8–30–96
Vol. 61 No. 170
Pages 45871–46372

Federal Register

Friday
August 30, 1996

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WASHINGTON, DC

WHEN: September 24, 1996 at 9:00 am.
WHERE: Office of the Federal Register
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CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Executive Order 13016 of August 28, 1996

Amendment to Executive Order No. 12580

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 *et seq.*) (the ''Act''), and section 301 of title 3, United States Code, I hereby order that Executive Order No. 12580 of January 23, 1987, be amended by adding to section 4 the following new subsections:

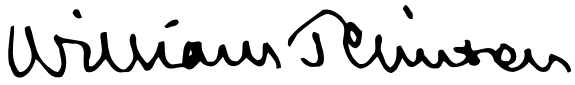
Section 1. A new subsection (c)(3) is added to read as follows:

''(3) Subject to subsections (a) and (b)(1) of this section, the functions vested in the President by sections 106(a) and 122 (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Secretary of Energy, to be exercised only with the concurrence of the Coast Guard, with respect to any release or threatened release in the coastal zone, Great Lakes waters, ports, and harbors, affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Coast Guard is the lead Federal agency for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness.''

Sec. 2. A new subsection (d)(3) is added to section 4 to read as follows:

''(3) Subject to subsections (a), (b)(1), and (c)(1) of this section, the functions vested in the President by sections 106(a) and 122 (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Department of Energy, to be exercised only with the concurrence of the Administrator, with respect to any release or threatened release affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Administrator is the lead Federal official for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection

shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness.''



THE WHITE HOUSE,
August 28, 1996.

[FR Doc. 96–22462
Filed 8–29–96; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0868]

Investment Adviser Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule amending its interpretive rule regarding investment adviser activities of bank holding companies to allow a bank holding company (and its bank and nonbank subsidiaries) to purchase, in a fiduciary capacity, securities of an investment company advised by the bank holding company if the purchase is specifically authorized by the terms of the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction under which the trust is administered. This amendment would reflect changes that have occurred since the rule was adopted; and would conform the Board's interpretive rule to rules applied to banks by the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, and the standard in section 23B of the Federal Reserve Act for this type of activity.

EFFECTIVE DATE: September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas M. Corsi, Senior Attorney (202/452–3275); or David S. Simon, Attorney (202/452–3611), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

In 1972, the Board permitted bank holding companies to serve as investment advisers to mutual funds and other registered investment companies, and adopted an interpretive rule setting forth limitations on this activity. Among the restrictions in the rule is a requirement that a bank holding company not purchase in its sole discretion in a fiduciary capacity any securities of an investment company advised by the bank holding company. The Board adopted this restriction because of concern that a bank holding company might use its position as a fiduciary to support an investment company that the bank holding company advises, increase the asset size of the investment company, or increase advisory fees.

The Board has sought public comment on a proposal to relax this restriction to permit a bank holding company to purchase in its sole discretion in a fiduciary capacity securities of an investment company advised by the bank holding company if the purchase is specifically authorized by the terms of the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction under which the trust is administered.[1] This change would reflect current practice in this area.[2]

Since the Board adopted its investment advisory interpretive rule, Congress enacted section 23B of the Federal Reserve Act, which permits a bank or its subsidiary to purchase securities, as a fiduciary, from an affiliate if such purchases are permitted by the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction governing the fiduciary relationship.[3] Both the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) recently permitted the banks that they regulate to purchase, in a fiduciary capacity, securities of an investment company advised by an affiliate of the bank if the purchase is specifically authorized by the terms of the instrument creating the fiduciary relationship, by court order, or by local law.[4] In addition, many states have amended their laws to permit a fiduciary to purchase, on behalf of customer accounts, shares of an investment company advised by the fiduciary or its affiliate.[5] In an analogous area, the Board has permitted fiduciary purchases of securities that are underwritten by a section 20 affiliate if the purchase is specifically authorized under the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction under which the trust is administered.[6]

The proposed amendment would have required that a bank holding company disclose to its fiduciary customers in writing that the bank holding company or its subsidiary serves as investment adviser to the investment company whose shares are purchased in a fiduciary capacity. The Board specifically requested public comment on whether the proposed disclosure requirement is necessary. The Board also requested public comment on whether the proposed disclosure requirement would be adequate if given only at the time the fiduciary relationship is created, or whether written disclosure should be given immediately prior to each initial investment in an investment company advised by the bank holding company.

Summary of Public Comments

The Board received 21 comments on its proposal.[7] Overall, the comments supported the Board's proposal. Regarding disclosures, twelve commenters stated that the Board should not require any special disclosure when a bank holding company purchases as fiduciary shares of an investment company advised by the fiduciary or its affiliates. Several commenters argued that special

[1] 59 FR 67,654 (December 30, 1994).

[2] The Board's proposal was in response to requests by several bank holding companies. These bank holding companies indicated that a mutual fund advised by the holding company is often the most cost-effective method of providing investment advice to customers and is increasingly attractive to customers because a mutual fund provides customers with a readily marketable and easily valued investment product. *See* Letter dated August 12, 1994, from the American Bankers Association to Chairman Greenspan.

[3] 12 U.S.C. 371c–1(b)(1).

[4] *See* OCC Trust Interpretation No. 234 (September 21, 1989); 12 CFR 9.12; and 12 CFR 337.4(e).

[5] *See, e.g.*, Mich. Comp. Laws § 487.485 (1992) (amended in 1992); Md. Code Ann., Est. & Trusts § 15–106 (1993) (amended in 1991); Ind. Code Ann. § 28–1–12–3 (Burns 1993).

[6] *Citicorp, J.P. Morgan & Company Incorporated, and Bankers Trust New York Corporation,* 73 Federal Reserve Bulletin 473 (1987) (*Citicorp Order*), *aff'd sub nom. Securities Industry Association* v. *Board of Governors of the Federal Reserve System,* 839 F.2d 47 (2d Cir. 1988), *cert. denied,* 486 U.S. 1059 (1988).

[7] These commenters included 17 banking organizations, two trade associations, one law firm, and one bank consulting firm.

disclosures are unnecessary in cases in which the purchase is permitted by court order or by the instrument creating the fiduciary relationship because the court or person creating the fiduciary relationship would be aware of the potential conflicts of interest. Commenters also stated that, in the case in which the purchase of shares is permitted by state law, the timing and content of disclosures should be governed exclusively by the laws of the state. These commenters generally maintained that the proposed disclosure would unnecessarily interfere with state law, could confuse fiduciary customers, and could be expensive and cumbersome.[8]

Discussion

After further review, the Board has determined that it is unnecessary to impose a general disclosure requirement when a bank holding company purchases as fiduciary shares of an investment company it advises. The Board believes that existing disclosure requirements are generally sufficient to ensure that fiduciary customers are aware of potential conflicts of interest that may arise from this activity.

As noted by commenters, the instrument or court order creating the fiduciary relationship, or state law, often contains or requires the disclosure of any potential conflict of interest. In addition, the common law has addressed conflicts of interest, disclosures, and other remedies in this area. Thus, any disclosure requirement adopted by the Board may be duplicative or conflict with other disclosure requirements.

In addition, other federal statutes require certain fiduciaries, including nonbanking subsidiaries of bank holding companies, to disclose potential conflicts of interest that may affect the fiduciary's recommendations. For example, under the Investment Advisers Act of 1940 (Advisers Act), an investment adviser has a fiduciary duty to disclose to a client any compensation it receives that may affect its recommendations.[9] Thus, according to the Securities and Exchange Commission (SEC), an investment adviser that receives fees from an investment company in which the adviser places trust funds as fiduciary must disclose to the trust customer the receipt of those fees and the potential conflict of interest presented.[10]

Although banks, trust companies, and bank holding companies themselves are exempt from the definition of investment adviser under the Advisers Act, the Act covers the advisory activities of affiliates of banks and bank holding companies.[11] According to the SEC, a nonbank subsidiary of a bank holding company—other than a trust company—has an obligation under the Advisers Act to disclose to its fiduciary customers that it may acquire for them shares of investment companies from which the nonbank subsidiary or its affiliate receives advisory fees.[12]

Neither the OCC nor the FDIC generally require a bank to specifically disclose to its fiduciary customers that the bank serves as investment adviser to an investment company whose shares the bank purchases in a fiduciary capacity.[13] The OCC recently indicated that a national bank that invests fiduciary assets in mutual funds that pay fees to the bank for services may, if the bank also receives fees for acting as a fiduciary, do so only to the extent authorized under state law, the trust instrument, or court order. The OCC further indicated that a trustee's overall fees must be consistent with any state law requirements that fees be reasonable, necessary, or appropriate, and the fee arrangement must be disclosed pursuant to any relevant state law disclosure requirements.[14]

While the Board is not adopting a disclosure requirement, the Board believes, as a general matter, that the disclosure of potential conflicts of interest is consistent with sound fiduciary principles. Accordingly, the Board encourages bank holding companies not already required to disclose potential conflicts of interest (by the instrument or court order creating the trust or by state or federal law) to make such disclosures. Bank holding companies engaging in this activity should recognize that their activities may be subject to disclosure requirements under state and federal laws, and should engage in the activities in a manner consistent with common law principles of trust law.

Other Comments

Four commenters stated that the Board should seek public comment on amending other restrictions contained in paragraph (g) of the interpretive rule. In particular, these commenters suggested that the Board reconsider the appropriateness of paragraphs (g) (1), (3) and (4) of the interpretive rule, which prohibit a bank holding company and its bank and nonbank subsidiaries from (i) purchasing for their own account securities of any investment company for which the bank holding company acts as investment adviser, (ii) extending credit to any such investment company, or (iii) accepting securities of such investment company as collateral for a loan which is for the purpose of purchasing securities of the investment company. Two of these commenters stated that national and state-member banks can engage in these activities subject only to the limitations contained in sections 23A and 23B of the Federal Reserve Act. Another commenter stated that these prohibitions prevent bank holding companies from competing effectively with other organizations because bank holding companies cannot provide the initial seed or start-up capital for advised investment companies or provide liquidity to such funds. One commenter also stated that the restrictions of paragraph (g) should apply to investment companies advised by subsidiary banks of bank holding companies.[15] The Board has decided to seek comment on amending other provisions of paragraph (g) in a separate proceeding.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 95–354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that adoption of this final rule would not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

[8] One commenter argued that the proposed disclosure was appropriate and should be required immediately prior to each initial investment in an investment company advised by the bank holding company, as well as at the time the fiduciary relationship is created.

[9] 15 U.S.C. § 80b–6. *See* Hornor Townsend & Kent, Inc., SEC No-Act. LEXIS 495 (April 4, 1995), *citing SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194–95 (1963).

[10] *See* Neuberger & Berman, SEC No-Act. LEXIS 1496 (May 29, 1984).

[11] *See, e.g.*, First Commerce Investors, Inc., SEC No-Act. LEXIS 221 (January 31, 1991) (* * * the Advisers Act does not specifically except a subsidiary of a bank or a bank holding company from the definition of investment adviser, unless that subsidiary is itself a bank or bank holding company.); 15 U.S.C. § 80b–1(11).

[12] Bank holding companies acting as fiduciaries to employee retirement plans also may be required to make disclosures under the Employee Retirement Income Security Act (ERISA) and Department of Labor Regulations. *See* 29 U.S.C. §§ 1106 and 1108; Prohibited Transaction Exception 77–4, 42 FR 18,732 (April 8, 1977).

[13] *See* 12 CFR 9.12 and 337.4(e). In addition, section 23B does not require a bank or its subsidiary to disclose to its fiduciary customers that it may purchase securities from an affiliate. Moreover, the *Citicorp Order* does not require specific disclosure of fiduciary purchases of securities underwritten by a section 20 affiliate.

[14] *See* OCC Interpretive Letter No. 704, November 2, 1995.

[15] The restrictions contained in paragraph (g) only apply to investment companies advised by a bank holding company or its nonbank subsidiaries. *See Norwest Corporation*, 76 Federal Reserve Bulletin 79, 80 n.3 (1990).

This amendment will remove a restriction currently contained in the Board's regulations that the Board believes is no longer necessary. The amendment does not impose more burdensome requirements on bank holding companies than are currently applicable.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board amends 12 CFR Part 225 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for 12 CFR 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Section 225.125 is amended by revising paragraph (g) to read as follows:

§ 225.125 Investment adviser activities.

* * * * *

(g) In view of the potential conflicts of interests that may exist, a bank holding company and its bank and nonbank subsidiaries should not:

(1) Purchase for their own account securities of any investment company for which the bank holding company acts as investment adviser;

(2) Purchase in their sole discretion, any such securities in a fiduciary capacity (including as managing agent) unless the purchase is specifically authorized by the terms of the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction under which the trust is administered;

(3) Extend credit to any such investment company; or

(4) Accept the securities of any such investment company as collateral for a loan which is for the purpose of purchasing securities of the investment company.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 26, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–22168 Filed 8–29–96; 8:45 am]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 705, 747 and 790

Changes in Office Description and References

AGENCY: National Credit Union Administration (''NCUA'').

ACTION: Final rule.

SUMMARY: Last year, the NCUA Board established the Office of Chief Financial Officer, transferring to it the functions of the Office of the Controller and some of the responsibilities of the Office of Examination and Insurance. The description of and references to the Office of the Controller are deleted, and a description of and references to the Office of Chief Financial Officer are added. The description of the Office of Examination and Insurance is updated to reflect redistribution of duties. Two references in other parts of the Regulations are also updated. These changes update the Regulations to reflect the current structure and responsibilities of various agency offices and make technical corrections to references within the regulations.

EFFECTIVE DATE: August 30, 1996.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Hattie Ulan, Special Counsel to the General Counsel, at the above address or 703–518–6540.

SUPPLEMENTARY INFORMATION: Part 790 of the NCUA Regulations sets forth NCUA organization, including descriptions of duties of all agency components. On July 25, 1995, the NCUA Board established the Office of Chief Financial Officer, transferring to it the functions of the Office of the Controller and some of responsibilities of the Office of Examination of Insurance. This document deletes the description of the Office of the Controller, and replaces it with a new description of the Office of Chief Financial Officer. It also makes changes to the description of the Office of Examination and Insurance to reflect current duties. Two additional technical changes are made. First, in Section 705.3, the reference to § 701.32(d)(1) is changed to § 701.34(a)(1) to reflect a recent change to Part 701. Second, the reference to 12 CFR part 4 in § 747.25(b) is corrected to read 12 CFR § 792.5(b). Section 747.25 was recently amended with the incorrect reference.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The types of changes made by this rule have no economic impact on credit unions. These are merely housekeeping changes. Therefore, the NCUA Board has determined and certifies that, under the authority granted in 5 U.S.C. 605(b), this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule does not change any paperwork requirements.

Executive Order

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. Since these are housekeeping changes only, there is no effect on state interests.

List of Subjects in 12 CFR Parts 705, 747 and 790

Credit unions.

By the National Credit Union Administration on August 8, 1996.

Becky Baker,

Secretary of the Board.

Accordingly, for the reasons set out in the preamble, 12 CFR Ch. VII is amended as set forth below.

PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN PROGRAM FOR CREDIT UNIONS

1. The authority citation for part 705 continues to read as follows:

Authority: Pub. L. 97–35, 42 U.S.C. 9822; Pub. L. 99–609, note to 42 U.S.C. 9822; Pub. L. 101–144, 12 U.S.C. 1766(k).

2. Section 705.3 is amended by revising the reference ''§ 701.32(d)(1)'' to ''§ 701.34(a)(1)'' in paragraph (b).

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

3. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C. 1784, 12 U.S.C. 1787.

4. Section 747.25 is amended by revising the reference ''12 CFR part 4'' to ''12 CFR 792.5(b)'' in the fifth sentence of paragraph (b).

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

5. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f.

6. Section 790.2 is amended by revising paragraph (b)(5); revising the first sentence of paragraph (b)(6)(i); replacing the last three sentences of paragraph (b)(6)(ii) with four new sentences; and replacing ''Controller'' with ''Chief Financial Officer'' in paragraph (b)(7) to read as follows:

§ 790.2 Central and regional office organization.

* * * * *

(b) * * *

(5) Office of Chief Financial Officer. NCUA's chief financial officer is in charge of budgetary, accounting and financial matters for the NCUA, including responsibility for submitting annual budget and staffing requests for approval by the Board and, as required, by the Office of Management and Budget; for managing NCUA's budgetary resources; for managing the operations of the National Credit Union Share Insurance Fund (NCUSIF) to include accounting, financial reporting and the collection and payment of capitalization deposits, insurance premiums and insurance dividends; for collecting annual operating fees from federal credit unions, for maintaining NCUA's accounting system and accounting records; for processing payroll, travel, and accounts payable disbursements; and for preparing internal and external financial reports.

(6) Office of Examination and Insurance. (i) The Director of the Office of Examination and Insurance: Formulates standards and procedures for examination and supervision of the community of federally insured credit unions, and reports to the Board on the performance of the examination program; manages the risk to the NCUSIF, to include overseeing the NCUSIF Investment Committee, monitoring the adequacy of NCUSIF reserves, analyzing the reasons for NCUSIF losses, formulating policies and procedures regarding the supervision of financially troubled credit unions, and evaluating certain requests for special assistance pursuant to Section 208 of the Federal Credit Union Act and for certain proposed administrative actions regarding federally-insured credit unions; serves as the Board expert on accounting principles and standards and on auditing standards; represents NCUA at meetings with the American Institute of Certified Public Accountants (AICPA), Federal Financial Institutions Examination Council (FFIEC) and General Accounting Office (GAO); and collects data and provides statistical reports. * * *

(ii) * * * The CLF is managed by the President of the CLF, under the general supervision of the NCUA Board which serves as the CLF Board of Directors. The Chairman of the NCUA Board serves as the Chairman of the CLF Board of Directors. The Secretary of the NCUA Board serves as the Secretary of the CLF Board. The Director of the Division of Risk Management, Office of Examination and Insurance, serves as the President of the CLF.

* * * * *

[FR Doc. 96–22169 Filed 8–29–96; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–13–AD; Amendment 39–9729; AD 96–18–05]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, A Division of Textron Canada Ltd. Model 206L, 206L–1, and 206L–3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing priority letter airworthiness directive (AD), applicable to Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC) Model 206L, 206L–1, and 206L–3 helicopters, that currently requires a visual inspection of the tailboom skin in the areas around the nutplates and in the areas of the tailboom drive shaft cover retention clips for cracks and corrosion using a 10-power or higher magnifying glass. This amendment requires the same actions as the existing AD, but corrects a part number that was incorrectly stated in that AD. This amendment is prompted by a recent accident and several reports of fatigue cracks in the tailboom skin in the areas around the nutplates for the tail rotor fairing and in the areas of the tail rotor drive shaft cover retention clips. The actions specified by this AD are intended to prevent failure of the tailboom and subsequent loss of control of the helicopter.

DATES: Effective September 16, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 16, 1996.

Comments for inclusion in the Rules Docket must be received on or before October 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–13AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, A Division of Textron Canada Ltd., 12,800 rue de L'Avenir, Mirabel, Quebec, Canada, JON 1LO. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Nguyen, Aerospace Engineer, FAA, Rotorcraft Certification Office, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5177, fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: On July 3, 1996, the FAA issued priority letter AD 96–14–10, to require, before further flight, and thereafter at intervals not to exceed 50 hours time-in-service (TIS), a visual inspection of the tailboom skin in the areas around the nutplates and in the areas of the tailboom drive shaft cover retention clips for cracks and corrosion using a 10-power or higher magnifying glass. This inspection interval was to be repeated until the tailboom was replaced by part number (P/N) 206–033–004–143 or –173. That action was prompted by a recent accident and several reports of fatigue cracks in the tailboom skin in the areas around the nutplates for the tail rotor fairing and in the areas of the tail rotor drive shaft cover retention clips. That

condition, if not corrected, could result in failure of the tailboom and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that one of the replacement tailboom's P/N should have been stated as P/N 206–033–004–177 instead of P/N 206–033–004–173.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 206L, 206L–1, and 206L–3 helicopters of the same type design, this AD supersedes priority letter AD 96–14–10 to require, before further flight, and thereafter at intervals not to exceed 50 hours TIS, a visual inspection of the tailboom skin in the areas around the nutplates and in the areas of the tailboom drive shaft cover retention clips for cracks and corrosion using a 10-power or higher magnifying glass. This inspection interval will be repeated until the tailboom is replaced by P/N–206–033–004–143 or –177. The actions are required to be accomplished in accordance with the service bulletin described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. 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. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be 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 for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–SW–13–AD.'' The postcard will be date stamped and returned to the commenter.

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 that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further 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 Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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 part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–9729, to read as follows:

AD 96–18–05 Bell Helicopter Textron, a Division of Textron Canada Ltd.: Amendment 39–9729. Docket No. 96–SW–13–AD. Supersedes priority letter AD 96–14–10.

Applicability: Model 206L, 206L–1, and 206L–3 helicopters, with tailboom, part number (P/N) 206–033–004–3, –11, –45, or –103 installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tailboom and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, and thereafter at intervals not to exceed 50 hours time-in-service (TIS), using a 10-power or higher magnifying glass, inspect the tailboom for cracks or corrosion. Perform this inspection in accordance with the inspection procedures stated in the Accomplishment Instructions, Part II or Part III, as applicable, of Bell Helicopter Textron Inc. Alert Service Bulletin 206L–87–47, Revision C, dated October 23, 1989. If a crack or corrosion is detected that is beyond the limits prescribed by the applicable maintenance manual, remove the tailboom and replace it with an airworthy tailboom.

(b) Replacement of the tailboom with tailboom, P/N 206–033–004–143 or –177, constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits will not be issued.

(e) The inspections and replacement shall be done in accordance with Bell Helicopter

Textron Inc. Alert Service Bulletin 206L–87–47, Revision C, dated October 23, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, A Division of Textron Canada Ltd., 12,800 rue de L'Avenir, Mirabel, Quebec, Canada, JON 1LO. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 16, 1996.

Issued in Fort Worth, Texas, on August 22, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–22141 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–138–AD; Amendment 39–9728; AD 96–18–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), applicable to certain Boeing Model 737–300, –400, and –500 series airplanes, that currently require modification of the packing and slide containers of the escape slide, and repetitive inspections of the velcro girt retaining straps of the escape slides at the forward door. The existing AD's were prompted by reports of slide girt material interfering with the girt bar stowage brackets during door opening. This new amendment requires the installation of a new modification, which constitutes terminating action for the repetitive inspection requirements. The actions specified by this amendment are intended to prevent failure or interference of opening of the forward doors, which could delay or impede the evacuation of passengers during an emergency.

DATES: Effective October 4, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 4, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719–0180; and Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Boffo, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2780; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding both AD 88–07–07 [amendment 39–5884 (53 FR 9864, March 28, 1988)] and AD 91–24–04 [amendment 39–8090 (56 FR 57588, November 13, 1991)] was published as a Notice of Proposed Rulemaking (NPRM) in the Federal Register on January 19, 1996 (61 FR 1291). Both of the existing AD's are applicable to various Boeing Model 737 series airplanes.

The NPRM proposed to continue to require modification of the escape slide packing and slide containers, which was required previously by AD 88–07–07. The NPRM also proposed to continue to require repetitive inspections of the velcro girt retaining straps at the forward door of the escape slides, which was required previously by AD 91–24–04. Additionally, the NPRM proposed to require modification of the escape slide girts, which would constitute terminating action for the repetitive inspection requirements.

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

Support for the Proposal

Two commenters support the proposal.

Request To Allow Removal of Placard

One commenter requests that the proposal be revised to allow operators to remove the velcro straps attach points and placard on the slide compartment cover that were installed as part of the modification required by AD 88–07–07. The commenter adds that some operators have already removed these items when they installed a modification that was approved as an alternative method of compliance with the repetitive inspections required by AD 91–24–04.

The FAA concurs. Once the terminating modification required by paragraph (c) of this final rule is installed, the velcro straps (and their attach points) are no longer necessary, and the placard may be confusing if it remains on the slide compartment. The FAA has revised paragraph (c) of the final rule to indicate that these items should be removed.

Request To Continue Approval of Previous Alternative Methods of Compliance

Several commenters request that the proposal be revised to specify that alternative methods of compliance (AMOC) approved previously by the FAA for AD 91–24–04, continue to be considered approved for this new AD. Specifically, three commenters point out that the FAA had previously approved, as an AMOC, the accomplishment of the modification described in Air Cruisers Service Bulletin S.B. 103–25–23 as terminating action for the repetitive inspections required by AD 91–24–04. These commenters request that the proposed rule likewise cite this service bulletin as an alternative terminating action.

The FAA does not concur. The modification described in Air Cruisers Service Bulletin S.B. 103–25–23 entails adding placards to the escape slide girt (that depict the proper stowed configuration of the girt) and removing the velcro straps that were required to be installed by AD 88–07–07. That modification, however, is reliant upon flight attendant procedures to correctly route the escape slide girt. Several recent ramp inspections of in-service airplanes have revealed that the girt material is still being misrouted, even with the placard installed. In light of this, the FAA has determined that the modification in that Air Cruisers service bulletin does not fully address the safety concern and is not as effective as the modification that is required by this new AD.

The modification specified in this final rule (which is described in Air Cruisers Service Bulletin S.B. 103–25–19) involves removing the existing girt; bonding on the girt attachments; installing a detachable girt; rigging a painter/mooring line; and bonding a placard to the slide assembly and reidentifying it. This modification will improve the operation of the escape slide of the forward entry and service doors, and will eliminate the need to rely on human factors associated with

ensuring that girt material is stowed properly.

Request To Allow Use of Revised Service Documents

One commenter requests that the proposal be revised to allow operators to install the terminating modification, proposed in paragraph (c), in accordance with various revisions of Air Cruisers Service Bulletin S.B. 103–25–19. The commenter points out that the service bulletin has been revised several times since the original version was released in May 1992.

The FAA concurs. The FAA has reviewed and approved all revisions of Air Cruisers Service Bulletin S.B. 103–25–19 through Revision 7, dated April 18, 1996. The various revisions are essentially identical, except for certain minor editorial changes. The FAA has revised paragraph (c) of the final rule to indicate that accomplishing the modification in accordance with any of these revisions is acceptable for compliance with that paragraph.

Conclusion

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 AD.

Cost Impact

There are approximately 1,572 Model 737–300, –400, and –500 series airplanes, equipped with Air Cruisers forward door escape slide of the affected design in the worldwide fleet. The FAA estimates that 663 airplanes of U.S. registry will be affected by this proposed AD.

The actions that are currently required by AD 88–07–07 take approximately 9 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $76 per airplane. Based on these figures, the cost impact on U.S. operators (175 airplanes) of the actions currently required is estimated to be $107,800, or $616 per airplane.

The actions that are currently required by AD 91–24–04 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators (439 airplanes) of the actions currently required is estimated to be $26,340, or $60 per airplane, per inspection cycle.

The terminating modification that is required by this new AD will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $1,800 per airplane. Based on these figures, the cost impact on U.S. operators of the new modification requirements of this AD is estimated to be $1,432,080, or $2,160 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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 ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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 part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendments 39–5884 (53 FR 9864, March 28, 1988) and 39–8090 (56 FR 57588, November 13, 1991), and by adding a new airworthiness directive (AD), amendment 39–9728, to read as follows:

96–18–04 Boeing: Amendment 39–9728. Docket 95–NM–138–AD. Supersedes AD 88–07–07, amendment 39–5884; and supersedes AD 91–24–04, amendment 39–8090.

Applicability: Model 737–300, –400, and –500 series airplanes, line numbers up to and including 2211; equipped with Air Cruisers forward door escape slides as listed in Air Cruisers Company Service Bulletin S.B. 103–25–19, Revison 7, dated April 18, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure or interference of opening of the forward doors, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 30 days after December 17, 1991 (the effective date of 91–24–04, amendment 39–8090), establish operating procedures, approved by the FAA Principal Maintenance Inspector (PMI), for the forward doors to include the requirements specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD; and thereafter, comply with those procedures until the modification required by paragraph (c) of this AD is accomplished. The procedures required by paragraphs (a)(1) and (a)(2) of this AD must be accomplished by qualified and trained mechanics. The procedures required by paragraph (a)(3) may be accomplished by qualified and trained members of the flightcrew or cabin crew. The training program to implement the procedures required by this paragraph must be approved by the FAA PMI. Methods for documentation of compliance with the following procedures must be approved by the FAA PMI.

(1) Prior to the next flight after December 17, 1991, and thereafter at intervals not to exceed 200 flight hours, inspect the condition of the girt retaining straps at the forward doors.

(2) Prior to further flight after December 17, 1991, replace worn or aged velcro whose grip

strength will no longer hold the girt retaining straps in position.

(3) Prior to the next flight after December 17, 1991, and thereafter prior to each flight, inspect the routing of the girt retaining straps at the forward doors, and reroute straps that are found not to be routed in accordance with the placarded instructions installed in accordance with AD 88–07–07, amendment 39–5885, on the inboard face of the slide compartment.

(b) For Model 737–300 series airplanes: Within 6 months after May 9, 1988 (the effective date of AD 88–07–07, amendment 39–5885), modify the escape slide packing and slide containers in accordance with Boeing Alert Service Bulletin 737–25A1221, dated December 17, 1987, or Revision 1, dated June 2, 1988. This modification must be accomplished prior to or in conjunction with accomplishment of the requirements of paragraph (c) of this AD.

(c) Within 36 months after the effective date of this AD, modify the escape slide girts in accordance with Air Cruisers Company Service Bulletin S.B. 103–25–19, Revision 7, dated April 18, 1996. Accomplishment of the modification constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD. Once this modification is installed, the placard and velcro straps (and their attach points) required by the modification specified in paragraph (b) of this AD may be removed.

Note 2: Accomplishment of this modification prior to the effective date of this AD in accordance with previous revisions of Air Cruisers Company Service Bulletin S.B. 103–25–19 is considered acceptable for compliance with the requirements of this paragraph.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) Except as indicated in NOTE 2 of this AD, the terminating modification shall be done in accordance with Air Cruisers Company Service Bulletin S.B. 103–25–19, Revision 7, dated April 18, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719–0180. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on Ocotber 4, 1996.

Issued in Renton, Washington, on August 21, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22010 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–243–AD; Amendment 39–9727; AD 96–18–03]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires installation of an automatic flight idle stop on the control quadrant in the flight compartment. This amendment is prompted by several reports of one or both power levers being moved aft of the flight idle stop on approach. The actions specified by this AD are intended to prevent such movement of the power lever(s) during flight, which could result in the loss of power to one or both engines, as well as severe engine damage.

DATES: Effective October 4, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 4, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth E. Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the Federal Register on March 21, 1996 (61 FR 11591). That action proposed to require installation of an automatic flight idle stop on the control quadrant in the flight compartment.

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

Support for the Proposal

One commenter supports the proposal in its entirety.

Request To Extend Compliance Time

Two commenters request that the compliance time for the installation be extended beyond the proposed 12 months. One commenter suggests that the compliance time be extended to 18 months so that the installation may be performed during a regularly scheduled maintenance interval. This would preclude additional costs incurred from special scheduling and additional downtime. The other commenter requests that the compliance time be extended to 20 months because the current number of available parts and the vendors turnaround time for delivery of parts will not be able to support the modification of the entire U.S. fleet of 230 airplanes within 12 months.

The FAA does not concur with the commenters request. In developing a compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but:

1. the recommendations for compliance time specified by the Luftfartsverket (LFV), which is the airworthiness authority for Sweden, and by the manufacturer;

2. the availability of required parts; and

3. the practical aspect of installing the required modification within an interval of time that parallels normal scheduled maintenance for the majority of affected operators.

Based on information received from the manufacturer relative to parts availability and vendor turnaround time, the FAA considers that the 12-month compliance time is adequate if operators make reasonable efforts to meet this schedule. However, under the provisions of paragraph (c) of the final rule, the FAA may approve requests for

adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Reference Latest Revision to Service Information

One commenter requests that the proposal be revised to cite the latest revisions to the SAAB service bulletins as the appropriate source of service information.

The FAA concurs with the commenters request. Since issuance of the notice, SAAB has issued the following revisions to the referenced service documents:

1. Service Bulletin 340–76–031, Revision 4, dated February 25, 1996.
2. Service Bulletin 340–76–032, Revision 3, dated March 25, 1996.
3. Service Bulletin 340–32–100, Revision 2, dated March 25, 1996.

These revised service bulletins are essentially identical to previous versions, but contain various minor editorial corrections and updated cost figures. They do not affect modifications that were accomplished in accordance with earlier versions of these service bulletins.

The FAA has revised the final rule to cite the latest versions of the service bulletins and has added information to specify that previous accomplishment of the installation in accordance with any earlier version of the service bulletin is acceptable for compliance with the applicable parts of the rule.

Request To Allow Continued Flight with Flight Idle Stop Inoperative

One commenter requests that the proposal be revised to provide relief from the Master Minimum Equipment List (MMEL) provisions to allow the airplane to continue to be operated if the flight idle (FI) stop is inoperative. In support of this request, the commenter points out that the Model SF340 automatic FI stop is unique in that, once the override mechanism is activated, the system cannot be reset without maintenance intervention. The commenter requests that the proposed AD allow affected operators to operate the airplane for at least a single additional revenue flight to a maintenance base where the FI system can be reset (or repaired, if necessary). Such relief would preclude what the commenter considers ''an unreasonable exposure to loss of service'' following such overrides.

The FAA concurs. In the event of a malfunction of the FI stop system, use of the FI stop override function is available to the flight crew. However, due to the redundant system design of the FI stop, the necessity for use of the override is expected to be very rare. In any case where the automatic system has malfunctioned and/or use of the override has been necessary, as the commenter correctly notes, maintenance action is required to return the FI stop system to an operational condition. If adequate maintenance support is not available upon landing, the FAA has determined that the airplane may be operated safely for one revenue flight to a location where appropriate maintenance can be performed, provided that the FI stop system has been properly deactivated and placarded for flight crew awareness in accordance with the provisions of the FAA-approved MMEL. A new paragraph has been added to the final rule to specify this.

Request To Allow Continued Flight if Anti-Skid System is Inoperative

This same commenter requests that the proposal be revised to provide MMEL relief to allow dispatch of an airplane equipped with an automatic FI stop system when the anti-skid system is inoperative. The commenter states that, while the quadruple redundancy of the ''release'' signal to the FI stop solenoid will minimize system faults that cause the solenoid to not release, this redundancy will result in the inability to defer the anti-skid system.

The FAA does not consider that additional revision of the proposed rule is necessary. The FI stop system uses wheel-spin-up signals from the anti-skid system to drive the FI stop to the open position. Other signals, such as weight-on-wheels signals, are also used to drive the FI stop to the open position, thus providing a redundant system design of the FI stop. However, the Abnormal Procedures specified in the FAA-approved Airplane Flight Manual (AFM) that relate to in-flight failure of the anti-skid system may include instructions for the flight crew to activate override of the FI stop upon landing. This use of the FI stop override then requires maintenance action to reset and, as discussed in the previous issue, the FAA has determined that a single flight for return of the aircraft to a location for maintenance will meet acceptable safety levels. Since the most restrictive requirements take precedence in the determination of dispatch relief, other equipment, such as the anti-skid system, may also be required to be repaired to support the requirements for the FI stop system.

Request To Provide Flight Crew With Indication of Status of FI System

One commenter supports the intent of the proposal, but requests that it be revised to include a requirement to provide the flight crew with adequate indication of the system status and failure annunciation, as well as a means to verify that the system is operational while in flight. The commenter considers that a status indicator is required to inform the flight crew of the mode of the lockout system. As a minimum, this indicator should inform the crew of two conditions:

1. the system has experienced a failure of some type, and
2. ground idle will not be available when it should be.

This commenter also considers that a means is necessary to allow the crew to test (fault check) and verify the system status and operability. Accurate knowledge of the system's status can be critical to the safety of the operation.

The FAA concurs partially with the commenter's statements about the need for adequate status indication and crew verification. The automatic FI stop system has been designed to provide status indication to the flight crew. The position of the FI stop in either the ''open'' position (no blocking of power levers into beta) or ''closed'' position is provided by means of indications on the top of the Flight Status Panel (FSP) as follows:

- *FI stop (blue):* FI stop is open and landing gear is down and locked. This is the normal indication when the airplane is electrically powered on the ground. The blue light normally will turn off when the landing gear is retracted after takeoff, and it does not illuminate for the duration of the flight. If the landing gear is not retracted following takeoff, the light will stay on, and the FI stop will remain open, until all wheels have spun down to less than 9 knots, which may take up to 90 seconds.
- *FI stop open (amber):* This light indicates an abnormal situation, showing that the FI stop is open, although landing gear is not down and locked. The amber light will appear if the FI stop fails to close after takeoff when the landing gear is retracted, indicating that there is no protection against movement of the power levers into beta during flight. This light also will appear if the manual override knob is pulled, causing the FI stop to open. This status indication is intended to alert the flight crew when FI stop protection is not available; therefore, increased crew awareness is necessary to prevent inadvertent placement of the

power levers into beta mode during flight.

These status indications do not, however, predict an upcoming failure of the FI stop to open correctly upon landing. Due to the redundant system design of the FI stop, and based on the failure analysis probabilities, malfunction of the FI stop system that would result in the system remaining closed after touchdown is predicted to be very infrequent. In the event of a malfunction or if adverse runway conditions result in the FI stop remaining closed upon touchdown, the override mechanism is always available to the flight crew. Operators may refer to SAAB 340 Operations Bulletin No. 52, which describes procedures to be followed in such an event.

As for the commenter's request for a means to allow the flight crew to test (fault check) and verify the system status and operability, the FAA points out that the FI stop lights on the FSP, as described above, provide an accurate indication of the system operation; in light of this, the FAA does not consider it necessary to add a flight crew test in addition to this status information. Additionally, lamp checks may be performed by the flight crew to ensure that the FI stop indication lights themselves are operational.

Request To Include Provisions To Minimize Compound System Failures

The same commenter requests that the proposal be revised to include provisions to minimize or exclude compound systems failures, and to ensure that the flight crew is able to override the automatic system if it becomes necessary to do so. If these features are not available, the commenter requests that the FI stop system be changed to incorporate them. To support its request, the commenter states that provisions must be made to eliminate failure modes that would result in certain systems being simultaneously disabled. The primary concern is the controllability of the airplane on the ground. Inability to select ground idle after landing may seriously degrade the airplane's stopping performance. If a failure that prevents access to ground idle also disables other ground operation related systems (such as nose wheel steering), the stopping capability and/or the controllability of the airplane could be seriously compromised. In order to further improve the reliability and independence of the FI stop installation, this commenter urges incorporation of three specific design considerations:

1. the ability to tap the spin-up signal in its rawest usable form, prior to it being processed by any digital/control component, to avoid its loss if that component should fail;

2. a redundant, parallel spin-up signal provided in case of a failure or lack of signal from one sensor;

3. a revision to the system operation that will address the possibility of reduced wheel spin-up (i.e., hydroplaning).

Related to the possibility of such failures, this commenter also states that provisions must be made to enable the flight crew to deliberately and rapidly override the FI stop system. This is necessary to prevent a system failure from creating a potentially hazardous situation when the crew is attempting to stop the airplane. The commenter states that, if power cannot be reduced below flight idle during the landing roll-out, the stopping capability of the airplane will be significantly degraded, potentially resulting in a runway overrun.

The FAA concurs with this commenter's statements, but finds that no revision to the rule is necessary because the design features suggested by the commenter already have been incorporated into the FI stop system. The quadruple redundancy of the ''release'' signal to the FI stop solenoid has been designed in order to minimize system faults that would cause the solenoid to not release. If the left or right landing gear is extended, and if any one of the left or right inboard or outboard wheel speed signals is greater than 25 knots, or if the left or right weight-on-wheels signal is true, then the FI stop system is opened, permitting unrestricted movement of the power levers.

Additionally, in the unlikely event that this combination of data fails to drive the FI stop to the ''open'' position, a manual override knob is also available to the flight crew. When this override knob is pulled, the FI stop will be mechanically forced to the ''open'' position. This combination of the redundant signal inputs and the override knob was intentionally designed into the FI stop system to enable selection of beta modes when necessary for slowing action.

Conclusion

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 AD.

Cost Impact

The FAA estimates that 224 airplanes of U.S. registry will be affected by this proposed AD. Accomplishment of the required installations will take between 122 and 142 work hours per airplane, depending upon the configuration of the airplane. The average labor rate is $60 per work hour. Required parts will cost approximately $9,300 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be between $3,722,880 and $3,991,680 (or between $16,620 and $17,820 per airplane).

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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 ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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 part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–18–03 Saab Aircraft AB: Amendment 39–9727. Docket 95–NM–243–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers –004 through –159 inclusive; and Model SAAB 340B series airplanes, serial numbers –160 through –379 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the movement of both power levers aft of the flight idle stop during flight, which could result in loss of power to both engines, as well as severe engine damage, accomplish the following:

(a) Within 12 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

Note 2: The actions specified in paragraphs (a)(1) and (a)(2) of this AD may be accomplished prior to, or in conjunction with, the accomplishment of the requirement of paragraph (a)(3) of this AD.

(1) Modify the electrical system of the flight idle stop in accordance with Saab Service Bulletin 340–76–031, Revision 04, dated February 25, 1996.

Note 3: Accomplishment of this modification prior to the effective date of this AD in accordance with previous revisions of Saab Service Bulletin 340–76–031 is considered acceptable for compliance with this paragraph.

(2) Install a control unit with a wheel spin-up signal in accordance with Saab Service Bulletin 340–32–100, Revision 02, dated March 25, 1996.

Note 4: Accomplishment of this installation prior to the effective date of this AD in accordance with previous revisions of Saab Service Bulletin 340–32–100 is considered acceptable for compliance with this paragraph.

(3) Install an automatic flight idle stop on the control quadrant in the flight compartment in accordance with Saab Service Bulletin 340–76–032, Revision 03, dated March 25, 1996.

Note 5: Accomplishment of this installation prior to the effective date of this AD in accordance with previous revisions of Saab Service Bulletin 340–76–032 is considered acceptable for compliance with this paragraph.

Note 6: Paragraph 2.A. of the Accomplishment Instructions of Saab Service Bulletin 340–76–032 specifies procedures for removal of a mechanical beta stop mechanism from the airplane. Since installation of a mechanical beta stop mechanism was not previously required for all airplanes by AD, that mechanism may not have been installed on certain airplanes affected by this AD. In such cases, procedures for removal of the mechanical beta stop would not apply.

(b) In cases where the automatic flight idle (FI) stop has malfunctioned and/or use of the FI stop override has been necessary, the airplane may be operated for one revenue flight to a location where required maintenance/repair can be performed, provided that the FI stop system has been properly deactivated and placarded for flight crew awareness in accordance with the provisions of the FAA-approved Master Minimum Equipment List (MMEL).

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification and installations shall be done in accordance with Saab Service Bulletin 340–76–031, Revision 04, dated February 25, 1996; Saab Service Bulletin 340–32–100, Revision 02, dated March 25, 1996; and Saab Service Bulletin 340–76–032, Revision 03, dated March 25, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 4, 1996.

Issued in Renton, Washington, on August 21, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22009 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 307

Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Comprehensive Smokeless Tobacco Health Education Act of 1986 (''Smokeless Tobacco Act'') requires that all packaging and advertising for smokeless tobacco products display one of three health warnings in rotating sequence. On January 16, 1993, the Commission published a Notice of Proposed Rulemaking seeking public comment on a method for rotating the health warnings on promotional materials based on the date of dissemination of the materials. On February 14, 1995, the Commission published another Notice of Proposed Rulemaking seeking public comment on a proposal to permit rotation of warnings on utilitarian items based on either the date of order or the date of dissemination of the items, provided the production of such items is carried out in a manner consistent with customary business practices.

Having considered all of the issues raised during the two public comment periods, the Commission is now amending the regulations governing utilitarian items and the regulations governing promotional materials to permit rotation based on either the date of order or the date of dissemination, provided the production of such items or materials is carried out in a manner consistent with customary business practices. This document contains the statement of basis and purpose and the text of the final regulations.

EFFECTIVE DATE: The effective date of these regulations will be September 30, 1996.

ADDRESSES: Requests for copies of the regulations and the statement of basis and purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th & Pennsylvania Ave. NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip S. Priesman, Attorney, Division of Advertising Practices, Federal Trade

Commission, 6th & Pennsylvania Ave. NW, Washington, DC 20580. (202) 326–2484.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Introduction

Congress enacted the Comprehensive Smokeless Tobacco Health Education Act of 1986 for the express purpose of educating the public about the health consequences of using smokeless tobacco products. (Public Law No. 99–252, 100 Stat. 30 (1986), 15 U.S.C. 4401 *et seq.*). To achieve this end, the Act required the random display of three warnings on the packaging and the rotation of these warnings in the advertising of smokeless tobacco products.

Specifically, the Smokeless Tobacco Act mandated that one of the following three health warnings appear in the labeling and advertising (with the exception of outdoor billboard advertising) of smokeless tobacco products:

Warning: This product may cause mouth cancer.
Warning: This product may cause gum disease and tooth loss.
Warning: This product is not a safe alternative to cigarettes.

The Commission's original regulations applying the Act to promotional materials provided that ''[a] satisfactory plan for point-of-sale and non-point-of-sale promotional materials * * * could provide for rotation according to the time that the material is scheduled to be disseminated or the order date for the material.'' 51 Fed. Reg. 40005, 40023 (1986). Point-of-sale materials include shelf-talkers (a card or brochure attached to the shelf where the product is located in a retail outlet), rack header cards (cards identifying a particular smokeless brand on semi-circular racks displaying cans of snuff), and tear pads. Non-point-of-sale materials include direct mail circulars, coupons, leaflets and pamphlets.

The Commission's original regulations exempted utilitarian items from the regulations governing the rotation and display of the health warnings. The exemption for utilitarian items was challenged in court, and the court ultimately ordered the Commission to delete the exemption.[1] Accordingly, in 1991, the Commission issued final regulations setting out requirements for the rotation and display of health warnings on utilitarian items. During its consideration of the 1991 rulemaking proceeding, the Commission became concerned that companies could order a year's supply of utilitarian items at one time, and thereby display only one warning over an entire year. The Commission also was concerned that this apparent loophole could likewise apply to promotional materials. Thus, the Commission amended its regulations governing rotation of both promotional objects and utilitarian objects, and called for ''rotation according to the date the materials or objects are disseminated.'' The Commission noted, however, that this could impose a hardship on a company that was unable to foresee its distribution schedule when placing the order. To alleviate this hardship, the rule also permitted rotational plans whereby each warning would be displayed on an equal number of objects comprising any given order. Under this option, for promotions lasting one year or longer, the company could distribute promotional materials or utilitarian items bearing the same warning for four months, and then switch to another warning. If the promotion was scheduled to last less than one year, the materials or items bearing the various warnings could be distributed randomly.

With regard to promotional materials, the Commission published this rule for additional public comment on January 16, 1993. The initial comment period was to expire on February 16, 1993, but the Commission extended the deadline until March 23, 1993. During this time, the Commission received five comments. Four of the comments were from manufacturers of smokeless tobacco products, and one was from a trade association representing the manufacturers.

On February 14, 1995, the Commission published a Notice of Proposed Rulemaking seeking comment on whether the requirements for rotating the health warnings on utilitarian items should be amended. The proposed rule permitted the rotation of warnings on utilitarian items according to either the date the item is ordered or the date of dissemination, provided that the production of the materials is carried out consistent with customary business practices. The Commission received four comments, all of which supported the proposed rule. All four comments were from manufacturers of smokeless tobacco products.

II. The Regulations

The Commission's original regulations were written, for the most part, as creating safe harbors rather than imposing mandatory requirements for compliance with the Smokeless Tobacco Act. The regulations issued in 1991 with respect to utilitarian items and promotional materials and those proposed again in 1993 regarding promotional materials removed the safe harbor provisions, and specified that the appropriate warning would be determined by the date the materials were scheduled for dissemination, with a limited option for random display. The comments the Commission received indicated that requiring rotation based on date of dissemination, even with the limited option for random display, was likely to impose additional, possibly significant, costs on smokeless tobacco manufacturers and their suppliers. Both the date of dissemination requirement and the more flexible date of order safe harbor appear likely to meet the chief benefit intended by the regulations: Providing a system for the rotation of health warnings as required by the Smokeless Tobacco Act. Consequently, the Commission is returning to the previous more flexible approach and specifying safe harbors for complying with the Smokeless Tobacco Act's warning requirements by amending the regulation governing utilitarian items, and retaining the present rotation schedule for promotional materials except for the amendment that such materials be produced in accordance with customary business practices. With these amendments, the regulations governing the rotation of warnings for utilitarian items will mirror those for promotional materials.

Given the practical constraints associated with the production and dissemination of utilitarian items and those for promotional materials, the Commission believes that the industry should be given some flexibility in conforming the rotation requirements to these types of advertising, while at the same time ensuring that the warnings rotate as required by the Smokeless Tobacco Act. If, however, there is a pattern of abuse or confusion suggesting that the safe harbors do not provide for adequate rotation of the warnings, the Commission will reconsider whether it is necessary to promulgate regulations providing less flexibility and more specificity. In particular, the Commission may reconsider whether to impose the mandatory date of dissemination requirement for the rotation of both utilitarian items and promotional materials.

A. Comments Regarding the Rotation of Utilitarian Items

The comments indicate that producing utilitarian items that comply with a rotation standard based upon

[1] *Public Citizen* v. *FTC*, 869 F.2d 1541 (D.C. Cir. 1989), aff'g, 588 F. Supp. 667 (D.D.C. 1988).

date of dissemination is expensive and imposes burdens on the smokeless tobacco manufacturers. According to one comment, the date of dissemination requirement is burdensome due to the difficulty of predicting the demand for any item in advance. This comment notes that such prediction is difficult both because methods of forecasting demand are imprecise and because premium promotions offering utilitarian items often change during the course of the promotion due to competitive conditions.[2] Several comments state that the date of dissemination requirement requires companies to order an excess supply of utilitarian items to ensure that the supply is not exhausted before the promotion ends.[3] These comments likewise state that the need to order an excess supply of items adds both warehousing and inventory costs (both in terms of manpower and facilities).[4] And, as inventory costs increase, so do freight costs, according to these comments. Another comment states that its inability to accurately forecast demand as well as the lead time needed to order items adds planning and administrative costs, including added costs of coordinating with suppliers, warehousing inventory, tracking inventory, and distributing items.[5]

B. Comments Regarding the Rotation of Promotional Materials

The comments from the smokeless tobacco manufacturers are similar to those for utilitarian items. The comments state that the companies exercise very little control over the actual rate or date of dissemination of promotional materials.[6] In addition, to comply with the proposed date of dissemination requirement, manufacturers would need to produce most of their materials in significantly larger quantities to ensure an adequate supply of materials with each of the warnings. This would increase their production expenses, as well as the cost of shipping, warehousing, and distributing the materials.[7] Several companies might also need to hire additional employees to handle the increased workload.[8] Further, much of the additional burden would fall on the businesses that produce and supply the materials to the tobacco companies. While these businesses would likely pass on their increased costs to their customers, some of these suppliers might lack the resources to meet the increased production requirements, thus forcing them to lose a significant portion of their business.

According to some of the comments, the proposed regulations would also raise environmental issues by increasing the amount of waste generated in producing materials.[9] To comply with the proposed requirements, manufacturers of smokeless tobacco would need to order greater quantities of materials displaying each different warning label. Rather than being able to exhaust the existing supply of materials before re-ordering, companies would need to switch to materials printed with a different warning on the specified date, and throw out or otherwise destroy all of the remaining materials with the outdated warning. According to the comments, this would only add to the nation's growing environmental concerns.[10]

C. Commission Conclusions

Based on its review of these comments, the Commission believes it is appropriate to adopt a rotation method that allows rotation to be based on either the date of order or the date of dissemination, as long as ''the production of such materials is carried out in a manner consistent with customary business practices.'' Such a method will fulfill the purpose of the Smokeless Tobacco Act and prevent manufacturers from circumventing the rotation requirement without imposing a substantial hardship on the manufacturers and their suppliers. Almost all of the members of the industry have demonstrated their ability to comply with a rotation requirement based on the date of order by submitting rotational plans that follow this schedule. Moreover, the addition of the requirement that production be based upon business considerations will ensure that permitting rotation based on date of order will not frustrate the Act's requirement that the warnings rotate. The inclusion of this ''caveat'' is intended to inhibit bulk-ordering by companies to avoid any one particular warning.[11]

Some comments suggest that the Commission could lessen the burden on the smokeless tobacco manufacturers by allowing for the random simultaneous display of the various warnings on promotional materials. The Smokeless Tobacco Act and the Commission's regulations specifically permit random simultaneous display for packaging. However, the Smokeless Tobacco Act expressly provided for different methods of assuring the rotation of the three warnings for packaging and advertising. On packaging, the Act specifies that the warnings be displayed randomly in as equal a number of times as possible. In advertising, however, the Act mandates the rotation of the three warnings in alternating sequence every four months. While random simultaneous display may meet the Act's directives applicable to packaging, it generally would not appear to satisfy the prescribed rotation in alternating sequence in advertising. The Commission, therefore, concludes that the regulations should not provide for random simultaneous display of either utilitarian items or promotional materials.[12]

Thus, the Commission's final regulations provide that the rotation of the health warnings on utilitarian items and promotional materials may be based upon either the date of order or the date of dissemination of the materials, provided that the items or materials are produced in accordance with customary business practices.

III. Regulatory Flexibility Act

When the Commission first promulgated the smokeless tobacco regulations, the agency certified that the Regulatory Flexibility Act's requirement for regulatory analysis was not applicable because the regulation did

[2] Comment of Pinkerton at 5 (April 17, 1995).

[3] Comments of Conwood at 3 (April 17, 1995); Pinkerton at 6 (April 17, 1995).

[4] Comment of Pinkerton at 6 (April 17, 1995).

[5] Comment of United States Tobacco Co. at 9 (April 11, 1995).

[6] Comments of Conwood at 2–3 (April 17, 1993); Smokeless Tobacco Council at 3 (March 18, 1993); Pinkerton at 5 (March 17, 1993).

[7] Comments of Helme at 2 (March 5, 1993); United States Tobacco Co. at 10–11 (March 18, 1993); Pinkerton at 3–4 (March 17, 1993).

[8] Comments of Smokeless Tobacco Council at 6 (March 18, 1993); United States Tobacco Co. at 18–20 (March 18, 1993); Conwood at 5 (March 16, 1993); Pinkerton at 4 (March 17, 1993); Helme at 2 (March 5, 1993).

[9] Comment of Conwood at 6 (March 16, 1993).

[10] *Id.*

[11] Such bulk-ordering was raised as a concern during the Commission's 1991 rulemaking regarding the rotation of warnings on smokeless tobacco utilitarian items. 56 FR 11653, 11659 (1991).

[12] In 1985, the Commission reached a similar conclusion with respect to the rotation of warnings on *cigarette packaging.* The Comprehensive Smoking Education Act (''Cigarette Act'') specified that the four statutory health warnings had to rotate quarterly. 15 U.S.C. 1331(c). Pursuant to the Cigarette Act, the cigarette companies submitted a rotational warning plan that called for the random simultaneous display of the warnings on cigarette packages. The Commission rejected this proposal, notifying the companies and the relevant committees of Congress of its action. Subsequently, the Congress amended the rotational warning requirements of the Cigarette Act to allow simultaneous rotation on packaging only for those cigarette companies that sold less than one-fourth of one percent of all cigarettes sold in the United States. The Nurse Education Amendments of 1985, Pub. L. 99–92, 99 Stat. 393, 402–403 (1985). The same Congress later enacted the Smokeless Tobacco Act, with its different rotational warning schemes for smokeless tobacco packages and for smokeless tobacco advertisements.

not appear to have a significant economic impact on a substantial number of small entities. 51 FR 40005, 40014 (1986). In its subsequent Notice, the Commission noted that the proposed amendments did not change the regulations sufficient to alter its previous ''no impact'' determination; nonetheless, to ensure that no substantial impact was being overlooked, the Commission requested public comment on the effect of the proposed regulations on costs, profitability, competitiveness, and employment in small entities. 54 FR 31541 (1989).

Two of the comments received during the comment period for promotional materials discussed the effect that regulations requiring rotation based upon date of dissemination would have on small businesses. The Smokeless Tobacco Council noted that smaller smokeless tobacco manufacturers may be unable to absorb any additional production costs, and may eliminate their promotional programs. The Smokeless Tobacco Council and Conwood Tobacco Company noted that small suppliers may be unable to make the necessary adjustments. No other comments on burden were received during the 1993 comment period for promotional materials and no comments on burden were received during the 1995 comment period for utilitarian items. By permitting rotation based upon date of order or date of dissemination, the final regulations will avoid any of these potential burdens on small entities. Thus, the Commission certifies that the amendments will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. § 605(b) (1982).

IV. Effective Date

During the comment period concerning the proposed regulations for promotional items, the Commission received two comments requesting that if the Commission adopts a requirement that promotional items rotate according to the date of dissemination, the Commission include a grandfather clause delaying the effective date of the rule for at least two years from publication of the final rule, to enable companies to use up their existing inventory of materials, and to allow suppliers time to make the necessary adjustments.[13] The Commission, however, does not believe that any grandfather period is necessary given the flexibility permitted by the amended regulations. In addition, the Commission notes that the major smokeless tobacco manufacturers have all previously filed plans calling for rotation based on date of order, one of the permitted methods of rotation under the amended regulations. However, the Commission will provide thirty (30) days for companies to come into compliance with these amendments. Thus, the effective date for the regulations governing the date that serves as the basis for rotating warnings on promotional materials is thirty (30) days from the date of publication of the final rule.

List of Subjects in 16 CFR Part 307

Health warnings, Smokeless tobacco, Trade practices.

Accordingly, Part 307 of 16 CFR Chapter I is amended as follows:

PART 307—REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

1. The authority for Part 307 continues to read as follows:

Authority: 15 U.S.C. 4401 *et seq.*

2. Section 307.12(b) is revised to read as follows:

§ 307.12 Rotation, display, and dissemination of warning statements in smokeless tobacco advertising.

* * * * *

(b) Each manufacturer, packager, or importer of a smokeless tobacco product must submit a plan to the Commission or its designated representative that ensures that the three warning statements are rotated every four (4) months in alternating sequence. There may be more than one system, however, that complies with the Act and these regulations. For example, a plan may require all brands to display the same warning during each four-month period or require each brand to display a different warning during a given four-month period. A plan shall describe the method of rotation and shall include a list of the designated warnings for each four-month period during the first year for each brand. A plan shall describe the method that will be used to ensure the proper rotation in different advertising media in sufficient detail to ensure compliance with the Act and these regulations, although a number of different methods may satisfy these requirements. For example, a satisfactory plan for advertising in newspapers, magazines, or other periodicals could provide for rotation according to either the cover or closing date of the publication. A satisfactory plan for posters and placards, other than billboard advertising, could provide for rotation according to either the scheduled or the actual appearance of the advertising. A satisfactory plan for point-of-sale and non-point-of-sale promotional materials such as leaflets, pamphlets, coupons, direct mail circulars, paperback book inserts, or non-print items, or for utilitarian objects, could provide for rotation according to the date the materials or objects are ordered by the smokeless tobacco manufacturer, or the date the objects or materials are scheduled to be disseminated, provided that the production of such materials or objects is carried out in a manner consistent with customary business practices.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–22221 Filed 8–29–96; 8:45 am]

BILLING CODE 6750–01–P

[13] Comments of Smokeless Tobacco Council at 7 (March 18, 1993); United States Tobacco Co. at 23 (March 18, 1993).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 85G–0335]

Direct Food Substances Affirmed as Generally Recognized as Safe; Enzyme-Modified Lecithin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm that the use of enzyme-modified lecithin as a direct human food ingredient is generally recognized as safe (GRAS). This action is in response to a petition filed by Kyowa Hakko Kogyo Co., Ltd.

DATES: Effective August 30, 1996. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of two publications listed in new § 184.1063, effective August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the procedures described in § 170.35 (21 CFR 170.35),

Kyowa Hakko Kogyo Co., Ltd., Tokyo, Japan, submitted a petition (GRASP 5G0301) proposing that enzyme-modified lecithin be affirmed as GRAS as a direct human food ingredient.

FDA published a notice of filing of this petition in the Federal Register of August 27, 1985 (50 FR 34758), and gave interested parties an opportunity to submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. FDA received two comments in response to that notice. One of the comments stated that the specifications proposed by the petitioner for enzyme-modified lecithin did not agree with the specifications for lecithin in the Food Chemicals Codex, 3d ed. (1981) and argued that because of the differences in the specifications, enzyme-modified lecithin should be the subject of a food additive petition rather than a GRAS affirmation petition. FDA finds that the specifications of enzyme-modified lecithin need not agree with those of lecithin, because the two substances are chemically different. The agency further concludes that the differences between the specifications should not affect the classification of this petition. The second comment endorsed the petitioned use of enzyme-modified lecithin. Subsequently, the same commenter requested that FDA regulate enzyme-modified lecithin under the existing GRAS affirmation regulation for lecithin (§ 184.1400) (21 CFR 184.1400)). The agency concludes that because the chemical composition of enzyme-modified lecithin is different than that of lecithin, enzyme-modified lecithin should be regulated separately.

II. Standards for GRAS Affirmation

Under § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances added to food. The basis of such views may be either: (1) Scientific procedures, or (2) in the case of a substance used in food prior to January 1, 1958, experience based on common use in food (§ 170.30(a)). General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). In its petition, Kyowa Hakko Kogyo Co., Ltd., relies on scientific procedures, primarily published scientific papers and books, corroborated by unpublished information, to demonstrate that enzyme-modified lecithin is GRAS.

III. Identity, Production, and Technical Effect

Lecithin is a complex mixture primarily composed of phospholipids, triglycerides, fatty acids, and carbohydrates (Refs. 1 and 2). The removal of most of the triglycerides and fatty acids of lecithin produces an ''oil-free'' or ''deoiled'' lecithin with a 90 percent or more phospholipid content. The enzyme phospholipase A_2, identified with the Enzyme Commission (EC) number EC 3.1.1.4, converts the principal phospholipids of lecithin to their corresponding lysophospholipids. This reaction produces enzyme-modified lecithin (Refs. 3 through 6).

Enzyme-modified lecithin is prepared from various types of crude or deoiled lecithin, using either purified phospholipase A_2 or pancreatin, an enzyme preparation from porcine pancreas that contains phospholipase A_2. Added calcium chloride supplies calcium ions required for the activation of phospholipase A_2. The process is carried out at pH 6 to 10 and within the temperature range of 30 to 70°C. At completion, phospholipase A_2 is inactivated by raising the temperature to 90 to 100°C.

The resulting enzyme-modified lecithin contains lysophospholipids and fatty acids produced by the enzymic reaction, as well as other components of lecithin (e.g., phospholipids, carbohydrates). Inactivated phospholipase A_2 and calcium chloride are also present in enzyme-modified lecithin. The exact composition of enzyme-modified lecithin varies depending on the type and the composition of lecithin used and on the degree of modification of lecithin achieved during the production of enzyme-modified lecithin (Ref. 7).

The petitioner intends to use enzyme-modified lecithin as an emulsifier in various foods, including bakery products, pasta products, margarine, mayonnaise, and salad dressings. The petition contains a published report and several patents demonstrating the effectiveness of enzyme-modified lecithin as an emulsifier in foods (Refs. 4, 5, 6, 8, and 9).

IV. Safety Evaluation

In evaluating the safety of enzyme-modified lecithin, the agency considered the following issues: (1) The safety of lecithin and phospholipase A_2, (2) the safety of enzyme-modified lecithin, (3) exposure to levels of the ingredient in food, and (4) specifications.

A. The Safety of Lecithin and Phospholipase A_2

FDA has affirmed lecithin as GRAS (§ 184.1400). Therefore, the agency has no safety concerns about the use of lecithin for the manufacture of enzyme-modified lecithin.

Phospholipase A_2 is one of the digestive enzymes present in the pancreatic juice of mammals, including humans (Refs. 10 through 12). Phospholipase A_2 is irreversibly inactivated by heat at the end of the manufacture of enzyme-modified lecithin. Active and inactive enzymes are constituents of many foods normally consumed by humans. Therefore, FDA concludes that inactive phospholipase A_2 in enzyme-modified lecithin will be digested like any other protein present in food. The agency also notes that calcium chloride, which is used to activate phospholipase A_2 during the production of enzyme-modified lecithin, has been affirmed as GRAS (21 CFR 184.1193).

B. The Safety of Enzyme-Modified Lecithin

The end products of the modification of lecithin by phospholipase A_2 are lysophospholipids and fatty acids. Fatty acids are normal constituents of lecithin. They also occur naturally in many foods and form in the human body during normal cellular metabolism (Refs. 11 and 12). FDA has approved the use of salts of fatty acids as binders, emulsifiers and anticaking agents in food (21 CFR 172.863). Therefore, the agency has no safety concerns about the presence of fatty acids in enzyme-modified lecithin.

Numerous published reports establish that the lysophospholipids produced during the manufacture of enzyme-modified lecithin also occur naturally in a variety of foods, especially in cereal grains and eggs (Refs. 13 through 19). Furthermore, these lysophospholipids form in the human body from the action of pancreatic phospholipase A_2 on dietary lecithin (Refs. 11 and 12).

FDA reviewed several published studies suggesting that under certain pathologic conditions the intestinal fluid containing lysophospholipids may regurgitate into the stomach and damage the stomach mucosal tissue (Refs. 12 and 20 through 23). The agency evaluated these studies in light of the possible adverse effects of enzyme-modified lecithin ingested in food. FDA concludes that the results of the studies suggesting that regurgitated lysophospholipids may damage the

stomach mucosal tissue are not relevant to the food ingredient uses of enzyme-modified lecithin, because the lysophospholipids present in enzyme-modified lecithin will be emulsified within a large excess of undigested food, which would provide a physical barrier to direct interaction of the lysophospholipids with the mucosal lining.

Moreover, in 1979, the Select Committee on GRAS Substances reviewed the available information on the metabolism of lecithin, including its breakdown to lysophospholipids in the human body, and concluded that there was no evidence of a hazard to the public from the use of lecithin in food at existing levels or levels that might reasonably be expected in the future (Ref. 24).

FDA also reviewed one published animal feeding study included in the petition (Ref. 6). During this study two groups of rats were fed for 3 and 13 weeks, respectively, diets containing various doses of enzyme-modified lecithin. The results of this study did not reveal any significant adverse effects in rats attributable to enzyme-modified lecithin.

Furthermore, the petitioner provided one unpublished corroborative feeding study. During this study enzyme-modified lecithin was administered to rats at a dose of 2,000 milligrams per kilogram body weight per day (mg/kg bw/d) for 30 days, followed by 6 days per week for 60 days, for a total of 90 days. The results of this study did not reveal any adverse effects on the gastric mucosa of the rats or any other significant adverse effects attributable to enzyme-modified lecithin.

C. Estimated Exposure Levels

Based on the petitioner's intended use of enzyme-modified lecithin in a manner similar to lecithin, and using information on consumption of various food categories containing lecithin (Ref. 25), the agency calculated the estimated daily intake (EDI) of enzyme-modified lecithin as 326 mg/person/d.

Moreover, the data obtained in the published 13-week rat feeding study (Ref. 6) showed no adverse effects at a level of 20 grams enzyme-modified lecithin/kg bw/d. Application of a 1,000-fold safety factor to this value produces, for a 60 kg person, an acceptable daily intake of 1,200 mg enzyme-modified lecithin/person/d, which exceeds the EDI reported above (326 mg/person/d).

D. Specifications

FDA reviewed the specifications for enzyme-modified lecithin suggested in the petition. The agency notes that the petitioner originally suggested a lead limit of not more than 10 parts per million. However, after discussions with FDA about the agency's desire to limit human exposure to lead to the lowest level possible in food (see 59 FR 5363, February 4, 1994), the petitioner amended the petition to suggest a lead limit of not more than 1.0 part per million. FDA agrees that this lower limit should be adopted. Also, the agency notes that in a notice published in the Federal Register of March 14, 1994 (59 FR 11789), the National Academy of Sciences/Institute of Medicine Committee on Food Chemicals Codex (the Committee) announced its new policy that inclusion of arsenic limits in Food Chemicals Codex monographs should no longer be routine, but should be considered on an ''as-needed'' basis. To implement this new policy, the Committee proposed to delete the arsenic specification for various Food Chemicals Codex substances, including lecithin. The proposal became final when the fourth edition of the Food Chemicals Codex was published in 1996. FDA agrees that a specification for arsenic in enzyme-modified lecithin is not necessary. Therefore, no such specification is being adopted in this final rule. FDA concludes that the other specifications suggested in the petition should be adopted.

V. Conclusion

FDA has evaluated the published information in the petition, along with other corroborative information, and finds that the use of enzyme-modified lecithin as an emulsifier in foods is GRAS.

Furthermore, these data show no potential risk from any foreseeable use of enzyme-modified lecithin. Therefore, in accordance with 21 CFR 184.1(b)(1), the agency is affirming that the use of enzyme-modified lecithin in foods is GRAS with no limits other than current good manufacturing practice.

VI. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental impact analysis report submitted under previous 21 CFR part 25, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VII. Analysis of Impacts

FDA has examined the economic implications of this final rule affirming the GRAS status of the use of enzyme-modified lecithin in foods under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety issues; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the significant economic impact of the rule on small entities. This final rule recognizes the applicability of a statutory exemption. The impact of the rule is to remove uncertainty about the regulatory status of enzyme-modified lecithin for use in foods. Therefore, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VIII. Effective Date

As this rule recognizes an exemption from the food additive definition in the Federal Food, Drug, and Cosmetic Act, and from the approval requirements applicable to food additives, no delay in effective date is required by the Administrative Procedure Act (5 U.S.C. 553(d)). The rule will therefore be effective immediately (5 U.S.C. 553(d)(1)).

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Scholfield, C. R., ''Composition of Soybean Lecithin,'' *Journal of American Oil Chemists' Society*, 58:889–892, 1981.

2. Rydhag, L., ''The Importance of the Phase Behaviour of Phospholipids for Emulsion Stability,'' *Fette Seifen Anstrichmittel*, 81:168–173, 1979.

3. Van Nieuwenhuyzen, W., ''The Industrial Uses of Special Lecithins: A Review,'' *Journal of American Oil Chemists' Society*, 58:886–888, 1981.

4. Lincklaen, H. W., and J. H. M. Rek, ''Pourable Emulsion,'' U.S. Patent 3,796,815, March 12, 1974.
5. Van Dam, A. F., ''Emulsions,'' U.S. Patent 4,034,124, July 5, 1977.
6. Dutilh, C. E., and W. Groger, ''Improvement of Product Attributes of Mayonnaise by Enzymic Hydrolysis of Egg Yolk with Phospholipase A_2,'' *Journal of Science of Food and Agriculture*, 32:451–458, 1981.
7. Pardun, H., ''Advances in the Extraction and Processing of Phytolecithins,'' *Fette Seifen Anstrichmittel*, 84:1–29, 1982.
8. Pardun, H., ''Phosphatide Emulsifiers,'' U.S. Patent 3,661,795, May 9, 1972.
9. Van Dam, A. F., ''Oil-in-Water Emulsion and Process for the Preparation Thereof,'' U.S. Patent 4,119,564, October 10, 1978.
10. De Haas, G. H., N. M. Postema, W. Nieuwenhuizen, and L. L. M. Van Deenen, ''Purification and Properties of Phospholipase A from Porcine Pancreas,'' *Biochimica et Biophysica Acta*, 159:103–117, 1968.
11. Rossiter, R. J., ''Metabolism of Phosphatides,'' in ''Metabolic Pathways,'' edited by D. M. Greenberg, vol. II, pp. 69–115, Academic Press, New York, 1968.
12. Johnson, A. G., and S. J. McDermott, ''Lysolecithin: A Factor in the Pathogenesis of Gastric Ulceration?'' *Gut*, 15:710–713, 1974.
13. Acker, L., and G. Becker, ''On the Subject of the Grain Starch Lipids,'' *Gordian*, 72:275–278, 1972.
14. Hargin, K. D., and W. R. Morrison, ''The Distribution of Acyl Lipids in the Germ, Aleurone, Starch and Non-starch Endosperm of Four Wheat Varieties,'' *Journal of Science of Food and Agriculture*, 31:877–888, 1980.
15. Morrison, W. R., D. L. Mann, W. Soon, and A. M. Coventry, ''Selective Extraction and Quantitative Analysis of Non-starch and Starch Lipids from Wheat Flour,'' *Journal of Science of Food and Agriculture*, 26:507–521, 1975.
16. Clayton, T. A., and W. R. Morrison, ''Changes in Flour Lipids During the Storage of Wheat Flour,'' *Journal of Science of Food and Agriculture*, 23:721–736, 1972.
17. Mano, Y., and Y. Fujino, ''Combined Lipid in Rice Starch,'' *Denpun Kagaku*, 22:1–5, 1975.
18. Tan, S. L., and W. R. Morrison, ''The Distribution of Lipids in the Germ, Endosperm, Pericarp and Tip Cap of Amylomaize, LG–11 Hybrid Maize and Waxy Maize,'' *Journal of American Oil Chemists' Society*, 56:531–535, 1979.
19. Weihrauch, J. L., and Y. Son, ''The Phospholipid Content of Foods,'' *Journal of American Oil Chemists' Society*, 60:1971–1978, 1983.
20. Davenport, H. W., ''Effect of Lysolecithin, Digitonin, and Phospholipase A upon the Dog's Gastric Mucosal Barrier,'' *Gastroenterology*, 59:505–509, 1970.
21. Bolin, T., L. Franzén, R. Sjödahl, and C. Tagesson, ''Passage of Molecules Through the Wall of the Gastrointestinal Tract,'' *Scandinavian Journal of Gastroenterology*, 21:441–448, 1986.
22. Salo, J. A., H. Myllärniemi, and E. Kivilaakso, ''Morphology of Lysolecithin-Induced Damage on Esophageal Mucosa,'' *Journal of Surgical Research*, 42:290–297, 1987.
23. Ritchie, W. P., ''Other Causes of GI Mucosal Injury: Upper Intestinal Content,'' *Clinical and Investigative Medicine*, 10:264–269, 1987.
24. Select Committee on GRAS Substances, ''Evaluation of the Health Aspects of Lecithin as a Food Ingredient,'' Report No. 106, Life Sciences Research Office, Federation of American Societies for Experimental Biology, Bethesda, Maryland, 1979.
25. Memorandum from the Food Additive Chemistry Evaluation Branch to the GRAS Review Branch, June 3, 1985.

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. New § 184.1063 is added to subpart B to read as follows:

§ 184.1063 Enzyme-modified lecithin.

(a) Enzyme-modified lecithin is prepared by treating lecithin with either phospholipase A_2 (EC 3.1.1.4) or pancreatin.

(b) The ingredient meets the specifications in paragraphs (b)(1) through (b)(8) of this section. Unless otherwise noted, compliance with the specifications listed below is determined according to the methods set forth for lecithin in the Food Chemicals Codex, 4th ed. (1996), pp. 220–221, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington DC 20418, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(1) Acetone-insoluble matter (phosphatides), not less than 50.0 percent.

(2) Acid value, not more than 40.

(3) Lead, not more than 1.0 part per million, as determined by atomic absorption spectroscopy.

(4) Heavy metals (as Pb), not more than 20 parts per million.

(5) Hexane-insoluble matter, not more than 0.3 percent.

(6) Peroxide value, not more than 20.

(7) Water, not more than 4.0 percent.

(8) Lysolecithin, 50 to 80 mole percent of total phosphatides as determined by ''Determination of Lysolecithin Content of Enzyme-Modified Lecithin: Method I,'' dated 1985, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Division of Petition Control, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an emulsifier as defined in § 170.3(o)(8) of this chapter.

(2) The ingredient is used at levels not to exceed current good manufacturing practice.

Dated: July 31, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–22246 Filed 8–29–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 623

[AR 700–131]

Loan of Army Materiel and Property Returns; Correction

AGENCY: Department of the Army, DoD.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published on September 18, 1980 (45 FR 62038) the regulations related to the process of Army property returns.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Showalter, U.S. Army Publications and Printing Command, ATTN: ASQZ–PDS, 2461 Eisenhower Ave., Alexandria, VA 22331, or telephone: (703) 428–0567.

SUPPLEMENTARY INFORMATION: The final regulation being corrected is § 623.5. In this section paragraphs (c)(5) (A) through (D) are incorrectly designated.

Need for Correction

As published, the final regulation contains errors which may be misleading and are in need of clarification.

List of Subjects in 32 CFR Part 623

Accordingly, 32 CFR part 623 is corrected by making the following correcting amendments:

PART 623—LOAN OF ARMY MATERIEL

1. The authority citation continues to read as follows:

Authority: 10 U.S.C. 2571; 31 U.S.C. 686; 10 U.S.C. 2667.

§ 623.5 [Corrected]

2. In § 623.5, paragraphs (c)(5)(A) through (c)(5)(D) are redesignated as paragraphs (c)(5)(i) through (c)(5)(iv).

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–22170 Filed 8–29–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–95–169]

RIN 2115–AE46

Special Local Regulation: Provincetown Harbor Swim for Life, Provincetown, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent special local regulation for a swimming event known as the Provincetown Harbor Swim for Life. The event will be held on September 7, 1996, and annually thereafter on a date and times published in a Federal Register document. This regulation is needed to protect the participants from transiting vessel traffic during the swimming event.

EFFECTIVE DATE: This regulation is effective on September 7, 1996.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander James B. Donovan, Office of Search and Rescue, First Coast Guard District, (617) 223–8268.

SUPPLEMENTARY INFORMATION:

Regulatory History

A Notice of Proposed Rulemaking (NPRM) was published on March 20, 1996, (61 FR 11352) proposing the establishment of a permanent special local regulation for the annual swimming benefit Provincetown Harbor Swim for Life. The NPRM proposed to restrict vessels from approaching within 200 feet of any participating swimmer to ensure the safety of participants during the event. No comments were received and no hearing was requested. This rule varies from the NPRM in one regard; it provides the date and time of the 1996 event and provides for the dates and times of future events to be published in a Federal Register document.

Background and Purpose

The annual Provincetown Harbor Swim for Life benefit is a local, traditional event which has been held for several years in Provincetown Harbor, Provincetown, MA. In the past, the Coast Guard has promulgated individual regulations for each year's event. Given the recurring nature of the event, the Coast Guard is establishing a permanent regulation. This rule establishes a regulated area in Provincetown Harbor, Cape Cod Bay, and provides specific guidance to control vessel movement during the event. This rule restricts vessels from approaching within 200 feet of participating benefit swimmers.

The event will consist of approximately 150 swimmers traveling 1.4 miles from Long Point Lighthouse to a point 200 yards east of the Coast Guard pier. There will be approximately 25–30 support boats on scene to augment a Coast Guard patrol to alert boating traffic of the presence of the swimmers. In emergency situations, provisions may be made to establish safe escort by a Coast Guard or Coast Guard designated vessel for vessels requiring transit within 200 feet of participating swimmers.

Good cause exists for providing for this rule to become effective in less than 30 days after Federal Register publication. Due to the need to provide the opportunity for notice and comment in the NPRM, there is insufficient time to publish this rule 30 days before the event is scheduled to begin. The Coast Guard believes delaying the event in order to provide a 30 day delayed effective date would be contrary to the public interest given this event's local popularity.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the limited duration of the event, the extensive advisories that will be made to the affected maritime community, and the minimal restrictions which the regulation places on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impacts of this rule and concluded that, under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B,

(as revised by 61 FR 13563, March 27, 1996) this rule is a special local regulation issued in conjunction with a regatta or marine parade and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Final Regulation

For reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section, 100.113, is added to read as follows:

§ 100.113 Provincetown Harbor Swim for Life, Provincetown, MA.

(a) *Regulated Area.* All waters of Provincetown Harbor within 200 feet of participating benefit swimmers.

(b) *Special Local Regulations.* (1) The Coast Guard patrol commander may delay, modify, or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or unless authorized by the Coast Guard patrol commander.

(3) Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard designated escort.

(4) All persons and vessels shall comply with the instructions of the Coast Guard on-scene patrol commander. On-scene patrol personnel may include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period.* This section is effective on September 7, 1996, from 10 a.m. to 4 p.m. and annually thereafter on a date and times published in a Federal Register document. If the event is canceled due to weather, this regulation is effective the following day at the same times.

Dated: August 22, 1996.

James D. Garrison,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 96–22210 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–96–072]

RIN 2121–AA97

Safety Zone: New York Super Boat Race, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the lower Hudson River, for the New York Super Boat Race. The temporary safety zone will be in effect on Sunday, September 8, 1996, from 12 p.m. until 4 p.m. unless extended or terminated sooner by the Captain of the Port, New York. The safety zone will close the entire Lower Hudson River between Battery Park and Pier 76 in Manhattan.

EFFECTIVE DATE: This rule is effective from 12 p.m. until 4 p.m. on Sunday, September 8, 1996, unless extended or terminated sooner by the Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant John W. Green, Waterways Oversight Branch Chief, Coast Guard Activities New York at (212) 668–7906.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 5, 1996, the Coast Guard published a notice of proposed rulemaking (NPRM) in the Federal Register (61 FR 40587). Interested persons were requested to submit comments on or before August 20, 1996. The Coast Guard received four comments on this proposal. A public hearing was not requested and one was not held. The Coast Guard is promulgating the final rule as proposed. Good cause exists for making this regulation effective less than 30 days after Federal Register publication. Due to the NPRM comment period deemed necessary to give the public adequate notice, there was insufficient time to publish this temporary final rule 30 days prior to the event. The delay that would be encountered to allow for a 30 day delayed effective date would cause the cancellation of this event. Cancellation of this event is contrary to the public interest since this event is intended for public entertainment.

Background and Purpose

Super Boat Racing Inc. submitted an Application for Approval of Marine Event for a Super Boat Race in the waters of the Lower Hudson River. This event will include up to 45 powerboats, 40 to 50 feet in length, racing on an 8 mile oval course at speeds in excess of 100 mph. No more than 100 spectator craft are expected for the event. This regulation establishes a temporary safety zone in the waters of the Lower Hudson River south of a line drawn from Pier 76 in Manhattan to a point in Weehawken, New Jersey at 40°45′52″ N latitude, 74°01′01″ W longitude, and north of a line connecting the following points:

Latitude	*Longitude*
40°42′16.0″ N	74°01′09.0″ W, then south to
40°41′55.0″ N	74°01′16.0″ W, then west to
40°41′47.0″ N	74°01′36.0″ W, then northwest to
40°41′55.0″ N	74°01′59.0″ W, then to shore at
40°42′20.5″ N	74°02′06.0″ W (NAD 1983)

The safety zone will be effective on Sunday, September 8, 1996, from 12 p.m. until 4 p.m., unless extended or terminated sooner by the Captain of the Port New York. This section prohibits all vessels and persons from entering the safety zone unless authorized by the Coast Guard Captain of the Port. The safety zone is needed to protect mariners from the hazards associated with high speed boat races.

Discussion of Comments and Changes

Of the four comments received, two were from companies operating sightseeing cruises, one was from a company operating an excursion boat, and one was from a ferry company. Three requested limited access through the safety zone in order to meet commitments previously reserved by paying customers and one requested the race route be moved in order for its ferryboat to meet a published schedule. All responses were considered and limited access was granted to meet the majority of the responders needs. Movement of the race course was not possible nor warranted and the ferryboat company was provided limited access in order to meet its operating schedule.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and

Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone will close all waters of the Lower Hudson River south of a line drawn from Pier 76 in Manhattan to a point located directly opposite on the New Jersey shoreline and north of a line drawn between Battery Park in Manhattan and the southern most point of Ellis Island in the Upper New York Bay on Sunday, September 8, 1996, from 12 p.m. until 4 p.m. This portion of the Hudson River experiences moderate commercial and recreational marine traffic. Although this regulation prevents traffic from transiting this area, the effect of this regulation will not be significant for several reasons: limited access has been arranged with time-sensitive commercial traffic; the volume of commercial vessel traffic transiting the Lower Hudson River on a Sunday is less than half of the normal daily traffic volume; pleasure craft desiring to view the event will be directed to designated spectator viewing areas outside the safety zone; pleasure craft can take an alternate route through the East River and the Harlem River; the duration of the event is limited to four hours; and the extensive advisories which will be made to the affected maritime community by Local Notice to Mariners, Safety Voice Broadcast, and facsimile notification.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (21 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist is included in the docket.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–072, is added to read as follows:

§ 165.T01–072 Safety Zone; New York Super Boat Race, Hudson River, New York and New Jersey.

(a) *Location.* All waters of the Lower Hudson River between Pier 76 in Manhattan and a point on the New Jersey shore in Weehawken, New Jersey at 40°45′52″ N latitude, 74°01′01″ W longitude, and north of a line connecting the following points:

Latitude	*Longitude*
40°42′16.0″ N	74°01′09.0″ W, then south to
40°41′55.0″ N	74°01′16.0″ W, then west to
40°41′47.0″ N	74°01′36.0″ W, then northwest to
40°41′55.0″ N	74°01′59.0″ W, then to shore at
40°42′20.5″ N	74°02′06.0″ W (NAD 1983)

(b) *Effective period.* This section is in effect on Sunday, September 8, 1996, from 12 p.m. until 4 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 23, 1996.

Richard C. Vlaun,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 96–22211 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–96–100]

RIN 2115–AA97

Safety Zone: MTV Music Awards Fireworks Display, East River, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the MTV Music Awards fireworks display located in the East River, New York. The safety zone will be in effect from 10:30 p.m. until 11:45 p.m. on Wednesday, September 4, 1996. The safety zone will close all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

EFFECTIVE DATE: This rule is effective from 10:30 p.m. until 11:45 p.m. on Wednesday, September 4, 1996, unless extended or terminated sooner by the Captain of the Port New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. W. Green, Waterways Oversight Branch Chief, Coast Guard Activities New York at (202) 668–7906.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after Federal Register publication. Due to the date on which complete information regarding this event was received, there was

insufficient time to draft and publish a NPRM. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of the event is contrary to public interest since the event is intended to provide public entertainment.

Background and Purpose

MTV submitted an Application for Approval of Marine Event to hold a fireworks program in the waters of the East River. This regulation establishes a safety zone in the waters of the East River from 10:30 p.m. until 11:45 p.m. on Wednesday, September 4, 1996, unless extended or terminated sooner by the Captain of the Port New York. This safety zone precludes all vessels from transiting south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn. It is needed to protect mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone closes a portion of the East River to all vessel traffic from 10:30 p.m. until 11:45 p.m. on Wednesday, September 4, 1996, unless extended or terminated sooner by the Captain of the Port New York. This section of the East River experiences moderate commercial and recreational marine traffic. Although this regulation prevents traffic from transiting this area, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; pleasure craft and some commercial vessels can take an alternate route via the Hudson and Harlem Rivers; and the extensive, advance advisories that will be made. Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have significant economic impact on your business or organization, please submit a comment explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e.(34)(g) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46

2. A temporary § 165.T01–100, is added to read as follows:

§ 165.T01–100 Safety Zone; MTV Music Awards Fireworks Display, East River, New York.

(a) *Location.* All waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

(b) *Effective period.* This section is effective from 10:30 p.m. until 11:45 p.m. on Wednesday, September 4, 1996, unless extended or terminated sooner by the Captain of the Port New York.

(c) *Regulations.* (1) The general regulations contained in 33 C.F.R. 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 23, 1996.

Richard C. Vlaun,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 96–22209 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI50–01–7257a; FRL–5542–1]

Promulgation of Reid Vapor Pressure Standard; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) temporarily is approving a State Implementation Plan (SIP) establishing a summertime gasoline Reid vapor pressure (RVP) limit of 7.8 pounds per square inch (psi) for gasoline sold in Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe counties in Michigan (Detroit-Ann Arbor consolidated metropolitan

statistical area (CMSA)). The marketing of less volatile gasoline reduces excessive evaporation of fuel during the summer months. Evaporated gasoline combines with other pollutants on hot summer days to form ground-level ozone, commonly referred to as smog. Ozone pollution is of particular concern because of its harmful effects on lung tissue and breathing passages.

In a parallel action EPA is proposing to make permanent this temporary approval of Michigan's SIP revision to establish a RVP limit of 7.8 psi for gasoline sold in the Detroit-Ann Arbor CMSA. The proposed SIP revision is published in the proposed rule section of this Federal Register. The EPA is requesting comments on this rulemaking action, as well as the proposed rulemaking action. Any public comments received by EPA will be addressed in the subsequent final rulemaking on the proposed revision to the Michigan SIP.

An interim final approval action is being taken because EPA finds good cause under section 553 of the Administrative Procedures Act (APA) to promulgate this interim rule without prior notice and comment and to make this action effective July 1, 1996, because of the public health and timing concerns discussed below.

EFFECTIVE DATE: This interim final rule is effective July 1, 1996 through September 15, 1996.

ADDRESSES: Copies of the documents relevant to this action are available at the above address for public inspection during normal business hours.

Comments may be mailed to: Carlton T. Nash, United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Brad J. Beeson at (312) 353–4779.

SUPPLEMENTARY INFORMATION:

I. Background

In April 1995, the Detroit-Ann Arbor CMSA which was nonattainment for ozone was redesignated to attainment. At the time the area was redesignated to attainment, EPA approved, as a revision to the Michigan SIP, a 7.8 psi RVP fuels program as a contingency measure. However, during the summer of 1995 there were several monitored violations of the ozone standard in the Detroit area. Therefore, the State is required to implement an ozone contingency measure.

One of the contingency measures that State has chosen to implement is a fuels program. The fuels program requires the sale of 7.8 psi (low-RVP) gasoline during the summer months.

RVP is a measure of a fuel's volatility and thereby affects the rate at which gasoline evaporates and emits volatile organic compounds (VOCs). The lower a fuel's RVP, the lower the rate of evaporation of the fuel. The RVP of gasoline can be lowered by reducing the amount of its volatile components, such as butane. Lowering RVP in the summer months can offset the effect of summer temperature upon the evaporation of gasoline, which in turn lowers emissions of VOCs. Because VOCs are a component in the formation of ground level ozone on sunny, hot summer days, reduction of RVP will assist the State of Michigan to reduce ozone by reducing VOC emissions from vehicles.

The EPA first proposed to regulate gasoline RVP in 1987 (52 FR 31274). The EPA's gasoline RVP proposal resulted in a two-phased final regulation which was in large part incorporated into the 1990 Amendments to the Clean Air Act (Act) in section 211(h). Phase I of the regulation took effect in 1990 (54 FR 11868) for the years 1990 and 1991. Phase II of the regulation became effective in 1992 (55 FR 23658). The rule divides the continental United States into two control regions, Class B and Class C. Generally speaking, the Class B states are the warmer southern and western states, and Class C states are the cooler northern states. The Phase II regulation limits the volatility of gasoline sold during the high ozone season to 9.0 psi for Class C areas and 7.8 psi for Class B ozone nonattainment areas. Michigan is a Class C State, and therefore, required under the Federal rule to meet the 9.0 psi standard.

II. State Submittal

Prior to making its SIP revision submittal, the State has presented at several public hearings its intention to implement a low-RVP fuels program. Initially the State presented the State's legislation to implement a low-RVP gasoline program, House Bill 4898, shortly after the legislation was passed in the State legislature, in 1993.

Next, as part of the redesignation process for Southeast Michigan, the State held a public hearing on the redesignation plan, as well as those measures the State was including in its contingency plan. One of the contingency measures presented to the public was the low-RVP gasoline program.

Lastly, the State presented the proposed low-RVP fuels program at a public hearing as part of the State's contingency measure selection process. The program presented to the public at these hearings not only included the State's legislation establishing a 7.8 psi RVP program, but also the option to market RFG in the area at the discretion of individual gasoline marketers. Two hearings presenting this proposal were held in October 1995.

On January 6, 1996, Michigan Governor John Engler sent a letter to EPA advising EPA the State had selected a low-RVP fuels program as one of the contingency measures to be implemented in the Detroit area. Shortly thereafter, on May 16, 1996, the State submitted just the low-RVP portion of their fuels program to EPA for approval. The SIP revision submitted by the State was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). On May 24, 1996, the State's SIP submittal was found complete.

III. Analysis of State Submittal

State governments are preempted under section 211(c)(4)(A) of the Clean Air Act from mandating a gasoline volatility standard not identical to any Federal standard promulgated under § 211(c)(1) that is applicable to the same characteristic. However, under 211(c)(4)(C) a State can require, through a SIP revision, a more stringent RVP standard for a particular area if the Administrator finds that the more stringent standard is necessary to achieve the National Ambient Air Quality Standard for ozone. In addition to demonstrating necessity as part of the 211(c)(4)(C) waiver process, under section 110 the State must also submit an adequate description of the low-RVP program and associated enforcement procedures. If EPA finds that a State has shown necessity and has provided an adequate description of the program, EPA may approve the SIP revision requiring the lower State RVP standard for the selected areas.

A. Demonstration of Necessity

Section 211(c)(4)(C) provides that the Administrator may find that a State fuel control is necessary if there are no other measures that would bring about timely attainment or such measures are unreasonable or impracticable. The necessity showing must demonstrate that the State is actually in nonattainment or in danger of nonattainment and must include an evaluation of all available ozone control measures.

Once it was determined that a contingency measure would have to be implemented, and was necessary

because of the violation of the ozone air quality standard, the State organized a workgroup to aid in the selection process. The Contingency Measure workgroup included participants from industry, state and local government, environmentalists, and any other interested persons. The analysis and final recommendations of the workgroup are summarized in a report.[1] The workgroup's recommendations were adopted by Michigan's Governor. The contingency measures selected by the State include a fuels program that limits RVP to 7.8 psi in the summertime, as well as expansion of the State's existing Stage I vapor recovery program.

As part of the analysis, the workgroup considered several different emission control technologies including vehicle inspection and maintenance (basic through enhanced), Stage I vapor recovery, Stage II vapor recovery, enhanced degreasing controls, oxides of nitrogen (NO_X) controls on stationary sources, and RFG. The reasonableness and practicality of each of these proposed control measures were evaluated using a number of factors, including the cost effectiveness of each measure. After considering and weighting all the factors, the workgroup selected stricter gasoline RVP control.

Having considered other measures that the State could implement before a low-RVP program, EPA finds that all other measures the State could implement are unreasonable or impracticable in this context, or would be insufficient to bring about timely attainment. The State is currently expanding its existing Stage I vapor recovery program as part of its contingency plan. While an I/M program would be a reasonable control measure, it could not be implemented as quickly as a low-RVP program and therefore would not reduce emissions in the time-frame necessary to reduce the likelihood of ozone standard violations and provide for attainment in as timely a manner as possible. Reformulated gasoline is not a practicable measure because the Detroit-Ann Arbor CMSA is designated as an attainment area, and hence is precluded from opting into the federal RFG program. While there are some additional reasonable and practicable control measures available, such as more stringent degreasing rules, Stage II vapor recovery, and NO_X controls on stationary sources, none of these measures considered individually or collectively would reduce emissions enough to bring about timely attainment.

Because there are no more reasonable and practicable emission control programs available in Southeast Michigan that would bring about timely attainment, EPA finds that a 7.8 psi summertime gasoline RVP meets the necessity requirement of 211(c)(4)(C) of the Act.

B. Description of Program Including the Enforcement Procedures

Historically, EPA has found that an adequate program description includes: (1) The counties included in the program, (2) the parties regulated as part of the program, (3) the general RVP limit, (4) the control period of the program, and (5) a list of any exceptions to the general limit for different types of gasoline, such as gasohol and RFG.

An adequate description of the State's enforcement procedures should include: (1) The recordkeeping requirement for all regulated parties marketing gasoline, (2) the name of the State agency that will be enforcing the program, (3) the testing frequency and number of stations that will be tested, (4) how sampling will be done, (5) procedures that will be used to determine fuel volatility during enforcement testing, and (6) the State's authority to levy penalties and fines for noncompliance with the program.

The Michigan submittal specifies that the gasoline distributed in Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe counties at the retail level must meet a RVP standard of 7.8 psi or less per gallon between June 1 and September 15.[2] Currently, the State's rules include a 1.0 psi exemption for ethanol blended fuels. In addition, the State's rule being developed to include RFG as part of the program will include a 0.3 psi for RFG. The rule to be submitted will also exempt gasoline dispensed at marinas, test tracks, and applications for agricultural purposes from the 7.8 psi limit. Because the State has satisfied all the program description elements, EPA finds the State's description of the program is sufficient.

To ensure enforcement of the program requirements, all parties involved with the marketing of gasoline in the area are required to maintain records for each gasoline shipment.[3] The Michigan Department of Agriculture (MDA) will conduct enforcement of the program.[4] As part of the SIP submittal, the State has committed to inspect a minimum of 40 percent of the dispensing facilities in the six county area during the control period. Sampling will be performed in accordance with the procedures described by EPA in its gasoline volatility regulations in 40 CFR part 80, Appendix D.[5] Gasoline volatility and ethanol content tests will be performed following procedures described by EPA in 40 CFR part 80, Appendices E and F, respectively. Gasoline deemed to be out of compliance will be subject either to a stop use order or seizure.[6] Additionally, MDA has the authority to levy administrative fines, in addition to applicable civil and criminal penalties.[7] The EPA finds the State's submittal sufficiently deters non-compliance and ensures effective enforcement of the program.

IV. Procedural Requirements

Section 553(b) of the APA provides that the general requirement to provide for notice and comment in the rulemaking process does not apply if an agency, for good cause, finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest. Additionally, section 553(d) of the APA provides that for good cause an agency may expedite the effective date of a rule allowing it to take effect sooner than 30 days from the date of publication. As discussed below, EPA has concluded that there is good cause to issue this interim final rule without notice and comment and to make the rule effective July 1, 1996.

A. Notice and Comment

Section 553(b) of the APA provides that agencies must provide the public notice and an opportunity to comment on agency rulemaking, unless one of the specified exceptions applies. Further, section 553(b)(B) of the APA states that notice and comment are not required ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Because of unusual circumstances associated with this rulemaking and for the reasons explained below, EPA finds good cause to issue this interim final rule without prior notice and comment.

[1] The report is titled ''Evaluation of Air Quality Contingency Measures for Implementation in Southeast Michigan'' and is included in the materials submitted by the State for this proposed SIP revision.

[2] MCLA 290.643 section 3(4), MCLA 290.650d section 10d.

[3] MCLA 290.647 section 7(3)–7(4), MCLA 290.649b section 9b(4).

[4] MCLA 290.641, et seq.

[5] MCLA 290.647 section 7(4), MCLA 290.643 section 3.

[6] MCLA 290.643 section 3.

[7] MCLA 290.647 section 7(5), MCLA 290.613 section 13, MCLA 290.615 section 15.

1. Time Critical Nature of Action

Ground-level ozone is a threat to public health. Ozone pollution is of particular concern because of its harmful effects on lung tissue and breathing passages. To address this threat, EPA places significant requirements on States to implement programs to control ozone to levels that protect the public health.

Because of the seriousness of the public health issue, the State of Michigan wants to implement a program that will provide substantial emission reduction benefits as soon as this summer. Any program that could be put in place immediately would help the State avoid violations of the ozone standard this summer. Conversely, control programs which take several months to implement would not help protect public health this summer.

A low-RVP fuels program addresses the need for immediate reductions because the air quality benefits of a low-RVP program are produced as soon as the fuel is delivered to retail gasoline stations. Currently, the State and the regulated industry are prepared to implement a low-RVP fuels program this summer, beginning July 1, 1996. There are no other measures the State could implement now to provide the needed emissions reductions in this time-frame.

Providing notice and comment for this action would run counter to the public interest because delaying this rulemaking through applying the normal notice and comment process would mean that the low-RVP program could not be put into place before the end of this summer. Without implementing a low-RVP program immediately the State risks further violations of the ozone standard and an adverse impact on public health this summer.

2. Prior Extensive Public Process and Public Consensus

Considerable public discussion and comment has already transpired concerning the State's adoption of a low-RVP fuels program and the outcome of this process is widespread consensus that a low-RVP fuels programs in the best approach. In particular, the directly affected regulated entities have participated extensively in the decision making process and have notice of the low-RVP fuels program to be implemented in Southeast Michigan.

Prior to making its submittal, the State discussed its plans to implement a fuels program beginning in the summer of 1996, featuring 7.8 psi gasoline, with the regulated parties and the general public. Not only did the State discuss its intentions, it also solicited comments on the State's plans. Initially, as part of the redesignation process for Southeast Michigan, the State held a public hearing on the redesignation plan, as well as those measures the State was including its contingency plan. One of the contingency measures presented to the public was a low-RVP fuels program.

Shortly after the State completed its public hearing process on the redesignation and associated contingency measures, the State submitted the redesignation request to EPA for approval. In the Federal Register notice proposing approval of the redesignation, a low-RVP program was listed as one of the possible contingency measures the State would implement if necessary. While EPA received a variety of comments on the proposal, none of the comments concerned the State's choice of low-RVP as part of the contingency plan, indicating there was no opposition to the possibility of implementation of this program. The EPA finalized approval of the Michigan contingency plan including a low-RVP program as a revision to the Michigan SIP on March 7, 1995.

Because of ozone violations during the summer of 1995 Michigan is required to select a contingency measure to be implemented from its contingency plan. To aid in the selection process, the State formed a workgroup. The Contingency Measure workgroup included participants from industry, state and local government, environmentalists, and any other interested persons. The committee eventually narrowed their recommendation to include a low-RVP fuels program. The Workgroup recommendation indicates the consensus support for this measure by the most directly affected and interested parties.

The final step in the contingency measure selection process was to present the committee's recommendations at a public hearing. Two hearings were held in October 1995. During the hearings none of the oil companies objected to the selection of a low-RVP fuels program as a contingency measure.

During the public participation process, the Detroit media covered the debate concerning which contingency measure would be selected. A number of articles and editorials were published in both the Detroit Free Press and the Detroit News concerning the selection process and the low-RVP fuels program. On January 6, 1996, Michigan Governor John Engler sent a letter to EPA identifying a low-RVP fuels program as one of its contingency measures to be implemented in the Detroit area. Shortly after the Governor's decision, both the Michigan Department of Agriculture and the Governor's offices issued press releases concerning the low-RVP fuels program. Both of these press releases included the planned start-up date of the program, July 1996. Following these press releases several more articles on the program were published in the print media. In addition, the AAA magazine Michigan Living, printed an article about the low-RVP fuels program including the planned start-up date of July 1996.

In addition to the general press coverage the program was receiving, the State held a series of meetings with the oil companies serving the Detroit area as well as the American Petroleum Institute (API), an industry association. During these meetings the State, represented oil companies, and API discussed the details concerning implementation of a low-RVP fuels program by July 1996.

Providing prior notice and comment is of limited benefit to the public here because of the extensive public comment process that has already taken place and the widespread support for the program. This public process has provided an opportunity for all interested parties to participate in the decision to implement low-RVP gasoline as a contingency measure and has generated consensus this is the optimal approach. In addition, delaying the SIP revision approval to allow for notice and comment would run counter to the public interest because of the potential for confusion regarding the applicable requirements. At this point in time the regulated industry, the general public, and the State have planned to begin the program on July 1, 1996. Providing notice and comment would preclude the program from beginning on July 1, 1996, which would likely cause disruption to the regulated industries and confuse the public.

3. Time Limited Nature of Action

This interim final rule is a temporary SIP revision, which will expire automatically and be followed by a notice-and-comment rulemaking to decide whether to make this a permanent SIP revision. The EPA is requiring that gasoline sold in the Detroit—Ann Arbor ozone nonattainment area from July 1, 1996 to September 15, 1996, comply with a 7.8 psi standard. This action does not establish a permanent change to the

gasoline RVP requirements in Southeast Michigan.

Prior notice and comment is of limited benefit to the public because of the limited time period of this action, and the need for prompt implementation of the program discussed above. In a parallel action, EPA is proposing to make this temporary RVP limit permanent by revising Michigan's SIP to establish a RVP limit of 7.8 psi for gasoline sold in the Detroit—Ann Arbor CMSA. The proposed SIP revision is published in the proposed rule section of this Federal Register. The EPA is hereby providing opportunity to comment on this rulemaking action, as well as on the proposed rulemaking action on the permanent revision. Any public comments received by EPA will be addressed in the subsequent final rulemaking on the proposed revision to the Michigan SIP. Thus, any negative results caused by the lack of notice and comment would exist only for a short and clearly delineated period.

For all the reasons stated above EPA believes that there is good cause for issuing this rule without prior notice and comment, as such prior notice and opportunity to comment under these circumstances is impracticable, unnecessary, and contrary to the public interest.

B. Effective Period

The APA also provides that a rule may not become effective until 30 days after it is published; this requirement is generally met through publication in the Federal Register. However, in certain situations the APA provides that agencies may expedite, or shorten, the time to make the rule effective. Section 553(d) of the APA provides an exception to the effective date requirement where an agency finds there is good cause to expedite the effective date. Because of circumstances specific to this situation and for the reasons explained below, EPA finds good cause to make this rule effective as of July 1, 1996.

1. Time Critical Nature of Action

As discussed more fully above, to protect public health during the upcoming ozone season, the State would need to implement a measure that would immediately reduce VOC emissions. The low-RVP program proposed by the State and required here on a temporary basis, would provide such immediate reductions if EPA's approval is effective by July 1, 1996.

Delaying the effective date until 30 days after publication runs counter to the public interest because of the need to address the risk of ozone air pollution occurring this summer. If this rulemaking action were subject to such a delay, the low-RVP program could not be put into place before the end of this summer. Without implementing a low-RVP program immediately the State risks further violations of the ozone standard and an adverse impact on public health this summer.

2. Prior Public Notice

Delaying the effective date until 30 days after publication is irrelevant to the lead time needed for compliance because the public has had substantial public notice of the upcoming low-RVP requirements. In particular, the directly affected regulated entities and the public have participated extensively in the decision process to implement this program starting July 1, 1996, and have notice of that start date. Hence, delay beyond that date is not necessary for compliance purposes and will introduce confusion as to when the requirements will apply.

For all the reasons stated above EPA believes that there is good cause for making this rule effective as of July, 1, 1996, as a later effective date is impracticable, unnecessary, and contrary to the public interest.

IV. Action

The EPA is approving a revision to Michigan's SIP to establish a summertime gasoline RVP limit of 7.8 psi for gasoline sold in Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe counties and is finding that such a requirement is necessary for the area to attain the ozone National Ambient Air Quality Standard for ozone, at least for the period the approval is effective. This approval is effective from July 1, 1996, to September 15, 1996.

V. Administrative Requirements

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–66 (1976).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

circuit by October 29, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 808(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act (SBREFA) EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in the Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended. Pursuant to 5 U.S.C. 808(2) as added by SBREFA, this rule may take effect prior to the date of its submission to Congress because EPA for good cause has found that providing for notice and public procedure on this rule is impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 21, 1996.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(107) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(107) On May 16, 1996, the State of Michigan submitted a revision to the Michigan State Implementation Plan (SIP). This revision is for the purpose of establishing a gasoline Reid vapor pressure (RVP) limit of 7.8 pounds per square inch (psi) for gasoline sold in Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe counties in Michigan. This revision will only be effective from July 1, 1996, to September 15, 1996.

(i) Incorporation by reference.

(a) House Bill No. 4898; signed and effective November 13, 1993.

(b) Michigan Complied Laws, Motor Fuels Quality Act, Chapter 290, Sections 642, 643, 645, and 646, 647, and 649 all effective November 13, 1993.

(c) Michigan Complied Laws, Weights and Measures Act of 1964, Chapter 290, Sections 613, 615; all effective August 28, 1964.

(ii) Additional materials.

(a) Letter from Michigan Governor John Engler to Regional Administrator Valdas Adamkus, dated January 5, 1996.

(b) Letter from Michigan Director of Environmental Quality Russell Harding to Regional Administrator Valdas Adamkus, dated May 14, 1996.

(c) State report titled ''Evaluation of Air Quality Contingency Measures for Implementation in Southeast Michigan,'' submitted to the EPA on May 14, 1996.

[FR Doc. 96–21982 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 86

[AMS–FRL–5602–3]

RIN 2060–AC65

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Regulations Requiring On-Board Diagnostic (OBD) Systems—Acceptance of Revised California OBD II Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This final rulemaking revises requirements associated with on-board diagnostic (OBD) systems. The federal OBD rulemaking, published February 19, 1993, allowed for compliance with California OBD II requirements to satisfy federal OBD requirements through the 1998 model year. The California Air Resources Board has recently revised their OBD II requirements. This rulemaking promulgates appropriate revisions to federal OBD regulations such that compliance with the recently revised OBD II requirements will satisfy federal OBD. This rulemaking does not require that manufacturers comply with OBD II anti-tampering provisions. OBD systems in general provide substantial ozone benefits.

EFFECTIVE DATE: This final rule is effective October 29, 1996.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–90–35, and are available for public inspection and photocopying between 8 a.m. and 5:30 p.m. Monday through Friday. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: Todd Sherwood, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, telephone (313) 668–4405, or Internet e-mail at ''sherwood.todd@epamail.epa.gov.''

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which manufacture new motor vehicles and engines. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	New motor vehicle and engine manufacturers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in § 86.094–17 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Copies of Rulemaking Documents

Electronic copies of the preamble and the regulatory text of this final rulemaking are available via the Internet on the Office of Mobile Sources (OMS) Home Page (http://www.epa.gov/OMSWWW/). Users can find OBD related information and documents through the following path once they have accessed the OMS Home Page: ''Automobiles,'' ''I/M & OBD,'' ''On-Board Diagnostics Files.''

Electronic copies of the preamble and the regulatory text of this final

rulemaking are also available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTN BBS). Users are able to access and download TTN BBS files on their first call. After logging onto TTN BBS, to navigate through the BBS to the files of interest, the user must enter the appropriate command at each of a series of menus. The steps required to access information on this rulemaking are listed below. The service is free, except for the cost of the phone call.

TTN BBS: 919–541–5742 (1,200–14,400 bps, no parity, eight data bits, one stop bit). Voice help: 919–541–5384 Internet address: TELNET ttnbbs.rtpnc.epa.gov Off-line: Mondays from 8–12 Noon ET.

1. Technology Transfer Network Top Menu: GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
2. TTN TECHNICAL INFORMATION AREAS: OMS—Mobile Sources Information
3. OMS BBS === MAIN MENU FILE TRANSFERS: Rulemaking & Reporting
4. RULEMAKING PACKAGES: Inspection & Maintenance
5. Inspection & Maintenance Rulemaking Areas: File Area #2...On-Board Diagnostics

At this stage, the system will list all available OBD Review files. To download a file, select a transfer protocol which will match the terminal software on your computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (i.e., ZIP'd) files, go to the TTN topmenu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit TTN BBS with the <G>oodbye command.

Table of Contents

I. Introduction and Background

On February 19, 1993, the EPA promulgated a final rulemaking (58 FR 9468, February 19, 1993) requiring manufacturers of light-duty vehicles (LDV) and light-duty trucks (LDT) to install on-board emission control diagnostics (OBD) systems on such vehicles beginning in model year 1994. The regulations promulgated in that final rulemaking require that manufacturers install OBD systems which monitor emission control components for any malfunction or deterioration causing exceedances of certain emission thresholds, and alert the vehicle operator to the need for repair. That rulemaking also requires that, when a malfunction occurs, diagnostic information must be stored in the vehicle's computer to assist the mechanic in diagnosis and repair.

Additionally, that rulemaking makes an allowance for manufacturers to satisfy the federal OBD requirements through the 1998 model year by installing systems satisfying the California OBD II requirements pertaining to those model years. This allowance means that manufacturers could concentrate on designing one system for OBD compliance and installing that system nationwide during allowable model years. As EPA regulations cannot be revised except through EPA rulemaking, the OBD II requirements allowed under this provision were, and have continued to be, those existing on the date of publication of the federal OBD final rulemaking. This means that subsequent changes made to the OBD II requirements by the California Air Resources Board (ARB) may be inconsistent and potentially unacceptable for federal OBD compliance.

On March 23, 1995, EPA published a direct final rule revising specific federal OBD provisions, including a provision that would allow manufacturers to comply with federal OBD requirements by optionally complying with more recent OBD II regulations. EPA believed that the March 23 direct final rule would not be controversial. In that direct final rule, EPA stated that, ''If notice is received that any person or persons wish to submit adverse comments regarding some, but not all of the actions taken in this rulemaking, then EPA shall withdraw this final action and publish a proposal only with regard to the actions for which notice has been received.'' EPA stated that it would make such a withdrawal if adverse comment was received by April 24, 1995.

EPA received adverse comment from the Motor and Equipment Manufacturers Association (MEMA). This adverse comment was placed in the public docket for viewing. The comments submitted by MEMA were adverse with regard to the revision of 40 CFR 86.094–17(j) that would allow manufacturers the option of complying with the recently revised California OBD II requirements (California Air Resources Board Mail-Out #95–03). (MEMA had initially objected to other specific provisions of the direct final rule, but MEMA withdrew these objections in a letter signed May 18, 1995.) Therefore, EPA subsequently removed the provision of the March 23 direct final rule that pertained to optional compliance with the revised OBD II requirements of ARB Mail-Out #95–03 (60 FR 37945, July 25, 1995). As a result, the language of the prior final rule published on February 19, 1993 (58 FR 9468) allowing compliance with California OBD II requirements was reinstated in § 86.094–17(j). EPA then reproposed the provision allowing manufacturers to meet the federal OBD requirements by complying with revised California OBD II requirements. The proposal did not, however, require that manufacturers meet the anti-tampering provisions in California's OBD II regulations. (60 FR 55521, November 1, 1995).

II. Requirements of this Final Rulemaking

This final rulemaking allows manufacturers to comply with federal OBD requirements by optionally complying with the revised and recently adopted California OBD II regulations. The allowance for optional compliance with California OBD II has already been established in the federal OBD program and was incorporated into the federal OBD final rulemaking in February 1993. However, since that time, the ARB has made several revisions to the OBD II regulations.

Because the Agency cannot simply accept the revised OBD II without undergoing the federal regulatory process, any optional compliance with California OBD II under the preexisting federal regulations had to be done according to the OBD II regulations as they existed in February 1993 (ARB Mail Out #92–56, November, 1992). However, the ARB has determined that several manufacturers would have difficulty complying with the OBD II regulations as they existed in February 1993. The most notable requirements that currently pose difficulties are those for engine misfire detection under all positive torque engine speeds and conditions and full OBD II implementation on alternative fueled vehicles. Additionally, most manufacturers have indicated difficulty meeting other aspects of the OBD II regulations due to, for example, the complexity of the computer software requirements, and unpredictable driver actions such as resting a foot on the gas

pedal while stopped at a traffic light. It is these additional difficulties that have prompted ARB to provide a ''deficiency'' allowance in their revised OBD II regulations whereby manufacturers can certify as OBD II compliant despite some reasonably acceptable and unplanned deficiency in the OBD system.

As a result of the ARB revisions to OBD II, and to remain consistent with the original intent of providing for optional compliance with OBD II for federal OBD purposes, and because EPA has determined that OBD systems complying with the revised OBD II requirements fully satisfy the intent of the 1990 Clean Air Act Amendments and federal OBD regulations, this final rulemaking will provide the same option but will require that manufacturers choosing this option comply with the more recent OBD II regulations contained in ARB Mail Out #95–34.

In the proposed rulemaking, EPA proposed allowing manufacturers to comply with federal OBD requirements by optionally complying with more recent OBD II regulations, specifically those contained in ARB Mail Out #95–03, made publicly available January 19, 1995. In this final rulemaking, the applicable OBD II regulations are contained in Mail Out #95–34, September 26, 1995. Mail Out #95–34 is identical in content to Mail Out #95–03, the only differences being slight editorial changes and reference to an updated version of a Society of Automotive Engineers (SAE) recommended practice (i.e., SAE J1939) that is not applicable to light-duty vehicles or light-duty trucks and therefore is not applicable under the provisions of this final rulemaking.

As a result of this final rule, any federal vehicles complying with federal OBD by optionally complying with California OBD II are allowed the same deficiencies as allowed under the OBD II provisions. This is consistent with revisions deemed necessary by EPA and subsequently made to federal OBD requirements through a direct final rulemaking published in March of 1995 (60 FR 15242, March 23, 1995). Note, however, that a manufacturer requesting certification of a deficient OBD II system must receive EPA acceptance of any deficiency independently of an acceptance made by ARB. The Agency will use the same criteria specified by the ARB in the OBD II regulation, (footnote: Those criteria being the extent to which the requirements are satisfied overall on the vehicle applications in question, the extent to which the resultant diagnostic system design will be more effective than earlier OBD systems, and a demonstrated good-faith effort to meet the requirements in full by evaluating and considering the best available monitoring technology) except that EPA will not provide deficiency allowances for lack of catalyst monitors or oxygen sensor monitors because the Clean Air Act specifically requires these monitors no later than the 1996 model year. The Agency will make every effort to determine the acceptability of OBD II deficiency requests in concert with ARB staff to avoid the potential for conflicting determinations. However, the extent to which the agencies can make concurrent and coordinated findings will rely heavily on the manufacturer, who will be expected to provide any necessary information to both agencies in parallel rather than pursuing deficiency determinations on a separate basis.

III. Public Participation

On November 1, 1995, EPA published a notice of proposed rulemaking (NPRM) which set forth proposed requirements for complying with federal OBD regulations by optionally demonstrating compliance with the revised California OBD II regulations. On December 13, 1995, a public hearing was held. The period for submission of comments on the NPRM was scheduled to close on January 16, 1996.

The comments received in response to the NPRM have not been extensive, and concentrate primarily on the issue of anti-tampering provisions. More specifically, the comments speak to the appropriateness of the anti-tampering provisions contained in the California OBD II regulations but intentionally excluded from any federal OBD compliance requirements. Comments were also received on the allowance of optional OBD II compliance for federal OBD purposes indefinitely, rather than through only the 1998 model year.

Comments were received from original equipment manufacturers, automotive aftermarket manufacturers and service providers, and one automotive consultant. The comments along with EPA's analyses and responses are discussed in the following section. A formal written ''Response to Comments'' document has not been prepared in association with this rulemaking as all pertinent issues are sufficiently discussed in this preamble.

IV. Discussion of Issues

A. General Comments on the Proposal

Summary of Proposal: The proposal allowed demonstration of compliance with revised California OBD II requirements (Mail Out #95–03) as satisfying federal OBD requirements through the 1998 model year.

Summary of Comments: The American Automobile Manufacturers Association (AAMA) fully supports the proposed regulatory action, stating that it will help by limiting the burden on manufacturers associated with the extremely technologically-challenging development of enhanced on-board diagnostic systems. The Association of International Automobile Manufacturers (AIAM) also stated its support, as did American Suzuki Motor Corporation and Michael Jay Grossman, an automotive certification consultant. Each of these commenters also stated that EPA should allow compliance against ARB Mail Out #95–34 rather than Mail Out #95–03, as was proposed.

Analysis of Comments: EPA agrees that Mail Out #95–34 should be used rather than the proposed Mail Out #95–03. Mail Out #95–34 is identical in content to Mail Out #95–03, the only differences being slight editorial changes (the removal of strikeout and underlined text differentiating old from new text) and reference to an updated version of a SAE recommended practice (i.e., SAE J1939) that is not applicable to light-duty vehicles or light-duty trucks and therefore is not applicable under the provisions of this final rulemaking.

EPA Decision: The final regulatory language will refer to ARB Mail Out #95–34.

B. California OBD II Anti-Tampering Provisions

Summary of Proposal: The proposal allowed demonstration of compliance with revised California OBD II requirements (Mail Out #95–03) as satisfying federal OBD requirements through the 1998 model year, except that compliance with the tampering protection provisions of the California OBD II requirements was not required to satisfy federal OBD.

Summary of Comments: Representatives of certain organizations within the automotive aftermarket made the following comments: (1) EPA should defer any decision in this proceeding until EPA has rendered a decision on California's request for a waiver of preemption under section 209 for its OBD II regulations; (2) EPA's incorporation of California OBD rules is an unlawful delegation of its powers; (3) EPA may not certify vehicles containing the anti-tampering devices required under the California OBD II regulations, because such devices violate sections 202(m) (4) and (5) and 207 of the Act; (4) the anti-tampering provisions of the

California OBD II regulations violate the Semiconductor Chip Protection Act; (5) the exclusion of the anti-tampering provisions from this rulemaking is inadequate, because as long as the anti-tampering regulations are required in California, manufacturers will use such devices in all their vehicles; (6) the anti-tampering provisions are unnecessary and eliminate competition in the repair of vehicles; (7) the anti-tampering provisions of the California OBD II regulations impose significant economic impact on the automotive aftermarket.

AAMA commented that it believes that both EPA and ARB have the general legal authority to require anti-tampering measures. Therefore, AAMA can see no viable cause for not proceeding with the NPRM as proposed.

Analysis of Comments: (1) Regarding deferment of this rulemaking until the OBD waiver proceeding is completed, EPA has been processing the OBD waiver final decision at the same time it has been processing this final rule. EPA intends to complete the OBD waiver decision either prior to, at the same time of, or shortly after, the completion of this rule. However, EPA does not believe that the decisions necessary for completion of this rulemaking need to be delayed until after the waiver decision in completed. As discussed below, the issues raised by the aftermarket in this proceeding and the OBD II waiver proceeding are more appropriately dealt with in that proceeding, and are not necessary for completion of this rulemaking. Should the issues raised by the aftermarket be resolved in favor of the automotive aftermarket, that resolution will carry over into EPA's broader motor vehicle program, including the certification of any vehicle that complies with the requirements promulgated in this rulemaking.

(2) Regarding the contention that EPA has unlawfully delegated its powers, EPA disagrees with this allegation. As the comments acknowledge, EPA has gone through a complete notice and comment rulemaking and found that the regulations that it incorporates today are consistent with the Act and that it is reasonable and appropriate for EPA to allow manufacturers to meet EPA's requirements by showing compliance with California's OBD II regulations, excluding its anti-tampering provisions. This is not delegation of power, but the acknowledgment that other entities besides EPA may devise reasonable methods for meeting particular requirements of the Act. These entities are not making decisions in place of EPA. EPA's decision to incorporate OBD II requirements is independent of California's initial decision to require OBD II in California. Commenters' line of reasoning would seem to require that EPA purposely ignore any sets of procedures drafted by another organization, (e.g., a state or a voluntary industry organization like SAE), no matter how reasonable, simply because EPA did not think of the procedures first. The restrictions on delegation of powers in no way require that result.

(3 and 4) The comments allege that California's anti-tampering provisions violate certain provisions of the Clean Air Act and other federal law. The comments, however, never explain why such allegations are relevant to this rulemaking. The regulations EPA promulgates today explicitly exclude California's anti-tampering provisions from the federal requirements. EPA is taking no action in this rulemaking that has any effect on manufacturers legal requirement or ability to voluntarily equip vehicles with tampering protection measures. To the extent manufacturers were permitted to do so prior to this rulemaking, they can do so after the rulemaking. To the extent the Clean Air Act prevents them from equipping vehicles with tampering protection measures, nothing in this rulemaking allows manufacturers to circumvent the Clean Air Act's provisions. The issue of whether the California OBD II anti-tampering provisions violate the Clean Air Act is simply irrelevant to this rulemaking, because this rulemaking does not require manufacturers to meet the anti-tampering provisions. As discussed above, EPA will be reviewing the comments the aftermarket has provided on these issues in the California OBD II waiver proceeding. The comments are relevant in that proceeding, at least to a certain extent, because in that proceeding, EPA is specifically reviewing the consistency of California's OBD II provisions, including the anti-tampering provisions, with section 202(a) of the Act.

(5) Regarding whether exclusion of the anti-tampering provisions is sufficient for the needs of the commenters, the appropriate issue is again whether the comments are relevant to this proceeding. The commenters admit in their comments, as well as in a letter to the Administrator dated April 30, 1996, that manufacturers will install the anti-tampering devices on their vehicles, and in fact are currently doing so, even in the absence of these regulations. Thus, the presence or absence of these regulations is irrelevant to whether manufacturers voluntarily equip vehicles with tampering protection measures. As noted above, EPA will deal with the issues raised by commenters in venues where such issues are relevant.

(6 and 7) The practicality, cost, and reasonableness of the anti-tampering provisions are likewise irrelevant to this proceeding because the anti-tampering provisions are not required by this proceeding.

EPA Decision: The regulatory language need not be changed from that proposed, with the exception of reference to ARB Mail Out #95–34 rather than #95–03. Should the anti-tampering provisions of the California OBD II regulations be deemed unlawful via the waiver process or other means, they will be removed from the OBD II regulations by the Air Resources Board and certification approval of vehicles containing anti-tampering measures consistent with those provisions will cease by both EPA and ARB.

C. Acceptance of California OBD II Beyond the 1998 Model Year

Summary of Proposal: The proposal allowed demonstration of compliance with revised California OBD II requirements (Mail Out #95–03) as satisfying federal OBD requirements through the 1998 model year.

Summary of Comments: Michael Jay Grossman suggested that EPA allow small volume manufacturers (<10,000 U.S. sales per year) the optional compliance against the California OBD II regulations beyond the 1998 model year, rather than eliminating this option beginning in the 1999 model year. Mr. Grossman reasons that such an allowance will present no loss of federal OBD program benefits due to the extremely small number of small volume manufacturer vehicles in the overall vehicle population.

Analysis of Comments: Mr. Grossman's suggestion was made by several commenters during development of the February 1993, federal OBD final rulemaking, although the comments then were not necessarily limited to small volume manufacturers. The same arguments against such a policy apply now as applied then. This alternative was neither proposed by the Agency, nor is it an attractive alternative from the Agency's perspective. The federal regulations contain enforcement approaches consistent with past EPA policies which rely on performance evaluations, rather than specific design requirements, to encourage innovative control strategies and improvements in technology. Also, having effectively two separate regulations mandating the same type of program is unnecessarily inefficient to enforce.

Further, the current option for California OBD II demonstration puts EPA in the position of making mandatory regulatory revisions in the event ARB revises the OBD II regulations. EPA regulations cannot incorporate a moving target and, therefore, every regulatory revision by ARB requires a corresponding revision to federal regulations should the ARB revision be deemed appropriate for federal purposes. This is evidenced by the reality of today's rulemaking, which is being done only because of ARB's recent revisions to OBD II. Upon the effective date of today's rulemaking, the federally acceptable OBD II requirements will be those in Mail Out #95–34, and will not be those contained in any potential future California mail outs pertaining to OBD II.

Barring passage of the National Low Emission Vehicle regulations and subsequent agreement among all stakeholders to voluntarily sign onto its requirements, EPA can see no reason to go forth with this suggestion. EPA sees merit in undertaking efforts to harmonize federal OBD requirements with the California OBD II requirements, but will explore other potential options as opposed to that suggested by Mr. Grossman.

EPA Decision: EPA will take no action in this final rulemaking to accommodate this commenter's suggestion. Therefore, no changes to the proposed regulatory language will be made. As a result, through the 1998 model year, EPA will enforce OBD requirements against either the California OBD II requirements as they exist in Mail out #95–34 or the federal OBD requirements, depending on the set of requirements to which the vehicle has been certified. Beginning with the 1999 model year, full compliance with the federal OBD requirements will be required for all vehicles covered by this rulemaking. This will assure designs fully meeting the goals of the federal OBD program, not only for preproduction certification but also during in-use operation.

As stated, EPA is exploring options to harmonize federal OBD requirements with the California OBD II requirements. EPA believes that effort will result in harmonized OBD system requirements along with enforcement approaches and regulatory philosophies consistent with each agency's respective goals. EPA also believes that effort will alleviate the concerns expressed by Mr. Grossman.

V. Cost Effectiveness

This final rulemaking alters an existing provision by allowing optional compliance with the most recent ''Revised'' California OBD II requirements, as opposed to the November 1992, ''Original'' OBD II requirements, for the purposes of federal OBD compliance. With three exceptions, the revised OBD II requirements provide regulatory relief relative to the original OBD II requirements. Those exceptions are: (1) More stringent catalyst monitoring requirements for 1998 model year low emission vehicles (LEV), requirements that would not apply to federal Tier I vehicles; and, (2) more stringent evaporative emission monitoring requirements for 2000 model year vehicles, requirements that begin beyond the 1998 model year cutoff of the OBD II compliance option; and, (3) more stringent anti-tampering provisions, requirements intentionally excluded from federal OBD compliance demonstration. Therefore, because this final rulemaking alters an existing provision, and that alteration provides regulatory relief, there are no additional costs to original equipment manufacturers associated with this specific final action.

The automotive aftermarket industry has stated that the provision of this final rulemaking will result in substantial costs to that industry. As they argue it, these costs will be incurred because the anti-tampering measures required under the California OBD II regulations will present more difficulty for the automotive aftermarket in carrying out their business of reverse engineering original equipment manufacturer (OEM) parts and designing replacement or specialty parts. However, the anti-tampering measures are intentionally excluded from federal OBD compliance requirements, even when choosing the optional OBD II compliance demonstration. Therefore, OEMs are, in effect, voluntarily incorporating anti-tampering measures into their federal vehicles, and would arguably do so absent the requirement under the California OBD II regulation. Consequently, EPA cannot understand how the provisions of this final rulemaking are responsible for any potential increased costs on the automotive aftermarket, outside those costs mandated under the Clean Air Act Amendments of 1990 which require all 1994 and later model year vehicles to incorporate OBD systems into their designs.

The costs and emission reductions associated with the federal OBD program were developed for the February 19, 1993, final rulemaking. The change being made today does not affect the costs and emission reductions published as part of that rulemaking.

VI. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Reporting and Recordkeeping Requirements

This final rulemaking does not change the information collection requirements submitted to and approved by OMB in association with the OBD final rulemaking (58 FR 9468, February 19, 1993; and, 59 FR 38372, July 28, 1994).

C. Impact on Small Entities

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will not have a significant adverse economic impact on a substantial number of small businesses. This final rulemaking will provide regulatory relief to both large and small volume automobile manufacturers by maintaining consistency with California OBD II requirements. It will not have a substantial impact on such entities. This final rulemaking will not have a significant impact on businesses that manufacture, rebuild, distribute, or sell automotive parts, nor those involved in automotive service and repair, as the revisions affect only requirements on automobile manufacturers.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, or $100 million or more. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the final approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 22, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

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

Subpart A—[Amended]

2. Section 86.094–17 is amended by revising paragraph (j) to read as follows:

§ 86.094–17 Emission control diagnostic system for 1994 and later light-duty vehicles and light-duty trucks.

* * * * *

(j) Demonstration of compliance with California OBD II requirements (Title 13 California Code § 1968.1), as modified pursuant to California Mail Out #95–34 (September 26, 1995), shall satisfy the requirements of this section through the 1998 model year except that compliance with Title 13 California Code § 1968.1(d), pertaining to tampering protection, is not required to satisfy the requirements of this section.

* * * * *

[FR Doc. 96–21946 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GEN Docket No. 90–314; FCC 96–340]

Omnipoint Communications New York MTA Frequency Block A; Establishment of New Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: By this action, the Commission denies a petition for declaratory ruling filed by The Wireless Communications Council (WCC). The Commission finds that WCC has not demonstrated the existence of a controversy or uncertainty sufficient to warrant exercise of the Commission's discretion to issue a declaratory ruling. The intended effect of this action is to clarify when it is appropriate for the Commission to issue a declaratory ruling regarding whether a party awarded a pioneer's preference has made substantial use of its pioneering technology.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Rodney Small or Charles Iseman, Office of Engineering and Technology, at (202) 418–2452 or (202) 418–2444, respectively.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O) in GEN Docket 90–314, FCC 96–340, adopted August 9, 1996, and released August 23, 1996. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of MO&O

1. In the Third Report and Order (Third R&O) in GEN Docket No. 90–314 (the broadband Personal Communications Services (PCS) proceeding), 59 FR 9419 (February 28, 1994), the Commission awarded pioneer's preferences to American Personal Communications (APC), Cox Enterprises, Inc. (Cox), and Omnipoint Communications, Inc. (Omnipoint). The Commission directed the Wireless Telecommunications Bureau (Bureau) to condition the broadband PCS licenses received by APC, Cox, and Omnipoint upon each licensee building a system that substantially uses the design and technologies upon which its preference award is based. Specifically, the Commission stated that this condition would apply in the service area for which the preference is being granted and for the initial required five-year build-out period specified in the rules for broadband PCS.

2. Omnipoint was awarded a pioneer's preference for having designed and manufactured a 2 GHz spread spectrum handset and associated base station equipment, and for proposing a viable service with the flexibility to be implemented in a variety of environments with capabilities useful to subscribers. This preference granted Omnipoint the right, if otherwise qualified, to use a 30 megahertz channel block (Block A, 1850–1865 MHz and 1930–1945 MHz) in the Major Trading Area that includes northern New Jersey (New York MTA). On December 13, 1994, the Bureau granted a pioneer's preference license to Omnipoint, on condition that ''Omnipoint * * * shall construct a * * * system * * * that substantially uses the design and technology upon which the pioneer's preference award * * * was based,'' and on condition that Omnipoint retain control of the license for three years or until it has met the five-year build-out requirement, whichever is the first to occur.

3. On January 16, 1996, WCC submitted a petition for declaratory ruling, urging the Commission to clarify the ''substantial use'' condition, as

specified in the pioneer's preference license awarded to Omnipoint.[1] WCC asserts that public evidence indicates that Omnipoint will initially use Global System for Mobile Communications (GSM) equipment for its New York PCS network, rather than the IS–661 technology for which the Commission awarded Omnipoint a preference. Specifically, WCC attaches the statement of its consulting engineer, Charles Jackson, who asserts that he has reviewed the publicly available information and believes that Omnipoint is currently constructing a GSM system with only minor use of IS–661 technology. WCC requests the Commission to clarify the extent to which Omnipoint must use its own technology to retain its preference award and asks several questions, including whether the substantial use condition requires Omnipoint to use its IS–661 interface from the inception of its broadband PCS operations pursuant to its license.

4. On January 31, 1996, Omnipoint submitted a response, in which it argues that WCC's petition should be dismissed or denied on five grounds. Omnipoint first states that ''WCC has failed to articulate who it is, whom it represents, or how it or its membership, if any, is affected by Omnipoint's activities in the New York MTA.'' Omnipoint notes that the Commission's rules permit requests for clarification of a decision only when the petitioner demonstrates the existence of a genuine decisional controversy or uncertainty, and argues that WCC has failed to make such a demonstration. Second, Omnipoint contends that WCC's petition is in substance not a petition for clarification but an untimely filed petition for reconsideration of the Third R&O. Third, Omnipoint addresses WCC's substantive allegations. Omnipoint avers that in the deployment of its New York MTA PCS system, it is, in fact, substantially using the IS–661 technology for which it received a preference. It adds that other companies are ''licensing and commercializing'' this technology. Omnipoint stresses that it is deploying and using its IS–661 technology in conjunction with GSM, and that such use of multiple technologies is similar to the practices of most cellular and other broadband PCS licensees. Omnipoint concludes that WCC is unfairly asking the Commission to prohibit only Omnipoint from using multiple technologies in deploying a broadband PCS system. Fourth, Omnipoint submits that WCC's petition is not ripe for consideration because there is no Commission requirement that pioneers demonstrate compliance with the substantial use condition prior to the expiration of the five-year build-out requirement. Hence, Omnipoint argues that it should be afforded five years to comply fully with the condition in the New York MTA. Finally, Omnipoint states that the substantial use condition is not vague and does not need to be clarified by an order that could inadvertently delay the rapid deployment of pioneers' systems.

5. On February 7, 1996, WCC submitted a reply to Omnipoint's response in which it contends that Omnipoint offers no information to suggest that WCC's petition is unwarranted. WCC states that it is not arguing that Omnipoint must use only IS–661 technology in the New York MTA, but is asking merely that the Commission define the substantial use condition associated with Omnipoint's pioneer's preference license. WCC also states that Omnipoint does not attempt to clarify the extent to which Omnipoint will use its IS–661 technology in the New York MTA, either initially or over a five-year period.

6. The Commission has discretionary authority to issue a declaratory ruling to ''terminat[e] a controversy or remov[e] uncertainty.'' The doctrine of standing was developed by the courts as an analytic tool to determine whether the exercise of jurisdiction by a court over a given case would exceed the limitation of ''the scope of the federal judicial power to the resolution of 'cases' or 'controversies.' '' This jurisdictional limitation is set forth in Article III of the U.S. Constitution. Although this limit on jurisdiction is not directly applicable to administrative agencies such as the Commission and there are no statutory or regulatory standing requirements applicable to the Commission in the declaratory ruling context, the Commission believes that the presence or absence of standing is a useful factor to consider in determining whether a ''controversy'' or ''uncertainty'' exists in a form sufficiently crystallized to warrant our consideration in the context of a declaratory ruling.

7. To establish standing in the context of federal appellate proceedings, a petitioner must satisfy a three-pronged test. That is, the petitioner must allege (1) A ''distinct and palpable'' personal injury-in-fact that is (2) ''fairly traceable'' to the respondent's conduct and (3) redressable by the relief requested. By analogy, in considering similar factors in the declaratory ruling context, the Commission's review of the pleadings indicates that WCC has not identified itself, its membership, or its interest in the Omnipoint application. Though WCC has alleged a general concern that the ''substantial use'' condition should be clarified to ''ensure that Omnipoint is in full compliance with the condition[ ] * * *, and that it is deserving of the substantial financial benefits attached to its license,'' it has not alleged how it personally would be injured if Omnipoint were not to comply with the ''substantial use'' condition. Its general allegations of potential harm to Omnipoint's competitors and to the U.S. Treasury are not distinct and palpable injuries personal to WCC.

8. In addition, although ripeness concerns addressed by federal courts in the context of Article III do not apply to agency declaratory rulings, concepts of ripeness can also provide a useful analogy in determining whether the Commission should exercise its discretion to issue declaratory rulings. The Commission concludes that this is not an appropriate case to issue such a ruling because the question of the extent to which technology must be deployed in order to satisfy the ''substantial use'' condition is not ripe for our consideration at this time and no unusual and compelling circumstances are present. A finding of ''substantial use'' entails a judgment of the degree and/or nature of deployment and use, which can be affected by the nature and extent of other technologies with which the pioneer's preference technology is entwined, the effect of market forces, the effect of ensuing technological advancements, and other factors. Such judgments are best made on a case-by-case basis. No precise formula for ''substantial use'' can productively be set forth at this time, and any effort to do so would only serve to delay unnecessarily the deployment and use of pioneer's preference technology. In the instant case, Omnipoint's broadband PCS system in the New York MTA is still under construction, and Omnipoint has until the five-year build-out date specified in its license authorization, December 13, 1999, to meet its build-out requirements. Therefore, the issue of substantial use is not yet ripe for Commission review.

9. Therefore, for these reasons, the Commission declines to exercise its discretion to issue a declaratory ruling here. Accordingly, *it is ordered* that the petition for declaratory ruling filed on

[1] The WCC petition is styled as a ''Petition for Clarification.'' Because the petition essentially asks the Commission to issue a declaratory ruling defining in greater detail the meaning and scope of the ''substantial use'' condition placed on pioneer's preference licenses, the Commission is treating it as a petition for declaratory ruling pursuant to 47 C.F.R. § 1.2.

January 16, 1996 by The Wireless Communications Council *is denied.*

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–22195 Filed 8–29–96; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 191, 192 and 193

[Docket PS–125; [Amdt Nos. 190–7; 191–11; 192–77; 193–12]]

RIN 2137–AC28

Regulatory Reinvention Initiative: Pipeline Safety Program Procedures; Reporting Requirements; Gas Pipeline Standards; and Liquefied Natural Gas Facilities Standards; Correction

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

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to final regulations Docket PS–125, which were published Monday, June 3, 1996 (61 FR 27789). The regulations made various changes to administrative practices in the pipeline safety program and made minor modifications to requirements for gas detection, protective enclosures, and pipeline testing temperatures.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, (202) 366–5523 or online at herrickl@rspa.dot.gov regarding the subject matter of this correction, or the Dockets Unit, (202) 366–5046, regarding copies of this final rule or other information in the docket.

SUPPLEMENTARY INFORMATION:

Need for Correction

The final rule that is the subject of these corrections was published with several errors and omissions. The document did not contain the amendment numbers. A hidden formatting inconsistency from imported text resulted in the misprinting of some of the typographical symbols used to denote degrees. As a result some of the degree symbols were printed as the letter ''N'' instead of the symbol ''°''. And, the instructions for amending § 193.2907 ''Protective enclosure construction'' did not specify that (c) was to be removed.

Correction of Publication

Accordingly, the publication on June 3, 1996 of the final rule Docket PS–125, is corrected as follows:

1. On page 27789, in the Heading, the docket number reference ''[Docket PS–125; Notice 2'', is corrected to read: ''[Docket PS–125; Amdt. 190–7; 191–11; 192–77; 193–12]''.

2. On page 27791, in the first column, line 24, the temperature ''100NF'' is amended to read ''100°F''.

3. On page 27791, in the first column, last paragraph, the temperatures ''23NC'' and ''73NF'' in all three instances are amended to read ''23°C'' and ''73°F''.

4. On page 27791, in the second column second line, the temperature ''100NF'' is amended to read ''100°F''.

5. On page 27791, in the second column second paragraph, the temperature ''100NF'' is amended to read ''100°F''.

6. On page 27793, in the first column, last paragraph, the temperature ''100NF'' is amended to read ''100°F''.

7. On page 27793, in the second column paragraph 3, the instructions are amended by inserting the phrase ''and by removing paragraph (c)'' following the section designation (b). and by removing the five asterisks following the word ''opening''.

Issued in Washington, D.C. on August 22, 1996.

Kelley S. Coyner,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96–22171 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–60–U

Proposed Rules

Federal Register
Vol. 61, No. 170
Friday, August 30, 1996

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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1645

Allocation of Earnings

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board is publishing in Part 1645 of 5 CFR proposed regulations concerning allocation of earnings of the three funds in which assets of the Thrift Savings Fund may be invested. These are the Government Securities Investment Fund (G Fund), the Common Stock Index Investment Fund (C Fund), and the Fixed Income Index Investment Fund (F Fund). These regulations are required by the Federal Employees' Retirement System Act of 1986 (FERSA). They describe the way in which earnings are allocated to participants of the Thrift Savings Plan.

DATES: Comments must be submitted on or before September 30, 1996.

ADDRESSES: Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Woodruff, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005. Telephone: (202) 942–1661. Telefacsimile: (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thrift Investment Board (Board) administers the Thrift Savings Plan (TSP) pursuant to the authority vested in it by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335, 100 Stat. 514 (1986), which has been codified, as amended, largely at 5 U.S.C. 8401–8479 (1994). The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Part 1645 describes the process for determining and allocating earnings for each of the three investment funds—the G Fund, the C Fund, and the F Fund—to individual accounts of participants in the TSP. Interim rules describing the process of allocating earnings for each of the investment funds to participant accounts were originally published in the Federal Register on May 2, 1988, (53 FR 15620) as an amendment to title 5 of the Code of Federal Regulations, adding Part 1645, Allocation of Earnings. Comments were requested by June 1, 1988. No comments were received.

The final rule reflects the Board's policy of allocating earnings to participant accounts as of month-end. The rule consolidates the different elements of a participant's account, formerly found in § 1645.5, into a definition of ''month-end account balance.'' There has been no change in the formula for calculating the amount of earnings that are allocated to the accounts found at § 1645.6. The Board also adopted, in § 1645.5(c), a single earnings allocation factor for each source of contributions within a fund (*i.e.*, agency automatic (1%) contributions, agency matching contributions, and employee contributions), rather than apply a different allocation factor for each source within a fund. The remainder of the changes involve clarifications of several definitions.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations will affect only internal Board procedures for allocating earnings.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, section 201, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, or tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA), as amended by the Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, tit. II, 110 Stat. 847, 857–875 (5 U.S.C. 801(a)(1)(A)), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to the publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined in section 804(2) of the APA as amended (5 U.S.C. 804(2)).

List of Subjects in 5 CFR Part 1645

Employee benefit plans, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

Accordingly, 5 CFR part 1645 is proposed to be amended as follows:

PART 1645—ALLOCATION OF EARNINGS

1. The authority citation for Part 1645 continues to read as follows:

Authority: 5 U.S.C. 8439(a)(3) and 5 U.S.C. 8474.

2. Section 1645.1 is amended by revising the definitions of ''Allocation date'', ''Employer contributions'', ''Forfeitures'', ''Source'', and ''Valuation period''; by removing the definitions of ''Employer basic contributions'' and ''Employer matching contributions'' and adding alphabetically definitions of ''Agency automatic (1%) contributions'' and ''Agency matching contributions'', respectively; and by adding in alphabetical order the definition of ''Month-end account balance'', to read as follows:

§ 1645.1 Definitions.

* * * * *

Allocation date means the last day of each calendar month.

* * * * *

Agency automatic (1%) contributions means contributions made pursuant to 5 U.S.C. 8432(c)(1) or 5 U.S.C. 8432(c)(3).

Agency matching contributions means contributions made pursuant to 5 U.S.C. 8432(c)(2).

* * * * *

Employer contributions means agency automatic (1%) contributions and agency matching contributions.

* * * * *

Forfeitures means amounts forfeited pursuant to 5 U.S.C. 8432(g)(2) and other nonstatutory forfeited amounts, net of restored forfeited amounts.

* * * * *

Month-end account balance means the value, as of the allocation date, of the funds for each source of contributions in each investment fund, including all earnings, and any forfeiture, restored forfeited amount, adjustment, earnings correction, loan, withdrawal, or interfund transfer transactions posted as of the allocation date.

* * * * *

Source means the origin of any one of the three types of contributions that are made to the Fund on behalf of participants—employee contributions, agency automatic (1%) contributions, or agency matching contributions.

* * * * *

Valuation period means the calendar month during which earnings accrue.

3. Section 1645.2 is revised to read as follows:

§ 1645.2 Posting of receipts.

Agency and employee contributions and loan repayments will be posted by source and by investment fund to the appropriate individual account on the day they are processed by the recordkeeper.

§ 1645.3 [Amended]

4. Section 1645.3 is amended by revising references to ''Investment Fund'' to read ''investment fund'' wherever they appear.

5. Section 1645.4 is revised to read as follows:

§ 1645.4 Administrative expenses attributable to each investment fund.

A portion of administrative expenses accrued during each valuation period will be charged to each investment fund. The investment funds' respective portions will be determined as follows:

(a) Investment managers' fees and other accrued administrative expenses attributable only to the C or F Fund will be charged to the C or F Fund, respectively;

(b) All other accrued administrative expenses will be reduced by forfeitures and earnings on forfeitures accrued during the valuation period;

(c) The amount of accrued administrative expenses not covered by forfeitures under paragraph (b) of this section will be charged on a *pro rata* basis to the investment funds, based on the respective investment fund balances on the last day of the prior valuation period.

6. Section 1645.5 is revised to read as follows:

§ 1645.5 Basis for allocation of earnings.

(a) *Individual account basis.* Except for the amounts described in paragraph (b) of this section, the individual account basis on the earnings allocation date for each source of contributions in each investment fund equals:

(1) The month-end account balance as of the previous allocation date; plus

(2) One-half of contributions posted to the individual account during the current valuation period (except for contributions referred to in paragraph (b) of this section); plus

(3) One-half of all loan repayments posted to the individual account during the current valuation period.

(b) *Inclusion of retroactive contributions.* The individual account basis for agency automatic (1%) contributions will also include all amounts attributable to retroactive contributions that are made to the individual account pursuant to 5 U.S.C. 8432(c)(3) and that are processed by the recordkeeper during the current valuation period.

(c) *Computation of fund basis.* For each valuation period, the total fund basis for each investment fund will be the sum of all individual account bases for all sources of contributions in that investment fund, calculated as described in paragraphs (a) and (b) of this section.

7. In § 1645.6, paragraph (a) is revised and paragraph (b) is republished to read as follows:

§ 1645.6 Earnings allocation for individual accounts.

(a) *Computation of earnings for each individual account.* Earnings for each source of contributions for each investment fund will be allocated to each individual account separately. The total net earnings for each investment fund (as computed under § 1645.3) will be divided by the total fund basis for that investment fund (as computed under § 1645.5(c)). The resulting number (the ''allocation factor'') will be multiplied by the individual account basis for the respective source of contributions in that investment fund (as computed under § 1645.5(a)), to determine the individual account earnings for the valuation period attributable to that source of contributions in that investment fund. The earnings of the individual account for each source of contributions in each investment fund, when added together, will constitute the earnings for that individual account during the valuation period.

(b) *Residual net earnings.* Amounts allocated to individual accounts may not exceed the total amount of earnings available to be allocated. To avoid allocating excessive amounts, computation of earnings for individual accounts described in paragraph (a) of this section will not include fractions of a cent. Residual net earnings attributable to unallocated fractions of a cent will be allocated with the earnings for the following valuation period.

8. Section 1645.7 is revised to read as follows:

§ 1645.7 Posting of earnings to individual accounts.

For each source of contributions for each investment fund, the amount of earnings computed for each individual account in a valuation period, as described in § 1645.6, will be posted to the individual account as of the allocation date.

[FR Doc. 96–22153 Filed 8–29–96; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1951

RIN 0560–AE93

Handling Payments From the Farm Service Agency (FSA) to Delinquent FSA Farm Credit Program Borrowers

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise regulations which establish the requirements for the use of administrative offset to collect delinquent debts due under programs formerly administered by the Farmers Home Administration. The proposed action will eliminate the existing provisions contained in the regulation and the Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service and Farm Service

Agency (the Agencies) will instead adhere to the requirements in the existing United States Department of Agriculture administrative offset regulations. This revision will eliminate the requirement that a borrower's account must be accelerated prior to offset of payments to delinquent borrowers.

DATES: Comments on the proposed rule, or comments on alternatives to this proposal, must be received on or before September 16, 1996. The comment period was reduced to allow for publication of a final rule prior to the distribution of income supplementation and enhancement program payments by the Farm Service Agency in September 1996. Comments on the information collection requirements of this rule must be received on or before October 29, 1996 to be assured of consideration.

ADDRESSES: Send comments on the proposed rule to: Director, Farm Credit Programs Loan Servicing and Property Management Division (LSPMD), Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), room 5449–S, P.O. Box 2415, Stop 0523, Washington, D.C. 20013–2415. Comments on the information collection requirements of this proposed rule must be sent to the Office of Management and Budget (OMB) at the address listed in the Paperwork Reduction Act section of this preamble and to the Department address listed after the OMB address.

FOR FURTHER INFORMATION CONTACT: Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Credit Programs Loan Servicing Division, P.O. Box 2415, Stop 0523, Washington, D.C. 20013–2415, telephone (202) 720–9053.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been reviewed under Executive Order 12866 has been determined to be a significant regulatory action, and has been reviewed by the Office of Management and Budget.

Executive Order 12372

The programs to which this Executive Order may apply are listed in the Catalog of Federal Domestic Assistance under the following:

10.104 Emergency Loans
10.405 Farm Labor Housing Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.420 Rural Self-Help Housing Loans
10.421 Indian Tribes and tribal Corporation Loans
10.422 Business and Industry Loans
10.423 Community Facility Loans
10.427 Rural rental Housing Assistance Grants
10.428 Economic Emergency Loans
10.433 Housing Preservation Grants
10.434 Nonprofit Organizations
10.435 Agricultural Loan Mediation Program

Programs listed under numbers 10.404, 10.406, 10.407, 10.410, 10.417, 10.421, 10.428, and 10.435 are not 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 29115, June 24, 1983).

Programs listed under the numbers 10.405, 10.411, 10.414, 10.415, 10.416, 10.418, 10.419, 10.420, 10.422, 10.423, 10.427, 10.433, and 10.434 are subject to and have met the provisions of Executive Order 12372. (7 CFR 3015, subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

Environmental Impact Statement

It is the determination of the issuing agencies that this action is not a major Federal action significantly affecting the environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule: and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Regulatory Flexibility Act

The issuing Agencies are not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking to effect these administrative changes.

Paperwork Reduction Act

The amendments to 7 CFR part 1951 set forth in this proposed rule involve a change in existing information collection requirements which were previously approved by OMB under the provisions of 44 U.S.C. 35 and assigned OMB Control Number 0575–0119. The regulations containing the information collection approved under 0575–0119 are jointly owned by the Agencies issuing this rule as aresult of the recent reorganization of USDA. A review of 0575–0119 has resulted in a division of the information collection requirements currently approved and a request for approval of the revised collection has been submitted to OMB.

OMB Control Number: 0560—New.

Title: Offsets of Federal Payments to FmHA Borrowers.

Type of Request: Revision of Currently Approved Information Collection.

Abstract: 7 CFR part 1951, subpart C, requires that a borrower's account be accelerated and the borrower's appeal rights exhausted before offsetting any payments to be received by the borrower. The Department of Agriculture Reorganization Act combined the farm credit functions of FmHA and the former Agricultural Stabilization and Conservation Service (ASCS), into the Farm Service Agency (FSA). This results in FSA making payments generated from participation in the former ASCS programs to the same farmer or rancher that is delinquent on his debts to the Agency. Acceleration of a borrower's account is one of the last steps FSA takes before liquidating the account. This process may take years while the borrower continues to receive payments from FSA.

This rule proposes to remove the existing administrative offset regulation which was used by the Agencies when they were a part of the former Farmers Home Administration (FmHA). The Department of Agriculture has an existing administrative offset regulation at 7 CFR part 3, subpart B and the administrative offset regulation of the former FmHA in 7 CFR part 1951, subpart C is redundant. The Department of Agriculture regulation complies with the requirements of 31 U.S.C. 3716, as amended by the Debt Collection Improvement Act of 1996, ch. 10 of Pub. L. 104–134 (April 26, 1996).

One intended effect of using the existing Department of Agriculture administrative offset procedure is that the Department procedure does not contain the restrictive provision of the former FmHA offset regulation which

requires the debt to have been accelerated prior to using administrative offset. There is no statutory basis for delaying offset until after a loan has been accelerated and the Department administrative offset procedure will permit offset to be utilized for debts which are past due. The information collection requirements for this type of internal agency offset will decrease, due to the development of a shortened notification letter, streamlining of the offset appeal process, and the reduction of the number of notices and number of meetings offered. However, the easing of offset procedures will greatly increase the number of FSA borrowers that receive notices and accounts that are offset. For example, as of March 30, 1996, 1,588 FSA borrowers were accelerated, whereas 27,180 borrowers were past due.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 2.35 hours per response.

Respondents: FSA Farm Credit Programs borrowers that are over 30 days past due.

Estimated Number of Respondents: 13,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 30,500 hours.

Estimated Annual Cost to the Public: $377,000.

Comments regarding the following issues should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Phillip D. Elder, Senior Loan Officer, Loan Servicing Division, Farm Service Agency, USDA, P.O. Box 2415, Ag Box Code 0523, Washington, D.C. 20013–2415; telephone (202) 720–9053: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Copies of the information collection may be obtained from Phillip Elder at the above address. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments or the private sector. Under section 202 of the UMRA, agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

The rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Discussion of Proposed Rule

The proposed changes involve the credit programs formerly administered by FmHA. Under the authority of the Department of Agriculture Reorganization Act of 1994, Pub. L. 10–354 (October 10, 1994), FmHA was abolished on October 20, 1994, and its functions were transferred to the Agencies.

This rule proposes to remove the existing administrative offset regulation which was used by the Agencies when they were a part of the former FmHA. The Department of Agriculture has an existing administrative offset regulation at 7 CFR part 3, subpart B and the administrative offset regulation of the former FmHA in 7 CFR part 1951, subpart C is redundant. The Department of Agriculture regulation complies with the requirements of 31 U.S.C. 3716, as amended by the Debt Collection Improvement Act of 1996, chapter 10 of Pub. L. 104–134 (April 26, 1996) and satisfies the administrative offset needs of the Agencies.

Section 1951.103(b) of Title 7 of the Code of Federal Regulations, which is part of the existing administrative offset procedure which the Agencies are proposing to remove, requires a borrower's account to have been accelerated prior to the use of administrative offset to collect part of the past due debt. One of the intended effects of this proposed rule is to eliminate the acceleration prerequisite to the use of administrative offset. The Department of Agriculture administrative offset regulation does not impose such a prerequisite. There is no statutory requirement that a past due account must have been accelerated prior to offsetting a borrower's federal payments.

Specifically, the acceleration prerequisite to administrative offset means that a FSA farm credit program borrower's account has to be accelerated and the borrower's appeal rights exhausted before FSA can offer any contract payments received by the borrower from programs of the former Agricultural Stabilization and Conservation Service (ASCS) (contract payments). Acceleration is one of the last steps FSA takes before liquidating a farm credit program borrower's account. This process may take years while the borrower continues to receive contract payments. After the reorganization of ASCS and FmHA into FSA, an acceleration prerequisite results in the incongruous situation of FSA having to make substantial contract payments to a farmer or rancher that is seriously delinquent on his or her farm program debts to FSA.

FSA proposes to remove the acceleration barrier to administrative offset in order to enhance collection of delinquent debts thereby reducing losses. While FSA could have revised the existing administrative offset procedure in 7 CFR part 1951, subpart C, this would mean continuing a regulation which is redundant with the existing Department of Agriculture administrative offset regulation. Removing unnecessary regulations is a goal of the National Performance Review, so the Agencies have determined that the adoption of the Department of Agriculture administrative offset regulation will serve the dual purpose of eliminating redundancy and removing the acceleration prerequisite to administrative offset.

While section 534 of the Housing Act of 1949 requires that regulations issued pursuant to title V of the Housing Act of 1949 generally must be published for a 60-day comment period, this regulation is being proposed to implement 31 U.S.C. 3716, not the Housing Act of 1949. Therefore, the notice and comment provisions of section 534 are inappropriate to this regulation.

List of Subjects in 7 CFR Part 1951

Accounting, Accounting Servicing, Credit, Loan Programs—Agriculture, Loan Programs—Housing and community development, Low and moderate income housing loans—Servicing.

Accordingly, 7 CFR part 1951 is proposed to be amended as follows:

PART 1951—GENERAL

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

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

2. The title of part 1951, subpart C is revised to read as follows:

Subpart C—Offsets of Federal Payments to Agency Borrowers

3. Section 1951.102 is revised to read as follows:

§ 1951.102 Administrative offset.

Action to effect administrative offset to recover delinquent claims may be taken in accordance with the procedures in 7 CFR part 3, subpart B.

4. Sections 1951.103 through 1951.105 are removed and reserved.

Signed in Washington, DC, on August 23, 1996.

Jill Long Thompson,

Under Secretary for Rural Development.

Eugene Moos,

Under Secretary for Farm and Foreign Agriculture Services.

[FR Doc. 96–22160 Filed 8–29–96; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–29–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require repetitive inspections to detect wear of the inboard flap trunnions, and modification or replacement, if necessary. This proposal would also require the eventual modification of the trunnions, which would terminate the repetitive inspections. This proposal is prompted by reports of wear damage found on the inboard flap drive trunnions that was caused by chafing of the Teflon rollers of the chain that actuates the sliding panel of the fairing. The actions specified by the proposed AD are intended to prevent such chafing and resultant wear damage, which could result in the failure of the trunnion primary load path; this would adversely affect the fatigue life of the secondary load path and could lead to loss of the flap.

DATES: Comments must be received by October 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered 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 postcard on which the following statement is made: ''Comments to Docket Number 96–NM–29–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that several operators have found wear marks on the inboard drive flap trunnions (both left-hand and right-hand) during removal and inspection of the inboard flaps. Investigation has revealed that such wear is caused by chafing of the Teflon rollers of the drive chain that actuates the sliding panel on the track No. 1 fairing. This chafing and resultant wear damage, if not corrected, could result in the failure of the trunnion primary load path. This failure would adversely affect the fatigue life of the secondary load path and, consequently, could lead to the loss of the flap.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–27–1066, dated March 7, 1994; and Revision 1, dated February 21, 1995. These service bulletins describe a program for conducting repetitive inspections to detect wear damage of the inboard flap trunnions. The interval for conducting each inspection depends

upon the amount of wear detected during the last inspection. These inspections are intended to detect wear marks in the outside diameter (primary load path) of the trunnion before they reach a critical depth that would lead to failure. If wear damage exceeds a certain amount, the service bulletin recommends that the trunnions be modified in accordance with the procedures specified in Airbus Service Bulletin A320–27–1050. Additionally, if wear damage is great (more than 5.0 mm in depth), the service bulletin recommends that Airbus be contacted for further actions. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 94–165–055(B), dated July 30, 1994, in order to assure the continued airworthiness of these airplanes in France.

Additionally, Airbus has issued Service Bulletin A320–27–1050, Revision 3, dated October 21, 1994, which describes procedures for modifying the inboard flap drive trunnions. The modification is identified as Modification 22881, and entails installing protective half shells on the trunnion assembly to prevent chafing and wear damage. Once this modification is accomplished, the repetitive inspections of the trunnions to detect wear marks are no longer necessary. The DGAC has approved the technical content of this service bulletin and has classified it as ''recommended.''

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive inspections to detect wear of each inboard flap trunnion. It would also require that the trunnion be either modified or replaced, depending upon the amount of wear detected.

This proposed AD also would require that Modification 22881 be installed eventually on trunnions of all affected airplanes as terminating action for the repetitive inspections.

The inspection, modification, and replacement actions would be required to be accomplished in accordance with the service bulletins described previously.

Differences Between Proposed Rule and Service Information

The inboard flap attachment trunnion is a primary structural element that is designed with both a primary and a secondary load path. The wear marks that have been found have been located on the outside diameter of the trunnion, which is the primary load path. Modification 22881, described in Airbus Service Bulletin A320–27–1050, entails installing protective half-shells on this outside diameter to prevent further wear damage.

Unlike the Airbus service bulletin and the French CN, this proposed AD would require the installation of Modification 22881as terminating action for the repetitive inspections. The FAA has determined that long term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

Cost Impact

The FAA estimates that 91 airplanes of U.S. registry would be affected by this proposed AD.

Accomplishment of the proposed inspections would take approximately 3 work hours per airplane, at an average labor rate of $60 per work hour. (This includes the time necessary to gain access, inspect, and close up.) Based on these figures, the cost impact of the proposed inspection requirement on U.S. operators is estimated to be $16,380, or $180 per airplane, per inspection.

Accomplishment of the proposed modification would require approximately 93 work hours, at an average labor rate of $60 per work hour. (This includes the time necessary to gain access, modify, test, and close up.) Required parts would cost approximately $1,923 per airplane. Based on these figures, the cost impact of the proposed modification requirement on U.S. operators is estimated to be $682,773, or $7,502 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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 ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

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 (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

Airbus: Docket 96–NM–29–AD.

Applicability: Model A320–111, –211, –212, –231, and –232 series airplanes; as listed in Airbus Service Bulletin A320–27–1066, Revision 1, dated February 21, 1995; and on which Airbus Modification 22881 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and resultant wear damage to the inboard flap trunnion, which could result in the failure of the trunnion primary load path, could adversely affect the fatigue life of the secondary load path, and could lead to loss of the flap, accomplish the following:

(a) Prior to the accumulation of 500 flight hours after the effective date of this AD, conduct a detailed visual inspection to detect wear marks on each inboard flap trunnion (right-hand and left-hand), in accordance with Airbus Service Bulletin A320–27–1066, dated March 7, 1994, or Revision 1, dated February 21, 1995. Measure and record the depth of all wear marks found on each trunnion, in accordance with the service bulletin.

(1) If no wear marks are found or if the depth of the deepest wear mark is less than or equal to 2.0 mm: Repeat the inspection at intervals not to exceed 5,000 flight hours.

(2) If the depth of the deepest wear mark is greater 2.0 mm but less than or equal to 3.0 mm: Repeat the inspection within the next 1,000 flight hours. Prior to the accumulation of 5,000 flight hours after the initial inspection, modify the trunnion (Modification 22881) in accordance with Airbus Service Bulletin A320–27–1050, Revision 3, dated October 21, 1994. This modification constitutes terminating action for the repetitive inspections of that trunnion required by this AD.

(3) If the depth of the deepest wear mark is greater 3.0 mm, but is less than or equal to 4.0 mm: Prior to the accumulation of 500 flight hours after the initial inspection, modify the trunnion (Modification 22881) in accordance with Airbus Service Bulletin A320–27–1050, Revision 3, dated October 21, 1994. This modification constitutes terminating action for the repetitive inspections of that trunnion that are required by this AD.

(4) If the deepest wear mark exceeds 4.0 mm: Prior to further flight, replace the trunnion in accordance with the Airbus Model A320 Maintenance Manual. This replacement constitutes terminating action for the repetitive inspections of that trunnion that are required by this AD.

(b) Prior to the accumulation of 10,000 total flight hours, modify each inboard flap trunnion, right-hand and left-hand, (Modification 22881) in accordance with Airbus Service Bulletin A320–27–1050, Revision 3, dated October 21, 1994. Accomplishment of this modification on each trunnion constitutes terminating action for the inspections required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22142 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–CE–03–AD]

RIN 2120–AA64

Airworthiness Directives; Burkhart Grob, Luft- und Raumfahrt, Model G 109 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to the Burkhart Grob, Luft-und Raumfahrt (Grob) Model G 109 sailplanes. The proposed action would require installing a damper and new bell crank lever on the rudder, in addition to adjusting the weight and balance of the sailplane, to correct the tendency of flutter at specific excitation frequencies. For those Grob G 109 airplanes that have previously accomplished this installation, a proposed modification to the damper and bell crank lever, and adjusting the weight and balance would be required. The proposed action is prompted by the discovery of rudder vibration problems during testing of two Model G 109 sailplanes. The actions specified by the proposed AD are intended to prevent the oscillation of the rudder, which could result in structural damage and eventual loss of control of the sailplane.

DATES: Comments must be received on or before November 1, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–03–AD, Room 1558, 601 E. 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.

Service information that applies to the proposed AD may be obtained from Burkhard Grob Luft-und Raumfahrt, D–86874 Mattsies, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri, 64106; telephone (816) 426–6934, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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 Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered 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 that summarizes 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 postcard on which the following statement is made: ''Comments to Docket No. 95–CE–03–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–03–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Grob Model G 109 sailplanes. The LBA reports that the rudder has a tendency to vibrate, which if not detected and corrected, will cause structural damage and eventual loss of control of the sailplane.

Burkhart Grob issued Service Bulletin (SB) TM 817–38, dated July 8, 1993, and Installation Instructions 817–38, dated October 25, 1994, which specify installation of a rudder damper and a new bell crank lever in the rudder control system. Subsequently, Burkhart Grob issued SB 817–38/2, dated March 31, 1995, to correct minor tolerance difficulties with the damper installation. This revised SB references two sets of installation instructions. Grob Installation Instructions No. 817–38/1, dated March 31, 1995, applies to Grob G 109 sailplanes that have been modified in accordance with the previous version of the SB and Installation Instructions. Grob Installation Instructions No. 817–38/2, dated March 31, 1995, applies to those Grob G 109 sailplanes that have not been so modified.

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other Grob G 109 sailplanes of the same type design, the proposed AD would require installing a rudder damper and a new rudder bell crank lever in the controls and adjusting the weight and balance; or modifying the rudder damper and bell crank lever, in addition to adjusting the weight and balance of the sailplane. Accomplishment of the proposed action would be in accordance with Grob SB 817–38/2, dated March 31, 1995, and either Grob Installation Instructions No. 817–38/1 or Grob Installation Instructions No. 817–38/2, both dated March 31, 1995, whichever is applicable.

The compliance time of the proposed AD is in calendar time instead of hours time-in-service (TIS). The average monthly usage of the affected sailplanes varies throughout the fleet. For example, one owner may operate the sailplane 25 hours TIS in one week, while another operator may operate the sailplane 25 hours TIS in one year. In order to ensure that all of the affected sailplanes have a rudder damper and a new rudder bell crank lever installed within a reasonable amount of time, the FAA is proposing a compliance time of 6 calendar months.

The FAA estimates that 23 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 hours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $1,000 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $34,040. Grob has informed the FAA that no parts have been distributed to equip any sailplane in the United States. The FAA has no way of determining how many owners/operators may have incorporated the proposed actions on their sailplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, 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 action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

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 (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Burkhart Grob, Luft- und Raumfahrt: Docket No. 95–CE–03–AD.

Applicability: Model G 109 sailplanes (serial numbers 6001 through 6159), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any aircraft from the applicability of this AD.

Compliance: Required within the next 6 calendar months after the effective date of this AD, unless already accomplished.

To prevent vibration of the rudder, which could result in structural damage and eventual loss of control of the sailplane, accomplish the following:

(a) For sailplanes that have been modified in accordance with Grob Service Bulletin (SB) TM 817–38, dated July 8, 1993, and

Grob Installation Instructions No. 817–38, dated October 25, 1994, modify the damper unit and the rudder bell crank lever in accordance with Grob SB 817–38/2, dated March 31, 1995, and Grob Installation Instructions No. 817–38/1, dated March 31, 1995.

(b) For sailplanes that have not been modified in accordance with Grob SB TM 817–38, dated July 8, 1993, and Grob Installation Instructions No. 817–38, dated October 25, 1994, install a new damper unit and rudder bell crank lever in accordance with Grob SB 817–38/2, dated March 31, 1995 and Grob Installation Instructions No. 817–38/2 dated March 31, 1995.

(c) For all affected sailplanes, re-calculate the weight and balance data in accordance with the Actions section in Grob SB 817–38/2, dated March 31, 1995.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri, 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Burkhard Grob Luft -und Raumfahrt, D–86874 Mattsies, Germany; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 23, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22248 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–163–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–102 and –103 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–102 and –103 series airplanes. This proposal would require repetitive external inspections to detect cracks in the skin exterior of the fuselage at floor level, and repair, if necessary. This proposal also would require repetitive internal inspections to detect cracks of the subject area, which terminates the repetitive external inspections. This proposal is prompted by a report that one of the tasks in the Maintenance Program Airworthiness Limitations List inadvertently excluded certain airplanes from the instructions for the inspections. The actions specified by the proposed AD are intended to prevent undetected cracking of the frames and skin panels of the fuselage, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by October 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7523; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered 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 postcard on which the following statement is made: ''Comments to Docket Number 95–NM–163–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, has notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–102 and –103 series airplanes. Transport Canada advises that, in a previous issue of the Maintenance Program Airworthiness Limitations List (ALL), certain modified airplanes were inadvertently excluded from instructions for performing one of the required maintenance tasks.

The ALL contains mandatory damage tolerance inspections of the fuselage [required by section 25.571 (''Damage tolerance and fatigue evaluation of structure'') of the Federal Aviation Regulations (14 CFR 25.571), amendment 25–45] that are part of the type certificate of these airplanes. The instructions for these inspections are in the form of inspection ''maintenance task cards'' and are contained in the Dash 8 Maintenance Program Manual PSM 1–8–7.

Maintenance Task Card 5310/30C contains instructions for performing internal visual inspections to detect cracks of the left- and right-hand fuselage frames at the floor level. It also contains an effectivity listing, which specifies those airplanes on which the inspection is necessary. The effectivity of this task card lists airplanes on which de Havilland Modification 8/0427 has not been installed, but inadvertently

excludes from the list the airplanes on which that modification has been installed. Both the modified and unmodified airplanes must receive these inspections, however.

Since the ALL is incorporated into the Dash 8 Maintenance Program Manual, and since the ALL's effectivity for this necessary inspection is incorrect, the fuselage frames of the modified airplanes may not have been inspected. Without these necessary inspections, cracking could occur and go undetected. Additionally, cracking of the fuselage frames is often associated with secondary cracking of the fuselage skin. Such cracking of the frames and skin panels of the fuselage at the floor level, if not detected and corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

De Havilland has issued Service Bulletin 8–53–48, dated August 26, 1994, which describes procedures for repetitive external detailed visual inspections to detect cracks in the left- and right-hand skin exterior of the fuselage at the floor level on Model DHC–8 series airplanes on which de Havilland Modification 8/0427 has been installed. The service bulletin also describes procedures for repetitive internal visual inspections to detect cracks of the fuselage frames. Accomplishment of the internal inspection eliminates the need for the repetitive external inspections. In addition, the service bulletin describes procedures for reporting all cracks to Bombardier Regional Aircraft Division.

Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–94–17, dated September 9, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusion

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require repetitive external detailed visual inspections to detect cracks in the left-and right-hand skin exterior of the fuselage at the floor level. The proposed AD also would require repetitive internal visual inspections to detect cracks of the fuselage frames; initiation of these inspections would constitute terminating action for the repetitive external inspection requirements. The actions would be required to be accomplished in accordance with the service bulletin described previously.

This proposed AD would be applicable only to airplanes on which de Havilland Modification 8/0427 has been installed, and on which Maintenance Program Manual PSM 1–8–7, Task 5310/30C (Section 3–53, page 12, dated August 10, 1993) has not been accomplished.

Differences Between the Proposal and the Related Service Information

Operators should note that, although the service bulletin specifies that operators are to contact Bombardier Regional Aircraft Division for ''disposition of all cracks,'' this proposed AD would require that operators accomplish the repair of any cracking in accordance with the de Havilland DHC–8 Structural Repair Manual, or in accordance with a method approved by Transport Canada Aviation or the FAA.

Cost Impact

The FAA estimates that 80 airplanes of U.S. registry would be affected by this proposed AD.

The proposed external inspections would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,800, or $60 per airplane, per inspection.

The proposed internal inspections would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $14,400, or $180 per airplane, per inspection.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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 ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

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 (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

de Havilland, Inc.: Docket 95–NM–163 AD.

Applicability: Model DHC–8–102 and 103 series airplanes having serial numbers 101 through 180, inclusive; on which de Havilland Modification 8/0427 has been installed, and on which Maintenance Program Manual PSM 1–8–7, Task 5310/30C (Section 3–53, page 12, dated August 10, 1993) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected cracking of the frames and skin panels of the fuselage, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 15,343 total flight cycles, or within 200 landings after the effective date of this AD, whichever occurs later, perform an external detailed visual inspection to detect cracks in the left- and right-hand skin exterior of the fuselage at floor level, in accordance with paragraph III, External Inspection, of the Accomplishment Instructions of de Havilland Service Bulletin S.B. 8–53–48, dated August 26, 1994.

(1) If no crack is detected, repeat the external detailed visual inspection thereafter at intervals not to exceed 750 landings.

(2) If any crack is detected, prior to further flight, perform an internal visual inspection to detect cracks of the fuselage frames in accordance with the service bulletin. Accomplishment of this internal visual inspection constitutes terminating action for the repetitive external detailed visual inspections required by of paragraph (a)(1) of this AD.

(i) If no crack is detected during the internal inspection, prior to further flight, repair the cracked area(s) found during the external inspection, in accordance with the de Havilland DHC–8 Structural Repair Manual; or in accordance with a method approved by Transport Canada; or in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Repeat the internal inspection thereafter at intervals specified in accordance with the Dash 8 Maintenance Program Manual.

(ii) If any crack is detected during the internal inspection, prior to further flight, repair all cracks found during both the external and internal inspections, in accordance with the de Havilland DHC–8 Structural Repair Manual, or in accordance with a method approved by Transport Canada Aviation; or in accordance with a method approved by the Manager, New York ACO, FAA, Engine and Propeller Directorate. Repeat the internal inspection thereafter at intervals specified in accordance with the Dash 8 Maintenance Program Manual.

(b) Prior to the accumulation of 31,000 flight cycles, or within 12 months after the effective date of this AD, whichever occurs later, perform an internal visual inspection to detect cracking of the fuselage frames, in accordance with de Havilland Service Bulletin S.B. 8–53–48, dated August 26, 1994. Accomplishment of the internal visual inspection constitutes terminating action for the repetitive external detailed visual inspections required by paragraph (a)(1) of this AD.

(1) If no cracking is detected during the internal inspection, repeat the internal inspection thereafter at intervals specified in accordance with the Dash 8 Maintenance Program Manual.

(2) If any cracking is detected during the internal inspection, prior to further flight, repair it in accordance with the de Havilland DHC–8 Structural Repair Manual, or in accordance with a method approved by Transport Canada Aviation; or in accordance with a method approved by the Manager, New York ACO, FAA, Engine and Propeller Directorate. Repeat the internal inspection thereafter at intervals specified in accordance with the Dash 8 Maintenance Program Manual.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New ACO, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22143 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–SW–14–AD]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Robinson Helicopter Company (Robinson) Model R22 helicopters, that currently requires installation of an improved throttle governor; an adjustment to the low RPM warning unit threshold to increase the revolutions-per minute (RPM) at which the warning horn and caution light activate; and revisions to the R22 Rotorcraft Flight Manual that prohibit flight with the improved throttle governor selected off, except in certain situations. This action would require the same compliance actions required by the existing AD, as well as require an insertion of procedures for the improved throttle governor into the Normal and Emergency sections of the R22 Rotorcraft Flight Manual and correct the applicability section of the existing AD. This proposal is prompted by the need to insert normal and emergency procedures for the improved throttle governor in the flight manual, as well as clarify the helicopter serial numbers to which the AD applies. The actions specified by the proposed AD are intended to minimize the possibility of pilot mismanagement of the main rotor (M/R) RPM, which could result in unrecoverable M/R blade stall and subsequent loss of control of the helicopter.

DATES: Comments must be received by October 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–14–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712 4137, telephone (310) 627–5265; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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 Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered 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 postcard on which the following statement is made: ''Comments to Docket No. 96–SW 14–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–14–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On May 15, 1996, the FAA issued AD 96–11–08, Amendment 39–9633 (61 FR 26429, May 28, 1996), to require installation of an improved throttle governor; an adjustment to the low RPM warning unit threshold to increase the RPM at which the warning horn and caution light activate; and, revisions to the R22 Rotorcraft Flight Manual that prohibit flight with the improved throttle governor selected off, except in certain situations. That action was prompted by an FAA Technical Panel review of Model R22 accident history data which revealed that M/R blade stall at abnormally low M/R RPM resulted in accidents. The requirements of that AD are intended to minimize the possibility of pilot mismanagement of the M/R RPM, which could result in unrecoverable M/R blade stall and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that the affected serial-numbered helicopters in the applicability section of that AD should be changed from ''serial number (S/N) 0002 to 2537,'' to include all Model R22 helicopters. The FAA has also determined that R22 Rotorcraft Flight Manuals issued prior to July 6, 1995 did not address normal and emergency procedures for the improved throttle governor. Finally, since the issuance of the existing AD, the FAA has determined that the cost estimate for installation of the improved throttle governor kits did not include the replacement cost of the magnetos.

Since an unsafe condition has been identified that is likely to exist or develop on other Model R22 helicopters of the same type design, the proposed AD would supersede AD 96–11–08 to require installation of the improved throttle governor; an adjustment to the low RPM warning unit threshold; insertions of language into the R22 Rotorcraft Flight Manual in the Normal and Emergency sections to address procedures for the improved throttle governor, as well as an insertion in the Limitations section that prohibits flight with the improved throttle governor selected off, except in certain situations; and, would expand the applicability section to additional Model R22 helicopters and revise the estimated cost impact of the existing AD.

The FAA estimates that 1,014 helicopters of U.S. registry will be affected by this AD, that it will take approximately 8 work hours to install the improved throttle governor, or 7 hours to upgrade the throttle/collective governor, 4 hours to upgrade the magnetos, if required, and approximately 0.2 work hour to accomplish the adjustment of the light/warning horn RPM, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,150 per helicopter to install the improved throttle governor, or approximately $500 for upgrading the throttle/collective governor per helicopter. Installation of upgraded magnetos, if required, will cost approximately $927 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,029,088. This cost estimate assumes that no helicopters are currently equipped with a governor and all will need the improved throttle governor installed. Additionally, the cost estimate assumes that 300 Model R22 helicopters will require installation of the upgraded magnetos.

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 ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

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 (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9633 (61 FR 26430, May 28, 1996) and by adding a new airworthiness directive (AD), to read as follows:

Robinson Helicopter Company: Docket No. 96–SW–14–AD. Supersedes AD 96–11–08, Amendment 39–9633.

Applicability: Model R22 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 30 days after the effective date of this AD, unless accomplished previously.

To minimize the possibility of pilot mismanagement of the main rotor (M/R) revolutions-per-minute (RPM), which could result in unrecoverable M/R blade stall and subsequent loss of control of the helicopter, accomplish the following:

(a) Adjust the A569–1 or –5 low-RPM warning unit so that the warning horn and caution light activate when the M/R RPM is

between 96% and 97% rotor RPM in accordance with the procedures contained in the Model R22 maintenance manual.

(b) For Model R22 helicopters that do not have a governor currently installed, install a Robinson Helicopter Company KI–67–2 Governor Field Installation Kit in accordance with the kit instructions. Upon completion of the governor installation required by this paragraph, revise the FAA-approved Robinson Helicopter Company R22 Rotorcraft Flight Manual (RFM) in accordance with paragraph (d) of this AD.

(c) For Model R22 helicopters that have a throttle/collective governor currently installed, upgrade the governor with a Robinson Helicopter Company KI–67–3 Governor Upgrade Kit in accordance with the kit instructions. Upon completion of the upgrade required by this paragraph, revise the FAA-approved Robinson Helicopter Company R22 Rotorcraft Flight Manual (RFM) in accordance with paragraphs (d) of this AD.

(d) Revise the FAA-approved Robinson Helicopter Company R22 RFM as follows:

(1) Insert the FAA-approved Robinson Helicopter Company R22 RFM revision, dated July 6, 1995, or later FAA-approved revision addressing the governor normal and emergency procedures, into the Normal and Emergency sections of the RFM.

(2) Include the following statement in the Limitations section: ''Flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training.'' This may be accomplished by inserting a copy of this AD or the FAA-approved Robinson Helicopter Company R22 RFM revision dated July 23, 1996, into the RFM.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on August 19, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–22136 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–SW–15–AD]

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Robinson Helicopter Company (Robinson) Model R44 helicopters, that currently requires an adjustment to the low RPM warning unit threshold to increase the revolutions per-minute (RPM) at which the warning horn and caution light activate, and revisions to the R44 Rotorcraft Flight Manual that prohibit flight with the throttle governor (governor) selected off, except in certain situations. This action would require the same compliance actions required by the existing AD, and would correct the applicability section of the existing AD. This proposal is prompted by the need to expand the helicopter serial number applicability to include all Robinson Model R44 helicopters. The actions specified by the proposed AD are intended to minimize the possibility of pilot mismanagement of the main rotor (M/R) RPM, which could result in unrecoverable M/R stall and subsequent loss of control of the helicopter.

DATES: Comments must be received by October 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–15–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712 4137, telephone (310) 627–5265; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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 Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered 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 postcard on which the following statement is made: ''Comments to Docket No. 96–SW–15–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–15–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On May 15, 1996, the FAA issued AD 96–11–09, Amendment 39–9634 (61 FR 26427, May 28, 1996), to require an adjustment to the low RPM warning unit threshold to increase the RPM at which the warning horn and caution light activate, and revisions to the R44 Rotorcraft Flight Manual that prohibit flight with the governor selected off, except in certain situations. That action was prompted by an FAA Technical Panel Review of Robinson accident history data which revealed that M/R blade stall at abnormally low M/R RPM resulted in accidents. The requirements of that AD are intended to minimize the possibility of pilot mismanagement of the M/R RPM, which could result in unrecoverable M/R stall and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that the affected serial-numbered helicopters in the applicability section of that AD should be changed from ''serial number (S/N) 0001 to 01183 and 0189,'' to include all Robinson Model R44 helicopters.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Model R44

helicopters of the same type design, the proposed AD would supersede AD 96–11–09 to require an adjustment to the low RPM warning unit threshold to increase the RPM at which the warning horn and caution light activate, and revisions to the R44 Rotorcraft Flight Manual that prohibit flight with the governor selected off, except in certain situations, for all Robinson Model R44 helicopters.

The FAA estimates that 20 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.2 work hour per helicopter to accomplish the actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $240.

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 ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

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 (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9634 (61 FR 26427, May 28, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Robinson Helicopter Company: Docket No. 96–SW–15–AD. Supersedes AD 96–11–09, Amendment 39–9634.

Applicability: Model R44 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 30 days after the effective date of this AD, unless accomplished previously. To minimize the possibility of pilot mismanagement of the main rotor (M/R) RPM, which could result in unrecoverable M/R stall and subsequent loss of control of the helicopter, accomplish the following:

(a) Adjust the A569–6 low RPM warning unit so that the warning horn and caution light activate when the M/R RPM is between 96% and 97% rotor RPM in accordance with the procedures contained in the Model R44 maintenance manual.

(b) Revise the FAA-approved Robinson Helicopter Company R44 Rotorcraft Flight Manual (RFM) to include the following statement in the Limitations Section:

''Flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training.''

This may be accomplished by inserting a copy of this AD or the FAA-approved Robinson Helicopter Company R44 RFM revision dated July 25, 1996, into the RFM.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on August 19, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–22137 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 96–AWP–10]

Proposed Establishment of Class E Airspace; Groveland, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace area at Groveland, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 09/27 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Pine Mountain Lake Airport, Groveland, CA.

DATES: Comments must be received on or before September 20, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 96–AWP–10, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AWP–10.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace area at Groveland, CA. The development of a GPS SIAP at Pine Mountain Lake Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 09/27 SIAP at Pine Mountain Lake Airport, Groveland, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would 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

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

AWP CA E5 Groveland, CA [New]

Pine Mountain Lake Airport, CA
(lat. 37°51′41″N, long. 120°10′42″W)

That airspace extending upward from 700 feet above the surface within a 5.7-mile radius of the Pine Mountain Lake Airport and within 2 miles southwest and 3 miles northeast of the 135° bearing from the Pine Mountain Lake Airport extending from the 5.7-mile radius to 11 miles southeast of the airport.

* * * * *

Issued in Los Angeles, California, on August 15, 1996.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–22131 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 96–ASO–5]

Proposed Amendment to Time of Designation for Restricted Areas; GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the time of designation for Restricted Areas 3008A (R–3008A), R–3008B, R–3008C, and R–3008D, Grand Bay Weapons Range, GA, by expanding the timeframe during which these areas may be activated without prior issuance of a Notice to Airmen (NOTAM). The U.S. Air Force proposed this amendment to accommodate an increase in the using agency's night flying requirements.

DATES: Comments must be received on or before October 15, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 96–ASO–5, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ASO–5.'' The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land-use aspects to: Mr. Robert C. Makowski, 347th CES/CEVA, 3485 Georgia Street, Moody Air Force Base (AFB), GA 31699–1707. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the Federal Aviation Administration, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to part 73 of Title 14 of the Code of Federal Regulations (14 CFR part 73) to amend the time of designation for R–3008A, R–3008B, R–3008C, and R–3008D from the current ''0700–1900 local time, Monday-Friday; other times by NOTAM 6 hours in advance,'' to ''0700–2200 local time, Monday-Friday; other times by NOTAM 6 hours in advance.'' This proposal would expand, by 3 hours daily, the core hours during which these areas could be activated without prior issuance of a NOTAM. As proposed, a NOTAM would not be required for activation of these restricted areas between 1900 and 2200 local time. The using agency currently has the option of activating these areas at any time providing a NOTAM is issued for any use outside the core hours. A NOTAM would still be required for any usage outside the proposed amended times. The 347th Wing at Moody AFB, GA, has reorganized as a composite wing made up of F–16, A–10, and C–130 aircraft. As a result, the unit's night flying missions, which utilize R–3008, routinely extend past 1900 local time, but are normally terminated by 2200 local time. This requires the daily issuance of NOTAM's for activation of these areas between 1900 and 2200. Amendment of the time of designation, as proposed, would provide better notification to the flying public of expected routine times of use of these restricted areas, and lesson NOTAM system workload.

Section 73.30 of part 73 of the Federal Aviation Regulations was published in FAA Order 7400.8C dated June 29, 1995.

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

Environmental Review

This proposal will be subjected to an environmental analysis by the proponent and the FAA prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

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

PART 73—[AMENDED]

1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority. 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 73.30 [Amended]

2. Section 73.30 is amended as follows:

R–3008A, R–3008B, R–3008C, and R–3008D, Grand Bay Weapons Range, GA [Amended]

By removing the words ''Time of designation. 0700–1900 local time, Monday–Friday; other times by NOTAM 6 hours in advance.'' and inserting the words:

''Time of designation. 0700–2200 local time, Monday–Friday; other times by NOTAM 6 hours in advance.''

Issued in Washington, DC, on August 22, 1996.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–22252 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 91, 93, 121, and 135

Public Meeting on Special Flight Rules in the Vicinity of Grand Canyon National Park; Notice of Proposed Rulemaking and Draft Environmental Assessment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA is issuing this notice to advise the public of two public meetings on the notice of proposed rulemaking (NPRM), Special Flight Rules in the Vicinity of Grand Canyon National Park, published in the Federal Register on July 31, 1996, and the corresponding draft environmental assessment (EA), the availability of which was announced on August 19, 1996. The purpose of these meetings is to provide an additional opportunity for the public to comment on the proposal and the draft assessment.

DATES: The meetings will be held on September 16 and 17, and September 19 and 20. See Supplementary Information for details.

ADDRESSES: The meetings will be held in Scottsdale, AZ and Las Vegas, NV. See Supplementary Information for details. Persons unable to attend the

meetings may mail their comments on the NPRM in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Rules Docket (AGC–200), Docket No. 28537, 800 Independence Ave., NW, Washington, DC 20591. Written comments to the docket will receive the same consideration as statements made at the public meetings.

Comments on the draft EA should also be sent to the Rules Docket in triplicate, but to Docket No. 28653.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the public meetings on the Grand Canyon NPRM or draft EA and questions regarding the logistics of the meetings should be directed to Linda Williams, Federal Aviation Administration, Office of Rulemaking (ARM–109), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9685; fax (202) 267–5075.

Questions concerning the NPRM should be directed to Neil Saunders, Airspace and Rules Program, Airspace Management, Federal Aviation Administration, 800 Independence Ave., Washington, DC 20591. Telephone: (202) 267–9241.

Questions on the draft EA should be directed to William J. Marx, Division Manager, ATA–300, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone (202) 267–9367.

SUPPLEMENTARY INFORMATION: Meeting dates, locations, and times are as follows:

September 16 and 17—Scottsdale, AZ
Arizona and Barcelona Rooms, 4th Floor, Embassy Suites, 5001 North Scottsdale Rd., Scottsdale, AZ 85250, telephone: 1–800–528–1456 or (602) 949–1414
Registration: 8:30 a.m.–6:30 p.m.
Meeting: 9:00 a.m.–4:00 p.m.; 7:00 p.m.–9:00 p.m.

September 19 and 20—Las Vegas, NV
Cashman Field, Meeting Rooms 107 and 108, 850 Las Vegas Blvd. North (use parking lot B), Las Vegas, NV 89101
Registration: 8:30 a.m.–6:30 p.m.
Meeting 9:00 a.m.–4:00 p.m.; 7:00 p.m.–9:00 p.m.

Please note: The first day of the meetings (September 16 and 19 will address the NPRM; the second day of the meetings (September 17 and 20) will address the draft EA.

Background

The FAA will conduct two public meetings on the recently published Grand Canyon National Park proposed rule and draft environmental assessment. Comments from the public at these meetings should be directed specifically to the proposed rule on the first day of each meeting and to the environmental assessment on the second day of each meeting.

The notice of proposed rulemaking was published in the Federal Register on July 31, 1996 [61 FR 40120]. The NPRM proposed to add new flight-free areas and corridors and proposed a number of options, including flight curfews and a moratorium or cap on flights allowed in the park. The NPRM also states that the FAA may adopt any combination of the options in a final rule.

The notice of availability for the draft environmental assessment was issued on August 19, 1996, and published in the Federal Register on August 21, 1996.

The closing date for comments on the proposal is September 30, 1996; the closing date for comments on the draft EA is October 4, 1996. In order to give the public an additional opportunity to comment on the proposed rule and the draft EA, the FAA is planning these public meetings. Because this additional opportunity to comment on the proposed rule and draft EA is provided, the FAA does not intend to extend the closing date for comments on the NPRM or draft EA.

Persons interested in obtaining a copy of the Grand Canyon proposed rule should contact Linda Williams at the address or telephone number provided in **FOR FURTHER INFORMATION CONTACT.** For a copy of the draft EA contact William Marx at the address or telephone number provided.

Participation at the Public Meetings on the NPRM or Draft EA

Requests from persons who wish to present oral statements at the public meetings on the Grand Canyon National Park proposal or draft assessment should be received by the FAA no later than September 10. Such requests should be submitted to Linda Williams as listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

Requests received after September 10 will be scheduled if time is available during the meetings; however, the name of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meetings. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Those persons desiring to have available audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Public Meeting Procedures

The following procedures are established to facilitate the public meetings on the NPRM and draft EA:

1. There will be no admission fee or other charge to attend or to participate in the public meetings. The meetings will be open to all persons who have requested in advance to present statements or who register on the day of the meeting (between 8:30 a.m. and 9:00 a.m.) subject to availability of space in the meeting room.

2. The public meetings may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meeting.

3. The FAA will try to accommodate all speakers; therefore, it may be necessary to limit the time available for an individual or group.

4. Participants should address their comments to the panel. No individual will be subject to cross-examination by any other participant.

5. Sign and oral interpretation can be made available at the meetings, as well as an assistive listening device, if requested 10 calendar days before the meetings.

6. Representatives of the FAA will conduct the public meetings. A panel of FAA and National Park Service (NPS) personnel involved in this issue will be present.

7. The meetings will be recorded by a court reporter. A transcript of the meetings and any material accepted by the panel during the meetings will be included in the public docket (Docket No. 28537 for the NPRM and 28653 for the draft EA). Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meetings.

8. The FAA will review and consider all material presented by participants at the public meetings. Position papers or material presenting views or information related to the proposed NPRM or the draft EA may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meetings provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

9. Statements made by members of the public meetings panel are intended to facilitate discussion of the issues or to clarify issues. Because the meetings concerning the Grand Canyon NPRM and draft EA are being held during the comment period, final decisions

concerning issues that the public may raise cannot be made at the meetings. FAA and NPS officials may, however, ask questions to clarify statements made by the public and to ensure a complete and accurate record. Comments made at these public meetings will be considered by the FAA and NPS when deliberations begin concerning whether to adopt any or all of the proposed rules.

10. The meetings are designed to solicit public views and more complete information on the proposed rule. Therefore, the meetings will be conducted in an informal and non-adversarial manner.

Issued in Washington, DC on August 27, 1996.

Chris A. Christie,

Director of Rulemaking.

[FR Doc. 96–22208 Filed 8–27–96; 12:13 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. S–051]

RIN 1218–AB51

Safety Standards for Fire Protection for Shipyard Employment

AGENCY: Occupational Safety and Health Administration (OSHA), U.s. Department of Labor.

ACTION: Notice of public meeting; appointment of members to Advisory Committee; and notice of organizational meeting of Advisory Committee.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing that a meeting of all parties interested in the Fire Protection for Shipyard Employment Negotiated Rulemaking Advisory Committee will be held to provide information, to promote an understanding of the negotiated rulemaking process, and to present the Committee members. Nominees for membership, who have been drawn from shipyard operators, labor, professional associations, and government agencies, have been selected to serve on the Committee. The nominees, along with their affiliations are listed in this notice. The members of the Committee will represent the interests of all groups interested in, or significantly affected by, the outcome of the rulemaking.

Immediately following the informational meeting, an organizational meeting of the advisory committee will take place. The committee will be charged with its duties and will address certain procedural matters. These meetings will be open to the public.

DATES: The public meetings will be held on October 15, 16, and 17, 1996. The informational meeting will begin at 9:00 a.m. on October 15, 1996, and the organizational meeting of the Committee will begin at 1:00 p.m. on October 15, 1996 and will run until approximately 5:00 p.m. The meetings October 16 and 17, 1996 will begin at 9:00 a.m. and run until approximately 5:00 p.m. each day.

ADDRESSES: The public meetings will be held at the Port of Portland Building, 700 N.E. Multnomah, 13th Floor, Room 13A, Portland, Oregon, 97208. Any written comments in response to this notice should be sent, in quadruplicate, to the following address: Docket Office, Docket S–051, Room N–2625, 200 Constitution Ave., N.W., Washington, D.C. 20210; Telephone (202) 219–7894.

FOR FURTHER INFORMATION CONTACT: Ann Cyr, Acting Director; OSHA, U.S. Department of Labor, Office of Information and Consumer Affairs, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION:

I. Background

Fire protection in shipyard employment has been regulated by OSHA's general industry standards for fire protection, 29 CFR 1910.155 through 1910.165, Subpart L. In enforcement activities, OSHA has also used Section (5)(a)(1) of the Occupational Safety Health Act (''the Act''), the General Duty Clause, which requires each employer to, furnish to each of his employees employment and a place of employment which are free from recognized hazards causing or likely to cause death or serious physical harm.

The general industry standards, which address fire brigades, portable fire extinguishers, standpipe and hose systems, automatic sprinkler systems, fixed extinguishing systems, fire standpipe and hose systems, automatic sprinkler systems, fixed extinguishing systems, fire detection systems, and employee alarm systems, cover primarily landside shipyard operations. Fire hazards on board vessels are not covered by the general industry standards. Moreover, the general industry standards are in need of review and revision and do not completely address hazards that are unique to shipyard employment. The Agency believes a standard promulgated under § 6(b) of the Act will more effectively reduce the risks of fire in the shipyard and on board vessels.

OSHA has decided to use the negotiated rulemaking (Neg/Reg) process to develop a proposed standard for fire protection covering all shipyard employment. The most important reason for using Neg/Reg is that the shipyard stakeholders from all sectors strongly support consensual rulemaking efforts like negotiated rulemaking. OSHA believes this process will result in a proposed standard whose provisions will effectively protect employees working throughout the shipyard. (See OSHA's Notice of Intent to Form a Negotiated Rulemaking Committee to Develop a Proposed Rule on Fire Protection in Shipyard Employment, 61 FR 28824, June 6, 1996, for a detailed explanation of why OSHA is using negotiated rulemaking to develop its proposed standard and for general information on the negotiated rulemaking process).

II. Some Key Issues for Negotiation

OSHA expects that key issues to be addressed as part of these negotiations will include:

1. Scope and Application. Should Subpart P apply to all shipyard employment? How will the standard affect out-of-yard/plant firefighters such as those employed by a municipal fire department?

2. Controls and Work Practices. What controls and work practices will provide adequate protection for employees? Should OSHA require hot work permits? Should OSHA require training for all fire fighters? Should OSHA incorporate U.S. Coast Guard regulations in this standard? Is there any difference in controls and work practices on landside vs. onboard vessels and vessel sections? Should OSHA require the employer to secure (deactivate) all fire fighting systems onboard vessels when they arrive in the yard?

3. Fire Brigades. Should OSHA require each shipyard to have an in-yard/plant fire brigade?

4. Written Fire Plans. Should OSHA require written fire plans for landside and onboard vessels? If so, what provisions need to be included in the plans? Should OSHA include a requirement for de-watering (removal of firefighting water from the vessel) of vessels when fighting a fire on board a vessel?

5. Technological Advances. What advances in fire technology have occurred since OSHA's general industry standards were promulgated? Which of

these advances should be incorporated into the shipyard standard?

6. Costs of Fire Protection. What costs would be incurred by shipyards in meeting the various provisions of a new standard? Calculations should include costs of acquiring new equipment, instituting new engineering controls and work practices, and costs of training employees. Are there cost savings or other benefits that could be expected with the promulgation of identical rules for all of shipyard employment? If so, what would be the magnitude of savings?

7. Appendices. Should OSHA include technical information in an appendix or appendices? If so, should it (they) be mandatory?

III. Agenda for the Public Meeting

Following registration and assembly, the Facilitator for the Committee will offer an overview of negotiated rulemaking (Neg/Reg). Interest-based negotiation will be contrasted with the usual development of a proposed rule. The advantages of using Neg/Reg, where practical decision making results in a rule that can be more stringent, but, at the same time, easier and less expensive to implement, will be discussed. Other topics addressed will be working with caucuses and the ''Wedge'' concept, where the member at the table represents a much broader constituency and is expected to funnel information to the Committee and back to the interests he or she represents. The very important role of workgroups, composed of both members and other interested parties, working out technical problems and performing drafting and analysis tasks will be discussed. It should be noted that workgroups, while reflecting the deliberations of the Committee, do not make policy decisions. During the meeting the Facilitator may provide opportunities for questions and caucus meetings.

The Facilitator will also announce the selection of the Committee. He will discuss: the variety of interests and the potential representatives of those interests; the difficulty in selecting the Committee members and the basis for these selections; and the criteria used in assessing whether to go forward with a Neg/Reg in Fire Protection for Shipyard Employment.

The Facilitator will address the matters that must be resolved by the Committee at its first meeting, including the ''Ground Rules.'' These are the procedural rules that the Committee will adopt at its first meeting. The Agency will distribute proposed Ground Rules that address: the composition of the Committee, the use of alternates, and the essential commitment of the members to attend the meetings and participate meaningfully. The Ground Rules emphasize the importance of the members' communication with their constituencies including keeping them abreast of the negotiations, thereby limiting surprises. The goal of this negotiated rulemaking is a proposed rule and supporting documentation that all members will support. The Ground Rules will address ''bargaining'' in good faith to reach the goal.

The Facilitator will also identify and discuss the substantive issues to be resolved by this Committee. Here, the Facilitator is relying on the information presented to him by OSHA as well as the considerable input from the various interests during convening efforts. The time needed for the resolution of these issues and the order of their consideration is integrally related to the development of a tentative schedule. OSHA requests that all interested parties bring their calendars to facilitate the development of a tentative schedule of committee meetings, site visits and workgroup meetings.

Interactivde training sessions, under the direction of the Facilitator, will constitute the final portion of this public meeting. Topics for these training sessions will include the following: a discussion on interest based negotiations; a session illustrating how to participate in a Neg/Reg; and an explanation of how the electronic bulletin board system will aid the negotiation process. Other training activities may be added at the time of the meeting.

IV. Committee Membership

Appointees to the Committee include representatives from labor, industry, public interests and government agencies. The appointees also represent groups interested in, or affected by, the outcome of the rulemaking. Following is a list of members and the affiliations they represent:

Labor

Richard M. Duffy: Director, Department of Occupational Health and Safety, International Association of Fire Fighters, AFL–CIO, CLC
Ted Pederson: Seattle Fire Department Union, Metal Trades, International Brotherhood of Electrical Workers
Michael M.X. Buchet: United Brotherhood of Carpenters

Management

E.P. ''Rick'' Kaiser: South Tidewater Association of Ship Repairers, Inc.
George Broussard: American Waterways Shipyard Conference
J.D. Paulson: National Steel and Shipbuilding Company (NASSCO)

Firefighters

Russ Sill: Portland Fire Bureau
Donald R. Mozick: Atlantic Marine, Inc. and Atlantic Dry Dock, Corp.

Safety Professionals

Guy Colonna: National Fire Protection Association
Glenn Harris: Ship Production Panel-5 of the Society of Naval Architects and Marine Engineers

Government

George F. Hurley, III: Fire Chief, Norfolk Naval Shipyard
Morgan J. Hurley: Fire Protection Engineer, DOT, Coast Guard
Paul Jensen (Ted Pettit—alternate): National Institute for Occupational Safety and Health
Joseph V. Daddura (Frank Strasheim—alternate): Occupational Safety and Health Administration

State Government

Peter Schmidt: State Department of Labor and Industry, Seattle, Washington

V. Agenda for the Organizational Meeting of the Fire Protection in Shipyard Employment Negotiated Rulemaking Advisory Committee

The meeting will be called to order. The Secretary of Labor, or his designee, will charge the Committee with its duties and goals. The Facilitator will assume the Chair and the procedural issues will be addressed by the Committee. These will include the adoption of the Ground Rules which are the procedural rules that the Committee will follow. The substantive matters must be considered in the development of a tentative schedule of committee meetings, site visits and workgroup meetings. The Committee will have to identify and discuss these matters to be resolved and determine the proper sequence of consideration as well as the location of the future meetings. OSHA will have provided proposed Ground Rules, issues, agendas (sequence of consideration), and meeting locations to the nominees of the committee prior to this meeting.

VI. Public Participation

All interested parties are invited to attend this public meeting at the time and place indicated above. No advanced registration is required. Seating will be available to the public on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact Ms. Theda Kenney at (202) 219–

8061 to obtain appropriate accommodations no later than October 1, 1996. The opening public meeting is expected to last 2 and one half days.

In addition, members of the general public may request an opportunity to make oral presentations to the Committee. The Facilitator of the Committee has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants unless these questions have been specifically approved by the Facilitator.

Part 1912 of Title 29 of the Code of Federal Regulations will apply generally. The reporting requirements of § 1912.33 have been changed pursuant to § 1912.42 to help meet the special needs of this Committee. Specifically, § 1912.33 requires that verbatim transcripts be kept of all advisory committee meetings. Producing a coherent transcript requires a certain degree of formality. The Assistant Secretary therefore has determined pursuant to § 1912.42 that such formality might interfere with the free exchange of information and ideas during the negotiations, and that the OSH Act would be better served by simply requiring detailed minutes of the proceedings without a formal transcript.

Minutes of the meetings and materials prepared for the Committee will be available for public inspection at the OSHA Docket Office, N–2625, 200 Constitution Ave., N.W., Washington, D.C. 20210; Telephone (202) 219–7894.

Any written comments should be directed to Docket No. S–051, and sent in quadruplicate to the following address: OSHA Docket Office, U.S. Department of Labor, Room N–2625, 200 Constitution Ave., N.W., Washington, D.C. 20210; Telephone (202) 219–7894.

VII. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 *et seq.*; and Section 7(b) of the Occupational Safety and Health Act of 1970, 84 Stat. 1597, Title 29 U.S.C. 656.

Signed at Washington, D.C., this 22nd day of August, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–22225 Filed 8–29–96; 8:45 am]

BILLING CODE 4510–26–M

Mine Safety and Health Administration

30 CFR Parts 21, 24, and 75

RIN 1219–AA98

Technical Amendments; Removal of Unnecessary Regulations

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; technical amendments.

SUMMARY: The Mine Safety and Health Administration (MSHA) is proposing to remove approval regulations on flame safety lamps and single-shot blasting units which have become obsolete because of advances in technology. Removal of these obsolete parts would not reduce protection for miners. This proposal also would make conforming amendments to safety regulations for underground coal mines which require the use of this approved equipment.

DATES: Submit written comments on or before November 29, 1996.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203. Commenters are encouraged to send comments on a computer disk or via e-mail to psilvey@msha.gov along with an original printed copy.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 703–235–1910 (voice), 703–235–5551 (facsimile), psilvey@msha.gov (Internet e-mail).

SUPPLEMENTARY INFORMATION:

I. Purpose

In response to the Administration's regulatory reinvention initiative, MSHA has conducted a page-by-page review of its existing regulations to identify provisions that are obsolete, outdated, redundant, or unnecessary. As part of this review, the Agency has identified two regulations that could be removed immediately without any adverse effect on miner safety and health. These regulations are obsolete. Conforming amendments to other 30 CFR parts would be made, as appropriate. Equipment approved by MSHA under parts being proposed for elimination can continue to be manufactured by the approval-holder and distributed for use in mines, as long as they continue to be manufactured in full compliance with the drawings and specifications upon which the approval was based. No changes in approved devices can be made once the 30 CFR parts being proposed for elimination are deleted.

For the reasons discussed below, the Agency is proposing to remove 30 CFR parts 21 and 24. MSHA specifically solicits comments on the impact of this action both on the mining community and on other government agencies if they reference these parts of 30 CFR.

II. Discussion

A. Part 21—Flame Safety Lamps

Part 21 addresses the requirements for approval of flame safety lamps used to detect oxygen deficiency and methane in mine atmospheres. Part 21 repeats the requirements for approval of flame safety lamps from Bureau of Mines' Schedule 7C, dated August 30, 1935. Advances in technology have produced oxygen and methane detecting devices which are more accurate and reliable than flame safety lamps. As a result, methane and oxygen detectors have replaced flame safety lamps as the required source for detecting these gases in mines. As required by 30 CFR 75.320, methane and oxygen detectors approved by MSHA must be used to make these tests and a permissible flame safety lamp may continue to be used only as a supplemental testing device for oxygen deficiency. These MSHA-approved flame safety lamps can continue to be manufactured by the approval-holder and distributed for use in mines, as long as they continue to be manufactured in full compliance with the drawings and specifications upon which the approval was based and there are no changes in the approved devices. Further, there have been no new applications for approval of flame safety lamps for more than 40 years. For these reasons, MSHA has determined that the approval requirements for flame safety lamps are obsolete and unnecessary and, therefore, is proposing to remove this part.

B. Part 24—Single-Shot Blasting Units

Part 24 addresses the requirements for approval of single-shot blasting units used in mines, especially mines that can contain methane or flammable dust in dangerous concentrations. Part 24 repeats the requirements for approval of single-shot blasting units from Bureau of Mines' Schedule 12D, dated November 27, 1945. Advances in technology have produced multiple-shot blasting units

which are safer, more versatile, and more reliable than single-shot blasting units. Multiple-shot blasting units can be used to fire single shots. As a result, single-shot blasting units are rarely used in underground mines. The approval requirements for single-shot blasting units have been replaced by part 7, subpart D, Multiple-Shot Blasting Units. MSHA-approved single-shot blasting units can continue to be manufactured by the approval-holder and distributed for use in mines, as long as they continue to be manufactured in full compliance with the drawings and specifications upon which the approval was based and there are no changes in the approved devices. Further, no new applications for approval of a single-shot blasting unit have been submitted in 25 years. For these reasons, MSHA has determined that the requirements for approval of single-shot blasting units are obsolete and unnecessary and, therefore, is proposing to remove this part.

List of Subjects

30 CFR Part 21

Mine safety and health.

30 CFR Part 24

Explosives, Mine safety and health.

30 CFR Part 75

Mine safety and health, Underground mining.

Dated: August 23, 1996.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of 30 U.S.C. 957 and 961, title 30, chapter I, of the Code of Federal Regulations is amended as set forth below:

PART 21—FLAME SAFETY LAMP APPROVAL [REMOVED]

1. Part 21 is removed.

PART 24—SINGLE-SHOT BLASTING UNITS [REMOVED]

2. Part 24 is removed.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

3. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

4. Section 75.506 is amended by revising paragraph (d) to read as follows:

§ 75.506 Electric face equipment; requirements for permissibility.

* * * * *

(d) The following equipment will be permissible electric face equipment only if it is approved under the appropriate Bureau of Mines schedules or parts of this chapter, as listed here, and it is in permissible condition.

(1) Multiple Shot Blasting Units, part 7 subpart D (Schedule 16E and part 25);

(2) Electric Cap Lamps, part 19 (Schedule 6D);

(3) Electric Mine Lamps Other than Standard Cap Lamps, part 20 (Schedule 10C);

(4) Flame Safety Lamps (Schedule 7C and part 21);

(5) Portable Methane Detectors, part 22 (Schedule 8C);

(6) Telephone and Signaling Devices, part 23 (Schedule 9B);

(7) Single Shot Blasting Units (Schedule 12D and part 24);

(8) Lighting Equipment for Illuminating Underground Workings, part 26 (Schedule 29A); and

(9) Methane-Monitoring Systems, part 27 (Schedule 32A).

[FR Doc. 96–22078 Filed 8–29–96; 8:45 am]

BILLING CODE 4510–43–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI50–01–7257b; FRL–5542–2]

Proposal To Approve State Implementation Plan; Michigan; Reid Vapor Pressure Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the Enivonmental Protection Agency (EPA) is proposing to approve a revision to the Michigan State Implementation Plan (SIP) for the purpose of establishing a summertime gasoline Reid vapor pressure limit of 7.8 pounds per square inch (psi) for gasoline sold in Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe counties. The marketing of less volatile gasoline reduces excessive evaporation of fuel during the summer months. Evaporated gasoline combines with other pollutants on hot summer days to form ground-level ozone, commonly referred to as smog. Ozone pollution is of particular concern because of its harmful effects on lung tissue and breathing passages. The EPA proposes to approve the State RVP requirement as a SIP revision and to find that the requirement is necessary for the State to achieve the National Ambient Air Quality Standard for ozone.

In the final rules section of this Federal Register EPA is publishing an interim final rule approving this SIP revision for a limited time only, from July 1, 1996 to September 15, 1996. In that document, EPA explains the basis for the approval and solicits comments on that action. This action proposes to make that temporary approval permanent and solicits comments.

DATES: Comments on this proposed action must be received by September 30, 1996.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Brad J. Beeson at (312) 353–4779.

SUPPLEMENTARY INFORMATION:

I. Background

For additional information, see the accompanying Interim Final rule, which is located in the Rules section of this Federal Register.

II. Action

The EPA is proposing to approve a revision to Michigan's SIP to establish a summertime gasoline RVP limit of 7.8 psi for gasoline sold in Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe counties and is finding that such a requirement is necessary for the area to attain the ozone National Ambient Air Quality Standard for ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 21, 1996.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 96–21983 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[WO–310–3110–02 1A]

Royalty Rate Reduction for Stripper Oil Properties

AGENCY: Bureau of Land Management, Interior.

ACTION: Review of regulations; request for comments.

SUMMARY: The Bureau of Land Management (BLM) is seeking public comments on the effectiveness of the royalty rate reduction available to producers of Federal stripper well properties. A stripper well produces a daily average of less than 15 barrels of oil. BLM is evaluating the effectiveness of this program. Comments will assist BLM in deciding whether to continue, modify or end the royalty rate reduction program.

DATES: Comments must be submitted on or before October 29, 1996.

ADDRESSES: You may *hand-deliver* comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC; or *mail* comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240. You also may *transmit* comments *electronically* via the Internet to:

WOComment@WO0033wp.wo.blm.gov.

Please include ''Attn: AC68'' in your message. If you do not receive a confirmation from the system that we have received your Internet message, contact the person identified at **FOR FURTHER INFORMATION CONTACT.** You will be able to review comments at BLM's Regulatory Management Team office, Room 401, 1620 L St., N.W., Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne Melton, Roswell (NM) District Office, (505) 627–0254.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments should be specific, should be confined to issues pertinent to the regulations under review, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the regulations that the commenter is addressing. BLM may not necessarily consider or include in the Administrative Record comments that BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background

In 1992, BLM amended 43 CFR 3103.4–1 to establish conditions under which an operator or an owner of a Federal stripper oil well property could obtain a reduction in the royalty rate (57 FR 35968, August 11, 1992). This action was intended to encourage operators of stripper properties to place marginal or uneconomic shut-in wells back in production and to provide an economic incentive to increase production by reworking such wells, drilling new wells, and/or by implementing enhanced oil recovery projects. In addition, the 1992 final rule contained procedures for operators to follow in (1) determining whether a property qualifies for the royalty reduction and (2) calculating the appropriate royalty rate.

BLM's regulations at 43 CFR 3103.4–1(d)(5) indicate that the Secretary of the Interior will evaluate the effectiveness of the stripper well royalty reduction program and may at any time after September 10, 1997, terminate any or all royalty reductions granted upon six months notice. Based on this review, the Secretary could continue the program, modify it, or terminate it.

At the request of the Secretary, the BLM has established a task force to evaluate the effectiveness of the stripper royalty rate reduction in meeting the goals of encouraging operators of stripper properties to place marginal or uneconomic shut-in wells back in production and providing an economic incentive to increase production by reworking such wells, drilling new wells, and/or by implementing enhanced oil recovery projects. Through this notice, the task force is actively seeking public comments in support of, or against, continuance of this program. These comments, in conjunction with a Department of Energy analysis, will provide the basis for the task force's final recommendation to the Secretary.

Comments are specifically requested on whether or not the royalty reduction program has:

1. Enabled existing stripper oil well properties to continue producing;

2. Caused additional drilling into known reservoirs;

3. Caused drilling into previously undeveloped reservoirs;

4. Triggered implementation of enhanced recovery programs; and

5. Affected the economies of States and local communities where the stripper properties are located.

BLM is also interested in receiving any other information that may have a bearing on whether the royalty reduction program is accomplishing its goals.

Dated: August 26, 1996.

Annetta L. Cheek,

Chief, Regulatory Management Team.

[FR Doc. 96–22193 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 101]

RIN 2127–AG17

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend a provision in the agency's occupant crash protection standard which specifies that, during crash tests, all portions of a test dummy must remain in the vehicle throughout the test. NHTSA is considering a range of alternative requirements, all of which would require the test dummy to remain in the vehicle at the conclusion of the test. The agency is taking this action to ensure that the standard's requirements are practicable. This action results from a petition for rulemaking submitted by the American Automobile Manufacturers Association.

DATES: Comments must be received by October 29, 1996.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: Mr. Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Current Automatic Protection Requirements

Standard No. 208, *Occupant Crash Protection*, specifies, among other things, ''automatic protection'' requirements for passenger cars and light trucks. Vehicles must meet specified injury criteria, measured using test dummies, during a barrier crash test, at speeds up to 30 mph and at a

range of specified angles. The standard specifies several injury criteria, including ones for the head and chest, and one specifying that all portions of the dummies remain in the vehicle throughout the test. For air-bag-equipped vehicles, the criteria must be met both when the dummies are belted and when they are unbelted.

The automatic protection requirements have applied to passenger cars since the late 1980's, and are currently being phased in for light trucks. In establishing the requirements, NHTSA permitted a variety of methods of providing automatic protection, including automatic belts and air bags. Congress, however, included a provision in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) directing NHTSA to prescribe an amendment to Standard No. 208 to require, by the late 1990's, that all passenger cars and light trucks provide automatic protection by means of air bags. The final rule implementing this provision of ISTEA was published in the Federal Register (58 FR 46551) on September 2, 1993.

The vehicle manufacturers are far ahead of the ISTEA implementation schedule. Manufacturers have been providing air bags in a large number of passenger cars for several years, and nearly every 1996 model year passenger car will be equipped with both driver-side and passenger-side air bags as standard equipment. A large number of model year 1996 light trucks are also equipped with air bags.

Petition for Rulemaking

NHTSA has received a petition for rulemaking from the American Automobile Manufacturers Association (AAMA)[1] requesting a change in Standard No. 208's requirement that all portions of the dummies remain in the vehicle at all times throughout the test. More specifically, AAMA requested that the requirement be changed from: ''All portions of the test device shall be contained within the outer surfaces of the vehicle passenger compartment,'' to: ''The test device shall be within the vehicle passenger compartment at the completion of the test.''

AAMA argued that the existing requirement is ''an obsolete and subjective criterion (that) is a relic of the early 1970's notion that air bags alone could provide complete protection from frontal, lateral and rollover collisions.'' That organization stated that ''(a)ir bags have been recognized since at least 1984 as being a supplement to safety belt restraints and they simply cannot prevent ejection or partial ejection in all instances.''

AAMA provided the following further explanation for its request:

> AAMA is convinced that a momentary, partial excursion of a test dummy's extremity outside the outline of the door window opening does not demonstrate a significant safety risk. Changes that might be made to try to completely contain ''All portions of the test dummy,'' such as smaller and softer air bags, may inhibit design of the air bag for optimum performance in ''real-world'' impact conditions. Structural changes necessary to try to keep all portions of the test dummy completely within the occupant compartment may hinder the overall occupant protection performance of the vehicle. Accordingly, the specific requirement as it pertains to current vehicles is unreasonable.
>
> Recent NHTSA rulemaking has mandated compliance with specified injury criteria, as measured with an instrumented test dummy, during a dynamic side impact test described in FMVSS 214. The head of the side impact dummy routinely, although momentarily, traverses outside the confines of the vehicle during a FMVSS 214 dynamic side impact test, and such an excursion is not considered a failure to meet the requirements. This very limited dummy excursion through the window opening does not demonstrate a significant safety risk in frontal or front angular impacts. Applying this agency rationale clearly shows that the FMVSS 208 dummy containment requirement, as specified, is obsolete.
>
> Since the Intermodal Surface Transportation Efficiency Act mandated that vehicle manufacturers provide dual air bags for *all* vehicles by the 1999 model year, knowledge of the interaction between a test dummy and an air bag in all types of vehicles has grown. It is this more recent information that shows that a requirement to maintain complete dummy containment throughout a barrier impact test is both unreasonable and impracticable. For example, during an impact, an unbelted test dummy acts like a linked multi-piece projectile. The positions of its appendages during impact and rebound are difficult to predict and even more difficult to control. A test dummy tends to be unstable when seated in an upright position. If not supported by seat backs and belts, it will tip over easily. This instability also makes it difficult, if not impossible, to predict the position of the test dummy as it rebounds from an air bag system, especially during angular impacts. Momentary partial excursion of hands, arms, shoulders and/or head is very possible during impact or rebound, both during angular impacts and during perpendicular impacts conducted with the windows open.
>
> Many light trucks and vans, particularly those with higher seating reference points relative to the ground, have relatively low beltlines to provide appropriate driver vision characteristics. In these vehicles, it is becoming increasingly apparent that during angular impacts, parts of a dummy may randomly and momentarily, move slightly outside the plane of the open window during rebound from the air bag and knee bolster. These random dummy excursions result directly from the reaction of the dummy to (1) contact with the air bag and (2) the unpredictable motion of the vehicle as it reacts to the angled barrier after the initial impact. Because of the relative positioning of a driver to the steering wheel, which typically houses the air bag, it is the driver dummy that is more likely to exhibit a random, momentary excursion.
>
> Maintaining each appendage of a test dummy completely within the occupant compartment during an angular impact, a side impact or during rollover testing is impracticable. However, AAMA supports the position that the test dummy as a whole should remain within the vehicle during the test, i.e., it should not be ejected from the vehicle. The need for motor vehicle safety would be addressed in the most appropriate manner if the regulation were to optimize the performance of the air bag system, even though a dummy's head, shoulder, hand or arm might momentarily extend through the door glass.
>
> This position is consistent with the desire to maintain vehicle passenger compartment integrity and to prevent ejections. Accordingly, AAMA recommends this requirement be changed to incorporate the current understanding that a safety belt is required to prevent ejection.

NHTSA held a meeting with representatives of AAMA and its member companies to discuss the petition. One issue which was discussed was the possibility of using a vehicle's windows to meet the dummy containment requirement. Section S8.1.5 of Standard No. 208 provides that ''(m)ovable vehicle windows and vents are, at the manufacturer's option, placed in the fully closed position.'' While most vehicle manufacturers select the option for windows to be open during testing, a few select the option for windows to be closed.

AAMA stated that using windows to control dummy containment is not a practicable option. According to the petitioner, current crash pulses in certain vehicles are strong enough to cause permanent structural deformation of the door frame and door, always resulting in broken window glazing. These structural changes provide a path for partial ejection of the test dummy during a crash test. AAMA also indicated that manufacturers are designing their light trucks and vans to have lower beltlines. (The beltline is the widest perimeter of the vehicle when viewed from the top or plan view.) AAMA stated that crash forces during Standard No. 208 testing can cause structural deformation of the low-beltline front doors with attendant loss of the glazing's ability to provide containment because the glazing breaks.

[1] AAMA's member companies are Chrysler, Ford, and General Motors.

Another issue that was discussed at the meeting concerned the ability to determine whether the current dummy containment requirement has been met during a test. General Motors (GM) stated that determining how far the dummy extends beyond the outer surface of the vehicle is difficult when viewing test films. Even under controlled test conditions, dummy extension is difficult to confirm because of camera viewing angles and vehicle structural deformations. GM stated that two different viewers of the same film may perceive the degree of test dummy containment differently, or may even disagree whether the test dummy has extended beyond the outer surface of the vehicle.

Proposal

After analyzing the arguments presented by AAMA in its petition and in the subsequent meeting with agency personnel, NHTSA has decided that the question of whether to issue the amendment requested by the petitioner should be decided in the context of a rulemaking proceeding. The agency will consider options ranging from no change in the standard to adopting the amendment requested by the petitioner. The agency is setting forth proposed regulatory text that falls within the middle range of options:

All portions of the test device shall be within the vehicle passenger compartment at the completion of the test. If the test is conducted with safety belts fastened, the head of the test device shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

In considering any petition to reduce the stringency of an existing safety requirement, NHTSA is obviously concerned about the possible impacts on safety. In the case of this requested change, however, it is difficult to assess the possible impacts.

On the one hand, it is ''directionally incorrect'' to permit partial dummy ejection, since there is a greater risk of injury to any portion of a person's body that is outside of a vehicle during a crash. Moreover, the requirement at issue is related to a critical area where the agency is focusing significant resources and attention, i.e., full and partial occupant ejections through windows, the subject of NHTSA's advanced glazing initiative.

On the other hand, AAMA argues that the vehicle manufacturers' experience in attempting to meet the requirement has shown that it is impracticable. That is, AAMA contends that at least for some vehicles and some test conditions, there are no available countermeasures to meet the requirement. Moreover, AAMA contends that some possible countermeasures, such as smaller air bags or structural changes, may negatively affect safety. To the extent that NHTSA amended the standard only to the extent necessary to ensure practicability, such an amendment would not appear to have any effect on safety.

While AAMA has provided sufficient information for NHTSA to decide to publish a notice of proposed rulemaking, the agency desires additional information to fully assess this issue for a possible final rule. The agency recognizes the need to ensure the practicability of its standards, and that experience in implementing a new requirement may demonstrate that a change is necessary. At the same time, before reducing an existing safety requirement, NHTSA must carefully assess the evidence indicating that a change is needed. The agency must also carefully consider the evidence with respect to the necessary scope of any such change.

NHTSA notes that the vehicle manufacturers have been certifying air-bag-equipped passenger cars to the current requirement for a number of years. The agency seeks additional information to assess the extent to which the problem cited by AAMA may apply only to light trucks, only to certain types of light trucks, or more generally to passenger cars and light trucks.

NHTSA also seeks additional information to assess the extent to which the problem cited by AAMA may apply to both the belted and unbelted test conditions, or only to the unbelted test condition. The agency notes that one of the purposes of safety belts is to prevent occupant ejection, and that even partial ejection of a person's head raises particular safety concerns. Therefore, one option that the agency is considering is to adopt the amendment suggested by AAMA, except that partial excursion of the dummy's head would be prohibited throughout the test for the belted condition. This is the option that is reflected in the proposed regulatory text.

In order to obtain the information needed to reach a final decision, NHTSA is setting forth below a number of questions directed toward the vehicle manufacturers. The agency is requesting more specific information and data concerning the manufacturers' efforts to meet the existing requirement and the problems they may have experienced or may be experiencing. The agency recognizes that some of this information may be confidential, e.g., it may relate to future product plans. The agency requests that, to the extent possible, manufacturers providing confidential information also provide a public document that generally discusses the significance of the underlying confidential data without revealing the data itself. For example, if a manufacturer provides confidential test data relating to a specific future product, it may be able to provide a general description of that information and its significance without revealing the specific future product. Such a general, non-confidential discussion would help the public understand the relevant issues. Also, NHTSA could use that non-confidential discussion in explaining whatever decision it reaches concerning this matter. While the questions are directed toward manufacturers, all interested persons, of course, may provide relevant information in response to the questions.

Questions for Manufacturers

1. Please explain how you have met Standard No. 208's dummy containment requirement for air-bag-equipped passenger cars. Have any particular passenger car models posed particular difficulties? How did you address those difficulties? Please address whether, and how, you are currently having difficulty meeting the dummy containment requirement for particular passenger car models.

2. For which light truck models (and passenger car models, if any) are you having difficulty meeting the dummy containment requirement? What design changes, including interior changes, air bag changes, structural additions or modifications, bracing, material changes, and window design changes, have you considered or investigated? To what extent do each of these design changes enable a vehicle to meet the dummy containment requirement? What tests have you conducted?

3. To what extent do the problems you are experiencing specifically relate to: The unbelted condition, the belted condition, the full frontal test condition, the angle test condition, the driver position, and the passenger position?

4. Please provide specific information concerning any safety tradeoffs associated with each of the designs identified in response to Question 2. How do each of the changes affect test dummy responses, including head injury criterion (HIC), chest g's, and femur loading?

5. What are the estimated costs of each of the changes identified in response to Question 2?

6. Please explain why the design strategies used for passenger cars are not

available for light trucks. Are there particular characteristics of light trucks which create a problem? Does this problem exist for all light trucks, or only for light trucks with particular characteristics?

7. To what extent have you considered the use of advanced glazing concepts to meet the dummy containment requirement?

Proposed Effective Date

The proposed amendment would not impose any new requirements but would instead ensure the practicability of Standard No. 208's requirements. According, NHTSA has tentatively concluded that there would be good cause for an effective date 60 days after publication of a final rule.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures. This action has been determined to be not ''significant'' under those policies and procedures.

As discussed above, the purpose of this proposed revision is to ensure that Standard No. 208's requirements are practicable. While NHTSA needs additional information to complete its analysis for purposes of a final rule, the agency expects to conclude that a final rule would not affect vehicle designs. Consequently, the proposal is not expected to affect either occupant safety or compliance costs for manufacturers. Accordingly, the agency concludes that preparation of a full regulatory evaluation for this proposal is not warranted.

Regulatory Flexibility Act

NHTSA has considered the effects of this proposed rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities.

The proposal affects motor vehicle manufacturers. Almost all motor vehicle manufacturers would not qualify as small businesses. Moreover, as discussed above, the proposal is not expected to affect compliance costs for manufacturers.

National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act and determined that a final rule adopting this proposal would not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

The agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Comments

Interested persons are invited to submit comments on this 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 the 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 NHTSA 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 by NHTSA 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 recommends 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, it is proposed that 49 CFR part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 would be amended by revising S6.1.1 and S6.2.1 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S6.1.1 All portions of the test device shall be within the vehicle passenger compartment at the completion of the test. In the case of a test conducted with safety belts fastened, the head of the test device shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

* * * * *

S6.2.1 All portions of the test device shall be within the vehicle passenger compartment at the completion of the test. In the case of a test conducted with safety belts fastened, the head of the test device shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

* * * * *

Issued on August 27, 1996.

Patricia Breslin,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 96–22250 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC63

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for Helianthus Eggertii (Eggert's Sunflower) in Kentucky, Tennessee, and Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Fish and Wildlife Service provides notice that the comment period is reopened on a proposal to list *Helianthus eggertii* (Eggert's sunflower) as threatened, pursuant to the Endangered Species Act of 1973 (Act), as amended. The Service is reopening the comment period on this proposal to allow members of the public to submit comments on this proposal.

DATES: The comment period on this proposal is extended until September 30, 1996.

ADDRESSES: Written comments and materials concerning the proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina, 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: J. Allen Ratzlaff at the above address (telephone 704/258–3939, ext. 229, fax 704/258–5330).

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1994, the Service proposed to add Eggert's sunflower to the list of endangered and threatened plants (59 FR 174). At that time, Eggert's sunflower was known from 24 populations in 13 counties—in Alabama, one population in Blount County; in Kentucky, one population from the Edmonson/Barren County line, and one additional population from each of those counties, one population from Grayson County, and four populations from Hart County; in Tennessee, one population each in Dickson, Franklin, Lewis, Marion, Maury, and Williamson Counties, four in Lawrence County, and five in Coffee County. Since the closing of the comment period on November 8, 1994, ten additional populations have been discovered—nine within the counties listed above and one new population in Hardin County, Kentucky. The current range and distribution of the species is now—in Alabama, one population in Blount County; in Kentucky, one population from Grayson and Hardin Counties, two populations from Edmonson and Barren Counties, and seven populations from Hart County; in Tennessee, one population each in Dickson, Marion, and Williamson Counties, two in Franklin (and part of a third) and Maury Counties, three in Lewis County, four in Lawrence County, and six in Coffee County. Over half of the known populations are very small (less than 500 square meters) and many are even smaller (less than 300 square meters).

A moratorium on listing actions (Public Law 104–6) took effect April 10, 1995, and prevented the Service from making a final decision on this proposal by the August 1995 administrative deadline. The moratorium was lifted on April 26, 1996, when the appropriation for the Department of the Interior for the remainder of fiscal year 1996 was enacted into law. In a Federal Register document published on May 16, 1996 (61 FR 24722), the Service outlined in detail the history of the moratorium and indicated the priorities it would follow in eliminating the listing program backlog resulting from the moratorium. Preparation of the final rule for this proposed species is considered a Tier 2 priority—processing final decisions on proposed listings. For more information on the moratorium and the priority for backlogged listing actions, refer to the May 15, 1996, Federal Register notice.

The Service does not believe that the new distributional information has changed the status of the species. However, we are reopening the comment period on the proposed rule to solicit comments on this new information and request any additional information on scientific studies conducted since the comment period last closed on November 8, 1994. The Service hereby announces reopening of the comment period until September 30, 1996.

Author

The primary author of this notice is J. Allen Ratzlaff, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina, 28801 (704/258–3939, ext. 229., fax 704/258–5330).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 22, 1996.

Richard A. Ivarie,

Acting Regional Director, Southeast Region, Fish and Wildlife Service

[FR Doc. 96–22139 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 61, No. 170
Friday, August 30, 1996

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

National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

In accordance with the Federal Agriculture Improvement and Reform (FAIR) Act of April 4, 1996 (Public Law 104–127, 110 Stat. 1156–1184), the United States Department of Agriculture has scheduled the initial meeting of:

Name: National Agricultural Research, Extension, Education and Economics Advisory Board.

Date: September 16–17, 1996, September 18, 1996.

Time: 8:30 a.m. to 5:00 p.m., 8:30 a.m. to Noon.

Place: U.S. Department of Agriculture, Room 104A-Williamsburg; Jamie L. Whitten Federal Building, 14th and Independence Ave, SW., Washington, DC 20250.

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: The Secretary of Agriculture has filled the Advisory Board's 30 positions from more than 400 nominations solicited from 600 United States organizations identified as having agricultural research, extension, education, and economic interests. Each member represents one of 30 constituent categories, as identified in the legislation. Members were assigned initial terms of one, two, or three years. A list of Advisory Board appointees will be published in the Federal Register prior to the September 16–18 meeting. The Secretary of Agriculture; Under Secretary for Research, Education, and Economics; and the Administrators (Agricultural Research Service; Cooperative State Research, Education, and Extension Service; Economic Research Service; and National Agricultural Statistical Service) will serve as Advisory Board ex officio members. The Advisory Board expires September 30, 2002.

Advisory Board duties include reviewing and consulting with the Secretary of Agriculture and land-grant colleges and universities on long-term and short-term national policies and priorities related to agricultural research, extension, education, and economics; evaluating the effectiveness of those policies and priorities; and reviewing and making recommendations to the Under Secretary for Research, Education, and Economics on elements of the mission area's draft strategic plan.

The initial Advisory Board meeting agenda includes: nomination and election of Executive Committee members; reviewing of the Research, Education, and Economics draft Strategic Plan; recommendation of criteria for allocating research, extension, and education grants for the Fund for Rural America; and development of a slate of nominees to the 15-member ''Strategic Planning Task Force.''

Contact person for Agenda and more information: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Board, Research, Education, and Economics Advisory Board Office, Room 3918, South Building, U.S. Department of Agriculture, Washington, DC 20250–2255, Telephone: 202–720–3684.

Done at Washington, DC this 23d day of August 1996.

Catherine E. Woteki,

Acting Under Secretary, Research, Education, and Economics.

[FR Doc. 96–22157 Filed 8–29–96; 8:45 am]

BILLING CODE 3410–22–M

Agricultural Research Service

Government Owned Invention Available for Licensing

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of government owned invention available for licensing.

SUMMARY: The invention disclosed in U.S. Patent Application Serial No. 08/471,349, ''Fiber and Fiber Products Produced from Feathers'' is owned by the U.S. Government as represented by the Department of Agriculture, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR 404 to achieve expeditious commercialization of results of federally funded research and development. International patent applications have been filed in selected countries to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: June Blalock, Technology Licensing Coordinator, USDA, ARS, Room 415, Bldg. 005, BARC-West, Beltsville, Maryland 20705; Phone 301–504–5989 or Fax 301–504–5060.

June Blalock,

Technology Licensing Coordinator.

[FR Doc. 96–22158 Filed 8–29–96; 8:45 am]

BILLING CODE 3410–03–M

Notice of Availability for Licensing and Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service intends to grant to Agricultural Innovations of Athens, Georgia, an exclusive license to U.S. Patent Number 5,089,701, ''Nondestructive Measurement of Soluble Solids in Fruits Having a Rind or Skin,'' issued February 18, 1992. Notice of Availability was published in the Federal Register on October 23, 1990.

DATES: Comments must be received on or before October 29, 1996.

ADDRESS: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Agricultural Innovations has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the

requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 96–22159 Filed 8–29–96; 8:45 am]

BILLING CODE 3410–03–M

Animal and Plant Health Inspection Service

[Docket No. 96–057–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For copies of the environmental assessments and findings of no significant impact, contact Mr. Clayton Givens at (301) 734–7612; e-mail: cgivens@aphis.usda.gov. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
96–094–01	Pioneer Hi-Bred Internatonal, Inc.	5–31–96	Corn plants genetically engineered to express resistence to certain diseases.	Iowa and Pennsylvania.
96–051–04	Biosource Technologies, Inc	6–4–96	Tobacco mosaic virus genetically engineered to contain genes of pharmaceutical interest.	Kentucky.
96–127–02	Washington State University	6–26–96	Wheat stripe fungus genetically engineered to contain a marker gene.	Washington.
96–156–01	Tuskegee University	6–26–96	Sweet potato plants genetically engineered for tolerance to the herbicide glufosinate.	Alabama.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 26th day of August 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–22212 Filed 8–29–96; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of partially closed meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Overland Park, Kansas, September 19–21, 1996. The Council is comprised of 15 members appointed by the Secretary of Agriculture. The meeting will be chaired by Genni Cross of The Trust for Public Land/California ReLeaf. The purpose of the meeting is to receive status reports on the Council's annual report, continue discussion on emerging issues in Urban and Community Forestry, and vote on the 1997 Challenge Cost-Share grant categories. The Challenge Cost-Share grant categories identified by the Council are advertised annually to

solicit proposals for funding which will advance the knowledge of, and promote interest in, urban and community forestry. Pursuant to 5 U.S.C. 552b(c)(9)(B), the meeting will be closed from approximately 8:30 to 9:30 a.m. on September 21 in order for the Council to vote on the categories for the Challenge Cost-Share grant program in fiscal year 1997. Otherwise, the meeting is open to the public, and time will be provided at the beginning of each major agenda topic for public input. In order to schedule public input, individuals must request time to speak and specific topic(s) to be addressed by September 6, 1996.

Council discussion is limited to Forest Service staff and Council members. Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting.

DATES: The meeting will be held September 19–21, 1996.

ADDRESSES: The meeting will be held at the Best Western Hallmark Inn, 7000 W. 108th Street, I–435 @ Metcalf, Overland Park, Kansas. A tour of local projects will be held on Sept. 19, 9:00 a.m.–3:00 p.m.

Send written statements and/or proposed agenda items to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 1042 Park West Court, Glenwood Springs, CO 81601.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (970) 928–9264.

Dated: August 19, 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 96–22156 Filed 8–29–96; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 30, 1996.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 5, May 13, June 7, 28, July 5, 8 and 12, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 15225, 22026, 29080, 33711, 35710 and 36705) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–43c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Tape, Electronic Data Processing

7045–01–321–0642

Frame, Picture

7105–01–419–5293
7105–01–419–5296
7105–01–419–5305
7105–01–419–5319
7105–01–419–5322
7105–01–419–5332
7105–01–419–5338
7105–01–419–5344
7105–01–419–5353
7105–01–419–5351
7105–01–419–5355
7105–01–424–7865
7105–01–424–6475
7105–01–424–6473
7105–01–424–6476
7105–01–424–6471
7105–01–424–6477
7105–01–424–6478
7105–01–424–6472
7105–01–424–6479
7105–01–424–6474
7105–01–424–6480
7105–01–424–6481
7105–01–424–6490
7105–01–424–6492
7105–01–424–6485
7105–01–424–6482
7105–01–424–6483
7105–01–424–6494
7105–01–424–6497
7105–01–424–6488
7105–01–424–6484
7105–01–424–6486
7105–01–424–6501
7105–01–424–6491
7105–01–424–6487
7105–01–424–6489
7105–01–424–6503
7105–01–424–6495
7105–01–424–6498
7105–01–424–6493
7105–01–424–6504
7105–01–424–6505
7105–01–424–6499

Pen, Rollerball, Executive and Refill

7510–00–425–5709
7510–00–425–5710
7520–01–424–4861

Mop, Chami Twist and Refill

M.R. 900
M.R. 935

Mop, Deck Twist and Refill

M.R. 989
M.R. 969

Dustpan

M.R. 996

Duster, Ostrich Feather and Lambswool

M.R. 991
M.R. 922

Services, Administrative Services, Social Security Administration, 6400 Old Branch Avenue, Camp Springs, Maryland

Administrative Services, General Services Administration, Federal Supply Service (3FS), Northeast Distribution Center, Burlington, New Jersey

Administrative/General Support Services, (GSA/FSS Region 7), General Products Commodity Center, Fort Worth, Texas (Up to 50% of the Government's requirement)

Grounds Maintenance, Tripler Army Medical Center, Oahu, Hawaii

Janitorial/Custodial, Argonne USARC, 10 S 100 S Frontage Road, Darien, Illinois

Switchboard Operation, Department of Veterans Affairs Medical Center, Nashville, Tennessee

Warehouse Operation, Naval Air Warfare Center Training Systems Division, 12350 Research Parkway, Orlando, Florida.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–22258 Filed 8–29–96; 8:45 am]

BILLING CODE 6353–01–M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 30, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Tape, Pressure-Sensitive Adhesive

7510–00–582–4771
7510–00–582–4772
7510–00–802–8311
7510–00–159–4450

NPA: Cincinnati Association for the Blind, Cincinnati, Ohio

Coat, Combat Woodland, Camouflage

8415–01–390–8537
8415–01–390–8538
8415–01–390–8539
8415–01–390–8540
8415–01–390–8541
8415–01–390–8542
8415–01–390–8543
8415–01–390–8544
8415–01–390–8545
8415–01–390–8546
8415–01–390–8547
8415–01–390–8548
8415–01–390–8549
8415–01–390–8551
8415–01–390–8552
8415–01–390–8553
8415–01–390–8555
8415–01–390–8557
8415–01–390–9641
8415–01–390–9646
8415–01–390–9648
8415–01–390–8550

NPA: Southside Training Employment Placement Services, Inc., Farmville, Virginia

Service

Janitorial/Custodial, Biscayne National Park, Dade County, Florida, NPA: Hope Center, Inc., Miami, Florida.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–22257 Filed 8–29–96; 8:45 am]

BILLING CODE 6353–01–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, September 20, 1996, 8 a.m.

PLACE: Ramada Inn, Mississippi Room, 2700 U.S. Highway 82 East, Greenville, Mississippi 38704.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of July Meeting
III. Announcements
IV. Staff Director's Report
V. ''Equal Educational Opportunity Project Series: Volume I'' Report
VI. State Advisory Committee Report—The Impact of the City of Richmond v. *J.A. Croson* Decision Upon Minority and Female Business Programs in Selected Cities in Ohio.
VII. State Advisory Committee Appointments for District of Columbia, Maryland, Michigan, Nevada, New York, Washington, and California (interim)
VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Dated: August 26, 1996.

Miguel A. Sapp,

Parliamentarian.

[FR Doc. 96–22395 Filed 8–28–96; 2:07 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 07/17/96–08/19/96

Firm name	Address	Date petition accepted	Product
Lance Garment Corporation	125 Hospital Road, Red Bay, AL 35582.	07/24/96	Cotton shirts for men.
Dwyer Products Corporation	418 North Calumet Avenue, Michigan City, IN 46360.	07/30/96	Custom compact kitchen systems and parts, wet bars and refrigerators.
Southern Oregon Sales, Inc	18 Stewart Avenue, Medford, OR 97501.	08/01/96	Pears.
Sun Valley Products, Inc	11505 38th Street South, Horace, ND 58047.	08/01/96	Sunflower Seeds, wheat kernels and soybeans.
TCK Manufacturing, Inc	3965 Park Avenue, St. Louis, MO 63110.	08/05/96	Liners for ball cap visors, and holiday decorative figures.
Kahlund Enterprises, Inc	3645 Hwy 200 East Missoula, MT 59802.	08/05/96	Wood and metal picture frames and moldings and supplies for picture framing.
Creative Marblecast Manufacturing, Inc.	2020 Creek Drive, Rapid City, SD 57701.	08/09/96	Cultured stone bath fixtures.
Avtech, Incorporated	412 North Red Bud, Broken Arrow, OK 74012.	08/07/96	Plastic toy products and components for pets.
Oak Ridge Designs	3875 East Huntington, Flagstaff, AZ 86004.	08/13/96	Blankets of cotton.
Wintron, Inc	250 Runville Road, Bellefonte, PA 16823.	08/13/96	Electronic yokes, power supply units and coils/flybacks.
Evvco Enterprises, Inc	589 Fifth Avenue, 17th Floor, New York, NY 10017.	08/13/96	Gold rings, necklaces and bracelets.
Bogue Executive Enterprises, Inc	1501 53rd Street West, West Palm Beach, FL 33407.	08/14/96	Gas Turbine aircraft engine parts.
FRS Industries, Inc	64 North 4th Street, Fargo, ND 58107.	08/16/96	Award ribbons, rubber stamps, engraving and printing.
Richtman's Inc	301 NP Avenue, Fargo, ND 58107	08/16/96	Commercial, web and packaging printing.
Durex, Inc	5 Stahuber Avenue, Union, NJ 07083.	08/19/96	Metal stamping and fabricated sheet metal.
Phoenix Gear Corporation	3301 East Madison Phoenix, AR 85034.	08/19/96	Gears.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: August 23, 1996.

Brenda A. Johnson,

Acting Director, Trade Adjustment Assistance Division.

[FR Doc. 96–22232 Filed 8–29–96; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–588–401]

Calcium Hypochlorite From Japan; Extension of Time Limit for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the preliminary and final results of this administrative review of the antidumping duty order on calcium hypochlorite from Japan. The review covers the period April 1, 1995 through March 31, 1996.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Stephanie Moore, Office of CVD/AD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limits for the completion of the preliminary results until April 30, 1997 and of the final results until 120 days after publication of the preliminary results of this review, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA). (*See* Memorandum to the file from Jeffrey P. Bialos to Robert S. LaRussa on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce).

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the URAA (19 U.S.C. 1675 (a)(3)(A)).

Dated: August 20, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–22238 Filed 8–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–047]

Elemental Sulphur From Canada; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests by respondents and a U.S. producer, the Department of Commerce (the Department) is conducting two administrative reviews of the antidumping finding on elemental sulphur from Canada. The reviews cover the periods December 1, 1992 through November 30, 1993, and December 1, 1993 through November 30, 1994.

As a result of the reviews, we have preliminarily determined that sales have been made below foreign market value (FMV). If these preliminary results are adopted in our final results of administrative reviews, we will instruct U.S. Customs to assess antidumping duties equal to the difference between United States price (USP) and FMV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: August 29, 1996.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1973, the Department of the Treasury published in the Federal Register (38 FR 34655) the antidumping finding on elemental sulphur from Canada. On November 26, 1993 and December 6, 1994, the Department published in the Federal Register notices of opportunity to request an administrative review of this antidumping finding for the periods December 1, 1992 through November 30, 1993 (58 FR 62326), and December 1, 1993 through November 30, 1994 (59 FR 62710), respectively.

With respect to the 1992/1993 administrative review, on December 30, 1993, Pennzoil Sulphur Company (Pennzoil), a domestic producer of elemental sulphur, requested that we conduct an administrative review of Alberta Energy Co., Ltd. (Alberta), Allied-Signal Inc. (Allied), Brimstone Export (Brimstone), Burza Resources (Burza), Fanchem, Husky Oil Ltd. (Husky), Mobil Oil Canada, Ltd. (Mobil), Norcen Energy Resources (Norcen), Petrosul International (Petrosul), Saratoga Processing Co., Ltd. (Saratoga), and Sulbow Minerals (Sulbow). On December 21, 1993, Petrosul requested revocation of the finding with respect to itself. The review was initiated on January 18, 1994 (59 FR 2593).

With respect to the 1993/1994 administrative review, on December 29, 1994, Pennzoil requested that we conduct an administrative review of Alberta, Husky, Mobil, Norcen, and Petrosul. On December 28, 1994, Petrosul requested revocation of the finding with respect to itself, and, on December 30, 1994, Mobil requested an administrative review of its sales. The review was initiated on January 13, 1995 (60 FR 3193).

The Department is conducting these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by these reviews are shipments of elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule (HTS) subheadings 2503.10.00, 2503.90.00, and 2802.00.00. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the written description of the scope of this finding remains dispositive.

The periods of review are December 1, 1992 through November 30, 1993, and December 1, 1993 through November 30, 1994. The 1992/1993 review covers eleven companies, and the 1993/1994 review covers five companies.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. Pursuant to section 291(a)(2)(B) of the Uruguay Round Agreements Act (URAA), the provisions of that Act apply only to reviews requested on or after January 1, 1995. Thus, although the 1993/1994 review was initiated after the effective date of the amendments pursuant to the URAA, those provisions do not apply to this review.

Verification

As provided in section 776(b) of the Act, we conducted verification of the sales information provided by Mobil in the 1992/1993 administrative review. We conducted the verification using standard verification procedures, including onsite inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report.

Best Information Available

We preliminarily determine, in accordance with section 776(C) of the Act, that the use of best information available (BIA) is appropriate for Mobil in the 1992/1993 and the 1993/1994 administrative reviews, for Petrosul in the 1992/1993 and the 1993/1994 administrative reviews, for Norcen in the 1992/1993 administrative review, and for Allied, Brimstone, Burza, Fanchem, and Sulbow in the 1992/1993 administrative review, and that the use of partial BIA is appropriate for Husky in the 1992/1993 and the 1993/1994 administrative reviews. Section 776(c) of the Act requires the Department to use BIA whenever a company refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation.

In deciding what to use as BIA, section 353.37(b) of the Department's regulations provide that the Department take into account whether a party refuses to provide requested information or impedes a proceeding. Prior Department practice has been to determine, on a case-by-case basis, what constitutes BIA. When it is necessary to base a firm's antidumping margin completely on BIA, the Department uses a two-tiered approach in its choice of BIA. When a company refuses to provide the information in the form required by the Department or otherwise significantly impedes the proceeding (first tier), the Department will normally assign to that company the higher of (1) the highest rate found for any firm in the less-than-fair-value (LTFV) investigation or a prior administrative review, or (2) the highest rate found in the current review for any firm. When a company substantially cooperates with the Department's requests for

information but fails to provide the information requested in a timely manner or in the form required (second tier), the Department will normally assign to that company the higher of (1) the highest rate ever applicable to that company from either the LTFV investigation or a prior administrative review, or (2) the highest calculated rate in the current review for any respondent. *See Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of An Antidumping Duty Order (Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom* (58 FR 39729, 39739, July 26, 1993). The Department's use of a two-tiered methodology was upheld in *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993).

A. Mobil

In both administrative reviews, Pennzoil alleged that Mobil made sales in the comparison market at prices below the cost of production (COP). Based on these allegations, the Department found reasonable grounds to believe or suspect that Mobil's sales were below cost, and initiated cost investigations pursuant to section 773(b) of the Act in each review. In response to our requests for cost information, Mobil submitted cost questionnaire responses and supplemental cost questionnaire responses. However, we have determined that these cost responses cannot be used to calculate margins in either administrative review and have preliminarily determined that total BIA should be applied to Mobil. As Mobil has substantially cooperated with the Department in its requests for information, we have determined to apply second-tier BIA as described above to Mobil for the preliminary results of each review. For a further discussion of the Department's determination that second-tier BIA is appropriate for Mobil, *see Decision Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary for Compliance,* dated June 4, 1996, ''Whether to Use Best Information Available for Husky Oil Ltd. and Mobil Oil Canada, Ltd. in the 1992/1993 Administrative Review of Elemental Sulphur from Canada,'' and *Decision Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary for Compliance,* dated June 4, 1996, ''Whether to Use Best Information Available for Husky Oil Ltd. and Mobil Oil Canada, Ltd. in the 1993/1994 Administrative Review of Elemental Sulphur from Canada,'' which are on file in the Central Records Unit (room B–099 of the Main Commerce Building) (BIA memoranda). Accordingly, the rate assigned to Mobil for the 1992/1993 administrative review is 42.80 percent, the rate for Husky from that administrative review. The rate assigned to Mobil for the 1993/1994 administrative review is 11.79 percent, the rate for Husky from that administrative review. For purposes of the final results of review for the 1993/1994 period, we will consider final rates in the 1992/1993 administrative review in determining BIA for Mobil.

B. Petrosul

Petrosul, a reseller of elemental sulphur, reported third-country sales in the 1992/1993 administrative review and home-market sales in the 1993/1994 administrative review. In both reviews, Pennzoil alleged that Petrosul made sales in the comparison market at prices below the COP. Based on these allegations, the Department found reasonable grounds to believe or suspect that Petrosul's sales were below cost, and initiated a cost investigation pursuant to section 773(b) of the Act in each review. The statute is concerned specifically with the COP of the merchandise, and Petrosul does not itself produce the elemental sulphur it sells. Department practice in such situations is to compare the production costs of the producer (Petrosul's suppliers/producers), plus the producer's selling, general, and administrative (SG&A) expenses, plus the SG&A expenses of the seller (Petrosul), to the seller's home-market/third-country sales to determine whether sales in the comparison market were made below the COP. *See Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway* (56 FR 7661, February 25, 1991) and *Final Results of Antidumping Duty Administrative Reviews: Oil Country Tubular Goods from Canada* (56 FR 38408, August 13, 1991). Therefore, in each administrative review, the Department requested that Petrosul provide certain cost information, *i.e.*, information regarding its own selling, general, and administrative expenses and profit, and a list of its suppliers of elemental sulphur.

In the 1992/1993 administrative review, Petrosul did not respond to our request for its own cost data. In the 1993/1994 administrative review, Petrosul did not respond to our requests for its own cost data or for a list of its suppliers of elemental sulphur. We have thus preliminarily determined that Petrosul has not cooperated with the Department in its requests for information, and have determined to apply first-tier BIA as described above to Petrosul for the preliminary results of each review. Accordingly, the rate assigned to Petrosul for the 1992/1993 administrative review is 42.80 percent, the rate for Husky from that administrative review. The rate assigned to Petrosul for the 1993/1994 administrative review is 28.90 percent, the highest final rate applicable to any company in this case, Timshel's rate from the 1986/1987 review of this finding. *See Elemental Sulphur from Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part* (55 FR 13179, April 9, 1990). For purposes of the final results of review for the 1993/1994 period, we will consider final rates in the 1992/1993 administrative review in determining BIA for Petrosul.

C. Norcen

In the course of the 1992/1993 administrative review, Norcen responded that its related company sold sulphur to a U.S. customer, but that the related company did not know whether the sulphur picked up by the U.S. customer at the plant gate in Canada ever entered the United States. Norcen further stated that the related company was never paid for the merchandise. The Department requested that Norcen respond to the questionnaire since the information on the record of the review indicates that these sales may constitute U.S. sales. Norcen responded that it declined to answer the questionnaire. Therefore, we have determined that Norcen has been uncooperative, and have assigned to Norcen the first-tier BIA rate of 42.80 percent, the rate for Husky from that administrative review and the highest rate applicable to any company in this case.

D. Allied, Brimstone, Burza, Fanchem, and Sulbow

In the 1992/1993 administrative review, Allied, Brimstone, Burza, Fanchem, and Sulbow did not respond to the questionnaire. Therefore, we have determined that these companies have been uncooperative, and have assigned to them the first-tier BIA rate of 42.80 percent, the rate for Husky from that administrative review and the highest rate applicable to any company in this case.

E. Husky

We have determined that the use of partial BIA is appropriate for Husky for the 1992/1993 and the 1993/1994 administrative reviews (*see* BIA

memoranda). As discussed in the BIA memoranda, in addition to other deficiencies in its responses, Husky did not comply with the Department's request that it report costs for all facilities accounting for at least 90 percent of its production volume in either review, and, in the 1992/1993 review, did not report cost-of-manufacturing data for its U.S. sales of powdered sulphur, as requested. However, since we are able to calculate a margin for Husky in each review using data which Husky has provided, we have determined that partial BIA is appropriate. Accordingly, we have used Husky data as partial BIA for the missing data. For the facility for which no sulphur costs were reported, we used the highest cost of manufacturing calculated for any facility for which costs were reported and the production volume of the facility for which costs were not reported to calculate the weighted-average cost of manufacturing. We have assigned, as BIA for each of Husky's sales of powdered sulphur in the 1992/1993 review, the highest weighted-average margin in that review, calculated on the basis of Husky's sales of liquid and formed sulphur.

United States Price

For both administrative reviews, the Department has based USP for Husky on purchase price, in accordance with section 772(b) of the Act, because the merchandise was sold to unrelated U.S. purchasers prior to importation. We calculated purchase price based on f.o.b. plant or delivered prices to unrelated customers. We made adjustments, where applicable, for discounts, brokerage and handling, foreign inland freight, tank car expenses, and U.S. duties, in accordance with section 772(d)(2) of the Act. In addition, when U.S. sales were compared to home-market sales, we adjusted USP for the Canadian Goods and Services Tax (GST), in accordance with our practice outlined in the following section on *Value Added Tax*. No other adjustments were claimed or allowed.

Value Added Tax

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States*, CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to USP the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to USP by multiplying the adjusted USP by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude the Department from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct the Department to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the URAA explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to USP, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to USP rather than subtracted from home-market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Foreign Market Value

Based on a comparison of the volume of home-market sales to third-country sales, we determined that Husky's home market was viable during each period of review. Therefore, in accordance with section 773(a)(1)(A) of the Act, we based FMV on f.o.b. plant and delivered prices to unrelated purchasers in the home market.

During the course of each administrative review, Pennzoil alleged that Husky made home-market sales of elemental sulphur at prices below its COP. Based on these allegations, the Department determined that it had reasonable grounds to believe or suspect that Husky had sold the subject merchandise in the home market at prices below the COP. We therefore initiated cost investigations in each administrative review, in accordance with section 773(b) of the Act, and investigated whether Husky sold such or similar merchandise in the home market at prices below the COP. In accordance with 19 CFR 353.51(c), we calculated COP for Husky as the sum of costs of materials, labor, factory overhead, and general expenses, and compared COP to home-market prices net of movement expenses.

In accordance with section 773(b) of the Act, in determining whether to disregard home-market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade. To satisfy the requirement of section 773(b)(1) that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. For each model for which less than 10 percent, by quantity, of the home-market sales during the period of review were made at prices below the COP, we included all sales of that model in the computation of FMV. For each model for which 10 percent or more, but less than 90 percent, of the home-market sales during the period of review were priced below the COP of the merchandise, we excluded from the calculation of FMV those home-market sales which were priced below the COP, provided that they were made over an extended period of time. For each model

for which 90 percent or more of the home-market sales during the period of review were priced below the COP and were made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with section 773(b) of the Act, we used the constructed value (CV) of those models, as described below. *See, e.g., Mechanical Transfer Presses from Japan; Final Results of Antidumping Duty Administrative Review* (59 FR 9958, March 2, 1994).

In accordance with section 773(b)(1) of the Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. We used CV as the basis for FMV when an insufficient number of home-market sales were made at prices above COP. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final results of Antidumping Duty Administrative Reviews* (58 FR 64720, December 8, 1993).

Because Husky provided no indication that its below-cost sales of models within the ''greater than 90 percent'' and the ''between 10 and 90 percent'' categories were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade, we disregarded those sales within the ''10 to 90 percent'' category which were made below cost over an extended period of time. In addition, as a result of our COP test for home-market sales of models within the ''greater than 90 percent'' category, we based FMV on CV for all U.S. sales for which there were insufficient sales of the comparison home-market model at or above COP. Finally, where we found, for certain of Husky's models, home-market sales for which less than 10 percent were made below COP, we used all home-market sales of those models in our comparisons.

In accordance with section 773 of the Act, for those U.S. models for which we were able to find a home-market such or similar match that had sufficient above-cost sales, we calculated FMV based on f.o.b. or delivered prices to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, tank car expenses, credit expenses, royalty expenses, Canadian GST, differences in the physical characteristics of the merchandise, and differences in packing. We also added to FMV U.S. credit expenses and royalty expenses, as appropriate.

In accordance with section 773(e) of the Act, CV includes the costs of materials and fabrication, general expenses, profit, and, where relevant, packing for shipment to the United States. We used Husky's home-market selling expenses pursuant to section 773(e)(1)(B) of the Act. We used Husky's actual general expenses as they were greater than the statutory minimum of ten percent of COM but applied the statutory eight percent for profit. Where appropriate, we made circumstance-of-sale adjustments for differences in credit and royalty expenses. No other adjustments were claimed or allowed.

Non-Shippers

Based on the information on the record, the Department has determined that Alberta and Saratoga had no shipments to the United States during the period December 1, 1992 through November 30, 1993, and that Alberta and Norcen had no shipments to the United States during the period December 1, 1993 through November 30, 1994. As a result, the rates assigned to these companies for these review periods are their rates from the immediately preceding administrative review. Therefore, for Alberta, which had no shipments during the administrative review covering the period December 1, 1991 through November 30, 1992 and which has no individual rate from any segment of the case, the rate for both of these reviews continues to be the ''All Others'' rate of 5.56 percent, the ''new shipper'' rate established in the first review conducted by the Department in which a ''new shipper'' rate was established (*see Elemental Sulphur from Canada; Final Results of Antidumping Finding Administrative Review* (61 FR 8239, March 4, 1996) (*Sulphur Final*)). For Norcen, whose rate for the 1991/1992 administrative review was the ''All Others'' rate of 5.56 percent (*see Sulphur Final*), the rate for the 1993/1994 review is 5.56 percent, its rate from the 1991/1992 review. For purposes of the final results of review for the 1993/1994 period, we will consider Norcen's final rate in the 1992/1993 administrative review in determining the appropriate rate for Norcen. For Saratoga, whose most recent rate was determined in the 1991/1992 administrative review (*see Sulphur Final*), the rate for the 1992/1993 review is 28.90 percent, which is its rate from the 1991/1992 review.

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily determine that the following margins exist for the periods December 1, 1992 through November 30, 1993, and December 1, 1993 through November 30, 1994:

Manufacturer/exporter	Time period	Margin [5] (percent)
Alberta Energy Co., Ltd	12/1/92–11/30/93	[1] 5.56
	12/1/93–11/30/94	[1] 5.56
Allied-Signal Inc	12/1/92–11/30/93	[2] 42.80
Brimstone Export	12/1/92–11/30/93	[2] 42.80
Burza Resources	12/1/92–11/30/93	[2] 42.80
Fanchem	12/1/92–11/30/93	[2] 42.80
Husky Oil Ltd	12/1/92–11/30/93	42.80
	12/1/93–11/30/94	11.79
Mobil Oil Canada, Ltd	12/1/92–11/30/93	[3] 42.80
	12/1/93–11/30/94	[3] 11.79
Norcen Energy Resources	12/1/92–11/30/93	[2] 42.80
	12/1/93–11/30/94	[4] 5.56
Petrosul International	12/1/92–11/30/93	[2] 42.80
	12/1/93–11/30/94	[2] 28.90
Saratoga Processing Co., Ltd	12/1/92–11/30/93	[4] 28.90

Manufacturer/exporter	Time period	Margin [5] (percent)
Sulbow Minerals	12/1/92–11/30/93	[2] 42.80

[1] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding. As a result, the firm will be subject to the ''all others'' rate.
[2] Non-cooperative total BIA rate.
[3] Cooperative total BIA rate.
[4] No shipments to the United States during the period of review. Rate is the rate established during the immediately preceding administrative review.
[5] Both the cooperative and the non-cooperative BIA rates may change for the final review results, if Husky's rates change for the final results.

Parties to these reviews may request disclosure within 5 days of the date of publication of this notice. Interested parties may request a hearing within 10 ten days of the date of publication. Any hearing, if requested, will be held not later than 44 days after the date of publication or the first workday thereafter. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. Upon completion of the reviews, the Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of elemental sulphur, entered or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of the most recent review in which the company was involved; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in either of these reviews, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous review, or the LTFV investigation, the cash deposit rate will be the ''new shipper'' rate of 5.56 percent established in the first review conducted by the Department in which a ''new shipper'' rate was established (*see Sulphur Final*). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 22, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–22237 Filed 8–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–301–003; C–301–601]

Roses and Other Cut Flowers From Colombia; Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews and termination of suspended investigations.

SUMMARY: On March 8, 1996, the Department of Commerce (''the Department'') published the preliminary results of its administrative reviews of, and its intent to terminate, the agreements suspending the countervailing duty investigations on roses and other cut flowers (''roses'') from Colombia and on miniature carnations (''minis'') from Colombia. We gave interested parties an opportunity to comment on the preliminary results. After reviewing all the comments received, we determine that the Government of Colombia (''GOC'') and producers/exporters of roses and minis have complied with the terms of the suspension agreements during the period January 1, 1994 through December 31, 1994. We also determine that the producers/exporters of subject merchandise have not received countervailable benefits or used any program under review for a period of at least five consecutive years. Additionally, we determine that the GOC and producers/exporters of the subject merchandise (respondents) have provided sufficient evidence for the Department to determine that it is likely that producers/exporters of subject merchandise will not in the future apply for or receive any net subsidy on the subject merchandise from those programs the Department has found countervailable in any proceeding involving Colombia or from other countervailable programs. Therefore, we determine that respondents have met the requirements for termination of the countervailing duty suspended investigation on roses and other cut flowers and on miniature carnations as outlined in the Department's Regulations.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Rick Johnson or Jean Kemp, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on or after January 1, 1995, the

effective date of amendments made to the Tariff Act in accordance with the Uruguay Round Agreements Act (URAA).

Background

On March 8, 1996, the Department published in the Federal Register (61 FR 9426) the preliminary results of its administrative reviews of the agreements suspending the countervailing duty investigations on roses and minis from Colombia. *See Roses and Other Cut Flowers From Colombia; Suspension of Investigation*, 48 FR 2158 (January 18, 1983); *Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement*, 51 FR 44930 (December 15, 1986); and *Miniature Carnations from Colombia; Suspension of Countervailing Duty Investigation*, 52 FR 1353 (January 13, 1987). We have now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 355.22.

Scope of Review

The products covered by these administrative reviews constitute two ''classes or kinds'' of merchandise: roses and minis from Colombia. During the period of review (''POR''), such merchandise covered by these suspension agreements was classifiable under *Harmonized Tariff Schedule* (''HTS'') item numbers 0603.10.60, 0603.10.70, 0603.10.80, and 0603.90.00 for roses, and 0603.10.30 for minis. The HTS item numbers are provided for convenience and Customs purposes only. The written descriptions remain dispositive.

These reviews of the suspended investigations involve over 600 Colombian flower producers/exporters of roses, over 100 Colombian flower producers/exporters of minis, as well as the GOC. The suspension agreement for minis covers ten programs: (1) BANCOLDEX (funds for the promotion of exports); (2) Plan Vallejo; (3) Instituto de Fomento Industrial (IFI); (4) Fondo Financiero de Proyectos de Desarrollo (FONADE); (5) Financiero de Desarrollo Territorial (FINDETER); (6) Tax Reimbursement Certificate Program (''CERT''); (7) Free Industrial Zones; (8) Export Credit Insurance; (9) Countertrade; and (10) Research and Development. The suspension agreement for roses covers the ten programs listed above, as well as (11) Air Freight Rates. The POR is January 1, 1994 through December 31, 1994.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the respondents, the GOC and Associaciòn Colombiana de Exportadores de Flores (''Asocolflores''); and the petitioner, the Floral Trade Council (''FTC''). Comments submitted consist of petitioner's case brief of April 8, 1996; and respondents' case brief of April 5, 1996 and rebuttal brief of April 12, 1996.

Comment 1: The FTC asserts that, prior to any termination, the Department must request confirmation that no CERT rebates were fraudulently received on flower exports of subject merchandise. The FTC further contends that this confirmation should be submitted in the form of warehoused documents or affidavits of personnel at Direcciòn de Investos y Aduanas Nacionales (''DIAN,'' the customs authority) associated with the preparation of DIAN's 1992 Annual report, in which it was noted that Panama and the Netherlands Antilles were eliminated from the CERT program due to fraud. Moreover, the FTC states that DIAN officials should also submit a certification describing what measures they put in place to eliminate the possibility of fraudulent receipt of CERT rebates over the five-year period. The FTC concludes that, absent such confirmation, the record shows ''only that flower exporters can receive CERT rebates on U.S. exports without detection in the absence of an investigation.''

Respondents note that the Department examined the allegation regarding the submission of fictitious invoices for exports to Panama and the Netherlands Antilles in the 1991–92 review period, and found no evidence to support FTC's claims, and thus found that there was no evidence that CERT rebates were received for exports to the United States.

Department's Position: In order to meet the regulatory requirements for termination of a suspended investigation under 355.25(a)(2), the Department must determine that all producers and exporters covered have not applied for or received any net subsidy on the merchandise for a period of at least five consecutive years, which in this case is the period 1990 through 1994. Petitioner's allegation concerning the 1991–92 period was examined by the Department during that review, and the Department found no evidence to support an allegation of transshipment or reshipment of the subject merchandise. *See Roses and Other Cut Flowers from Colombia; Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations (1991–2 Review)* 60 FR 42539, 42540–1 (August 16, 1995), Comment 3. Hence, the Department determined that ''with respect to this issue the GOC and the flower producers/exporters were in compliance with the suspension agreements during the PORs.'' Because the Department found no indication that the terms of the suspension agreements were violated through the fraudulent receipt of CERT rebates on subject merchandise, there is no requirement on respondents to place any further documents, affidavits, or certifications on the record.

In fact, the GOC has already certified that it has ''eliminated all subsidies on (i) miniature carnations and (ii) roses and all other fresh cut flowers exported to the United States, by abolishing for such merchandise for at least three consecutive years, all programs that the Secretary of Commerce has found countervailable,'' and that it will ''not reinstate for such merchandise those programs or substitute other countervailable programs.'' *See Letter from Counsel to Respondents to the Department of Commerce*, February 2, 1996. Thus, the Department determines that no further certifications are warranted with regard to this issue.

Comment 2: The FTC argues that because CERT rebates are not necessarily tied to third-country exports, the Department should reconsider its position that ''rebates tied to exports to third countries do not benefit the production or export of the subject merchandise.'' In particular, the FTC contends that under the new statute (19 U.S.C. § 1677(5)(A)), a countervailable subsidy is a subsidy which is specific, and export subsidies are specific if they are contingent upon export performance (19 U.S.C. § 1677(5A) (A) & (B)). Petitioners request that, prior to termination, the Department should require the GOC to abolish CERT rebates for all flower exports.

Respondents argue that the statute, the Department's regulations, and past determinations clearly refute petitioner's contention. Furthermore, respondents assert that there is nothing in the URAA which would change the Department's policy.

Department's Position: We agree with respondents. It is the Department's continuing policy that rebates tied to exports to third countries do not benefit the production or export of the subject merchandise destined for the United States. We found no evidence in the

questionnaire responses or at verification that would cause us to reconsider our position, in this POR or in the last five consecutive review periods. (*See Roses and Other Cut Flowers from Colombia; Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations, 1993 Review,* 61 FR 94229 (Comment 3) (March 8, 1996); *Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination not to Terminate Suspended Investigation,* 59 FR 10790 (Comment 7) (March 8, 1994), and *Roses and Other Cut Flowers from Colombia; Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations,* 60 FR 42541 (Comment 4) (August 16, 1995)).

As the Department has previously noted in this case, it is the Department's policy that we will not allocate benefits tied to a product not under investigation over a product under investigation unless we have a clear reason to believe that such a benefit encourages production or export to the United States of the product under investigation. *See Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination Not to Terminate Suspended Investigation,* 59 FR 10790, 10794 (March 8, 1994), citing *Industrial Nitrocellulose From France; Final Results of Countervailing Duty Administrative Review,* 52 FR 833 (January 9, 1987), and *Certain Fresh Cut Flowers from Israel; Final Affirmative Countervailing Duty Determination,* 52 FR 3316 (February 3, 1987). As respondents have noted, the existence of export subsidies to third countries could in fact serve to encourage producers to export to those other countries, and not to the United States.

While the URAA makes it clear that export subsidies are *per se* specific, specificity is not the issue. The issue is whether export subsidies explicitly tied to non-subject merchandise (*i.e.*, exports to third countries) provide a countervailable benefit to subject merchandise. Nothing in the URAA or its legislative history indicates that Congress intended to countervail subsidies tied to exports to third countries. In fact, 19 U.S.C. § 1671(a) provides for the imposition of countervailing duties when a countervailable subsidy is provided to ''a class or kind of merchandise imported, or sold (or likely to be sold) for importation, *into the United States* * * * .'' (emphasis added). The Department is continuing its longstanding practice of not countervailing export subsidies tied to third countries. Moreover, since the CERT rebates do not benefit subject merchandise, it is not necessary that the GOC eliminate them on exports to third countries.

Comment 3: The FTC asserts that the Department cannot terminate the suspended investigations for a period in which the Department could not determine whether signatories to both suspension agreements accounted for 85 percent of imports of the subject merchandise. Specifically, the FTC argues that for the purposes of satisfying termination requirements, the Department requires that the same producer/exporters account for 85 percent of the merchandise for a period of five consecutive years. Because the Department discovered, in the 1991 and 1992 reviews, that the GOC had not maintained an up-to-date list of signatories for both suspension agreements, the FTC suggests that respondents have no way to guarantee that the same exporters have accounted for 85 percent of the merchandise for the periods 1990 through 1994. *See Roses and Other Cut Flowers from Colombia; Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations (1991–2 Review)* 60 FR 42539, 42540 (August 16, 1995).

Respondents argue that there is no 85-percent test for termination, but rather the termination standards require that no producer/exporter covered by the suspension agreement receive any net subsidy over the five-year period. Respondents note further that the Department found, in the 1993 review, that no countervailable benefits were provided during the POR to *any* flower producer/exporter. Because the statutory purpose of the 85 percent rule is to ensure that ''substantially all'' imports do not benefit from countervailable subsidies, according to respondents, the 85 percent requirement is met, given that the Department has verified that 100 percent of exports do not receive any benefit.

Finally, respondents state that there is no Departmental requirement that the same producer/exporters must account for 85 percent of the merchandise for a period of five consecutive years.

Department's Position: Section 704(b) of the statute provides that Commerce may enter into a suspension agreement if the producers/exporters accounting for ''substantially all'' of the imports of the subject merchandise agree to eliminate (or offset completely) countervailable subsidies. The regulations do not define ''substantially all'' imports. However, the suspension agreements require that producer/exporters accounting for 85 percent of the imports must be subject to the terms of the suspension agreements. *See* 48 FR 2158, 2161 (January 18, 1983) (roses); 52 FR 1353, 1356 (January 13, 1987) (miniature carnations).

The Department's regulations provide that the Secretary may terminate a suspended investigation if the Secretary concludes that all producer/exporters covered by the suspension agreements have not applied for or received any net subsidy on the subject merchandise for a period of at least five consecutive years. 19 C.F.R. § 355.25(2)(i) (1995). In *Certain Fresh Cut Flowers from Costa Rica,* the case cited by petitioner, the Department determined that the same producer/exporters who have accounted for 85 percent of the merchandise for a period of five consecutive years must not have applied for or received any net subsidy on the merchandise during that period in order for the Department to terminate the suspended investigation. However, the Department's concern in that case stemmed from the fact that, in its administration of that suspension agreement, the Government of Costa Rica eliminated subsidies only to signatories, not all producers/exporters of the subject merchandise.

In contrast, in implementing these agreements, the GOC has acted to ensure that 100 percent of companies producing and exporting the subject merchandise were in compliance with the terms of the roses and minis suspension agreements, whether or not those companies had signed these suspension agreements.

The Department has found that all Colombian producers/exporters were in full compliance in the 1990, 1991, 1992, and 1993 administrative reviews of these suspension agreements. In the current 1994 administrative reviews, the Department reviewed and verified information at each GOC agency for all producers/exporters of the subject merchandise, regardless of their signatory status. The record evidence for the 1994 administrative reviews indicates that all Colombian producers/exporters have been in full compliance with the agreements. At verification, we analyzed the Colombian Customs Authority's export statistics of all flower companies exporting roses and minis to the United States and Puerto Rico. At the Central Bank, we checked computer records of exports with U.S. and Puerto Rican country identification codes showing that no CERT payments were made to any flower producers/exporters

for shipments of the subject merchandise.

At BANCOLDEX, we reviewed and verified all PROEXPO/BANCOLDEX loans issued and outstanding in the POR (*see Government Verification Report* of February 27, 1996) and we have determined that all Colombian flower producers/exporters have complied with the terms of the suspension agreements during the POR. Similarly, we verified that no countervailable benefits were granted to or received by any flower producers/exporters for Plan Vallejo, Air Freight Rates, Free Industrial Zones, and the Export Credit Insurance Program.

Thus, all Colombian flower producers/exporters have been required to comply with the terms of the suspension agreements. Further, the Department has determined that all producers/exporters of the subject merchandise have been in full compliance with the suspension agreements for five consecutive years. The Department has verified that *all* producers/exporters of subject merchandise (not just signatories to the agreements) have not received subsides on the subject merchandise during the current POR or during any POR from 1990 through the 1994 period. Therefore, the Department has determined that the requirements for termination of the suspended investigations have been met.

Comment 4: The FTC claims that under the terms of the suspension agreements, the Department applies outdated benchmark interest rates to determine ''compliance'' with the suspension agreements. The FTC objects to the Department's practice in setting prospective and outdated benchmark interest rates to determine compliance with the terms of the suspension agreements. The FTC claims that the suspension agreements are not in the public interest because Colombian flower producers/exporters can ''technically'' comply with the terms of the suspension agreements while at the same time receive loans at preferential interest rates. Because the benchmarks are outdated, the FTC asserts, they are incapable of eliminating the net subsidy on flowers. FTC concludes that to terminate the suspension agreements, the Department must compare the PROEXPO/Bancoldex interest rates to current interest rate benchmarks for the five year period to determine that all producer/exporters covered by the suspension agreements have not applied for or received any net subsidy on the merchandise for a period of at least five consecutive years.

Respondents note that the Department has addressed and rejected these arguments in earlier reviews of these suspension agreements. *See Roses and Other Cut Flowers from Colombia; Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations, 1993 Review,* at 9431–32 (Comment 5), March 8, 1996. Furthermore, respondents claim that petitioners have offered no basis that would support a different finding in the 1994 review.

Department's Position: We agree with respondents. Because these suspension agreements are forward-looking, the Department sets benchmark interest rates prospectively for these agreements. (*See Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Review*; 56 FR 14240 (April 8, 1991), *Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination Not To Terminate Suspended Investigation,* 59 FR 10790, (March 8, 1994), and *Roses and Other Cut Flowers from Colombia: Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations,* 60 FR 42541 (August 16, 1995)).

At verification for the 1994 POR, the Department examined documentation that indicated that BANCOLDEX charged interest rates on its short- and long-term loans above the Department's established benchmark rates in effect during the POR. The Department also found that the companies received BANCOLDEX loans on terms consistent with the suspension agreements. Consequently, we have determined that respondents were in compliance with the terms of the suspension agreements for the BANCOLDEX programs. Therefore, we determine that the GOC did not confer any countervailable benefits through the BANCOLDEX programs during the POR. Respondents complied with the suspension agreements' benchmarks and avoided receiving countervailable benefits during the POR, resulting in a situation analogous to non-use for the BANCOLDEX programs by Colombian flower producers/exporters of the subject merchandise. Therefore, there is no basis for petitioner's claim that the suspension agreements are not in the public interest.

Comment 5: The FTC asserts that the Department should reconsider its use of the subsidized FINAGRO interest rate when establishing short- and long-term benchmarks. The FTC argues instead that the Department use weighted-average interest rates of available non-government-related financing at commercial lending rates maintained by the Central Bank. In addition, the FTC asserts, citing *Rice From Thailand; Preliminary Results of Countervailing Duty Administrative Review,* 57 FR 8437, and 8439 (March 10, 1992), that the Department is not required to look to interest rates available to the agricultural sector, when the rates are not available to flower producers/exporters.

Respondents note that the FTC has argued this issue repeatedly in the course of these proceedings, and the Department has consistently rejected these arguments on an equal number of occasions. Moreover, according to respondents, this is an issue of no relevance to the termination proceeding, as long as the producer/exporters complied with the terms of the suspension agreements.

Department's Position: We agree with respondents. The Department has repeatedly determined that FINAGRO is a major intermediary lender to the agricultural sector, and therefore is an appropriate alternative basis for the Department's benchmarks. *See Roses and Other Cut Flowers from Colombia; Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations, 1993 Review* (Comment 8), 61 FR 9429, 9433, (March 8, 1996); *Roses and Other Cut Flowers from Colombia; Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations (1991–2 Review)* (Comments 6 and 7), 60 FR 42539, 42542 (August 16, 1995); and *Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination Not To Terminate Suspended Investigation* (Comment 8), 59 FR 10790, 10794–95 (March 8, 1994). In this review we examined potential alternative benchmarks and continued to find that FINAGRO was the most appropriate alternative source of financing to the agricultural sector.

Finally, we note that by terminating these suspension agreements, any issue regarding the establishment of prospective benchmarks for these cases is moot.

Comment 6: The FTC asserts that the Department had inadequate evidence concerning whether signatories are likely to apply for or receive any net subsidy on the merchandise. The FTC argues that the Department relied on GOC certifications that were substantially the same as the

commitments made under the suspension agreements. Furthermore, petitioner claims that the GOC still maintains BANCOLDEX benefits and the CERT program. The FTC cites the Statement of Administrative Action (''SAA'') accompanying the URAA as stipulating that, ''as long as a subsidy program continues to exist, Commerce will not consider company- or industry-specific renunciations of countervailable subsidies, by themselves, as an indication that continuation or recurrence of countervailable subsidies is unlikely.''

Respondents argue that the certifications supplied to the Department exceed both the requirements of the Department's regulations and the terms of the suspension agreements. Second, respondents claim that abolition of programs (such as the BANCOLDEX program) is not required for termination for non-use, and that the FTC has failed to point out that the GOC has eliminated countervailable benefits by eliminating preferential rates to flower producers/exporters under the BANCOLDEX program. Third, respondents note that the Department has found that the CERT program has been abolished for flower exports to the United States since ''at least'' 1988. In conclusion, respondents claim that the FTC's reliance on the SAA is ill-conceived, because the Department has relied on more than simply company-specific renunciations: in fact, for the most part, the subsidy programs at issue no longer exist for flower producers/exporters; the Department has the aforementioned certifications from the GOC; and finally, there is a record of ''7–11 years'' compliance with the suspension agreements.

Department's Position: We agree with respondents. With regard to CERT, flower producers/exporters are prohibited by Colombian law from receiving CERT rebates on exports to the United States and Puerto Rico. With regard to BANCOLDEX loans for the period 1990–94, flower producers/exporters have been prohibited by the terms of various GOC resolutions from receiving loans at countervailable rates, and have been unable to obtain loans at rates below the Department's benchmarks pursuant to Colombian law and BANCOLDEX instructions to refinancers of BANCOLDEX loans. Furthermore, the GOC has certified that it will not confer any loans constituting countervailable subsidies on flower producers/exporters. Finally, the record of compliance with the terms of these suspension agreements over the period 1990–94, together with the actions described above, indicates that continuation or recurrence of countervailable subsidies is unlikely.

Final Results of Reviews

After considering all of the comments received, we determine that the GOC and the producers/exporters of the subject merchandise have complied with all the terms of the suspension agreements during the period January 1, 1994 through December 31, 1994. We determine that no countervailable benefits have been bestowed on subject merchandise, and furthermore, that producers/exporters of subject merchandise have not used the above programs for at least five years (or, in the case of programs only recently created, for the life of the program). Additionally, we note that the GOC has stated for the record that it will institute or maintain appropriate measures to ensure that export loan programs will be administered to guarantee that loans granted to recipients are comparable to commercial loans that a flower producer/exporter could obtain in the market, such as those alternative sources of financing available to agriculture in Colombia, and will not confer any loan program countervailable subsidies on flower producers/exporters. Furthermore, the GOC has certified that, for the subject merchandise, it shall not reinstate those programs which the Department has found countervailable, and it shall not substitute other countervailable programs. Finally, producers/exporters have certified that they will not apply for or receive any net subsidy on exports to the United States of subject merchandise from those programs that the Department has found countervailable in any proceeding involving Colombia or from other countervailable programs.

Therefore, we determine that the GOC and the producers/exporters covered by these agreements have met the requirements for termination of the suspended countervailing duty investigations on roses and other cut flowers and miniature carnations, as required by 19 CFR 355.25. We, therefore, determine to terminate the suspended investigation on roses and other cut flowers from Colombia and the suspended investigation on miniature carnations from Colombia.

Lastly, as a result of this determination, we will also terminate the reviews in progress for these agreements covering the 1995 period.

These administrative reviews and this notice are in accordance with sections 751(a)(1)(C) of the Tariff Act (19 U.S.C. 1675(a)(1)(C) and 1675(c)) and 19 CFR 355.22 and 355.25.

Dated: August 26, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–22235 Filed 8–29–96; 8:45 am]

BILLING CODE 3510–DS–P

Intent To Revoke Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty order listed below. Domestic interested parties who object to revocation of this order must submit their comments in writing not later than the last day of September 1996.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Maria MacKay, Office of CVD/AD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulations (at 19 C.F.R. 355.25(d)(4)), we are notifying the public of our intent to revoke the countervailing duty order listed below, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with section 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in sections 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke this order pursuant to this notice, and no interested party (as defined in section 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty order is no longer of interest to

interested parties and proceed with the revocation. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a domestic interested party does object to the Department's intent to revoke pursuant to this notice, the Department will not revoke the order.

Countervailing duty order	
Canada: Steel Rail (C–122–805).	09/22/89, 54 FR 39032

Opportunity To Object

Not later than the last day of September 1996, domestic interested parties may object to the Department's intent to revoke this countervailing duty order. Any submission objecting to the revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: August 21, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–22236 Filed 8–29–96; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review; Notice of Application To Amend Certificate

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as ''Export Trade Certificate of Review, application number 89–7A016.''

Geothermal Energy Association's (''GEA'') original Certificate was issued on February 5, 1990 (55 FR 4647, February 9, 1990) and previously amended on November 7, 1990 (55 FR 47784, November 15, 1990); April 17, 1991 (56 FR 16328, April 22, 1991); September 11, 1991 (56 FR 47068, September 17, 1991); October 25, 1993 (58 FR 58325, November 1, 1993); September 26, 1994 (59 FR 50575, October 4, 1994); and March 6, 1996 (61 FR 11189). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Geothermal Energy Association (''GEA''), 2001 Second Street, Suite 5, Davis, California 95616,

Contact: John Armstrong, Counsel, Telephone: (703) 356–3100.

Application No.: 89–7A016.

Date Deemed Submitted: August 23, 1996.

Proposed Amendment: Geothermal Energy Association seeks to amend its Certificate to:

1. Add the following company as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Ormat Technologies, Inc. as the controlling entity of the GEA Certificate Member Ormat International, Inc.

2. Delete the following companies as ''Members'' of the Certificate: University of Utah Research Institute; and Big Bear Mud & Engineering Company; and

3. Change the listing of the company names for the current members: ''Calpine Corporation'' d.b.a ''Santa Rosa Geothermal Company, L.P.'' to the new listing ''Calpine Corporation''; and ''Unocal Geothermal Division and its controlling entity, ''Unocal Corporation'' to ''Union Oil of California'', d.b.a. ''Unocal and/or Unocal Corporation''.

Dated: August 26, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–22161 Filed 8–29–96; 8:45 am]

BILLING CODE 3510–DR–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission.

DATE AND TIME: Thursday, September 5, 1996, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: August 27, 1996.

Todd A. Stevenson,

Deputy Secretary.

[FR Doc. 96–22423 Filed 8–28–96; 3:25 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies

AGENCY: Department of Education.

ACTION: Request for comments on an accrediting agency's requested expansion of scope during the review of its application to the Secretary for renewal of recognition.

DATES: Commentors should submit their written comments by September 13, 1996.

FOR FURTHER INFORMATION CONTACT:

Karen W. Kershenstein, Director, Accreditation and State Liaison Division, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3915 ROB–3, Washington, DC 20202–5244, telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education is required by law to publish a list of accrediting agencies that he determines to be reliable authorities regarding the quality of education or training offered by institutions or programs they accredit. The National Advisory Committee on Institutional Quality and Integrity (the ''Advisory Committee'') advises the Secretary on specific accrediting agencies that seek to be recognized by the Secretary or to be granted an expansion of scope.

The agency listed in this notice is seeking renewal of recognition and an expansion of scope, which was inadvertently omitted from the Federal Reigster notice dated Tuesday, July 9, 1996. The Advisory Committee will consider this petition for renewal and expansion of scope, along with the petitions listed in the July Notice, at its November 18–20, 1996 meeting.

The purpose of this notice is to invite interested third parties to present written comments on the agency that will be reviewed by the Advisory Committee. In order for Department staff to give full consideration to the comments received, the comments must arrive at the address listed above not later than September 13, 1996. All written comments received by the Department in response to this notice will be reviewed by Department staff as part of its evaluation of the agency's compliance with the criteria for recognition.

A subsequent Federal Register notice will announce the meeting and invite individuals and/or groups to submit requests for oral presentation before the Advisory Committee on the AMDA and other agencies being reviewed at the meeting. That notice, however, does not constitute another call for written comment. This notice is the only call for written comment.

Request for Renewal of Recognition and Expansion of Scope

The agency listed below is seeking renewal of recognition and expansion of scope:

1. The American Dietetic Association (requested scope of recognition: the accreditation of coordinated undergraduate programs in Dietetics and postbaccalaureate Dietetic Internships). The agency is seeking an expansion of scope for (1) Coordinated Programs at the graduate level; (2) Dietetic Technician Programs (associated degree level); and (3) preaccreditation status for all programs.

Public Inspection of Petitions and Third-Party Comments

All third-party comments received in response to this call for comment, as well as the agency's original petition and supporting documentation, and the Department staff analysis of that petition will be available for public inspection and copying at the U.S. Department of Education, ROB–3, Room 3915, 7th and D Streets, S.W., Washington, DC 20202–5244, telephone (202) 708–7417 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. It is preferred that an appointment be made in advance of such inspection and copying.

Dated: August 26, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–22220 Filed 8–29–96; 8:45 am]

BILLING CODE 4000–01–M

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on January 22, 1996, an arbitration panel rendered a decision in the matter of *Johnny Wilson* v. *Georgia Department of Human Resources, (Docket No. R–S/92–4).* This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–2, upon receipt of a complaint filed by Johnny Wilson.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3230, Mary E. Switzer Building, Washington, D.C. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal and other property.

Background

In October 1990 the Georgia Department of Human Resources, the State licensing agency (SLA), announced a vacancy at a new facility, No. 1–350. This was a vending machine facility at the United States Postal Service Mail Processing Center in Duluth, Georgia. The announcement for this facility indicated that a manager and an assistant manager would be needed at this location.

Mr. Johnny Wilson was the successful applicant for this position and several weeks later another vendor was selected as the assistant manager. The complainant employed his spouse at the facility. The assistant manager at various times also employed his spouse and occasionally members of his family. The relationship between the two vendors became increasingly strained. The SLA initiated action to discharge the spouse of each vendor.

The complainant filed a complaint with the SLA under the State fair hearing procedures. Mr. Wilson's complaint included two additional grievances. The first concerned the equipment required for the start-up of his facility. The equipment to begin operation of complainant's facility had been purchased by Georgia Co-op for the Blind and leased to the SLA under a lease-purchase agreement that required monthly payments. The SLA passed these payments on to Mr. Wilson and the assistant manager at facility No. 1–350. This charge was in addition to the 12 per cent set-aside fee on net proceeds. Secondly, Mr. Wilson grieved the decision of the SLA to place an additional blind vendor at a cafeteria facility at the Mail Processing Center.

A fair hearing was conducted by the SLA on February 21, 1992, regarding the three issues: (1) Dismissal of Mr. Wilson's spouse. (2) The assignment of the equipment lease payment in addition to the set-aside fee to complainant's facility. (3) The SLA's proposal to establish the cafeteria as a separate facility at the Mail Processing Center.

On March 16, 1992, the Administrative Law Judge (ALJ) ruled in Mr. Wilson's favor on the following issues. The ALJ ruled that the SLA had exceeded its authority in terminating

the employment of the vendor's spouse. The ALJ ruled that the monthly lease-purchase payments assigned to facility No. 1–350 were in direct violation of the Act, Federal regulations, and the SLA's own policy manual, all of which require the SLA to provide equipment to blind vendors. The ALJ, therefore, directed that the SLA reimburse Mr. Wilson for all equipment charges improperly assessed. The ALJ also ruled that the SLA's proposal to establish a cafeteria facility at the same location as Mr. Wilson's was within the discretion of the SLA.

On April 1, 1992, Mr. Wilson appealed three portions of the ALJ's decision to the Secretary of the U.S. Department of Education. The issues appealed were: (1) The ruling on the proposed new cafeteria facility. (2) The failure of the ALJ to award interest on the reimbursement payments by the SLA to Mr. Wilson for the lease-purchase of equipment. (3) The failure of the ALJ to award attorney's fees.

These issues were pending before a Federal arbitration panel when the SLA imposed a three-day suspension without pay on complainant as the result of alleged actions taken by Mr. Wilson that impaired the assistant manager's ability to perform his duties at facility No. 1–350. Mr. Wilson appealed the SLA's action in a State fair hearing proceeding before an ALJ. The ALJ denied Mr. Wilson's claim, and, subsequently, the complainant filed a grievance with respect to this matter with the Secretary of the U.S. Department of Education. The Secretary consolidated this grievance along with the earlier complaint.

An arbitration hearing was held on this matter on June 29 and 30, 1994. The issues before the panel were: (1) What remedy, if any, is appropriate for the three-day suspension? (2) Did the State agency improperly award the cafeteria contract to the detriment of Mr. Wilson, and, if so, what is the appropriate remedy? (3) Can the arbitration panel award attorney's fees to Mr. Wilson, and, if so, is such an award justified? Prior to the hearing, the parties resolved the issue concerning interest on the leased equipment payments that Mr. Wilson made to the SLA.

Arbitration Panel Decision

The arbitration panel ruled that the SLA did not or would not violate the Randolph-Sheppard Act or any regulations promulgated under the Act by assigning the license to operate the cafeteria facility to a vendor other than Mr. Wilson. The panel's majority concluded, with one dissent, that the conflict between the agency's duty to protect and maximize the earnings of existing vendors and its duty to maximize the number of vendors operating viable facilities is a matter committed to the SLA's discretion. Among other considerations, even if Mr. Wilson's vending facility revenues were to be reduced as he projected, his facility would remain one of the most highly remunerative in the entire State.

The panel also ruled that the complainant failed to show that the refusal to award attorney's fees in the State fair hearing violated any State or Federal statute or regulations.

Finally, the panel ruled that the appropriate remedy for the concededly improper suspension of the complainant was the sum withheld for his three-day suspension plus interest at the Federal funds rate together with costs, including reasonable attorney's fees, incurred by Mr. Wilson in contesting the matter in the State fair hearing proceedings and in the arbitration proceedings. The panel majority concluded, with one dissent, that an award of attorney's fees was appropriate and not barred by the Eleventh Amendment to the United States Constitution.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: August 27, 1996.

Judith E. Heumann,

Assistant Secretary Special Education and Rehabilitative Services.

[FR Doc. 96–22217 Filed 8–27–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed ''subsequent arrangement'' to be carried out in Canada under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the Government of the United States of America and the Government of Canada, signed June 15, 1955, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the alteration in form or content of irradiated fuel rods from the H.B. Robinson Nuclear Power Station to produce elements for irradiation in a research reactor, using a dry proliferation-resistant fabrication process in accordance with the plan contained in the document AECL/KAERI/US DOS Joint Development Program for the Direct Use of Spent PWR Fuel in CANDU (DUPIC), dated November 1995.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: August 26, 1996.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 96–22188 Filed 8–29–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation for Civil Uses of Atomic Power between the United States and the Republic of Argentina, and the Agreement for Cooperation for Civil Uses of Atomic Power between the United States and Brazil.

The subsequent arrangement to be carried out under the above-mentioned agreements involves the conclusion of protocols concerning the suspension of the application of safeguards by the International Atomic Energy Agency (IAEA) under the Safeguards Transfer Agreement between the Republic of Argentina, the United States of America and the IAEA, signed June 13, 1969; and the Safeguards Transfer Agreement between the Federative Republic of Brazil, the United States of America and the IAEA, signed March 10, 1967, and amended July 27, 1972. These agreements will be replaced by a Quadripartite Agreement between Argentina, Brazil, the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials, the IAEA, and by the Safeguards Agreement referred to as the Voluntary Offer Agreement between the United States

and the IAEA that entered into force on December 9, 1980.

The application of safeguards in Argentina and Brazil pursuant to the Safeguards Transfer Agreements will be suspended while the Quadripartite Agreement is in force and safeguards specified therein are being applied by the IAEA. The application of safeguards in the United States pursuant to the Safeguards Transfer Agreement is suspended while the Voluntary Offer Agreement between the IAEA and the United States, and the protocol thereto, is in force and safeguards specified therein are being applied by the IAEA. These protocols shall enter into force on the date on which the IAEA receives from Argentina, Brazil and the United States written notification of the fulfillment of their respective internal procedures.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: August 26, 1996.

For the Department of Energy.

Edward T. Fei,

Deputy Director International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 96–22189 Filed 8–29–96; 8:45 am]

BILLING CODE 6450–01–P

Final Environmental Impact Statement (EIS) for the Hanford Site Tank Waste Remediation System, Richland, WA

AGENCY: Department of Energy and Washington State Department of Ecology.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE) and the Washington State Department of Ecology (Ecology) announce the availability of a Final EIS entitled ''Tank Waste Remediation System at the Hanford Site, Richland, Washington'' (DOE/EIS–0189). DOE and Ecology co-prepared the EIS. DOE and Ecology revised the information in the Draft EIS in response to public comments and to reflect new environmental information that became available after the Draft EIS was issued in April 1996.

The EIS evaluates the potential environmental impacts of DOE's proposed action as well as reasonable alternatives for management and disposal of mixed, radioactive, and hazardous waste currently or projected to be stored in 177 underground storage tanks and in approximately 60 active and inactive miscellaneous underground storage tanks that were associated with Hanford's tank farm operations. In addition, the EIS evaluates the management and potential disposal of approximately 1,930 cesium and strontium capsules currently on loan or stored at the Hanford Site.

ADDRESSES: Requests for copies of the Final EIS and for further information on the Final EIS should be directed to Ms. Carolyn Haass, DOE TWRS EIS NEPA Document Manager, U.S. Department of Energy, Richland Operations Office, P.O. Box 1249, Richland, WA 99352. Requests for copies of the Draft EIS also can be made via the Internet at TWRSEIS@ken01.JACOBS.com or by calling Ecology's Hanford Information Line at 1–800–321–2008. Addresses of locations where the Final EIS will be available for public review are listed in this notice under ''DOE Reading Rooms and Information Repositories.'' The Final EIS is also available for review on the Internet at www.hanford.gov.

General information on the DOE National Environmental Policy Act (NEPA) process may be requested from Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Ms. Borgstrom may be contacted by telephone at (202) 586–4600 or by leaving a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

DOE and Ecology issued a Draft EIS for public comment and published a Notice of Availability in the Federal Register on April 15, 1996 (61 FR 16471). EPA published a Notice of Availability in the Federal Register on April 12, 1996 (61 FR 16248). Public hearings on the Draft EIS were held in Pasco, Washington on May 2, 1996; Portland, Oregon on May 9, 1996; Arlington, Virginia on May 7, 1996; Spokane, Washington on May 15, 1996; and Seattle, Washington on May 22, 1996. All written and oral comments on the Draft EIS received during the 45 day public comment period were assessed and considered by DOE and Ecology both individually and collectively. Comment letters, transcripts of oral comments, and transcripts of public hearings and meetings are available for review at locations listed in this notice under ''DOE Reading Rooms and Information Repositories.''

DOE requested the National Academy of Science to review and comment on the TWRS Draft EIS. DOE will carefully consider all comments provided by the National Academy of Science and the public in the Record of Decision.

DOE and Ecology revised the information in the Draft EIS in response to public comments and to reflect new environmental information that became available after the Draft EIS was issued. Appendix L contains oral and written comments and DOE and Ecology's responses to the comments. Responses to comments included appropriate revisions of the EIS, answers to questions, explanations of technical issues, references to information in other DOE environmental impact statements, references to information provided in the Draft EIS, explanations of the relationship of this EIS to other related DOE NEPA documents, statements of government policy, or indications that the comment was outside the scope of this EIS.

The Final EIS has been filed with the Environmental Protection Agency (EPA) and has also been distributed to Federal, State, and local officials, Tribal Nations, as well as agencies, organizations, and individuals who may be interested or affected. The Final EIS and supporting technical reports also are available for public review in DOE reading rooms and designated information repository locations identified in this notice. DOE plans to issue a Record of Decision on the EIS no sooner than 30 days after publication of EPA's notice of availability of the Final EIS in the Federal Register (i.e., no sooner than September 30, 1996).

Alternatives Considered

The Final EIS evaluates ten tank waste alternatives in detail:

- No Action—perform minimum activities required for safe and secure management of Hanford's tank wastes with the current tank farm configuration;
- Long-Term Management—perform minimum activities required for safe and secure management of Hanford's tank waste including upgrades to tank farms with the current single-shell tank farm configuration and the replacement of the double-shell tanks twice during a 100-year period;
- In Situ Fill and Cap—retrieve and evaporate liquid waste from the double-shell tanks, then fill all tanks with gravel and cover the tank farms with an earthen surface barrier, disposing of all tank waste onsite;
- In Situ Vitrification—retrieve and evaporate liquid waste from the double-shell tanks, then vitrify all of the tank

farms and cover the tank farms with an earthen surface barrier, disposing of all tank waste onsite;

• Ex Situ No Separations—retrieve all tank farm waste practicable (assumed to be 99 percent), then either vitrify or calcine the waste and package the treated waste form for onsite storage and eventual offsite disposal at a geologic repository;

• Ex Situ Intermediate Separations—retrieve all tank farm waste (99 percent) and separate the high-level and low-activity waste streams using sludge washing and ion exchange, then vitrify the waste streams in separate facilities and package the treated waste form for onsite disposal of immobilized low-activity waste and offsite disposal of the immobilized high-level waste at a geologic repository;

• Ex Situ Extensive Separations—retrieve all tank farm waste (99 percent) and separate into high-level and low-activity waste streams using sludge wash, ion exchange, caustic leach and acid dissolution, then vitrify the waste streams in separate facilities and package the treated waste form for onsite disposal of the immobilized low-activity waste and onsite storage and eventual offsite disposal of the immobilized high-level waste at a geologic repository;

• Ex Situ/In Situ Combination 1—retrieve waste from 70 tanks based on the potential long-term risks to human health or the environment, separate the retrieved waste into high-level and low-activity waste streams using sludge washing and ion exchange, then vitrify the waste streams in separate facilities and package the treated waste form for onsite disposal of the immobilized low-activity waste and onsite storage and eventual offsite disposal of the immobilized high-level waste at a geologic repository. Fill all tanks, including those with waste that had not been retrieved, with gravel, and cover the tanks with a barrier, permanently disposing of the waste in-place;

• Ex Situ/In Situ Combination 2—retrieve waste from 25 tanks based on the potential long-term risks to human health or the environment, separate the retrieved waste into high-level and low-activity waste streams using sludge washing and ion exchange, then vitrify the waste streams in separate facilities and package the treated waste form for onsite disposal of the immobilized low-activity waste and onsite storage and eventual offsite disposal of the immobilized high-level waste at a geologic repository. Fill all tanks, including those with waste that had not been retrieved, with gravel, and cover the tanks with a barrier, permanently disposing of the waste in-place; and

• Phased Implementation—for Phase 1, construct commercial demonstration-scale facilities that would include one low-activity waste separations and vitrification demonstration plant and one low-activity and high-level waste vitrification demonstration plant to operate for up to 10 years. These facilities could treat up to 30 percent of the tank waste by volume during the 10-year operating period. For Phase 2, construct larger capacity separations and vitrification plants, retrieve the remaining waste, separate the waste into low-activity and high-level waste streams, vitrify the waste in separate facilities, package the waste, and dispose of the low-activity waste onsite in near-surface vaults and the high-level waste offsite at a geologic repository.

The cesium and strontium capsules are currently classified as waste by-product and are therefore available for beneficial uses. If beneficial uses cannot be found, the capsules would be subject to management and disposal actions as high-level waste. As in the Draft EIS, cesium and strontium capsule alternatives analyzed in the Final EIS are:

• No Action—Continue existing operations and maintenance in the Hanford Site Waste Encapsulation and Storage Facility for 10 years;

• Onsite Disposal—overpack the cesium and strontium in canisters and store onsite indefinitely in a newly constructed dry-well storage facility;

• Overpack and Ship—overpack the cesium and strontium into canisters, which would then be overpacked into Multi-Purpose Canisters, and dispose of offsite at the proposed national high-level waste repository; and

• Vitrify with Tank Waste—remove capsule contents and vitrify with the high-level tank waste, place in Multi-Purpose Canisters, and dispose of offsite at a geologic repository.

Preferred Alternatives

DOE and Ecology's preferred tank waste alternative in the EIS is the Phased Implementation alternative. DOE and Ecology's preferred alternative for the Hanford Site's cesium and strontium capsules is the No Action alternative.

Availability of Copies of the Final EIS

Copies of the Final EIS are being distributed to Federal, State, and local officials and agencies; to organizations and individuals known to be interested in the EIS; and to persons and agencies that commented on the Draft EIS. Additional copies may be obtained by contacting Ms. Carolyn Haass, DOE TWRS EIS NEPA Document Manager, U.S. Department of Energy, Richland Operations Office, P.O. Box 1249, Richland, Washington 99352. Requests for copies also can be made via the Internet at:

TWRSEIS@ken01.JACOBS.com or by calling Ecology's Hanford Information Line at 1–800– 321–2008. Addresses of DOE Public Reading Rooms and Information Repositories where the EIS and reference documents will be available for public review are listed below:

Summary of the EIS

Summary:
- Summary of the alternatives and analysis presented in the EIS

Volume One:
- Main Text of the Tank Waste Remediation System EIS

Volume Two:
- Appendices Supporting Volume One
- Appendix A. Waste Inventory
- Appendix B. Description of Alternatives
- Appendix C. Alternatives Rejected from Analysis

Volume Three:
- Appendix Supporting Volume One
- Appendix D. Anticipated Health and Ecological Risks

Volume Four:
- Appendices Supporting Volume One
- Appendix E. Accident Risks
- Appendix F. Groundwater Modeling

Volume Five:
- Appendices Supporting Volume One
- Appendix G. Air Quality Modeling
- Appendix H. Socioeconomic Impact Modeling
- Appendix I. Affected Environment
- Appendix J. Consultation Letters
- Appendix K. Uncertainties Analysis

Volume Six:
- Appendix Containing Comments and DOE and Ecology Responses and Supporting Changes to the Summary and Volumes One through Six made in Response to Comments
- Appendix L. Comments and Agency Responses

The Summary of the EIS is available for those who do not wish to receive the entire Final EIS. When requesting copies of the Final EIS, please indicate whether you wish to receive only the Summary (50 pages), the Summary and Volume One (620 pages), or the entire EIS, including the appendices (3,100 pages).

DOE Public Reading Rooms and Information Repositories

University of Washington, Suzzallo Library, Government Publications

Room, Seattle, WA 98185. (206) 685–9855, Monday–Thursday 9:00 a.m. to 8:00 p.m., Friday and Saturday 9:00 a.m. to 5:00 p.m.

Gonzaga University, Foley Center, E. 502 Boone, Spokane, WA 99258. (509) 328–4220 ext. 3829, Monday–Thursday 8:00 a.m. to midnight, Friday 8:00 a.m. to 9:00 p.m., Saturday 9:00 a.m. to 9:00 p.m., Sunday 11:00 a.m. to midnight.

U.S. Department of Energy Reading Room, Washington State University, Tri-Cities Campus, 100 Sprout Road, Room 130W, Richland, WA 99352, (509) 376–8583, Monday–Friday 10:00 a.m. to 4:00 p.m.

Portland State University, Bradford Price Millar Library, Science and Engineering Floor, S.W. Harrison and Park, Portland, OR 97207, (503) 725–3690, Monday–Friday 8:00 a.m. to 10:00 p.m., Saturday 10:00 a.m. to 10:00 p.m., Sunday 11:00 a.m. to 10:00 p.m.

U.S. Department of Energy, Headquarters, Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–6020, Monday–Friday 9:00 a.m. to 4:00 p.m.

Issued in Washington, D.C., this day August 26, 1996.

Stephen P. Cowan,

Deputy Assistant Secretary for Waste Management.

[FR Doc. 96–22186 Filed 8–29–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP96–735–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

August 26, 1996.

Take notice that on August 21, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–735–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate a new delivery point to accommodate natural gas deliveries to Western Gas Utilities, Inc. (WGU) for delivery to the proposed Darwin town border station (TBS), located in Meeker County, Minnesota, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that it requests authority to install and operate the proposed delivery point to accommodate natural gas deliveries to WGU under Northern's currently effective throughput service agreements. Northern asserts that WGU has requested the proposed delivery point to accommodate service due to expansion of its distribution system into new areas. The estimated volumes proposed to be delivered to WGU at the Darwin TBS are 350 MMBtu on a peak day and 53,550 MMBtu on an annual basis. Northern states that the estimated cost to install the delivery point is $50,000, and that WGU will reimburse Northern for the cost to install the proposed delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22164 Filed 8–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OA96–219–000]

Vermont Marble Power Division of OMYA, Inc.; Notice of Filing

August 26, 1996.

Take notice that on August 1, 1996, Vermont Marble Power Division of OMYA, Inc. (VMPD), submitted for filing pursuant to Section 35.28(d) of the Commission's Regulations, 18 CFR 35.28(d), a request that the Commission grant it a waiver from the requirements of §§ 35.28(c), 37.4(c) and § 37.5 of the Commission's Regulations, to file open access transmission service tariffs, to prepare and file written procedures to implement the standards of conduct set forth in § 37.4 of the Commission's Regulations, and to maintain information system.

VMPD has served its Request for Waiver on the Vermont Department of Public Service, the Vermont Public Service Board, and certain of the Vermont distribution and transmission utilities with which it conducts business.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 18 CFR 385.214 and the Commission's ''Order Clarifying Order Nos. 888 and 889 Compliance Matters,'' issued in Docket No. RM95–8–000 et al. on July 2, 1996. All such motions or protests 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. 96–22167 Filed 8–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1733–000, et al.]

Wisconsin Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

August 23, 1996.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Power and Light Company

[Docket No. ER96–1733–000]

Take notice that on August 15, 1996, Wisconsin Power and Light Company (WP&L) tendered for filing an amendment in its May 6, 1996, filing in this docket.

WP&L requests an effective date of May 7, 1996, and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing have been served upon MG&E and the Public Service Commission of Wisconsin.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. PanEnergy Power Services, Inc., Power Exchange Corporation, CNB/Olympic Gas Services, Inc., Logan Generating Company, L.P., Sonat Power Marketing Inc., DuPont Power Marketing Inc., Energy West Power Co., LLC

[Docket Nos. ER95–7–010, ER95–72–006, ER95–964–005, ER95–1007–002, ER95–1050–005, ER95–1441–006, and ER96–392–003, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On August 13, 1996, PanEnergy Power Services, Inc. filed certain information as required by the Commission's December 16, 1994, order in Docket No. ER95–7–000.

On July 29, Power Exchange Corporation filed certain information as required by the Commission's February 1, 1995, order in Docket No. ER95–72–000.

On July 31, CNB/Olympic Gas Services, Inc. filed certain information as required by the Commission's July 10, 1995, order in Docket No. ER95–964–000.

On July 31, 1996, Logan Generating Company, L.P. filed certain information as required by the Commission's June 28, 1995, order in Docket No. ER95–1007–000.

On July 30, 1996, Sonat Power Marketing Inc. filed certain information as required by the Commission's August 18, 1995, order in Docket No. ER95–1050–000.

On July 31, 1996, DuPont Power Marketing Inc. filed certain information as required by the Commission's August 30, 1995, order in Docket No. ER95–1441–000.

On July 30, 1996, Energy West Power Co. filed certain information as required by the Commission's December 28, 1995, order in Docket No. ER96–392–000.

3. Williams Energy Services Company, Hartford Power Sales LLC, IEP Power Marketing, LLC, Nordic Electric, LLC, Questar Energy Trading Company, Transalta Enterprises Corporation, PECO Energy Company

(Docket Nos. ER95–305–007, ER95–393–009, ER95–802–005, ER96–127–001, ER96–404–002, ER96–1316–001, and ER96–640–002, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 30, 1996, Williams Energy Services Company filed certain information as required by the Commission's May 10, 1995, order in Docket No. ER95–305–000.

On July 31, 1996, Hartford Power Sales LLC filed certain information as required by the Commission's February 22, 1995, order in Docket No. ER95–393–000.

On August 15, 1996, IEP Power Marketing, LLC filed certain information as required by the Commission's May 11, 1995, order in Docket No. ER95–802–000.

On August 13, 1996, Nordic Electric, LLC filed certain information as required by the Commission's December 1, 1995, order in Docket No. ER96–127–000.

On July 31, 1996, Questar Energy Trading Company filed certain information as required by the Commission's January 29, 1996, order in Docket No. ER96–404–000.

On August 14, 1996, TransAlta Enterprises Corporation filed certain information as required by the Commission's June 12, 1996, order in Docket No. ER96–1316–000.

On July 30, 1996, Peco Energy Company filed certain information as required by the Commission's March 28, 1996, order in Docket No. ER96–640–000.

4. Gateway Energy Inc. and PowerMark LLC

[Docket Nos. ER95–1049–004, ER96–332–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On August 5, 1996, Gateway Energy Inc. filed certain information as required the Commission's August 4, 1995, order in Docket No. ER95–1049–000.

On August 8, 1996, PowerMark LLC filed certain information as required the Commission's January 19, 1996 order in Docket No. ER96–332–000.

5. Inland Pacific Energy Services Corporation

[Docket No. ER96–2144–000]

Take notice that on August 1, 1996, Inland Pacific Energy Services Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Central Vermont Public Service Corporation

[Docket No. ER96–2238–000]

Take notice that on August 15, 1996, Central Vermont Public Service Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Thicksten Grimm Burgum, Inc.

[Docket No. ER96–2241–000]

Take notice that on August 14, 1996, Thicksten Grimm Burgum, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Indiana Gas & Electric Company

[Docket No. ER96–2336–000]

Take notice that on August 19, 1996, Southern Indiana Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Great Bay Power Corporation

[Docket No. ER96–2595–000]

Take notice that on July 29, 1996, Great Bay Power Corporation tendered for filing a summary of activity for the quarter ending June 30, 1996.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER96–2665–000]

Take notice that on August 8, 1996, New York State Electric & Gas Corporation tendered for filing the executed signature page to the Agreement with Rochester Gas and Electric Corporation filed with the Commission unexecuted on February 29, 1996.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER96–2709–000]

Take notice that on August 14, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating

Companies), tendered for filing an Amendment to Rate Schedule SP. ESI states that this filing is designed to allow ESI to engage in negotiated sales of electric power with unaffiliated purchasers, including sales not involving ESI's generation or transmission facilities.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Northern States Power Company (Minnesota Company)

[Docket No. ER96–2711–000]

Take notice that on August 15, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Transmission Service Agreement between NSP and Dairyland Power Cooperative.

NSP requests that the Commission accept the agreement effective July 25, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER96–2712–000]

Take notice that on August 15, 1996, PECO Energy Company (PECO), filed a Service Agreement dated August 7, 1996 with Long Island Lighting Company (LILCO) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds LILCO as a customer under the Tariff.

PECO requests an effective date of August 7, 1996, for the Service Agreement.

PECO states that copies of this filing have been applied to LILCO and to the Pennsylvania Public Utility Commission.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER96–2713–000]

Take notice that on August 15, 1996, PECO Energy Company (PECO), filed a Service Agreement dated August 7, 1996 with SCANA Energy Marketing, Inc. (SCANA) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds SCANA as a customer under the Tariff.

PECO requests an effective date of August 7, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to SCANA and to the Pennsylvania Public Utility Commission.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Pacific Gas and Electric Company

[Docket No. ER96–2714–000]

Take notice that on August 15, 1996, Pacific Gas and Electric Company (PG&E), tendered for filing an Interconnection Agreement between PG&E and the Shelter Cove Resort Improvement District No. 1 (District), dated August 6, 1996 (Interconnection Agreement). The Interconnection Agreement supersedes the current power sale contract between District and PG&E (PG&E Rate Schedule FERC No. 90).

District and PG&E (the Parties) entered into the Interconnection Agreement to define their new relationship after the termination of Rate Schedule FERC No. 90. The most important change under the Interconnection Agreement is that District will become an interconnection customer of PG&E, instead of a full-requirements customer. District will purchase wholesale electric service to become, in essence, a full-requirements customer of the Northern California Power Agency (NCPA). This change will reduce PG&E yearly revenues from the District by approximately $110,000.

Copies of this filing have been served upon District and the California Public Utilities Commission.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. UGI Power Supply, Inc.

[Docket No. ER96–2715–000]

Take notice that on August 15, 1996, UGI Power Supply, Inc., a wholly-owned subsidiary of UGI Enterprises, Inc., and an indirect subsidiary of UGI Utilities, Inc., tendered for filing an application for approval of its FERC Electric Rate Schedule No. 1 and for authorizations to make wholesale sales of electric power at rates to be negotiated by the purchaser. UGI Power Supply, Inc. requests that its FERC Electric Rate Schedule No. 1 be made effective 60 days from the date of filing, or October 14, 1996.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Arizona Public Service Company

[Docket No. ER96–2716–000]

Take notice that on August 15, 1996, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS–FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entity:

Koch Power Services, Inc.

A copy of this filing has been served on the above listed party and the Arizona Corporation Commission.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Duke Power Company

[Docket No. ER96–2717–000]

Take notice that on August 15, 1996, Duke Power Company (Duke), tendered for filing a Service Agreement for Market Rate (Schedule MR) Sales between Duke and Duquesne Light Company.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Duke Power Company

[Docket No. ER96–2718–000]

Take notice that on August 15, 1996, Duke Power Company (Duke), tendered for filing a Service Agreement for Market Rate (Schedule MR) Sales between Duke and Dayton Power & Light Company.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. San Diego Gas & Electric Company

[Docket No. ER96–2719–000]

Take notice that on August 15, 1996, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and Energy Transfer Group, L.L.C. (Energy Transfer).

SDG&E requests that the Commission allow the Agreement to become effective on the 1st of October 1996 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Energy Transfer.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Central Hudson Gas & Electric Corporation

[Docket No. ER96–2720–000]

Take notice that on August 15, 1996, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and Niagara Mohawk Power Corporation. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the

Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Central Hudson Gas & Electric Corporation

[Docket No. ER96–2721–000]

Take notice that on August 15, 1996, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and Coral Power L.L.C. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2722–000]

Take notice that on August 14, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to TransCanada Power Corporation (TC).

Con Edison states that a copy of this filing has been served by mail upon TC.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2723–000]

Take notice that on August 14, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to PECO Energy Company—Power Team (PECO).

Con Edison states that a copy of this filing has been served by mail upon PECO.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2724–000]

Take notice that on August 14, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Sonat Power Marketing, Inc. (Sonat).

Con Edison states that a copy of this filing has been served by mail upon Sonat.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2725–000]

Take notice that on August 14, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Enron Power Marketing, Inc. (Enron).

Con Edison states that a copy of this filing has been served by mail upon Enron.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Louisville Gas and Electric Company

[Docket No. ER96–2726–000]

Take notice that on August 14, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement between Louisville Gas and Electric Company and City of Tallahassee, Florida under Rate TS.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. New England Power Pool

[Docket No. ER96–2727–000]

Take notice that on August 14, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by KOCH Power Services, Inc. (KOCH). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit KOCH to join the over 100 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make KOCH a Participant in the Pool. NEPOOL requests an effective date of September 15, 1996 for commencement of participation in the Pool by KOCH.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. 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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. 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.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 96–22162 Filed 8–29–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 4797–042, –043, –044, and –045]

Cogeneration, Inc.; Notice of Availability of Draft Environmental Assessment

August 26, 1996.

A draft environmental assessment (DEA) is available for public review. The DEA is for an application to amend articles 404, 405, 406, and 407 of the project license for the Auger Falls Hydroelectric Project (FERC No. 4797). The DEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Auger Falls Hydroelectric Project is located on the Snake River in Twin Falls County, Idaho.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project manager listed below.

Please submit only those comments relative to the environmental conclusions reached in the DEA within 20 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 4797–042, –043, –044, and –045 to all comments. For further information, please contact the project manager, Robert J. Fletcher, at (202) 219–1206.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22166 Filed 8–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 1980, 1759, 2072, 2073, 2074, and 2131]

Wisconsin Electric Power Company; Notice of Scoping Meetings Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

August 26, 1996.

Pursuant to the Energy Policy Act of 1992, and as part of the license applications, the Wisconsin Electric Power Company (hereinafter referred to as WE) intends to prepare an Environmental Assessment (EA) to file with the Federal Energy Regulatory Commission (Commission) for the Upper Menominee River Basin Hydroelectric Projects. Two public scoping meetings will be held, pursuant to the National Environmental Policy Act (NEPA) of 1969, to identify the scope of environmental issues that should be analyzed in the EA. At the scoping meetings, WE will (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially qualified data, on the resources at issue; and (3) encourage statements from experts and the public on issues that should be analyzed in the EA.

Although WE's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

All interested individuals, organizations, and agencies are invited and encouraged to attend and assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus the discussions, a scoping document was mailed on July 31, 1996, as part of the Initial Consultation Package (ICP). Copies of the Scoping Document and ICP will also be available at the meetings.

WE will conduct site visits on Friday, September 13, 1996, to tour the Way Dam, Hemlock Falls Dam, Lower Paint Dam, Peavy Falls Dam, and Michigamme Falls Dam. The site visits will begin at 8:00 a.m. at the Way Dam. On Saturday, September 14, 1996, from 10:00 a.m. to 3:00 p.m., WE will host a centennial open house of the Kingsford Dam. On Monday, September 16, 1996, WE will conduct site visits of the Twin Falls Dam and the Big Quinnesec Falls Dam. The site visits will begin at 8:00 a.m. at the Twin Falls Dam. Persons interested in touring one or more of the sites should contact WE for an itinerary.

A scoping meeting for Federal, state, and local resource agencies will be held on Monday, September 16, 1996, at 2:00 p.m., at the Premiere Center, located at 300 East F Street, Iron Mountain, Michigan. The evening scoping meetings will be held on Monday, September 16, 1996, at 7:00 p.m. at the Premiere Center and on Tuesday, September 17, 1996, at 7:00 p.m. at the Crystal Falls Township Hall, located at Junction US Highways 2 and 141, Crystal Falls, Michigan. The site visits and scoping meetings are open to all interested parties.

Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting when the applications and EA are filed with the Commission in October 1999. Instead, the Commission staff will attend the meetings held on September 16 and 17, 1996.

The meetings will be recorded by a stenographer and, thereby, will become a part of the formal record of the proceedings on the Upper Menominee River Basin Projects. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within the allotted time, may submit written statements for inclusion in the public record.

Written scoping comments may also be mailed to Ms. Rita L. Hayen, P.E., Wisconsin Electric Power Company, 231 W. Michigan St., P.O. 2046, Milwaukee, Wisconsin, 53201–2046, by November 17, 1996. Correspondence should clearly show the following caption on the first page: Scoping Comments, Upper Menominee River Basin Hydroelectric Projects, FERC Nos. 1980, 1759, 2072, 2073, 2074, and 2131.

For further information, please contact Ms. Annie Salmona at (414) 221–4151 (Wisconsin Electric) or Patti Leppert-Slack at (202) 219–2767 (Federal Energy Regulatory Commission).

Lois D. Cashell,

Secretary.

[FR Doc. 96–22165 Filed 8–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–716–000, et al.]

East Tennessee Natural Gas Company, et al.; Natural Gas Certificate Filings

August 23, 1996.

Take notice that the following filings have been made with the Commission:

1. East Tennessee Natural Gas Company

[Docket No. CP96–716–000]

Take notice that on August 14, 1996, East Tennessee Natural Gas Company (East Tennessee) a Tennessee Corporation, P. O. 2511, Houston, Texas 77252, filed, in the above docket, a request for authorization pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) and under its blanket authority issued on September 1, 1982, in Docket No. CP82–412–000, to establish a new delivery point in order to provide additional firm transportation service to an existing customer, Loudon Utilities Gas Department (Loudon), all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, East Tennessee proposes to install a new delivery point located at approximate M.P. 3218D–101+6.6 on its system in Loudon County, Tennessee. To establish the delivery point, East Tennessee states that it will install a four-inch tie-in assembly, approximately 50 feet of four-inch interconnecting pipe, a two-inch turbine

meter, electronic gas measurement (EGM) and communications. East Tennessee states that it will own, operate and maintain the measurement facilities, the tie-in assembly and interconnecting pipe, and will maintain the communications and EGM. Loudon will provide the site for these facilities and will provide over-pressure protection, pressure regulation, heating and odorization, as required by the State of Tennessee.

East Tennessee further states that the total quantities to be delivered to Loudon will not exceed the total quantities authorized. East Tennessee asserts that the installation of the proposed delivery point is not prohibited by its tariff, and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of its other customers.

Comment date: October 7, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP96–717–000]

Take notice that on August 15, 1996, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP96–717–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to upgrade the existing Ohio Gas Delta delivery point, under Panhandle's blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Panhandle proposes to replace certain inefficient and undersized facilities with more efficient upgraded facilities so as to allow increased deliveries to be made at this delivery point. The estimated cost to upgrade the facilities is $370,000.

Comment date: October 7, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP96–723–000]

Take notice that on August 16, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP96–723–000, an abbreviated application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, for (1) a certificate of public convenience and necessity authorizing the construction and operation of approximately 1,750 feet of new upgraded 26-inch replacement pipeline and appurtenances on Northwest's Ignacio to Sumas mainline, and (2) permission and approval to abandon by removal approximately 1,020 feet and to abandon in place approximately 730 feet of the 26-inch pipeline being replaced; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that the installation of replacement pipeline and abandonment of existing pipeline is necessary to comply with Department of Transportation safety classification requirements. The total costs to construct the proposed pipeline and abandon the existing pipeline segment are estimated at $685,000.

Comment date: October 7, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Eastern Shore Natural Gas Company

[Docket No. CP96–724–000]

Take notice that on August 19, 1996, Eastern Shore Natural Gas Company (Eastern Shore), P.O. Box 1769, Dover, Delaware 19903–1769, filed in Docket No. CP96–724–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to add one new delivery point for Delmarva Power and Light Company (Delmarva), an existing customer, under Eastern Shore's blanket certificate issued in Docket No. CP83–40–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Eastern Shore proposes to construct and operate one delivery point and associated facilities near Cox Neck Road (County Road 411) in St. Georges, New Castle County, Delaware (Cox Neck Delivery Point) to serve Delmarva. Eastern Shore states the proposed Cox Neck Delivery Point would require the installation of a meter and appurtenant equipment and approximately 200 feet of 4-inch-diameter service lateral.

Eastern Shore states that deliveries to Delmarva at the Cox Neck Delivery Point will be approximately 175 Mcf on a peak day and approximately 17,500 Mcf per year.

Eastern Shore asserts that the delivery of gas through the new tap would be within the customer's existing entitlement, that there will be no adverse impact on Eastern Shore's other customers' peak and annual deliveries, and that no additional facilities will be required to serve the new delivery point other than a meter and regulating station and service lateral, the costs of which will be paid for by Delmarva.

Eastern Shore further states that its tariff does not prohibit the addition of delivery points for existing customers.

Comment date: October 7, 1996, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP96–725–000]

Take notice that on August 19, 1996, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP96–725–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon by removal a delivery tap and measurement facilities located in Montgomery County, Texas, under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to abandon the facilities, including the meter, piping and appurtenant facilities, which were installed and placed in service in June 1972 to serve Terra Resources, Inc. (Terra), for the sale and delivery of natural gas for oil field operations. It is stated that no gas has flowed through the meter since 1992 and that the sales agreement between Tennessee and the Daniels Corporation (Daniels), the successor-in-interest to Terra, was terminated in 1992. It is asserted that Daniels was the only customer served by the facilities, and a letter was included in the application showing Daniels' consent to the abandonment.

Comment date: October 7, 1996, in accordance with Standard Paragraph G at the end of this notice.

6. Kern River Gas Transmission

[Docket No. CP96–727–000]

Take notice that on August 19, 1996, Kern River Gas Transmission Company (Kern River), 295 Chipeta Way, Salt Lake City, Utah, 84108, filed an abbreviated application in Docket No. CP96–727–000, pursuant to Section 7(c) of the Natural Gas Act and Section 157 of the Commission's Regulations, for a certificate of public convenience and necessity authorizing the construction and operation of facilities, all as more

fully set forth in the application on file with the Commission and open to public inspection.

Kern River requests authorization to construct and operate the proposed Blue Diamond Meter Station on Kern River's existing pipeline located near Las Vegas, Nevada. Kern River states that the installation of the new meter station will allow it to make deliveries to Southwest Gas Corporation (Southwest) enabling Southwest to provide firm transportation service to Nevada Power Company (NPC) at NPC's Clark and Sunrise electric generating stations in Clark County, Nevada, and to serve imminent increases in demand in its Las Vegas service area.

The estimated cost of constructing the Blue Diamond Meter Station is $871,500. Kern River will finance this cost as well as an $8 million ''Contribution-in-Aid-of-Construction'' towards Southwest's required construction tie-in consisting of approximately 24 miles of 24-inch diameter pipeline, by use of internally generated funds. Kern River plans to place the proposed facilities in service by May 1, 1997.

Comment date: September 13, 1996, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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 motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–22163 Filed 8–29–96; 8:45 am]

BILLING CODE 6717–01–P

Western Area Power Administration

Proposed Allocation of the Post-2000 Resource Pool—Pick-Sloan Missouri Basin Program, Eastern Division

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Allocation.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy, hereby announces its Post-2000 Resource Pool Proposed Allocation of Power to fulfill the requirements of Subpart C—Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 C.F.R. § 905. The Post-2000 Resource Pool Proposed Allocation of Power is Western's implementation of Subpart C—Power Marketing Initiative of the Energy Planning and Management Program Final Rule. Western's call for applications for power was published in the Federal Register at 61 FR 2817, January 29, 1996, and revised and clarified in the Federal Register at 61 FR 28574, June 5, 1996. Western published the Final Post-2000 Resource Pool Allocation Procedures in the Federal Register at 61 FR 41142, August 7, 1996.

Applications for power were accepted at Western's Upper Great Plains Customer Service Region until close of business on July 5, 1996. The Proposed Allocation of Power published herein is the result of those applications. Only comments relevant to the proposed allocations will be accepted during this period. A Federal Register notice of the final allocations of power will address the comments received during the comment period.

DATES: The comment period on the Proposed Allocation of Power will begin August 30, 1996 and will end October 7, 1996. To be assured of consideration, all written comments must be sent by certified or return receipt requested U.S. mail and received by the end of the comment period. Western will hold public information forums and public comment forums on the Proposed Allocation of Power on September 18, 19, and 20, 1996, at the following locations and times:

September 18, 1996
- Hilton Sioux Hotel, 707 Fourth St., Sioux City, Iowa
- Information forum—1 p.m. (not to exceed 2 hours)
- Comment forum—immediately following the information forum

September 19, 1996
- Kelly Inn, 1–29 and Main Avenue, Fargo, North Dakota
- Information forum—1 p.m. (not to exceed 2 hours)
- Comment forum—immediately following the information forum

September 20, 1996
- Holiday Inn Rushmore Plaza, 505 North 5th Street, Rapid City, South Dakota
- Information forum—9 a.m. (not to exceed 2 hours)
- Comment forum—immediately following the information forum

All comments regarding the Proposed Allocation of Power should be directed to the following address: Mr. Gerald C. Wegner, Regional Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800.

All documentation developed or retained by Western for the purpose of developing the Proposed Allocation of Power will be available for inspection and copying at the Upper Great Plains Customer Service Region located at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Harris, Power Marketing Manager, Upper Great Plains Customer

Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 247–7394.

After all public comments have been thoroughly considered, Western will prepare and publish the Final Allocation of Power in the Federal Register.

SUPPLEMENTARY INFORMATION: Western published final procedures on August 7, 1996, at 61 FR 41142, to implement Subpart C—Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 C.F.R. § 905. The Energy Planning and Management Program (Program), which was developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. Subpart C of the Program provides for the establishment of project-specific resource pools and the allocation of power from these pools to new preference customers. Those final procedures, in conjunction with the Eastern Division, Pick-Sloan Missouri Basin Program Final Post-1985 Marketing Plan (Post-1985 Marketing Plan) (45 FR 71860), will establish the framework for allocating power from the resource pool to be established for the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP–ED).

Proposed Allocation of Power

Written comments on the Proposed Allocation of Power must be sent by certified or return receipt requested U.S. mail at the address set forth above by close of business on October 7, 1996. Western will respond to the comments received on the Proposed Allocation of Power and publish its final allocations after the end of the public comment period. New utility customers', nonutility customers', and Native American tribes' contracts may be entered into by Western after publication of that notice.

Western proposes that Native American tribes' share of the resource pool is 80.64 percent in the summer season and 78.33 percent in the winter season. The new utility and nonutility customers' share of the resource pool is 19.36 percent in the summer season and 21.67 percent in the winter season.

The proposed allocations of power for new Native American customers and the data these allocations are based upon are as follows:

New Native American customers	Estimated demand kilowatts	Average current western service		Proposed post 2000 power allocation	
		Summer (percent)	Winter (percent)	Summer kilowatts	Winter kilowatts
Blackfeet Nation	18,600	34	29	5,454	5,184
Cheyenne River Sioux	13,500	33	29	4,094	3,762
Chippewa Cree-Rocky Boy	5,000	55	44	416	643
Crow Creek	4,100	50	47	546	405
Crow	12,500	55	44	1,040	1,609
Devils Lake Sioux	7,700	22	14	3,182	3,301
Flandreau Santee Sioux	2,355	55	56	196	20
Fort Belknap Indian Community	6,200	28	22	2,190	2,162
Fort Peck Tribes	15,300	34	31	4,486	3,958
Lower Brule Sioux	3,100	33	29	940	864
Lower Sioux	3,750	0	.....	2,375	2,133
Northern Cheyenne	9,400	36	37	2,568	1,868
Oglala Sioux-Pine Ridge	29,600	28	24	10,456	9,729
Omaha Tribe of Nebraska	5,100	15	14	2,464	2,186
Ponca Tribe of Nebraska	2,100	8	6	1,162	1,068
Rosebud Sioux	21,300	49	43	3,051	2,954
Santee Sioux Tribe of Nebraska	1,100	10	8	587	538
Sisseton-Wahpeton Sioux	7,500	40	38	1,749	1,415
Standing Rock Sioux	12,900	30	29	4,299	3,595
Three Affiliated Tribes	8,000	30	25	2,666	2,550
Turtle Mountain Chippewa	18,000	35	18	5,098	6,996
Upper Sioux	1,250	42	39	267	223
White Earth Indian Reservation	3,500	6	7	2,006	1,745
Winnebago Tribe of Nebraska	3,100	10	8	1,653	1,515
Yankton Sioux	5,300	25	24	2,031	1,742

The proposed allocations for new Native American customers were calculated based upon the estimated demand figures set forth in the table above. Inconsistent demand estimates were adjusted by Western.

In order to fairly distribute the benefits of Federal hydropower among the tribes, Western calculated the proposed power allocations in the table above in such a manner as to levelize total Federal hydropower benefits to each of the Native American tribes. This results in a total Federal hydropower benefit of 63.323 percent in the summer season and 56.869 percent in the winter season to each of the tribes. To levelize the total Federal hydropower benefits, the average current percentage of Western service that each of the tribes receives through their current power supplier(s) was utilized and is as shown in the table above. For the Blackfeet Nation, Western used the weighted average of the current percentage of Western service for the remaining tribes. The Blackfeet Nation is served by Glacier Electric Cooperative, which is a total requirements customer of Bonneville Power Administration, therefore the Blackfeet Nation does not receive Western service, but does receive the benefit of Federal hydropower.

The proposed allocations to new Native American customers set forth in the table above are based on the P–SMBP–ED marketable resource available at this time. If the P–SMBP–ED marketable resource is adjusted in the future, the proposed allocations will be adjusted accordingly.

The proposed allocations of power for new utility and nonutility customers and the loads these allocations are based upon are as follows:

New utility and nonutility customers	1994 Summer season load kilowatts	1994–95 Winter season load kilowatts	Proposed post 2000 power allocation	
			Summer kilowatts	Winter kilowatts
Village of Emerson, NE	1,454	1,146	361	412
City of Estherville, IA	11,040	7,820	2,743	2,814
City of Randolph, NE	1,861	1,386	462	499
City of Pocahontas, IA	3,980	3,144	989	1,131
City of Madison, NE	10,034	8,759	2,493	3,152
City of South Sioux City, NE [1]	24,977	21,846	5,000	5,000
City of Sergeant Bluff, IA	6,076	3,888	1,510	1,399
City of Wakefield, NE	4,717	3,667	1,172	1,320
City of Fairmont, MN	2,330	2,464	579	887
City of Marathon, IA	520	764	129	275
City of Stanton, ND	656	850	163	306

[1] 5,000 kW is the maximum allocation allowed under the Final Procedures.

The proposed allocations of power for new utility and nonutility customers were calculated using Post-1985 Marketing Plan criteria. Under the Post-1985 Marketing Plan criteria, the proposed summer allocations are 24.84413 percent of total summer load and the proposed winter allocations are 35.98853 percent of total winter load.

The proposed allocations for new utility and nonutility customers set forth in the table above are based on the P-SMBP-ED marketable resource available at this time. If the P-SMBP-ED marketable resource is adjusted in the future, the proposed allocations will be adjusted accordingly.

VI. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. § 601 et seq (Act), requires Federal agencies to perform a regulatory flexibility analysis if a proposed regulation is likely to have a significant economic impact on a substantial number of small entities. Western has determined this rulemaking relates to services offered by Western, and, therefore, is not a rule within the purview of the Act.

VII. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget (OMB) for the collection of customer information in this rule, under control number 1910–1200.

IX. Determination Under Executive Order 12866

DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Issued at Golden, Colorado, August 21, 1996.

J.M. Shafer,

Administrator.

[FR Doc. 96–22184 Filed 8–29–96; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration's Policy for the Purchase of Non-Hydropower Renewable Resources

AGENCY: Western Area Power Administration, DOE.

ACTION: Correction notice of non-hydropower renewable resources policy.

SUMMARY: The following SUMMARY replaces the version that published on August 20, 1996, 61 FR 43051.

The Western Area Power Administration (Western) considered adopting a policy to purchase a portion of its expected purchase power requirements on a project-by-project basis and in a competitive manner, from non-hydropower renewable resource producers. The concept also included a proposal to purchase 50 percent of those purchases from solar resources. In response to comments on the proposed policy, Western decided to adopt a modified policy. Western's policy focuses on technical assistance and facilitation of renewables, as opposed to a mandatory purchase power set-aside for renewables.

Issued in Washington, D. C. on August 26, 1996.

Joel K. Bladow,

Assistant Administrator.

[FR Doc. 96–22185 Filed 8–29–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5604–2]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before October 29, 1996.

ADDRESSES: U.S. Environmental Protection Agency, 401 M Street SW, Mail code 2223A, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For NSPS subpart AA: Standards of Performance for steel plants: Electric Arc Furnaces Constructed after October 21, 1974 and on or before August 17, 1983 and NSPS subpart AAa: Standards of Performance for steel plants: Electric Arc Furnaces and Argon Oxygen Decarburization Vessels constructed after August 7, 1983—Maria Malave at (202) 564–7027 or via e-mail (MALAVE. MARIA@EPAMAIL. EPA.GOV.) or send a fax to (202) 564–0050 her attention.

For NSPS subpart KK, lead acid batteries—Jane M. Engert, tel: (202) 564–5021; FAX: (202) 564–0050; e-mail: engert.jane@epamail.epa.gov;

For NSPS subpart FFF, Standards of Performance for Flexible Vinyl and Urethane Coating and Printing

Industry—Ginger Gotliffe at (202) 564–7072 or via e-mail (gotliffe.ginger@epamail.epa.gov)

For NSPS subpart PPP, Wool fiberglass Insulation Manufacturing Plants—Scott Throwe at (202) 564–7013 of for a fax (202) 564–0050.

For NSPS subpart TTT, Surface Coating of Plastic Parts for Business Machines—Maria Malave at (202) 564–7027 or via e-mail (MALAVE. MARIA@EPAMAIL. EPA.GOV.) or send a fax to (202) 564–0050 her attention.

SUPPLEMENTARY INFORMATION:

NSPS subpart AA/AAa

Affected entities: Entities potentially affected by this action are those owners or operators of electric arc furnaces and dust handling systems in steel plants that produce carbon, alloy, or specialty steels; and commenced construction, modification, or reconstruction after the date of proposal (i.e., October 21, 1974), and on or before August 17, 1983 (for Subpart AAa).

Title: New Source Performance Standards (NSPS) for Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels, Subparts AA and AAa; OMB No. 2060–0038; Agency No. 1060.08.

Abstract: Owners or operators of the affected facilities described make the following one-time only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Recordkeeping and reporting requirements specific to steel plants subject to NSPS subpart AA and AAa include the initial notifications, and recording all measurements required under the monitoring sections. Owners or operators of electric arc furnaces controlled by a direct shell evacuation system are required to install and maintain a continuous monitoring device that continuously records pressure inside the EAF, and records 15 minute integrated averages. Prior notification it is required for the procedure used for determining compliance when emissions are combined with facilities that are not subject. The results of the performance tests including all requirements specified in §§ 60.275, 60.276(c), 60.275a, and 60.276(f) must be reported.

Semiannual reports of unacceptable operation of the affected facilities, and semiannual reports of exceedances of control device opacity are also required. Unacceptable operation is considered to be operation at a furnace with static pressures that exceed the values established at 60.274(f) and 60.274a(g), or operation of the control system fan motor at values ± 15% of the values established under the performance test, or operation at flow rates lower than those established in the performance test. Exceedances of opacity are defined as all 6-minute periods during which the average opacity is greater than the standard. In general, excess emission reports must include the magnitude of excess emissions; conversion factors used; the date and time of commencement and completion of each excess emission time period; identification of excess emissions during startups, shutdowns, and malfunctions; the nature and Cause of the malfunction (if known) and corrective measures taken; and identification of the time period during which the CMS was inoperative (this does not include zero and span checks nor typical repairs or adjustments).

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then Inspect the source to check if the pollution control devices are properly installed and operated and the standards are being met. Performance test reports are needed as these are the Agency's records of a source initial capability to comply with the emission standard, and note the operating conditions under which compliance was achieved.

The Administrator may require owners and operators subject to Section 111 of the Clean Air Act (CAA) are required to comply with recordkeeping and reporting requirements, as specified in Section 114(a) of CAA.

In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9. The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The only type of industry cost associated with the information collection activity in the standards is labor cost. The average annual burden to industry over the past three years for these recordkeeping and reporting requirements were estimated to be 21,430 person-hours. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead. The average annual cost to industry over the past three years of the previously approved ICR was estimated to be $652,528. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart KK

Affected entities: Entities potentially affected by this action are lead-acid battery manufacturing plants that produce or have the capacity to produce in one day (24 hours) batteries

containing an amount of lead equal to or greater than 6.5 tons. Specifically, the affected facilities in each plant include grid casting, paste mixing, three-process operations, lead oxide manufacturing, lead reclamation, and other lead-emitting operations in lead acid battery manufacturing plants that commenced construction, modification, or reconstruction after the date of proposal.

Title: New Source Performance Standards (NSPS) for Lead-Acid Battery Manufacturing Plants [40 CFR Part 60, Subpart KK] OMB Control Number: 2060–0081, Expires: 4/30/97.

Abstract: The largest single use of lead in the United States is in the manufacture of lead-acid, or secondary, storage batteries. Lead-acid battery manufacturing plants emit lead particulates in quantities that, in the Administrator's judgment, cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards rely on the proper installation, operation and maintenance of particulate control devices such as electrostatic precipitators or scrubbers.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep records of all startups, shutdowns, and malfunctions.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average annual burden to the industry over the next three years from these recordkeeping and reporting requirements is estimated at 320 person-hours. This is based on an estimated 48 respondents. The average annual burden for reporting only is projected to be 128 person-hours. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart FFF

Affected entities: Entities potentially affected by this action are those which are subject to NSPS Subpart FFF, or each rotogravure printing line used to print or coat flexible vinyl or urethane products, and for which construction, modification, or reconstruction commenced after January 18, 1983.

Title: NSPS Subpart FFF: Standards of Performance for Flexible Vinyl and Urethane Coating and Printing Industry, OMB number 2060–0073, expires April 30, 1997.

Abstract: The EPA is charged under Section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources that reflect:

* * * application of the best technological system of continuous emissions reduction which (taking into consideration the cost of achieving such emissions reduction, or any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

The Agency refers to this charge as selecting the best demonstrated technology (BDT). Section 111 also requires that the Administrator review and, if appropriate, revise such standards every four years. In addition, Section 114(a) states that:

* * * the Administrator may require any owner or operator subject to any requirement of this Act to (A) establish and maintain such records, (B) make such reports, (C) install, use and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (D) provide such other information, as he may reasonably require.

In the Administrator's judgment, VOC emissions from flexible vinyl and urethane coating and printing industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, the New Source Performance Standards (NSPS) were promulgated for this source category. The NSPS for the Flexible Vinyl and Urethane Coating and Printing Industry were proposed on January 18, 1983, and promulgated on June 29, 1984. These standards apply to each rotogravure printing line used to print or coat flexible vinyl or urethane products, and for which construction, modification or reconstruction commenced after the date of proposal. Volatile organic compounds (VOCs) are the pollutants regulated under this Subpart. The standards restrict the use of inks to those with a weighted average VOC content of less than 1.0 kilogram VOC per kilogram of ink solids, unless the source can otherwise reduce emissions to the atmosphere by 85 percent.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction (40 CFR 60.7(a)(1)); notification of the anticipated and actual dates of startup (40 CFR 60.7(a)(2) and (a)(3); notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate (40 CFR 60.7(a)(4)); and the notification of

the date of the initial performance test (40 CFR 60.7 (a)(5) and (d)). Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility (40 CFR 60.7(b), 60.584(d)). These notifications, reports and records are required, in general, of all sources subject to NSPS.

Recordkeeping specific to flexible vinyl and urethane coating operations include: temperature measurements when a capture system and an incinerator are used, the calculation of the daily volume of VOC solvent recovered, and the cumulative amount of solvent recovered when a capture system is used in combination with a solvent recovery system (40 CFR 60.584 (a)). Owners or operators of affected facilities using incineration are also required to install, calibrate, and maintain temperature measurement devices downstream of the exhaust gases if thermal incineration is used, and both upstream and downstream of the catalyst bed if catalytic incineration is used (40 CFR 60.584 (b) and (c)).

The owner or operator shall keep a calendar month record of the cumulative amount of solvent contained in inks used in the printing and coating process (40 CFR 60.583 (b) and (c)). When thermal or catalytic incineration is performed, the owner or operator shall keep records of each three-hour period during which the incinerator temperature averaged more than 28 degrees centigrade below the temperature of the most recent performance test (40 CFR 60.584 (b) and (c)). Daily records of this information shall be kept at the source for a period of two years (40 CFR 60.7(d)).

Test reporting requirements apply only to the initial performance test. A written report must be furnished to the Administrator describing the results of the initial performance test (40 CFR 60.8(a), 60.585(a)). In addition, semiannual reports of excess emissions are required, including a semiannual negative declaration if there are no excess emissions (40 CFR 60.585(b)).

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection or information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved 1994 Information Collection Request (ICR). Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paperwork Reduction Act. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This estimate is based on the assumption that there would be one new affected facility over the three years of the existing ICR and that there were approximately 7 sources in existence at the start of the three years covered by the ICR. The annual burden of reporting and recordkeeping requirements for facilities subject to Subpart FFF are summarized by the following information. The reporting requirements are as follows: Read Instructions (1 person-hour), Initial performance test (280 person-hours). It is assumed that 20% of tests are repeated due to failure. Estimates for report writing are: Notification of construction/reconstruction (2 person-hours), Notification of anticipated startup (2 person-hours), Notification of actual startup (1 person-hour), Notification of initial performance test (2 person-hours), Report of performance test (included in reporting requirements listed above), Semiannual report (4 person-hours). Records must be kept for a period of two years. The average burden to industry over the three years of the current ICR from these recordkeeping and reporting requirements was estimated to be 163.2 person hours. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead. The average annual burden to industry over that three year period of the ICR was estimated to be $4,969.

NSPS Subpart PPP

Title: Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants (OMB Control No. 2060–0114; EPA ICR No. 1160). This is a request for extension of a currently approved collection.

Abstract: The Administrator has judged that particulate matter emissions from Wool Fiberglass Insulation Manufacturing Plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of Wool Fiberglass Insulation Manufacturing Plants must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test and excess emissions.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

Owners or operators of the affected facilities described make the following one-time only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the

regulated pollutant emission rate; and the notification of the date of the initial performance test. Owner or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. These notifications, reports and records are required, in general, of all sources subject to NSPS.

A written report must be furnished to the Administrator describing the results of the initial performance test. Recordkeeping and reports specific to NSPS subpart PP are listed in 40 CFR section 60.684.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

If the information required by the standards were not collected, the Agency would have no means for ensuring that compliance with the NSPS is achieved and maintained by new, modified, or reconstructed sources subject to the regulations. Under this circumstances, an owner or operator could elect to reduce operating expenses by not complying with the emission limitations. In the absence of the information collection requirements, compliance with the standards could be ensured only through continuous on-site inspections by regulatory agency personnel. Consequently, not collecting the information would result in either greatly increased expenditures of resources, the inability to ensure compliance with the standards.

The information collected from recordkeeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court.

The Administrator may require owners and operators subject to Section 111 of the Clean Air Act (CAA) are required to comply with recordkeeping and reporting requirements, as specified in Section 114(a) of CAA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 29, 1995.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3,680 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 38.

Estimated Number of Respondents: 38.

Frequency of Response: 2.

Estimated Number of Responses: 76.

Estimated Total Annual Hour Burden: 3,680 hours.

Estimated Total Annualized Cost Burden: $112,056

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1160 and OMB Control No. 2060.0114 in any correspondence.

NSPS Subpart TTT

Affected entities: Entities potentially affected by this action are those owners or operators of spray booths in which plastic parts for business machines receive prime, color, texture, or touch-up coats, and for which construction, modification or reconstruction commenced after the proposal date.

Title: New Source Performance Standards (NSPS) for Surface Coating of Plastic Parts for Business Machines, Subpart TTT; OMB No. 2060–0162; Agency No. 1093.05.

Abstract: Owners or operators of the affected facilities described make the following one-time only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test. Owner or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Recordkeeping requirements specific to the surface coating of plastic parts for business machines include the records of each monthly performance test.

A written report must be furnished to the Administrator describing the results of the initial performance test. Thereafter, quarterly reports of noncompliance are required, and semiannual reports shall be made when the source is in compliance with the applicable emission limitations.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

If the information required by the standards were not collected, the Agency would have no means for ensuring that compliance with the NSPS is achieved and maintained by new, modified, or reconstructed sources subject to the regulations. Under this circumstances, an owner or operator could elect to reduce operating expenses by not complying with the emission limitations. In the absence of the information collection requirements, compliance with the standards could be ensured only through continuous on-site inspections by regulatory agency personnel. Consequently, not collecting the information would result in either greatly increased expenditures of resources, the inability to ensure compliance with the standards.

The information collected from recordkeeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court.

The Administrator may require owners and operators subject to Section 111 of the Clean Air Act (CAA) are require to comply with recordkeeping and reporting requirements, as specified in Section 114(a) of CAA.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9. The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The only type of industry costs associated with the information collection activity in the standards are labor costs. The average annual burden to industry over the past three years for these recordkeeping and reporting requirements were estimated to be 29,444 person-hours. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead. The average annual cost to industry over the past three years of the ICR was estimated to be $896,569. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: August 23, 1996.

Bruce R. Weddle,

Acting Director, Office of Compliance.

[FR Doc. 96–22264 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–00198; FRL–5395–4]

Proposed Renewal of an Agency Information Collection; Toxic Chemical Release Reporting; Community Right-to-Know; EPA ICR #1363.05

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and Request for Comment.

SUMMARY: This notice announces and solicits comments on the proposed renewal of the Information Collection Request (ICR) entitled: Toxic Chemical Release Reporting; Recordkeeping; Supplier Notification; and Petitions under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPA ICR #1363.05; OMB Approval #2070–0093). The Office of Prevention, Pesticides and Toxic Substances (OPPTS) is seeking public comment on this ICR pursuant to the Paperwork Reduction Act (PRA) and the procedures contained in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection, the expected burden and estimated costs associated with the information collection, and includes the actual data collection instrument. The complete ICR document and any attachments to it are available in paper or electronic copy and may be obtained as described in Unit IV of this notice.

After reviewing any public comments submitted in response to this notice and amending the ICR as necessary, OPPTS will announce in another Federal Register notice that it has submitted a final ICR to the Office of Management and Budget (OMB) for review and approval pursuant to 5 CFR 1320.12(c).

DATES: All comments must be submitted to the addresses listed below on or before October 26, 1996.

ADDRESSES: Submit written comments identified by the administrative record number AR–165 and EPA ICR #1363.05 by mail to: TSCA Document Receipts (7407), Room NE–G099, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–7099. In person, bring comments directly to the OPPT docket which is located in Room NE–B607 at the address given above from noon to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form or encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the appropriate administrative record and ICR number indicated above. Electronic comments on this document may be filed online at many Federal Depository Libraries.

Information submitted as a comment concerning this document may be claimed Confidential Business Information (CBI) by marking any part or all of that information as CBI. No CBI should be submitted through e-mail. Information marked as CBI 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 CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room NE–B607 at the address given above from noon to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Christine Augustyniak, Deputy Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–1024; fax 202–401–8142, or e-mail: augustyniak.christine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Electronic Availability: Electronic copies of the ICR are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental Sub-Set entry for this document under ''Rules and Regulations.''

I. Background Information

Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 U.S.C. 11001 et seq.) requires certain owners or operators of certain facilities (i.e., manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39) manufacturing, processing, or otherwise using any of over 600 listed toxic chemicals and chemical categories (hereafter ''toxic chemicals'') in excess of the applicable threshold quantities to report on their environmental releases and transfers of and waste management activities for such chemicals annually.

Under section 6607 of the Pollution Prevention Act (PPA) (42 U.S.C. 11071 to 11079), facilities must provide information on the quantities of the toxic chemicals in waste streams and the efforts made to reduce or eliminate those quantities. Facilities required to report under EPCRA section 313 and PPA section 6607 submit a Toxic Chemical Release Inventory Form (EPA Form 9350–1, also known as ''Form R'') to EPA and the State in which it operates each year, providing information from the preceeding year.

In 1994, EPA established an alternate threshold for those facilities with low amounts of a listed toxic chemical in wastes. A facility that meets the appropriate reporting thresholds, but estimates that the total amount of the chemical in the total annual reportable amount does not exceed 500 pounds per year, can take advantage of an alternate manufacture, process, or otherwise use a threshold of 1 million pounds per year for that chemical, provided that certain conditions are met. Facilities able to take advantage of an alternate threshold would be eligible to submit a Toxic Chemical Release Inventory Form A (EPA Form 9350–2). As such, facilities meeting the alternate threshold may use either the Form R or the Form A.

The reporting and recordkeeping requirements associated with the alternate reporting requirement using Form A are contained in a separate ICR and are approved under OMB Control #2070–0143 (EPA ICR #1704.03). OMB is currently reviewing a request to renew that approval, which is scheduled to expire on September 30, 1996. Pursuant to OMB regulations at 5 CFR 1320.12(a), EPA announced the proposed renewal of ICR #1704.03, seeking public comment in the Federal Register on May 15, 1996 (61 FR 24488)(FRL–5368–9). After reviewing the two comments received in response to that notice, which were supportive of the continuation of the alternate reporting form requirements and encouraged OMB approval of the requested renewal, EPA subsequently issued another Federal Register notice on August 8, 1996 (61 FR 41407)(FRL–5547–8) to announce the Agency's submission of the renewal request for ICR #1704.03 to OMB for review and approval, as well as announcing the final 30 day comment period as required under 5 CFR 1320.12 (c). Any OMB action taken with regard to ICR #1704.03, which must be taken no later than September 30, 1996, applies only to the alternate reporting requirements and Form A.

The reporting and recordkeeping requirements associated with EPCRA section 313 (i.e., Form R, supplier notification and the petition process) are discussed in a separate ICR (EPA ICR #1363.05). The renewal of EPA ICR #1363.05 is the subject of this notice and is being processed separately from those related to the alternate reporting requirement, which are covered by EPA ICR #1704.03. OMB approved the Form R reporting and recordkeeping requirements under OMB Control #2070–0093 (EPA ICR #1363.05). Although the OMB approval for this ICR would have ordinarily expired on November 30, 1992, OMB's approval was extended by Congress in September of 1992 until EPA promulgates changes to the Form R and Instructions. This approval was contained in the 1993 Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, Pub. L. 102–389, signed October 6, 1992, which states that:

> Notwithstanding the Paperwork Reduction Act of 1980 or any requirements thereunder the Environmental Protection Agency Toxic Chemical Release Inventory TRI Form R and instructions, revised 1991 version issued May 19, 1992, and related requirements (OMB No. 2070–0093), shall be effective for reporting under section 6607 of the Pollution Prevention Act of 1990 (Public Law 101–508) and section 313 of the Superfund Amendments and Reauthorization Act of 1990 (Public Law 99–499) until such time as revisions are promulgated pursuant to law.

The proposed ICR announced in this notice will replace the Congressional approval described above upon final approval of the ICR by OMB under the Paperwork Reduction Act pursuant to 5 CFR 1320.12. In accordance with the process described in 5 CFR 1320.12(a)(1), EPA is seeking comment on the burden estimates and information collection activities described in this ICR. After reviewing any comments received during the 60 day comment period, EPA will submit a final ICR to OMB for review and approval pursuant to 1320.12(c).

In addition, EPA recently proposed to amend the EPCRA Section 313 reporting and recordkeeping requirements by proposing to add several additional industry groups to the universe of respondents subject to reporting (61 FR 33588, June 27, 1996)(FRL–5379–3). As required by 5 CFR 1320.11, EPA announced and sought comment on the proposed Industry Expansion ICR (EPA ICR #1784.01) which provided burden estimates for the information collection contained in the proposed rule. When EPA issues the final rule for Industry Expansion, the information collection requirements contained in that final rule will be reflected in an amended ICR which will be submitted to OMB for review and approval. This submission must occur no later than publication of that final rule in the Federal Register and the submission will be announced in the final rule. The public will have 30 days to provide additional comments on the final ICR related to the industry expansion rule. Upon OMB's approval of the industry expansion related ICR (EPA ICR #1784.02), EPA will add the industry expansion burdens to the existing burdens associated with overall TRI reporting and recordkeeping (i.e., those in ICR #1363.05 for Form R and ICR #1704.03 for Form A). Specifically, EPA would amend the existing ICRs by submitting an Information Correction Worksheet to OMB requesting that the burden hours associated with each ICR be adjusted to include the new burden hours imposed by that final rule.

II. Request for Public Comment

For the collection of information addressed in this notice, EPA is soliciting comments on the ICR, including but not limited to the information collection activity, the burden hour and cost estimates presented, and any other information that would help the Agency to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be submitted to EPA according to the procedures described in the ADDRESSES section above.

III. Proposed Information Collection Request

ICR Numbers: EPA ICR No. 1363.05 and OMB No. 2070–0093.

Current Expiration Date: As discussed in Unit I above, this ICR, which covers the reporting and recordkeeping requirements under section 313 of the Emergency Planning and Community Right-to-Know Act, is valid until EPA promulgates changes to the Form R and Instructions.

Title: Toxic Chemical Release Reporting and Recordkeeping; Supplier Notification and Petitions under Section 313 of the Emergency Planning and Community Right-to-Know Act.

Abstract: This Information Collection Request (ICR) is for the information collection contained in the regulations governing toxic chemical release reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 U.S.C. 11001 et seq.) and the information collection in section 6607 of the Pollution Prevention Act (PPA) (42 U.S.C. 11071 to 11079). In accordance with EPCRA section 313 (and PPA section 6607 because of its linkage to EPCRA), EPA's Office of Pollution Prevention and Toxics (OPPT) collects, processes, and makes available to the public all of the information collected. The information gathered under these authorities is stored in a database maintained at both EPA and the National Library of Medicine (NLM). NLM provides public access to the TRI database through the Toxicology Data Network (TOXNET). The TRI has been used extensively by EPA and the public and private sectors. Program offices within EPA have used the TRI, with other sources of data, to establish priorities, evaluate potential exposure scenarios, and for enforcement activities. Environmental groups and public interest groups have used the data in several studies and reports, making the public more aware of releases of chemicals in their communities. Industry has used the data extensively to assess and improve their environmental performance.

Comprehensive data about releases, transfers, and other waste management activities of toxic chemicals at the community level are generally not available from sources other than TRI. Permit data often are difficult to obtain, are not cross-media and present only a limited perspective on a facility's overall performance. With TRI and the real gains in understanding it can produce, communities and governments know what listed toxic chemicals a subset of industrial facilities in their area release, transfer, or otherwise manage as waste; and industries have an additional tool for evaluating efficiency and progress on their pollution prevention goals.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 52.1 hours per response for Form R, 24 hours for supplier notification (where applicable), and 185 hours for a petition (where applicable). This estimate includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the regulations related to this information collection, are displayed in 40 CFR Part 9. Summary of the ICR activity:

Form R: *Respondents/affected entities.* Facilities that manufacture, process or otherwise use certain toxic chemicals and which are required, under EPCRA section 313, to report annually to EPA their environmental releases of such chemicals.

Estimated No. of Respondents: 27,382

Estimated Total Annual Burden on Respondents: 4,707,860 hours.

Frequency of Collection: Annual.

Supplier Notification: *Respondents/ Affected Entities.* Manufacturing facilities that supply mixtures or trade name products containing chemicals listed under EPCRA section 313.

Estimated No. of Respondents: 3,657

Estimated Total Annual Burden on Respondents: 87,768 hours.

Frequency of Collection: Annual.

Petitions: *Respondents/Affected Entities.* Any person or organization submitting a petition under section 313(e) of EPCRA.

Estimated No. of Respondents: 11

Estimated Total Annual Burden on Respondents: 2,035 hours.

Frequency of Collection: On occasion.

In addition, all facilities in a Standard Industrial Classification (SIC) code covered under EPCRA section 313 with 10 or more full-time equivalent employees must determine each year whether they manufacture, process or otherwise use any of the listed chemicals above threshold quantities. It is estimated that 185,266 facilities will need to make this determination each year, with a total estimated burden of 741,064 hours.

Changes in Burden Estimates. The estimated burden has changed in several ways compared with the total burden last approved by OMB in 1992 and covered by the 1992 Congressional approval. First, the ICR estimates were adjusted to account for Agency experience and additional information about the burden associated with EPCRA section 313. Second, there was a reduction in total burden resulting from program changes. Specifically, EPA has either modified the listing or completely removed the listing for several chemicals on the TRI list of chemicals subject to reporting under EPCRA section 313. In addition, the 1994 amendment that established the alternate reporting threshold, is estimated to replace up to 23,288 Form R submissions with submissions of Form A. After accounting for the addition of chemicals that increased burden during this time frame, these program changes reduced the number of Form R submissions by approximately 20 percent compared to the previous ICR, and decreased total burden by 1,115,408 hours. When the burden reduction caused by the program change (-1,115,408 hours) and the burden increase caused by various adjustments in the estimates (+1,766,455 hours) are combined, the result is a net increase of 651,047 hours.

IV. Where to View or Obtain Copies of the Proposed Information Collection Request

A. Public Record

A record has been established for this notice under docket number [OPPTS–00198] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record

maintained at the address in ''ADDRESSES'' at the beginning of this document.

B. Paper Copies

Paper copies of the complete ICR and any accompanying appendices may be obtained from the OPPT docket at the above address, by contacting the person whose name appears under FOR FURTHER INFORMATION CONTACT, or by contacting the EPCRA Hotline at 1–800–535–0202, in Virginia or Alaska call 703–412–9877 or TDD: Toll Free 1–800–533–7672.

C. Electronic Copies

Electronic copies of the complete ICR and any accompanying appendices are also available from the EPA Public Access gopher (gopher.epa.gov) and the EPA home page (http://www.epa.gov). To access this information on the EPA gopher you should look for the ''Rules and Regulations'' entry under the Environmental Sub-Set. To access this information on the EPA Home page, you should enter the Directory for ''Rules, Regulations, and Legislation;'' then enter the ''Federal Register - Environmental Sub-set;'' then ''Federal Register - Toxic Release Inventory;'' and then enter the Year, Month and Day that this notice appeared in the Federal Register. In both cases, the information is identified as ''Supporting Documentation'' under the entry for the Federal Register notice.

List of Subjects

Environmental Protection; Air pollution control; Chemicals; Hazardous substances; Hazardous waste; Imports; Intergovernmental relations; Natural resources; Penalties; Reporting and recordkeeping requirements; Superfund; Water pollution control; Water supply.

Dated: August 28, 1996.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–22417 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–F

[ER–FRL–5472–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 12, 1996 Through August 16, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (61 FR 15251).

Draft EISs

ERP No. D–FHW–E40768–TN Rating EC2, Shelby Avenue/Demonbreum Street Corridor, from I–65 North to I–40 West in Downtown Nashville, Funding, U.S. Coast Guard Permit and COE Section 404 Permit, Davidson County, TN.

Summary: EPA's review found that most environmental impacts were adequately discussed, but expressed concern for water quality and floodplain degradation from bridge construction.

ERP No. D–FHW–E40769–TN Rating EC2, TN–385 (Collierville-Arlington Parkway) Improvement Project, Construction from Mt. Pleasant Road to South of Interstate 40, Shelby and Fayette Counties, TN.

Summary: EPA expressed environmental concerns that wetlands and floodplain resources would be impacted by the proposed project and asked for detailed mitigation plans.

ERP No. D–FHW–J40139–CO Rating LO, Parker Road (CO–83)/I–225 Interchange Project (FCU–CX–083–1 (49)), Improvement between Peoria Street to Hampden Avenue, Funding, NPDES Permit and COE Section 404 Permit, City Aurora, Arapahoe County, CO.

Summary: EPA lacks objection to the project as proposed.

ERP No. D–SFW–K39038–NV Rating EO2, Lahontan Valley Wetlands Water Rights Acquisition Program, Implementation, Churchill County, NV.

Summary: EPA expressed environmental objections with the proposed action due to potential water quality impacts associated with agriculture drainwater. EPA requested that this issue be further addressed and mitigated in the final EIS.

ERP No. D–TVA–E07013–TN Rating EC2, Kingston Fossil Plant Alternative Coal Receiving Systems, New Rail Spur Construction near the Cities of Kingston and Harriman, Roane County, TN.

Summary: EPA expressed environmental concerns regarding potential earthen causeway fill, noise single-event documentation, completion of archaeological surveys, and consideration of other reasonable additional alternatives, and requested additional information be provided in the final EIS.

ERP No. D–USN–E11038–00 Rating EC1, USS SEAWOLF Submarine Shock Testing, Implementation, located offshore Mayport, FL or Norfolk, VA.

Summary: EPA expressed environmental concerns regarding the proposal, pending the results of the test monitoring.

ERP No. DA–FHW–E40108–NC Rating EC2, Smith Creek Parkway and Downtown Spur Construction, from NC–133 at Northeast Cape Fear River to US 74/Eastwood Road and US 117/Castle Hayne Road at Smith Creek to 3rd Street, Updated and Additional Information, Funding, Wilmington, New Hanover County, NC.

Summary: EPA noted information inadequacies that are in need of correction and has concerns about the acceptability of mitigation for segments A & B based on present wetlands mitigation planning problems for segment C.

Final EISs

ERP No. F–GSA–E81036–GA, Savannah Federal Building—United States Courthouse, Site Selection and Construction of Annex within the existing Federal Building Courthouse, Savannah, GA.

Summary: The concerns raised at the draft EIS stage were adequately addressed in the final EIS. Therefore, EPA had no objection to the project as proposed.

ERP No. F–ICC–J53004–MT, Tongue River Railroad Additional Rail Line Construction and Operation, Ashland to Decker, Approval, Rosebud and Big Horn Counties, MT.

Summary: The EPA concurs that the Four Mile Creek Alternative would be an environmentally preferable construction alternative to the Tongue River Railroad project's proposed route since it avoids disturbances to the environmentally sensitive section of the Tongue River below the Tongue River Dam, and would eliminate the need to construct a tunnel and five bridges in the Tongue River canyon. EPA notes that site-specific analysis of river and wetland encroachment issues will be necessary during the 404 permit review of the proposed project.

ERP No. F–SFW–J64005–CO, Rocky Mountain Arsenal National Wildlife Refuge Establishment and Operation, Implementation, Adam County, CO.

Summary: EPA expressed environmental concerns regarding potential impact from hazardous waste on human health and the environment.

ERP No. F–USA–J11011–UT, Tooele Army Depot Disposal and Reuse of BRAC Parcel, Implementation, Salt Lake, Tooele and Utah Counties, UT.

Summary: The Army has adequately address previous EPA concerns

therefore, EPA has no objection to the project as proposed.

Dated: August 27, 1996.

B. Katherine Biggs

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–22239 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5472–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed August 19, 1996 Through August 23, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960394, Final EIS, COE, NC, Buckhorn Reservoir Expansion, Construction of a Dam to Impound Water on the Contentnea Creek, COE Section 404 Permit, City of Wilson, Wilson County, NC, Due: September 23, 1996, Contact: William Adams (910) 251–4748. This EIS was inadvertently omitted from the 8–23–96 Federal Register. The official 30 day NEPA wait period is calculated from 8–23–96.

EIS No. 960395, Final EIS, AFS, CA, Placerville Nursery Pest Management Plan, Implementation, Camino, El Dorado County, CA, Due: September 30, 1996, Contact: Susan Frankel (415) 705–2651.

EIS No. 960396, Final EIS, COE, DE, Delaware Coast from Cape Henlopen to Fenwick Island Feasibility Study, Rehoboth Beach and Dewey Beach Project, Storm Damage Reduction, Sussex County, DE , Due: September 30, 1996, Contact: Steve Allen (215) 656–6555.

EIS No. 960397, Final EIS, AFS, CO, Vail Ski Area Category III Development Plan, Implementation, Special-Use-Permit and COE Section 404 Permit Issuance, White River National Forest, Holy Cross Ranger District, Rocky Mountain Region, Eagle County, CO, Due: September 30, 1996, Contact: Loren M. Kroenke (970) 827–5715.

EIS No. 960398, Final EIS, COE, GA, SC, Savannah Harbor Navigation Project, Operation and Maintenance, Long Term Management Strategy Study, Chatham County, GA and Jasper County, SC, Due: September 30, 1996, Contact: William Bailey (912) 652–5781.

EIS No. 960399, Revised Draft EIS, SFW, CA, Multiple Species Conservation Program (MSCP) Planning Area, Issuance of Take Authorizations for Threatened and Endangered Species Due to Urban Growth, San Diego County, CA, Due: October 14, 1996, Contact: Mr. Gail Kobetich (619) 431–9440.

EIS No. 960400, Final EIS, USN, FL, Naval Training Center Orlando Disposal and Reuse, Implementation, Orange County, FL, Due: September 30, 1996, Contact: Ronnie Lattimore (803) 820–5888.

EIS No. 960401, Final EIS, DOE, WA, Hanford Site Tank Waste Remediation Systems (TWRS), Management and Disposal of Radioactive, Hazardous, and Mixed Wastes, NPDES Permit and Approval of Several Permits, in the City of Richland, Grant County, WA, Due: September 30, 1996, Contact: Carolyn C. Haass (509) 372–2731.

EIS No. 960402, Final EIS, FTA, NJ, Hudson River Waterfront Transportation Corridor Improvements, Funding, Transportation Systems Management, Light Rail Transit, Hudson and Bergen Counties, NJ, Due: September 30, 1996, Contact: Anthony G. Carr (212) 264–8973.

Dated: August 27, 1996.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–22240 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5602–8]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of proposed administrative settlements concerning the Odessa Drum Site, Ector County, Texas with the following settling parties:

Champion Technologies, Inc
BJ Services Company, U.S.A.
Petrolite Corporation

The settlements require the settling parties to pay the following amounts to the Hazardous Substances Superfund. Champion Technologies ($4,110,289.59), BJ Services Company, U.S.A. ($473,464.71), and Petrolite Corporation ($559,757.90). The settlements are designed to resolve the settling parties' past liability at the site through a covenant not to sue under Section 107 of CERCLA, 42 U.S.C. § 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlements. The Agency will consider all comments received and may modify or withdraw its consent to the settlements if comments received disclose facts or considerations which indicate that the settlements are inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

DATES: Comments must be submitted on or before September 30, 1996.

ADDRESSES: The proposed settlements and additional background information relating to the settlements are available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. Copies of the proposed settlements may be obtained from Carl Bolden, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6713. Comments should reference the Odessa Drum Superfund Site in Ector County, Texas and the following EPA Docket Nos. Champion Technologies (6–16–95), BJ Services Company (6–17–95), and Petrolite Corporation (6–18–95) and should be addressed to Carl Bolden at the address listed above.

FOR FURTHER INFORMATION CONTACT: John Dugdale, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–8027.

Dated: August 20, 1996.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 96–22265 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–P

[OPPT–59354; FRL–5394–1]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemptions (TME's) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38.

EPA has designated these applications as TME–96–5, TME–96–7, and TME–96–8. The test marketing conditions are described below.

DATES: This notice becomes effective August 22, 1996. Written comments will be received until (insert date 15 days after the date of publication in the Federal Register).

ADDRESSES: Written comments, identified by the docket number [OPPT–59354] and the specific TME number should be sent to: TSCA nonconfidential center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

Comments and data may be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified as [OPPT–59354]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

FOR FURTHER INFORMATION CONTACT: Shirley D. Howard, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447, 401 M St., SW., Washington, DC 20460, (202) 260–3780; e-mail: Howard.sd@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–96–5, TME–96–7, and TME–96–8. EPA has determined that test marketing of these new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the applications. All other conditions and restrictions described in these applications and in this notice must be met.

A notice of receipt of these applications was not published in advance of approval. Therefore, an opportunity to submit comments is being offered at this time. EPA may modify or revoke the test marketing exemptions if comments are received which cast significant doubt on its finding that these test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–96–5, TME–96–7, and TME–96–8. A bill of lading accompanying each shipment must state that the use of these substances are restricted to that approved in the TMEs. In addition, the applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substances produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substances.

TME-96-5, TME-96-7, and TME-96-8

Date of Receipt: TME 96-5, July 19, 1996, and TME's 96-7 and 8, July 29, l996. The extended comment periods will close (insert date 15 days after date of publication in the Federal Register).

Applicant: Reichhold Chemicals Inc.

Chemical: (G) Polyurethane Adhesive.

Use: (G) Industrial Adhesive.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: 12 months. Commencing on first day of commercial manufacture.

Risk Assessment: Possible concerns for lung effects and oncogenicity were mitigated by an expected lack of inhalation exposure. EPA identified no significant environmental concerns for these test market substances. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

A record has been established for this notice under docket number [OPPT–59354] (including comments and data submitted electronically as described above). A public version of this record, including printed versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA nonconfidential information center (NCIC), Rm. NEB–607, 401 M St., SW., Washington, DC 20460.

The official record of this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, test marketing exemptions.

Dated: August 22, 1996.

Paul J. Campanella,

Chief, New Chemicals Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 96–22241 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget (OMB) for Review

August 26, 1996.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, 44 U.S.C.

Section 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236, NEOB, Washington, D.C. 20503, (202) 395–0651. For further information, contact Dorothy Conway, Federal Communications Commission, (202) 418–0217.

Please note: The Commission has requested emergency review of this collection by September 12, 1996, under the provisions of 5 CFR Section 1320.13.

Title: Policy and Rules Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1966, CC Docket No. 96–98, First Report and Order.

Form No.: N/A.

OMB Control No.: 3060–0710.

Action: Revised Collection.

Respondents: Business or other for-profit entities.

Estimated Annual Burden: 12,500 respondents; 122 hours per response (avg.); 1,529,620 hours total annual burden.

Needs and Uses: In the First Report and Order in CC Docket 96–98, the Commission adopted rules and regulations to implement parts of Section 251 and 252 that effect local competition. Specifically, the Order requires incumbent local exchange carriers (''LECs'') to offer interconnection, unbundled network elements, transport and termination, and wholesale rates for retail services to new entrants; that incumbent LECs price such services at rates that are cost-based and just and reasonable; and that they provide access to rights-of-way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the burden estimates or any other aspect of the collection of information including suggestions for reducing the burden to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project, Washington, D.C. 20554.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–22196 Filed 8–29–96; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

August 26, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before October 29, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0397.

Title: Special Temporary authority, Section 15.7(a).

Form No.: None.

Type of Review: Extension of existing collection.

Respondents: Business/For Profit Institutions.

Number of Respondents: 2.

Estimated Time Per Response: 6 hours.

Total Annual Burden: 12 hours.

Needs and Uses: The information gathered is used to determine if the Commission should issue a special temporary authorization to operate an incidental, intentional or unintentional radiation device that does not conform to the provisions of Part 15. The proposed operation of the equipment must be in the public interest, be a unique type of station, or must be incapable of being established as a regular service; and the proposed operation cannot feasibly be conducted under the general provisions of Part 15. Information describing the intended operation of the proposed equipment is required to determine if the applicant should be issued a special temporary authorization.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–22197 Filed 8–29–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

General Counsel's Opinion No. 9; FICO Funding Sources

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Notice of FDIC General Counsel's Opinion No. 9.

SUMMARY: The FDIC has received inquiries on the availability of funding from FSLIC Resolution Fund (FRF) receiverships for Financing Corporation (FICO) to pay interest on its obligations. Specifically, one inquiry has questioned the availability of potential recoveries in the ''goodwill'' litigation currently pending against the government by some of the former RTC receiverships. This General Counsel Opinion sets forth the Legal Division's conclusions on the issues involved in determining the availability of funding for FICO interest payments from FSLIC Resolution Fund receiverships.

FOR FURTHER INFORMATION CONTACT: Pamela A. Shea, Assistant General Counsel, (202) 898–3521 or Linda L. Stamp, Counsel, Legal Division, (202)

898–7310, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Text of General Counsel's Opinion

General Counsel's Opinion No. 9—FICO Funding Sources

By: William F. Kroener, III, General Counsel

Background

FICO is a mixed-ownership government corporation created in 1987 to recapitalize the Federal Savings and Loan Insurance Corporation (FSLIC) by issuing bonds to purchase capital stock or capital certificates issued by the FSLIC.[1] FICO was created in 1987 pursuant to the Competitive Equality Banking Act (CEBA), Pub. L. 100–86, as a way to augment the resources of the FSLIC, which had effectively been declared insolvent by the Federal Home Loan Bank Board (FHLBB) earlier that year. FICO is managed by a three-member directorate composed of the Director of the Office of Finance of the Federal Home Loan Banks and the presidents of two Federal Home Loan Banks (FHLBs).[2] FICO was authorized to issue bonds in an amount of up to $10.825 billion with an annual net borrowing limit of $3.75 billion.[3] FICO issued 30-year noncallable bonds in a principal amount of approximately $8.1 billion that mature in 2017 through 2019. FICO's authority to issue bonds ended on December 12, 1991.[4] Under the terms of FICO's contracts with its bondholders, FICO's bonds are not redeemable before maturity.[5] The FHLBs were required to invest in nonvoting capital stock to capitalize FICO.[6] FICO was required to invest in and hold in a segregated account noninterest bearing (zero coupon) securities having a total principal payable at maturity approximately equal to the aggregate amount of principal due at the maturity of the FICO bonds.[7] The FICO bonds bear interest at a fixed rate of 8.60% or higher depending on the series and date of issue.[8]

The FHLBs pay the administrative expenses of FICO according to a statutory formula and the term administrative expenses is defined to exclude interest, issuance costs and custodian fees.[9] FICO has limited sources of funding available to pay its interest and principal obligations because the obligations of the FICO and the interest payable on such obligations are not obligations of, or guaranteed as to principal or interest by the FHLBs, the United States, or the FSLIC Resolution Fund (FRF).[10] The FICO statute, as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), establishes the following as sources of funding for the interest, issuance costs and custodian fees on the FICO obligations:

(1) FICO assessments made prior to FIRREA; [11]

(2) FICO assessments on SAIF member Savings associations with the approval of the FDIC; [12]

(3) Liquidating dividends and payments made on claims received by FRF (as established under section 11A of the Federal Deposit Insurance Act) from receiverships, subject to the priority claim of the Resolution Funding Corporation (REFCORP) for the Funding Corporation Principal Fund (Principal Fund); [13]

(4) Exit fees paid on ''conversion transactions'' in which the resulting or surviving institution is not a SAIF member.[14]

The statute clearly provides that funds from a higher priority source are to be used to the extent available before moving to the next lower priority source.[15]

Priority of Claims to Liquidating Dividends and Payments

Today, the FRF consists of two distinct pools of assets and liabilities: [16] one composed of the assets and most of the liabilities of the FSLIC transferred to the FRF upon the dissolution of the FSLIC on August 9, 1989 (FRF–FSLIC) and the other composed of the assets and liabilities of the RTC transferred to the FRF upon the dissolution of the RTC on December 31, 1995 (FRF–RTC). The assets transferred from the RTC consist chiefly of the subrogated depositors' claims that the RTC acquired as it resolved the institutions within its jurisdiction, that is, thrifts that failed on or after January 1, 1989 through June 30, 1995.

The Legal Division interprets the language in section 21(f)(3) of the Federal Home Loan Bank Act (''FHLB Act'') concerning FICO's access to ''liquidating dividends and payments made on claims received by the FSLIC Resolution Fund (established under section 11A of the Federal Deposit Insurance Act) from receiverships'' [emphasis added] to encompass only the FRF–FSLIC. Although a facial reading of section 21(f)(3) of the FHLB Act does not explicitly distinguish between FRF–FSLIC and FRF–RTC, it is the Legal Division's view that the italicized language should be read as defining the FRF as established at the date of FIRREA's passage, which did not include any assets or liabilities of RTC. This reading fits squarely with the general statutory design established by FIRREA to resolve the thrift crisis by assigning responsibilities for failed and failing thrift institutions (pre-FIRREA and post-FIRREA) to each of two entities, RTC and FRF.

RTC was to resolve thrifts that failed after January 1, 1989, using $31.2 billion in off-budget funding provided to the RTC by the REFCORP and $18.8 billion from appropriations.[17] Congress created REFCORP in 1989 to provide funding for the RTC as a part of FIRREA.[18] RTC

[1] Competitive Equality Banking Act (CEBA), Pub. L. 100–86, Title III, amending § 21 of the Federal Home Loan Bank Act. 12 U.S.C. § 1441.

[2] Federal Home Loan Bank Act § 21(b), 12 U.S.C. § 1441(b).

[3] Federal Home Loan Bank Act § 21(e), 12 U.S.C. § 1441(e).

[4] Resolution Trust Corporation Refinancing, Restructuring and Improvement Act of 1991, § 104.

[5] *See* FICO Information Statement Supplement dated September 19, 1989.

[6] Federal Home Loan Bank Act § 21(d), 12 U.S.C. § 1441(d).

[7] Federal Home Loan Bank Act § 21(g), 12 U.S.C. § 1441(g).

[8] *See* FICO Information Statement Supplement dated September 19, 1989.

[9] Federal Home Loan Bank Act § 21(b)(7), 12 U.S.C. § 1441(b)(7).

[10] Federal Home Loan Bank Act § 21(e)(6), 12 U.S.C. § 1441(e)(6).

[11] Federal Home Loan Bank Act § 21(f)(1), 12 U.S.C. 1441(f)(1). Under the statute, FICO's initial source of funds were pre-FIRREA assessments, but those funds are exhausted.

[12] Federal Home Loan Bank Act § 21(f)(2), 12 U.S.C. § 1441(f)(2).

[13] Federal Home Loan Bank Act § 21(f)(3), 12 U.S.C. § 1441(f)(3) states:

Receivership proceeds To the extent the amounts available pursuant to paragraphs (1) and (2) are insufficient to cover the amount of interest payments, issuance costs, and custodial fees, and if the funds are not required by the Resolution Funding Corporation to provide funds for the Funding Corporation Principal Fund under section 1441b of this title, the Federal Deposit Insurance Corporation shall transfer to the Financing Corporation, from the liquidating dividends and payments made on claims received by the FSLIC Resolution Fund (established under section 1821a of this title) from receiverships, the remaining amount of funds necessary for the Financing Corporation to make interest payments.

[14] Federal Deposit Insurance Act § 5(d)(2)(E), 12 U.S.C. § 1815(d)(2)(E).

[15] Federal Home loan Bank Act § 21(f), 12 U.S.C. § 1441(f).

[16] Separate accounting for each pool is maintained by the FDIC.

[17] Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA''), Pub.L. 101–73, §§ 501 and 511.

[18] FIRREA amending § 21B of the Federal Home Loan Bank Act. 12 U.S.C. § 1441b. In a manner similar to the FICO, the administrative expenses of REFCORP are paid by the Federal Home Loan Banks (FHLBs) according to a statutory formula. 12 U.S.C. § 1441b(c)(7). The Principal Fund is fully

Continued

acquired no assets of the FSLIC and assumed liability only for certain guarantees of FHLBs' advances issued by the FSLIC, relating to thrifts that had not failed as of the date of passage of FIRREA.[19] RTC never had access to any funds provided by FICO to resolve the institutions within RTC's jurisdiction.[20] However, to the extent all other funding sources are insufficient to cover the amount of interest payments on its obligations, REFCORP is authorized to obtain the additional amount needed from the Secretary of the Treasury, which authorization was NOT granted to FICO.[21]

By comparison, FIRREA provided that all other liabilities of the FSLIC and all of the assets of the FSLIC were transferred to the FRF.[22] The FDIC succeeded the FSLIC as receiver or conservator for any thrift taken over by the government before January 1, 1989.[23] The liabilities to which the FRF succeeded consisted chiefly of the FSLIC's obligations under transactions resolving thrifts that failed prior to January 1, 1989, and the FSLIC's direct liability to depositors in thrifts that failed before that date. A further divergence in the treatment of the two FRF pools is illustrated by the fact that the FRF–FSLIC was given access to any funds borrowed by FICO beginning with the date of the enactment of FIRREA.[24]

If section 21(f)(3) of the FHLB Act were read to encompass liquidating dividends and payments on claims from RTC receiverships, the result would contradict the remaining statutory design. Under that interpretation, RTC assets would be used to pay for that portion of the thrift crisis that was expressly excluded from the RTC's jurisdiction. This view seems inconsistent with a Congressional intent that RTC's assets would not be used to pay for the portion the thrift crisis that Congress expressly excluded from the RTC's jurisdiction. Likewise, it would be inconsistent with Congressional intent to impose liability to pay the interest on the FICO obligations on the RTC assets, since the RTC received no FICO funding.

The Legal Division's view that payment of FICO's interest, issuance costs and custodian fees is limited to liquidating dividends from former FSLIC receiverships is consistent with the language in section 21B(f)(2)(D) of the FHLB Act, which contains the language that Congress used when it intended to have the FRF–RTC assets flow directly to REFCORP. This subsection states as follows:

> (D) Proceeds from sale of assets. To the extent the amounts available pursuant to subparagraphs (A), (B), and (C) are insufficient to cover the amount of interest payments, the FSLIC Resolution Fund shall transfer to the Funding Corporation any net proceeds from the sale of assets received from the Resolution Trust Corporation, which shall be used by the Funding Corporation to pay such interest.[25]

This subsection shows that Congress intended to separate the FRF–FSLIC from the FRF–RTC and that Congress identified the FRF–RTC as proceeds from the sale of a separate pool of assets intended to be used for different purposes than the FRF–FSLIC assets. Thus, although the assets and the liabilities of the RTC were transferred to the FRF when the RTC terminated, the RTC dissolution provisions require that after all outstanding liabilities of the RTC have been paid, the FRF is to transfer the net proceeds from the sale of the RTC assets to the REFCORP,[26] which provided $31.2 billion in initial funding to the RTC.[27] In addition, on a periodic basis, the net proceeds of former RTC asset sales are available to service REFCORP periodic interest obligations.[28] These provisions are consistent with the statutory pattern whereby the RTC received its primary funding from REFCORP, to which net proceeds of any excess RTC assets are to return.

This interpretation is supported by FICO' own post-FIRREA disclosure document in conjunction with the sale of its bonds, which does not mention RTC assets as a potential source of funds to pay interest. The disclosure states that ''the FDIC will transfer to FICO from the liquidating dividends and payments made on claims received by the FSLIC Resolution Fund (if any), the amount necessary for FICO to make interest payments, but only to the extent such funds are not required * * * by REFCORP.'' [29] When defining the FSLIC Resolution Fund, FICO disclosed the following information:

> The FSLIC Resolution Fund was established by FIRREA and has assumed all the assets and liabilities of FSLIC as of the date of enactment of FIRREA except for those expressly transferred to or assumed by RTC. These assets and liabilities primarily relate to FSLIC's case resolution activity prior to 1989, while RTC is responsible for the management and resolution of all cases involving the appointment of a conservator or receiver for an Insured Institution after January 1, 1989 and prior to August 9, 1992. To meet its obligations, the FSLIC Resolution Fund may use its assets, returns from receiverships, amounts borrowed by FICO, and insurance assessments on SAIF-Insured Institutions to the extent that they are not required for interest on Obligations of FICO and not required by REFCORP for defeasance of REFCORP's obligations. FIRREA authorizes the future appropriation from the U.S. Treasury of funds needed by the FSLIC Resolution Fund to satisfy its obligations. The FSLIC Resolution Fund will be managed by the FDIC as a separate fund and will terminate when its debts are paid and its assets are sold.[30]

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funded with zero coupon Treasury bonds purchased by REFCORP through capitalization from the FHLBs' mandatory stock purchases. *See* 12 U.S.C. § 1441b(e) and the audited financial statements confirming the existence of the zero coupon Treasury bonds. (Section 21B(e)(7) of the FHLB Act also required that SAIF assessment income be used, if necessary, to fund REFCORP's Principal Fund. *Id.* At 1441b(e)(7). Because REFCORP's Principal Fund is fully funded, assessment income from SAIFmember institutions is no longer required for REFCORP purposes.) The statutes provide separate funding for interest payments on the bonds, notes, debentures and similar obligations issued by REFCORP. 12 U.S.C. § 1441b(f). REFCORP collects the funding for interest from its earnings on assets not invested in Principal Fund; certain proceeds from the RTC to the extent available during its existence; from the FHLBs according to a statutory formula; through the net proceeds from the sale of assets transferred to the FRF by the RTC; and to the extent the other sources are insufficient, the Secretary shall pay the additional interest. In addition, when the FRF satisfies all of the liabilities of RTC, then the net proceeds of RTC asset sales are to be returned to REFCORP.

[19] Federal Home Loan Bank Act § 21A(h), 12 U.S.C. § 1441a(h), as added by § 501 of FIRREA.

[20] *See* generally Federal Deposit Insurance Act, § 11A (b)(3), 12 U.S.C. § 1821a(b)(3)) and Federal Home Loan Bank Act, § 21, 12 U.S.C. § 1441. Under section 1441(f)(3) and 1441b(7)(B), the Principal Fund could have received assets from FRF–FSLIC, if its other sources of funding had been insufficient. This appears to have been an isolated instance of ''seed money'' provided by what remained of the former FSLIC to the entity (RTC) created to resolve formerly FSLIC-insured institutions going forward. In contrast, there are no instances in the FIRREA statutory framework where funding flows from the RTC to the FRF–FSLIC.

[21] Federal Home Loan Bank Act § 21B(f)(2)(D), 12 U.S.C. § 1441b(f)(2)(D).

[22] Federal Deposit Insurance Act § 11A(a)(2)(A), 12 U.S.C. § 1821a(a)(2)(A).

[23] Federal Deposit Insurance Act § 11A(a)(5)(A), 12 U.S.C. § 1821a(a)(5)(A).

[24] Federal Deposit Insurance Act § 11A(b)(3), 12 U.S.C. § 1821a(b)(3).

[25] Federal Home Loan Bank Act § 21B(f)(2)(D), 12 U.S.C. § 1441b(f)(2)(D).

[26] Federal Home Loan Bank Act § 21A(m)(2), 12 U.S.C. § 1441a(m)(2); and Federal Deposit Insurance Act § 11A(e), 12 U.S.C. § 1821a(e). 12 U.S.C. § 1441a (m)(2) states:

> Case resolutions transferred Simultaneous with the termination of the Corporation as provided in paragraph (1), all assets and liabilities of the Corporation shall be transferred to the FSLIC Resolution Fund. Thereafter, if there are no liabilities of the Corporation outstanding, the FSLIC Resolution Fund shall transfer any net proceeds from the sale of assets to the Resolution Funding Corporation.

[27] Federal Home Loan Bank Act § 21B, 12 U.S.C. § 1441b.

[28] Federal Home Loan Bank Act § 21B(f), 12 U.S.C. § 1441b(f).

[29] FICO Information Statement dated September 19, 1989 at page 4.

[30] *Id.* at page 13.

FICO's disclosure document does not mention RTC assets transferred to FRF upon RTC dissolution as a source of funding for FICO.

Additional indications that proceeds from FRF-RTC receiverships were never intended to be a source of funding for FICO are found in subsection section 21A(i) of the FHLB Act as added by the Resolution Trust Corporation Completion Act in 1993 when Congress provided the final appropriation authority to the RTC. This subsection provides in part that ''if the aggregate amount of funds transferred to the [RTC] pursuant to this subsection exceeds the amount needed [for RTC and certain SAIF purposes,] such excess amount shall be deposited in the general fund of the Treasury.''

In the legislative history from the House Report showing the section-by-section analysis of section 21A(i) of the FHLB Act, Congress showed a clear intent that the money so provided be used for limited purposes. This report states as follows:

> Such funding can only be used to protect insured depositors or for the administrative expenses of the RTC. Shareholders of insured institutions in default may not benefit in any manner from such funding. In addition, any funds transferred to the RTC that are not needed for such purposes or for the Savings Association Insurance Fund (''SAIF'') must be deposited in the general fund of the Treasury.[31]

Finally, we note that in preparation for the transition when the RTC would cease to be a separate entity, the RTC and FDIC prepared a memorandum dated October 12, 1995 to the Thrift Depositor Protection Oversight Board (Oversight Board) addressing the future funding needs of the FDIC when it would succeed to the RTC's responsibilities.[32] In this memorandum, the FDIC and the RTC recognized that Congress had limited the uses of the money appropriated to the RTC. When the Oversight Board acceded to the request of the FDIC and RTC by its Resolution dated and effective October 18, 1995, the Oversight Board *inter alia* relied on the representations of the FDIC and RTC that there would be ''separate accounting with respect to the former FSLIC and former RTC portions of the FRF, the results for both of which would be contained in the FDIC's public quarterly financial statements, commencing in 1996'' and that ''the FDIC intends to return to the Treasury on an ongoing basis cash receipts that are over and beyond cash that is needed for operating purposes or cash that might be needed in the future to complete remaining disposition responsibilities.'' Neither FDIC nor RTC identified any possibility that any of these funds could be subject to a claim by FICO for its interest payments. The Oversight Board acceded to the request of the FDIC and RTC and in its Resolution relied on these representations. The FDIC has acted and continues to act in accordance with these representations.

Therefore for all of the reasons stated above, proceeds from RTC receiverships are not available to pay FICO's obligations. Consequently, recoveries by RTC receiverships in the ''goodwill cases'' (none of which arise out of former FSLIC receiverships) would not be available to FICO.

FRF Monies Subject to FICO Call

Next the meaning of the language, ''liquidating dividends and payments made on claims received by [FRF] * * * from receiverships,'' needs to be examined. This phrase on its face refers to the money that is distributed to the holders of claims against receiverships when the assets of the receiverships are sold, turned into cash proceeds and dividends are declared or payments are otherwise made to creditors.[33] For the reasons discussed above, FICO will have access only to liquidating dividends paid by former FSLIC receiverships to FRF–FSLIC.

It might be argued that the phrase ''payments made on claims received by the [FRF] from receiverships'' should also include, e.g., proceeds from the sale of assets acquired by the FRF–FSLIC through corporate purchase under assistance agreements or other amounts recovered by the FRF–FSLIC in connection with assistance transactions, such as upon the disposition of a warrant position in an assisted entity. This argument is flawed because the FRF did not receive the assets or amounts in question *from a receivership* but from the assisted entity, often long after the time that the assisted transaction commenced (at the time of appointment of the receiver) and even after the receivership may have been terminated. Accordingly, it is our view that the phrase is meant to encompass only payments in the nature of liquidating dividends. Further, assets, such as stock warrants, that were owned by the FSLIC in its corporate capacity passed to the FRF, not any individual receivership, by operation of law under Section 11A. The proceeds from these assets will not be available to FICO because they do not derive from ''liquidating dividends and payments made on claims received by [FRF] * * * *from* receiverships.'' (emphasis added).

Current Payment Stream

The Legal Division views the language of section 21(f)(3) of the FHLB Act as only referring at any given time to the current payment stream from receiverships as collected by the FRF-FSLIC[34] and does not require that all proceeds from receiverships be accumulated for the contingent claim of REFCORP and FICO whenever either might need this source of funding. Several reasons support this reading of the provision. First, the contingent nature of FICO's claim to this source of funding as contrasted with FRF's primary need for this source of money to pay the immediate and ongoing liabilities of the FSLIC is inconsistent with a Congressional intent that the payment stream be held or escrowed for the contingent future needs of FICO. The legislative history seems to show that Congress intended that FRF spend the receivership proceeds to pay the liabilities of FSLIC.[35] Second, FRF has lawfully spent money from this source since its inception and its financial results have been regularly reported to Congress and audited by General Accounting Office (GAO) without any questions being raised. The money received by FRF from this source has been spent to pay operating expenses,

[31] P.L. 103–204, Resolution Trust Corporation Completion Act, H.R. REP. 103–103(I), H.R. Rep. No. 103(I), 103RD Cong., 1ST Sess. 1993, 1993 U.S.C.C.A.N. 3040, 1993 WL 180206 (Leg. Hist.) in the Section-by-Section Analysis.

[32] Memorandum entitled Revised Funding Request and Recommendations to Dietra L. Ford, Executive Director, Thrift Depositor Protection Oversight Board, from Barry S. Kolatch, Vice President for Planning, Research, and Statistics, RTC, and William A. Longbrake, Deputy to the Chairman for Finance and Chief Financial Officer, FDIC, dated October 12, 1995.

[33] By statute since August 9, 1989, FRF has received funding from liquidating dividends and similar payments from receiverships. Section 215 of title II of FIRREA, 12 U.S.C. § 1821a(b)(2). FRF is partially funded through liquidating dividends and such payments, except to the extent that these funds are required by REFCORP or FICO pursuant to sections 1441b or 1441, respectively. Neither REFCORP nor FICO have required this money during FRF's existence.

[34] Federal Home Loan Bank Act § 21(f)(3), 12 U.S.C. § 1441(f)(3).

[35] *See* discussion of FSLIC Resolution Fund:

> To meet its obligations, this Fund may use its assets, returns from receiverships, amounts borrowed by FICO, and insurance assessments on SAIF members through 1991 that are not required for interest on FICO bonds and not required by REFCORP for defeasance of its bonds. Any additional funds needed will be provided by the Treasury. The Fund will terminate when its debts are paid and its assets are sold. 135 Cong. Rec. H5172 (A&P), 101st Congress, First Session, Arnold & Porter Legislative History: P.L. 101–73 Debate; Congressional Record—House Proceedings and Debates of the 101st Congress, First Session, Conference Report on H.R. 1278 Financial Institutions Reform, Recovery, and Enforcement Act, 1989, August 4, 1989; page 830.

assistance agreement liabilities, insured deposit claims, judgments, such amounts as were needed by SAIF for administrative and supervisory expenses from August 9, 1989 through September 30, 1992,[36] and any other liabilities to which FRF succeeded. Third, FRF is intended to dissolve when its assets are sold and liabilities paid.[37] FRF has no statutory requirement to continue to exist for speculative requirements of REFCORP or FICO. This factor seems to indicate that FRF had no duty to hold money for the requirements of REFCORP or FICO. Fourth, FRF is not directly liable for the FICO obligations, and the general assets of FRF are not available to FICO.[38] Section 21(f)(3) of the FHLB Act does not grant FICO a general claim to the assets of FRF.

The time relevant to the analysis in this instance is the date FICO's assessment revenues become insufficient to cover interest payments, issuance costs and custodial fees. Therefore, FICO only has access to the future payment stream from liquidating dividends of former FSLIC receiverships beginning on the date that FICO's assessments become insufficient to cover interest payments, issuance costs, and custodial fees. Accordingly, liquidating dividends paid to the FRF before the ''shortfall date'' could not generally be reached by FICO.

Conclusion

The determination of available funding sources for FICO cannot be made purely by reviewing the statutory provisions, rather the language must be interpreted in light of the entire statutory structure established to resolve the thrift crisis. The statutory scheme formed two separate entities—RTC and FRF. Later when the RTC terminated, two pools of assets and liabilities managed by the same entity remained—FRF–FSLIC and FRF–FRTC. The results of the arrangement Congress created shows the Congressional intent to separate the RTC and the FRF–FSLIC. Congress could have used only one agency and one fund but chose not to do so. Accordingly, we conclude that only the FRF–FSLIC is available to FICO under section 21(f)(3) of the FHLB Act. In addition, the phrase ''liquidating dividends and payments made on claims received by FRF'' includes only dividends paid to FRF from former FSLIC receiverships and not proceeds from the sale of assets acquired by FRF–FSLIC through corporate purchase or other amounts recovered by the FLSIC–FRF in connection with assistance transactions. Further, the quoted language only refers to the current payment stream from receiverships as collected by the FRF–FSLIC and there is no requirement to escrow those payments in anticipation of a need for them by FICO.

By Order of the Board of Directors dated at Washington, D.C., this 21st day of August, 1996.

Federal Deposit Insurance Corporation

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–22213 Filed 8–29–96; 8:45 am]

BILLING CODE 6714–01–P

[36] Federal Deposit Insurance Act § 11A(a)(2)(B), 12 U.S.C. § 1821a(a)(2)(B).

[37] Federal Deposit Insurance Act § 11A(f), 12 U.S.C. § 1821a(f).

[38] *See* Federal Home Loan Bank Act, § 21(e)(6). 12 U.S.C. § 1441(e)(6).

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 13, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Oak Bancorporation, Oakland, Iowa; to engage *de novo* in purchasing certain loans originated by affiliate banks and thereby make and service loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 26, 1996.

William W. Wiles

Secretary of the Board

[FR Doc. 96–22177 Filed 8-29-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue

concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 23, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Eberhardt, Inc., Elberton, Georgia; and JAM Family Partnership II, L.P., Elberton, Georgia, which is a second tier bank holding company subsidiary of Eberhardt, Inc.; to retain an additional 2.07 percent and prior approval to acquire an additional 1.37 percent of Pinnacle Financial Corporation, Elberton, Georgia, and thereby indirectly acquire First National Bank of Elberton, Elberton, Georgia, and Tri-County Bank of Royston, Royston, Georgia. Pro forma ownership will equal 25.24 percent.

In addition McConnell & Co., Elberton, Georgia, and JAM Family Partnership I, L.P., Elberton, Georgia, which is a second tier bank holding company subsidiary of McConnell and Co.; to acquire an additional 3.97 percent, for a total of 25.77 percent of the voting shares of Pinnacle Financial Corporation, Elberton, Georgia, and thereby indirectly acquire First National Bank in Elberton, Elberton, Georgia, and Tri-County Bank of Royston, Royston, Georgia.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Taylor Bancshares, Inc., North Mankato, Minnesota; to acquire 16 percent of the voting shares of First National Bank of Fairfax, Fairfax, Minnesota.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Saint Jo Bancshares, Inc., Saint Jo, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Financial Company of Saint Jo, Dover, Delaware, and thereby indirectly acquire The First National Bank of Saint Jo, Saint Jo, Texas.

In connection with this application First Financial Company of Saint Jo, Dover, Delaware, also has applied to become a bank holding company.

Board of Governors of the Federal Reserve System, August 26, 1996.

William W. Wiles

Secretary of the Board

[FR Doc. 96–22178 Filed 8-29-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Commission on Dietary Supplement Labels; Notice of Meeting #5

AGENCY: Office of Disease Prevention and Health Promotion.

ACTION: Commission on Dietary Supplement Labels: Notice of Meeting #5.

SUMMARY: The Department of Health and Human Services (HHS) is providing notice of the fifth meeting of the Commission on Dietary Supplement Labels. The Commission intends to hold its meeting on September 19, 1996 from 8:30 a.m. to approximately 4:30 p.m. E.D.T., and September 20, 1996 from 8:30 a.m. to 3:00 p.m. E.D.T. in Room G at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia 22091. The meeting is open to the public; seating is limited.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Ph.D., Executive Director, Commission on Dietary Supplement Labels, Office of Disease Prevention and Health Promotion, Room 738G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC 20201, (202) 690–7102.

SUPPLEMENTARY INFORMATION: Public Law 103–417, Section 12, authorized the establishment of a Commission on Dietary Supplement Labels whose seven members have been appointed by the President. The appointments to the Commission by the President and the establishment of the Commission by the Secretary of Health and Human Services reflect the commitment of the President and the Secretary to the development of a sound and consistent regulatory policy on labeling of dietary supplements.

The Commission is charged with conducting a study and providing recommendations for regulation of label claims and statements for dietary supplements, including the use of supplemental literature in connection with their sale and, in addition, procedures for evaluation of label claims. The Commission is expected to evaluate how best to provide truthful, scientifically valid, and non-misleading information to consumers in order that they may make informed health care choices for themselves and their families. The Commission's study report may include recommendations on legislation, if appropriate and necessary.

The Commission meeting agenda will include receipt and discussion of ad hoc Subcommittee reports, continuation of discussion of key issues related to labeling of dietary supplements, and identification of materials to be included in the Commission's forthcoming report.

The meeting is open to the public. If you will require a sign language interpreter, please call Sandra Saunders (202) 690–7102 by 4:30 p.m. E.D.T. on September 13, 1996.

Dated: August 26, 1996.

Linda D. Meyers,

Acting Deputy Director, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services.

[FR Doc. 96–22192 Filed 8–29–96; 8:45 am]

BILLING CODE 4160–17–M

Centers for Disease Control and Prevention

[INFO–96–25]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. National Hospital Discharge Survey—(0920–0212)—Extension The National Hospital Discharge Survey (NHDS), which has been conducted continuously by the National Center for Health Statistics, CDC, since 1965, is the principal source of data on inpatient utilization of short-stay, non-Federal hospitals and is the only annual source of nationally representative estimates on the characteristics of discharges, the lengths of stay, diagnoses, surgical and non-surgical procedures, and the patterns of use of care in hospitals in various regions of the country. It is the benchmark against which special programmatic data sources are compared. Data collected through the NHDS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field. NHDS data have been used extensively in the production of goals for the Year 2000 Health Objectives and the subsequent monitoring of these goals. In addition, NHDS data provide annual updates for numerous tables in the Congressionally-mandated NCHS report, *Health, United States.* Data for the NHDS are collected annually on approximately 275,000 discharges from a nationally representative sample of noninstitutional hospitals, exclusive of Federal, military and Veterans' Administration hospitals. The data items collected are the basic core of variables contained in the Uniform Hospital Discharge Data Set (UHDDS). Data for approximately half of the responding hospitals are abstracted from medical records while the remainder of the hospitals supply data through commercial abstract service organizations, state data systems, in-house tapes or printouts. There is no actual cost to respondents since hospital staff who actively participate in the data collection effort are compensated by the government for their time.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Medical Record Abstracts Primary Procedure Hospitals	77	250	0.0833	1604
Alternate Procedure Hospitals	134	250	0.01666	558
In-House Tape or Printout Hospitals	103	12	0.18333	227
Update Form (Abstract Service Hospitals)	164	2	0.0333	11
Quality Control Forms	50	40	0.1666	33
Induction Forms	40	1	2	80
Total				2,513

Dated: August 26, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–22259 Filed 8–29–96; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Intent to Reallot Part C—Protection and Advocacy Funds to States for Developmental Disabilities Expenditures

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of Intent to Reallot Fiscal Year 1996 Funds, pursuant to Section 125 and Section 142 of the Developmental Disabilities Assistance and Bill of Rights Act, as amended (Act).

SUMMARY: The Administration on Developmental Disabilities herein gives notice of intent to reallot funds which were set aside in accordance with Section 142(c)(5) of the Act. Of the $806,682 which was set aside for technical assistance and Indian Consortiums, $534,360 was utilized for technical assistance and $136,161 was awarded to an Indian Consortium. Therefore, the balance of $136,161 has been released for reallotment.

Any State or Territory which wishes to release funds or cannot use the additional funds under Part C—Protection and Advocacy program for Fiscal Year 1996 should notify Joseph Lonergan, Director, Division of Formula, Entitlement and Block Grants, Office of Program Support, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, in writing within thirty (30) days of the date of this promulgation. This notice is hereby given in accordance with Sections 125 and 142 of the Act.

FOR FURTHER INFORMATION CONTACT: Joseph Lonergan on (202) 401–6603.

The proposed reallotment for Part C—Protection and Advocacy program are set forth below:

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

[Fiscal Year 1996 Reallotment]

	Protection and Advocacy	Reallotment	Revised allotment
Alabama	$443,606	$2,328	$445,934
Alaska	254,508	1,336	255,844
Arizona	339,119	1,780	340,899
Arkansas	257,788	1,353	259,141
California	2,180,763	11,437	2,192,200
Colorado	274,211	1,439	275,650

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

[Fiscal Year 1996 Reallotment]

	Protection and Advocacy	Reallotment	Revised allotment
Connecticut	259,173	1,360	260,533
Delaware	254,508	1,336	255,844
Dist. of Columbia	254,508	1,336	255,844
Florida	1,056,678	5,546	1,062,224
Georgia	601,121	3,155	604,276
Hawaii	254,508	1,336	255,844
Idaho	254,508	1,336	255,844
Illinois	912,328	4,788	917,116
Indiana	514,368	2,700	517,068
Iowa	265,501	1,393	266,894
Kansas	254,508	1,336	255,844
Kentucky	405,062	2,126	407,188
Louisiana	466,781	2,450	469,231
Maine	254,508	1,336	255,844
Maryland	337,787	1,773	339,560
Massachusetts	445,718	2,339	448,057
Michigan	843,318	4,426	847,744
Minnesota	357,873	1,878	359,751
Mississippi	318,030	1,669	319,699
Missouri	462,189	2,426	464,615
Montana	254,508	1,336	255,844
Nebraska	254,508	1,336	255,844
Nevada	254,508	1,336	255,844
New Hampshire	254,508	1,336	255,844
New Jersey	508,648	2,669	511,317
New Mexico	254,508	1,336	255,844
New York	1,384,019	7,264	1,391,283
North Carolina	635,921	3,337	639,258
North Dakota	254,508	1,336	255,844
Ohio	1,006,478	5,282	1,011,760
Oklahoma	306,490	1,609	308,099
Oregon	263,401	1,382	264,783
Pennsylvania	1,040,683	5,462	1,046,145
Rhode Island	254,508	1,336	255,844
South Carolina	368,740	1,935	370,675
South Dakota	254,508	1,336	255,844
Tennessee	495,627	2,601	498,228
Texas	1,501,473	7,880	1,509,353
Utah	254,508	1,336	255,844
Vermont	254,508	1,336	255,844
Virginia	502,496	2,637	505,133
Washington	384,796	2,019	386,815
West Virginia	276,991	1,454	278,445
Wisconsin	451,493	2,370	453,863
Wyoming	254,508	1,336	255,844
American Samoa	136,161	715	136,876
Guam	136,161	715	136,876
Puerto Rico	813,736	4,271	818,007
Virgin Islands	136,161	715	136,876
Northern Mariana Islands	136,161	715	136,876
Palau**	103,124	.....	103,124
AZ DNA People's Legal Services	136,161	715	136,876
Total	26,047,479*	136,161	26,183,640

* Includes the award of $136,161 to an Indian Consortium (AZ DNA People's Legal Services) in accordance with Section 142(b).

** Palau's allotment is reduced to 75% of its Fiscal Year 1995 allotment, in accordance with the Compact of Free Association with the Republic of Palau.

Dated: August 12, 1996.

Reginald F. Wells,

Deputy Commissioner Administration on Developmental Disabilities.

[FR Doc. 96–22337 Filed 8–29–96; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 90N–0172]

Medical Devices; Development of Design Control Inspectional Strategies; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting intended to explore and develop strategies to be utilized by FDA's investigators when inspecting a medical device facility relative to design controls, after issuing the final quality system regulation. The purpose of the meeting is to obtain information from the medical device industry and other members of the public about their perspective and practical experience in exercising design controls. This meeting is intended to provide an opportunity to work with FDA towards constructing an investigational model for design controls which will become the basis for future establishment inspections.

DATES: The public meeting will be held on September 12, 1996, from 8:30 a.m. to 4:30 p.m. There is no cost to attend, however, due to space limitations, registration is required and must be submitted by September 4, 1996.

ADDRESSES: The public meeting will be held at the Parklawn Bldg., 5600 Fishers Lane, conference room M, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Trautman, Office of Compliance, Center for Devices and Radiological Health (HFZ–341), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4648, ext. 126, FAX number 301–594–4672. Persons interested in attending this meeting should FAX a request for participation no later than the close of business on Wednesday, September 4, 1996. Please include name, firm affiliation if any, job title, address, telephone number, and FAX number to the contact person. Please do not plan to attend this meeting unless you have received a confirmation from the Center of Devices and Radiological Health (CDRH) affirming your participation. This confirmation will be sent via FAX on a first-come-first-served basis.

SUPPLEMENTARY INFORMATION: Under notice and comment rulemaking procedures initiated in 1990 to implement certain provisions of the Safe Medical Devices Act of 1990, FDA plans to issue a final rule revising the current good manufacturing practice (CGMP) requirements for medical devices and incorporating them into a quality system regulation. This action will add preproduction design controls to the CGMP regulation and achieve consistency with quality system requirements worldwide.

FDA is interested in obtaining further information regarding perspectives and practical experience in exercising design controls. Accordingly, FDA's CDRH is conducting a grassroots regulatory partnership meeting on September 12, 1996, with interested parties in the device industry and members of the public. This meeting is being conducted in accordance with President Clinton's reinventing government initiatives. The purpose of the meeting will be to address specific issues and to explore and develop strategies with regard to how design controls will be inspected for compliance with the regulation by FDA's investigators at the field District Offices. FDA headquarters and District personnel will attend and participate in the meeting.

Industry, FDA participants, and members of the public will be arranged into working teams to review and develop strategies. This is an opportunity for the regulated industry and others to work with front-line FDA's regulators towards constructing an investigational model for design controls which will become the basis for all future establishment inspections.

Upon completion of the grassroots regulatory meeting, FDA will formulate its design control inspectional strategy and make this strategy document available to the public through the publication of a notice of availability in the Federal Register.

Dated: August 27, 1996.

Joseph A. Levitt,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 96–22284 Filed 8–28–96; 9:56 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4021–N–02]

Office of Administration; Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: The due date for comments is: September 6, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that if the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a proposed ''Application Kit for Economic Development and Supportive Services (EDSS) Program Grants''.

This Program provides grants to public housing agencies and Indian housing authorities (collectively HAs) to (1) provide economic development opportunities and supportive services to assist residents of public and Indian housing to become economically self-sufficient and (2) to provide supportive services to assist the elderly and disabled persons to live independently or to prevent premature or unnecessary institutionalization. HUD published a Notice of Funding Availability (NOFA) which announced a total of $ million in grant funds. The grants will be up to three years in duration.

The Department has submitted the proposal for the collection of information to OMB for review, as required by the Paperwork reduction Act (44 U.S.C. Chapter 35). The Department has requested emergency clearance of the collection of information, as described below, with approval being sought by September 3, 1996:

(1) Title of the information collection proposal:

Application Kit—Economic Development Support Services Program

(2) Summary of the collection of information:

Each respondent seeking to obtain an EDSS grant would be required to submit current information, as listed below as:

1. Fact Sheet—information about the respondent: name, address, telephone, the local housing authority information, Congressional district number and representatives names, and partner agency information.
2. Program Summary, Budget Outline, Budget Narrative, Timetable and Milestones
3. Descriptions: Partnership Agency Commitments, Resident Involvement/ Employment, Job Placement, Training Program, Need for Supportive Services, Measuring Success
4. Certifications
5. SF–424, SF–424A
6. Form HUD–2880
7. Disclosure of Lobbying Activities
8. Annual Report.

(3) Description of the need for the information and its proposed use:

To appropriately determine which HAs should be awarded the EDSS grants, certain information is necessary as stated in the EDSS Notice of Funding Availability.

(4) Description of the likely respondents, and proposed frequency of response to the collection of information:

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Reporting Burden:

Number of respondents: 350.

Total burden hours: 14,212.

(@ 11 hours per response): 11.

Total Estimated Burden Hours: 14,212.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 22, 1996.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 96–22154 Filed 8–29–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–4065–N–03]

Office of the Assistant Secretary for Community Planning and Development; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: September 6, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed Notice of Funding Availability (NOFA) for the Economic Development Initiative (EDI) Grants program. HUD seeks OMB approval by September 17, 1996, in order to implement this program by September 30, 1996.

Under the EDI Grants program, HUD will provide approximately $50 million to encourage eligible units of general local government to submit proposals for funding for eligible economic development projects, including projects for site specific economic development projects, economic development revolving loan funds, housing development projects and proposals for community development financial institutions. By law, EDI grant may only be made in conjunction with Section 108 loan guarantee commitments which are made in accordance with 24 CFR 570.702.

Eligible applicants are CDBG entitlement units of general local government, and nonentitlement units of general local government which are eligible to receive Section 108 loan guarantees.

Eligible uses of EDI grants and related Section 108 loan guarantee assistance are those authorized under 24 CFR 570.703. The National Objectives criteria of 24 CFR 570.208 and the economic development project guidelines of 24 CFR 570.209 also apply.

Section 108(q) of P.L. 93–383 authorizes the EDI grant program and provides selection criteria for HUD to use in selecting proposals from applications submitted in response to a Notice of Fund Availability in the Federal Register. The information collected is essential in order to rate and rank proposals, in keeping with the statutory provisions, and in order to determine the eligibility of applicants and proposed activities. The selection criteria are: (1) Level of distress; (2) extent of need for EDI grants to support the Section 108 loan and the project; (3) quality of the plan; (4) capacity of the applicant to carry out the plan successfully; (5) leveraging of other public and private resources; (6) the extent to which the plan follows a comprehensive and coordinated approach in addressing the community and economic development needs of the applicant and furthers neighborhood revitalization; (7) innovation and creativity.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35):

(1) Title of the information collection proposal :

''Notice of Fund Availability (NOFA) and Program Guidelines for the Economic Development Initiative (EDI) Grants.''

(2) Summary of the collection of information:

Each applicant for EDI grant funds is required to submit current information, as listed below:

1. Form S.F. 424—Application for Federal Assistance;

2. Certifications—Concerning the use of federal funds for lobbying required under 24 CFR Part 87;

3. Narrative statement providing a description of the proposed activities to be carried out with EDI grant and Section 108 Loan Guarantee funds; and

4. A statement describing how the proposed activities addresses each of the seven selection criteria.

After the Congressional notification of grant awards is made, recipients are required to collect information which satisfies the record keeping requirements of the Community Development Block Grant program and the Section 108 loan guarantee program.

(3) Description of the need for the information and its proposed use:

The information collected is essential in order to rate and rank proposals, in keeping with the statutory provisions and the selection criteria published in a NOFA, and in order to determine the eligibility of applicants and proposed activities. Based upon the competitive ranking of all applicants, applicants are funded in rank order.

After grant award, information collection is essential to access program grant funds through the Line of Credit and Control system (LOCCS) and to document program compliance.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

Eligible applicants are CDBG entitlement units of general local government, and nonentitlement units of general local government which are eligible to receive Section 108 loan guarantees.

The estimated number of respondents who can meet the requirements of this NOFA is 150. The proposed frequency of the collection of information for the application is one-time. The application is a discretionary act. The proposed frequency of the collection of information to access funds through LOCCs and to document program compliance after grant approval will be based on the recipient's program design and management system, but for estimation purposes is expected to be no more than once a week on average.

(5) Estimate of the total reporting and record keeping burden that will result from the collection of information:

Reporting Burden:

a. Number of Respondents to Notice of Funding Availability: 150.

Total Burden Hours—Application: 6,000.

(@ 40 hours per application response)

b. Estimated Number of Grant Recipients: 40.

Total Burden Hours—electronic funds transfer, recordkeeping and reporting: 6,240.

(@ 2 hours per week per recipient)

Total Estimated Burden Hours: 12,240.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 22, 1996.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 96–22155 Filed 8–29–96; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4076–N–02]

Office of Public and Indian Housing; Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Public and Indian Housing—HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: The due date for comments is: September 3, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within four (4) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a proposed NOFA announcing the availability of $480 million for the HOPE VI Program. HUD seeks to implement this initiative as soon as possible.

Under the HOPE VI Program, HUD will provide grants for the purpose of enabling the demolition of obsolete public housing developments or portions thereof, the revitalization (where appropriate) of sites (including remaining public housing units) on which such developments are located, replacement housing which will avoid or lessen concentrations of very low-income families, and tenant-based assistance for the purpose of providing the replacement housing and assisting tenants to be displaced by the demolition.

HUD intends that the assistance will contribute to the goal of transforming public housing by changing the physical shape of public housing, establishing positive incentives for residents, enforcing tough expectations, lessening concentrations of poverty, and forging partnerships with other agencies, local government nonprofit organizations, and private businesses in the community.

The Department has submitted the proposal for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Department has requested emergency clearance of the collection of information, as described below:

(1) Title of the information collection proposal:

NOFA—Public Housing Demolition, Site Revitalization and Replacement Housing Grants (HOPE VI).

(2) Summary of the collection of information:

Each respondent requesting HOPE VI funding will be required to submit an application as described in Section V of the NOFA. This will include:

1. Narratives that respond to requests for information regarding the current condition of the obsolete public housing, a description of the proposed demolition and revitalization, proposals for self-sufficiency programs and management policies, the local and National impact of the obsolete public housing, the capability of the PHA to carry out the revitalization plan, relationships with residents, the community, and development partners, and financing of the proposal.

2. Evidence of a public meeting with residents and community members.

3. A demolition/disposition application of approval letter.

4. HOPE VI Budget, Form HUD–52825–A.

5. PHA Board Resolution for Submission of HOPE VI Application, Form HUD–52820–A.

6. Other standard forms as follows: SF–424, Application for Federal Assistance; HUD–50070, Certification for a Drug-Free Workplace; SF–LLL, Disclosure of Lobbying Activities; HUD–2880, Recipient Disclosure/Update Report; HUD–52481, Cooperation Agreement; HUD–50071, Anti-Lobbying

Certification for Contracts, Grants, Loans and Cooperative Agreement.

(3) Description of the need for the information and its proposed use: To appropriately determine which applicants should be provided funding, certain information is required. The application evaluation factors include the extent to which the proposal will lessen concentration of low-income residents, need, the quality of proposed self-sufficiency programs and management policies, the extent of participation by the community and development partners, the need for funding, and overall program quality, feasibility, and sustainability.

All 3,400 PHAs are eligible to apply. The estimated number of respondents is 500. The proposed frequency of the response to the collection of information is one-time. PHAs that administer 10,000 or more public housing units may submit one or two separate applications, as long as the total amount requested does not exceed $40 million.

(5) Estimate of the total reporting and record keeping burden that will result from the collection of information:

Reporting burden:

Number of respondents: 500.

(@ 61 hours per response)

Total Estimated Burden Hours: 30,500.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 26, 1996.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 96–22215 Filed 8–29–96; 8:45 am]

BILLING CODE 4210–33–M

[Docket No. FR–4124–N–01]

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1998 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 23, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 96–22024 Filed 8–29–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–96–1610–00: G6–0204]

High Desert Management Framework Plan Amendment and Record of Decision for Lake Abert Area of Critical Environmental Concern, Notice of Availability

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act, section 202(f) of the Federal Land Policy and Management Act, and 43 CFR part 1610, the Lakeview District has completed the plan amendment process covering a proposal to designate the Lake Abert and the surrounding vicinity as an Area of Critical Environmental Concern (ACEC). The final decision and special management actions to be implemented have been documented in a combined Approved Plan Amendment/Record of Decision (ROD) document and are available for review.

The Approved Plan Amendment addresses resource management over the next 10–15 years for approximately 123,000 acres of public land and 101,700 acres of reserved mineral estate administered by the BLM located approximately 30 miles north of the town of Lakeview, Oregon. That portion of the planning area officially designated as an ACEC includes approximately 49,900 acres of BLM-administered lands.

DATES: The ACEC designation and management direction specified in the Approved Plan Amendment/ROD is effective August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Paul Whitman, BLM, Lakeview District Office, P.O. Box 151, Lakeview, Oregon 97630 (Telephone: 541–947–6110). Copies of the Approved Plan Amendment/ROD may also be obtained by contacting this person at the above address.

SUPPLEMENTARY INFORMATION: The Approved Plan Amendment/ROD focuses on management goals, objectives, and special management direction for BLM-administered lands within about 49,900 acres of public lands designated as an ACEC. Four resource values (wildlife, visual, cultural, and ecological processes) were found to require special management attention within the ACEC area. Major management changes include: restricting off-highway vehicle (OHV) use (to existing roads and trails), salable and locatable mineral extraction, and new rights-of-way (ROW) location within the entire ACEC. Additional seasonal or temporary OHV closures could occur within the ACEC in the future, but would require the publication of separate Federal Register notices. OHV use has previously been restricted within approximately 14,500 acres of the ACEC area by earlier Federal Register notices (dated December 28, 1981, and January 22, 1988). This OHV designation represents a net change of approximately 35,400 acres formerly classified as open within the Lakeview Resource Area in these Federal Register notices, now being classified as limited. This notice fulfills the requirements of Executive Orders 11644 and 11989 and 43 CFR Part 8340.

Livestock grazing would continue to be restricted within that portion of Abert Rim Wilderness Study Area (WSA) falling within the ACEC (approximately 7,500 acres), as well as within most riparian zones and ecologically sensitive areas (approximately 1,500 acres) within the ACEC. Mineral leasing would be closed within the northern portion of the ACEC (approximately 18,000 acres) and restricted within the remainder of the ACEC (approximately 31,900 acres).

With the exception of visual resource management (VRM), management activities within the remainder of the planning area (approximately 73,100 acres) would not change from that specified in the existing land use plan.

VRM classifications for the entire planning area would be more accurately categorized as follows: Class I (approximately 22,925 acres), Class II (approximately 57,690 acres), and Class III (approximately 42,380 acres).

Those individuals, organizations, native American tribes, and agencies with a known interest in the plan have been sent a copy of the Approved Plan Amendment/ROD. Reading copies of the document are available at the Lake, Klamath, and Harney County, Oregon, libraries and at the following BLM locations: Office of External Affairs, Main Interior Building, Room 5600, 18th and C Streets, NW, Washington DC 20240, and Public Room, Oregon State Office, 1515 SW 5th, Portland, Oregon 97201. Persons desiring a copy of the document should contact the point of contact listed above.

Dated July 22, 1996.

Mark Lawrence,

Acting District Manager.

[FR Doc. 96–22146 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–33–P

[AK–020–1220–04–P]

Recreation Fee Collection at Fortymile Management Area Bureau of Land Management (BLM) Developed Campgrounds

The Bureau of Land Management (BLM) will begin fee collection at the following campgrounds during the summer of 1996 (on or about 1 September):

Eagle Campground, Mile 162 Taylor Highway (Eagle, AK)

Walker Fork Campground, Mile 82 Taylor Highway

West Fork Campground, Mile 49 Taylor Highway

Fees at all of the sites are $6.00 per night, with golden age passport half-price.

Direct questions and responses to: Jeff Roach, Fortymile Management Area, Bureau of Land Management, P.O. Box 309, Tok, Alaska 99780–0309, Tel: (907) 883–5121.

Dated: August 23, 1996.

Dee R. Ritchie,

Northern District Manager.

[FR Doc. 96–22179 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–84–P

[ID–017–06–5440–00–D012]

Notice of Intent, Resource Management Plan Amendment

ACTION: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to 43 CFR Part 1600, the Lower Snake River District Office, Bureau of Land Management, proposes to amend the Jarbidge Resource Management Plan (RPM) to change several parcels totaling 1851.59 acres, from a retention category to a transfer category. The public lands are described as follows:

Boise Meridian, Idaho

T. 5 S., R. 10 E.,
  Section 29: NW¼NE¼, N½NW¼,
T. 14 S., R. 10 E.,
  Section 12: SE¼SE¼,
  Section 13: E½NE¼,
T. 15 S., R. 10 E.,
  Section 11: W½SW¼,
  Section 13: NE¼NW¼,
  Section 14: NW¼NW¼,
T. 5 S., R. 11 E.,
  Section 17: NW¼SW¼,
  Section 18: SE¼SE¼,
  Section 29: Lot 8,
  Section 32: Lot 2, E½NW¼,
T. 6 S., R. 11 E.,
  Section 6: SE¼SW¼, SW¼SE¼,
T. 16 S., R. 11 E.,
  Section 21: SE¼NE¼,
  Section 22: SW¼NW¼, NE¼NW¼,
T. 8 S., R. 13 E.,
  Section 12: N½SW¼NW¼
T. 9 S., R. 13 E.,
  Section 28: SW¼NW¼,
T. 10 S., R. 13 E.,
  Section 1: Lots 6, 8,
  Section 2: Lots 6, 8,
T. 12 S., R. 13 E.,
  Section 3: NW¼SW¼,
  Section 22: SW¼SW¼,
  Section 26: SE¼SW¼,
  Section 27: SW¼NE¼, NW¼NW¼, SE¼,
  Section 34: NE¼NW¼,
  Section 35: NE¼NW¼,
T. 8 S., R. 14 E.,
  Section 7: NE¼SW¼,
T. 13 S., R. 14 E.,
  Section 25: NW¼SW¼,
  Section 26: SE¼SW¼,

Also, the amendment will consider changing wording in the RMP to clarify that rejection of Carey Act (CA) and Desert Land Act (DLA) applications will result in the lands no longer being available for CA/DLA applications. The present wording addresses this provision only for relinquishment of applications. In addition, wording will be added to allow more flexibility for disposal generally within the resource area, but not allowing disposal within current WSA's, ACEC's, SRMA's and other public lands reserved through withdrawals, classifications, and special designations.

DATES: Comments concerning the plan amendment must be received by October 14, 1996.

ADDRESSES: Written comments concerning this plan amendment should be sent to the BLM Area Manager, Jarbidge Resource Area Office, 2620 Kimberly Road, Twin Falls, Idaho 83301–7975.

FOR FURTHER INFORMATION CONTACT: Mike Austin, Realty Specialist, at the above address, or telephone (208) 736–2350. The hours of availability are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The preliminary issues identified to date for analysis in the proposed amendment are: (1) The potential impacts on resources if the public lands were made available for disposal, and (2) the public interest to be served by transferring certain public lands into private ownership. The general planning criteria from the Jarbidge RMP will be used to focus the amendment process and to guide decision making. These criteria are: (1) Social and economic values; (2) plans, programs, and policies of other Federal, State, and local government agencies, and Indian tribes; (3) existing laws, regulations, and BLM policy; (4) future needs and demands for existing or potential resource commodities and values; (5) public input; (6) public welfare and safety; (7) past and present use of public and adjacent lands; (8) public benefits of providing goods and services in relation to cost; (9) quantity and quality of noncommodity resource values; and (10) environmental impacts. The following resources will be considered in preparation of the amendment: Realty, wildlife, range, cultural, minerals, watershed/soils, threatened/endangered species, and hazardous materials. Staff members representing each resource will make up the planning team. Proposed changes in the RMP transfer designations are not known to be controversial at this time. No public meetings are presently scheduled. Documents relevant to the planning process are available for public review at the address provided above.

Dated: August 19, 1996.

Jerry L. Kidd,

District Manager.

[FR Doc. 96–22083 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Receipt of Application and Availability of a Recirculated Draft Environmental Impact Report/Environmental Impact Statement for Issuance of Permits To Allow Incidental Take of Threatened and Endangered Species Within the Multiple Species Conservation Program Planning Area in San Diego County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice announces the receipt of an application and the availability of a Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement for the proposed issuance of incidental take permits, pursuant to the Endangered Species Act of 1973, as amended, for species federally listed as threatened or endangered. The proposed take would occur due to urban development in southwestern San Diego County, California. The City of San Diego has submitted an application, and the County of San Diego, the Cities of Chula Vista, Coronado, Del Mar, and Santee, and the Otay Water District (applicants) intend to apply to the U.S. Fish and Wildlife Service within the foreseeable future for incidental take permits pursuant to the Endangered Species Act.

The applications include a regional Multiple Species Conservation Program Plan and individual Subarea Plans and Implementing Agreements. The Multiple Species Conservation Program is intended to conserve listed and unlisted species, thereby reducing the uncertainty associated with development and future species' listings.

The U.S. Fish and Wildlife Service anticipates that each of the applicants will request permits for 12 listed animals: the threatened western snowy plover (*Charadrius alexandrinus nivosus*), coastal California gnatcatcher (*Polioptila californica californica*), bald eagle (*Haliaeetus leucocephalus*), and the red-legged frog (*Rana aurora draytoni*); and the endangered Riverside fairy shrimp (*Streptocephalus woottoni*), California brown pelican (*Pelecanus occidentalis californicus*), American peregrine falcon (*Falco peregrinus anatum*), light-footed clapper rail (*Rallus longirostris levipes*), California least tern (*Sterna antillarum*), southwestern willow flycatcher (*Empidonax traillii extimus*), least Bell's vireo (*Vireo bellii pusillus*), and southwestern arroyo toad (*Bufo microscaphus californicus*).

The U.S. Fish and Wildlife Service also anticipates that each applicant will request assurances for future incidental take, should it become necessary, of 5 endangered plants, 12 plants and 1 animal proposed for listing, and 55 other unlisted species (29 plants, 18 birds, 3 reptiles, 3 mammals, and 2 invertebrates). These species would be listed on the permits, with take authorization effective upon listing. Plants would be covered by the permits to the extent that take of plants is prohibited by the Endangered Species Act of 1973, as amended. The exact number of species for which assurances are sought may change between the draft and final Environmental Impact Report/Environmental Impact Statement.

The Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement evaluates the effects on the human environment expected to occur from proposed issuance of the permits. Adoption of the Multiple Species Conservation Program Plan, and adoption of the Concept Plan for the Otay Valley Regional Park within the Multiple Species Conservation Program planning area, would be at the programmatic level. Project level actions, including adoption of Subarea Plans, are evaluated for the County of San Diego, and the Cities of San Diego, Chula Vista, Coronado, Del Mar, and Santee. Another proposed action evaluated in the document is the adoption of the County of San Diego's Biological Mitigation Ordinance. Incidental take resulting from the above actions would be minimized and mitigated by implementation of the regional Multiple Species Conservation Program Plan.

Federal approval of the Multiple Species Conservation Program Plan is required pursuant to the special section 4(d) rule for the coastal California gnatcatcher. Incidental take of the coastal California gnatcatcher is allowed under section 4(d) of the Endangered Species Act of 1973, as amended, if take results from activities conducted in accordance with the California Natural Community Conservation Planning Act, the Natural Community Conservation Planning Process Guidelines, and the Natural Community Conservation Planning Southern California Coastal Sage Scrub Conservation Guidelines provided that all of the issuance criteria for incidental take permits have been met.

The Multiple Species Conservation Program and Draft Joint Environmental Impact Report/Environmental Impact Statement are being recirculated due to project changes that warrant issuance of new documents with new analyses. Earlier drafts of the documents were made available to the public during spring of 1995 (60 FR 25734).

DATES: Written comments on the Multiple Species Conservation Program Plan, Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement, and City of San Diego Implementing Agreement should be received on or before October 15, 1996.

ADDRESSES: Comments should be addressed to Mr. Gail Kobetich, Field Supervisor, Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue, Carlsbad, California 92008. Comments also may be sent by facsimile to telephone (619) 431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Gilbert, Fish and Wildlife Biologist, at the above address; telephone (619) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement should immediately contact Ms. Gilbert. Copies of this Draft Joint Environmental Impact Report/ Environmental Impact Statement have been sent to City and County libraries in the greater San Diego area, and to all agencies and individuals who participated in the scoping process or requested copies. In addition, copies of the Multiple Species Conservation Program Plan and City of San Diego Implementing Agreement are available at public libraries and can be obtained by contacting the City of San Diego Clean Water Program, 600 B Street, Suite 500, San Diego, California 92101, telephone (619) 533–4200. All documents can be viewed, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Carlsbad Field Office (see ADDRESSES) and the City of San Diego's Clean Water Program Office.

Background

Under section 9 of the Endangered Species Act of 1973, as amended, and its implementing regulations, wildlife listed as threatened or endangered are protected from ''taking.'' The Endangered Species Act of 1973, as amended, defines take, in part, as killing, harming, or harassing listed wildlife. U.S. Fish and Wildlife Service regulations further define harm to include significant habitat modification that results in death or injury of listed wildlife (50 CFR 17.3). Under limited

circumstances, the U.S. Fish and Wildlife Service may issue permits to take listed wildlife if such taking is incidental to, and not the purpose of, otherwise lawful activities. The taking prohibitions of the Endangered Species Act of 1973, as amended, do not apply to listed plants on private lands unless such take would violate State law. Regulations governing permits are in 50 CFR 17.22 and 17.32. Under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, the U.S. Fish and Wildlife Service may issue incidental take permits for listed animals for which an approved habitat conservation plan has been prepared. Among other criteria, issuance of such permits must not jeopardize the existence of listed species, both plant and animal.

The proposed action would allow incidental take of listed animals over a 50-year period. Take would occur on approximately 314,900 acres of habitat within the 581,600-acre planning area. Approximately 102,400 acres of the planning area is already developed. To mitigate the impacts of the proposed take, the applicants propose establishment of a 171,917-acre preserve within the boundaries of a Multiple Habitat Planning Area. Twenty-four habitats are represented in the Multiple Habitat Planning Area, including 6 rare or protected habitats. In addition, 85 species are expected to be adequately protected under the Multiple Habitat Planning Area.

The Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement considers the environmental consequences of 5 alternatives, including the applicants' habitat conservation plan (the Multiple Species Conservation Program Plan) and the no action alternative. Under the no action or no project alternative, the regional Multiple Species Conservation Program Plan would not be implemented. Jurisdictions would either avoid take of listed species within the planning area or apply for individual permits under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, on a project-by-project basis. Existing land use and environmental regulations would apply to all projects proposed within the planning area. Existing regulatory practices require mitigation for impacts to sensitive species and habitats resulting in lands being set aside for open-space preservation. Analyses indicate that the amount of land potentially conserved within the Multiple Species Conservation Program planning area under the no action alternative would be similar to that conserved under the proposed action (Multiple Habitat Planning Area). However, under the no action alternative, greater habitat fragmentation would likely occur because the lands set aside for open-space preservation would not be assembled in coordination with a regional preserve design.

Other alternatives consider different preserve configurations. The coastal sage scrub scenario would conserve 84,900 acres. The coastal sage scrub alternative would include 21 habitats, providing adequate protection for 2 habitats, neither of which is rare. Twenty-six species would be covered under the coastal sage scrub alternative. The biologically preferred scenario would conserve 167,000 acres. The biologically preferred alternative would include 24 habitats, adequately protecting 9. Of these 9 habitats, 7 are considered rare. Seventy-three species are expected to be adequately protected under the biologically preferred alternative. The public lands scenario would conserve 147,000 acres. The public lands alternative would include 24 habitats and adequately protect 6, all 6 of which are rare. Thirty-five species are expected to be adequately protected under public lands.

Local jurisdictions would implement their respective portions of the Multiple Species Conservation Program Plan. Preserve establishment would be a cooperative effort among Federal, State, and local governments and private landowners. These groups would manage habitat on certain lands they currently own and on additional lands acquired for the preserve. Additional lands within the preserve would be acquired as compensation for impacts to habitat both inside and outside the preserve. Lands would be acquired from willing sellers.

In addition to off-site mitigation, take within the preserve would be avoided or minimized through local land-use regulation, environmental review, and resource protection guidelines. Land-use regulations would emphasize avoidance by limiting encroachment onto sensitive biological resources. Long-term preserve management plans would be prepared to address habitat management and land-use issues. The Multiple Species Conservation Program Plan provides guidelines for vegetative restoration and reintroduction, fencing, signs, fire management, grazing, predator and exotic species control, insects and disease, lighting, and other factors.

Each jurisdiction would sign an individual Implementing Agreement with the U.S. Fish and Wildlife Service and California Department of Fish and Game to identify the specific responsibilities and assurances of each party in implementing the Multiple Species Conservation Program Plan. Although each applicant has not yet completed an Implementing Agreement, all Implementing Agreements will follow a model. Because the Implementing Agreement is a legal contract to ensure that all actions in the Subarea Plans are implemented, the effects of individual Implementing Agreements should be the same as the effects of the corresponding Subarea Plans. If late submission of individual Implementing Agreements reveals effects significantly different from those analyzed in the Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement, the comment period would be reopened.

Should take authorizations be approved, each jurisdiction would then exercise its land-use review and approval powers in accordance with its Implementing Agreement and the Multiple Species Conservation Program. The 5 percent limit on interim loss of coastal sage scrub, imposed as part of the Natural Community Conservation Planning Program and special section 4(d) rule for the gnatcatcher, would be replaced by the conditions of each jurisdiction's permit and Implementing Agreement.

Each jurisdiction would be expected to adopt the final configuration of the Multiple Species Conservation Program preserve within its subarea boundary and adopt the recommendations of the Multiple Species Conservation Program through amendment of its General Plan or other applicable plans. Zoning would be retained or properties rezoned, as needed, and zoning regulations amended to reflect the preserve boundaries and to achieve consistency with the Multiple Species Conservation Program Plan. The Multiple Species Conservation Program guidelines for compatible land uses in and adjacent to the preserve are expected to be incorporated into the General Plan, zoning regulations, and approval process for projects, including adoption of appropriate mitigation guidelines. Procedures and regulations for interim controls will be necessary to address activities that would potentially impact sensitive habitats prior to issuance of permits to individual jurisdictions.

This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended, and National Environmental Policy Act regulations (40 CFR 1506.6). All comments received will become part of the public record and may be released.

Dated: August 23, 1996.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 96–22040 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

[AG Order No. 2049–96]

Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation

AGENCY: Department of Justice.

ACTION: Notice.

EFFECTIVE DATE: August 23, 1996.

FOR FURTHER INFORMATION OR TO PROVIDE COMMENT CONTACT: Lisalyn R. Jacobs, Counsel, Office of Policy Development, Department of Justice, 10th Street & Constitution Avenue, N.W., Washington, D.C. 20530, telephone (202) 514–9114.

SUPPLEMENTARY INFORMATION: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, H.R. 3734, which the President signed on August 22, 1996, vests in the Attorney General the authority to designate the kinds of government-funded community programs, services or assistance that are necessary for protection of life or safety and for which all aliens will continue to be eligible. This Order implements that authority.

Background

Section 401 provides a new rule that an alien who is not a ''qualified alien,'' as defined in § 431 of the Act, is not eligible for any ''Federal public benefit''—which, in general, means

(a) any grant, contract, loan, professional license or commercial license provided by a federal agency or through appropriated federal funds; or

(b) any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit or any other similar benefit for which payments or assistance are provided to individuals, house-holds or families by a federal agency or through appropriated federal funds.

Section 411 also makes certain non-qualified aliens ineligible for state and local public benefits unless the state enacts new legislation after August 22, 1996 that affirmatively provides for such eligibility. In addition, § 403 of the Act makes qualified aliens ineligible for specific means-tested federal benefit programs for a five-year period after their entry into the United States as a qualified alien.

In addition to certain statutory exceptions, the Act authorizes the Attorney General to establish limited exceptions to these provisions for the following kinds of benefits:

Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

This authority appears in several places in the Act, including: § 401(b)(1)(D), with respect to federal public benefits; § 403(c)(2)(G), with respect to the five-year limited eligibility for federal means-tested public benefits; and § 411(b)(4), with respect to state and local public benefits. (This authority also appears in § 423(d)(7) in the context of new requirements with regard to individuals who execute an affidavit of support on behalf of a sponsored alien.)

Attorney General Review

As required by the statute, the Department of Justice has conducted preliminary consultations with other federal agencies regarding the scope and interpretation of these provisions and their proper application. Given the great variety of federal, state and local programs conducted or supported at the community level, including those administered by private non-profit organizations, and the limited time available, the Department's consultation process is still ongoing. At my direction, the Department is seeking additional, more specific recommendations from all appropriate federal agencies, from representatives of state and local governments, and from the public.

Given the immediate effective date of provisions of the Act, I have decided to provide a ''provisional specification'' of programs, services and assistance that will be exempt from the limitations on alien eligibility discussed above, based upon preliminary consultations with appropriate federal agencies and departments. This ''provisional specification'' is effective immediately and will continue in effect pending adoption of a revised specification, if necessary, after further consultations. Should ongoing consultations indicate that further refinements in this specification are appropriate under the Act, I will revise it accordingly.

Specification

Therefore, by virtue of the authority vested in me as Attorney General by law, including Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, I hereby specify that:

1. I do not construe the Act to preclude aliens from receiving police, fire, ambulance, transportation (including paratransit), sanitation, and other regular, widely available services and, for that reason, I am not making specifications of such programs, services or assistance. It is not the purpose of this Order, however, to define more specifically the scope of the public benefits that Congress intended to deny certain aliens either altogether or absent my specification and nothing herein should be so construed.

2. The government-funded programs, services or assistance specified in this Order are those that: deliver in-kind (non-cash) services at the community level, including through public or private non-profit agencies or organizations; serve purposes of the type described in paragraph 3, below, for the protection of life and safety; and do not condition the assistance according to the individual recipient's income or resources, as discussed in paragraph 4, below.

3. Included within the specified programs, services or assistance determined to be necessary for the protection of life and safety are:

(a) Crisis counseling and intervention programs, services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity, or treatment of mental illness or substance abuse;

(b) Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused or abandoned children;

(c) Programs, services or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;

(d) Soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance;

(e) Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability or substance abuse assistance necessary to protect life or safety;

(f) Activities designed to protect the life and safety of workers, children and youths, or community residents; and

(g) Any other programs, services, or assistance necessary for the protection of life or safety.

4. The community-based programs, services or assistance specified in

paragraphs 2 and 3 of this Order are limited to those that provide in-kind (non-cash) benefits and are open to individuals needing or desiring to participate without regard to income or resources. Programs, services or assistance delivered at the community level, even if they serve purposes of the type described in paragraph 3 above, are not within this specification if they condition (a) the provision of assistance, (b) the amount of assistance provided, or (c) the cost of the assistance provided on the individual recipient's income or resources.

Dated: August 23, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–22233 Filed 8–29–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 15, 1995, Celgene Corporation, 7 Powder Horn Drive, Warren, NJ 07059, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396)	I
Amphetamine (1100)	II

The firm plans to manufacture small quantities of 2,5-dimethoxyamphetamine using biocatalysis to develop, manufacture and sell high value added compounds to pharmaceutical and agrochemical industries and amphetamine for distribution of the bulk active substances to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 29, 1996.

Dated: August 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22218 Filed 8–29–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 25, 1996, Ciba-Geigy Corporation, Pharmaceuticals Division, Regulatory Compliance, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724).

The firm plans to manufacture finished product for distribution to this customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 29, 1996.

Dated: August 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22219 Filed 8–29–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 22, 1996, and published in the Federal Register on May 30, 1996, (61 FR 27099), Lonza Riverside, 900 River Road, Conchohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Lonza Riverside to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22148 Filed 8–29–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Correction

As set forth in the Federal Register (FR Doc. 96–14057) Vol. 61, No. 109 at page 28598, dated June 5, 1996, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer for certain controlled substances. The listing of controlled substances for which Penick Corporation applied should not have included the basic classes of controlled substances listed below:

Drug	Schedule
Cocoa Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II
Ethylmorphine (9190)	II

Therefore, Penick Corporation no longer wishes to be registered for the above listed controlled substances and they are hereby deleted from the list of controlled substances for which Penick Corporation made application to manufacture in bulk.

Dated: August 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22149 Filed 8–29–96; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated June 27, 1996, and published in the Federal Register on July 5, 1996, (61 FR 35265), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Research Triangle Institute to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 22, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22150 Filed 8–29–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 21, 1996, and published in the Federal Register on May 30, 1996, (61 FR 27099), Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Roche Diagnostic Systems, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22152 Filed 8–29–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and States:

Volume III

Alabama
AL960055 (August 30, 1996)

Volume V

Texas
TX960117 (August 30, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA960001 (MARCH 15, 1996)
MA960002 (MARCH 15, 1996)
MA960003 (MARCH 15, 1996)
MA960005 (MARCH 15, 1996)
MA960006 (MARCH 15, 1996)
NA960007 (MARCH 15, 1996)
MA960008 (MARCH 15, 1996)
MA960009 (MARCH 15, 1996)
MA960010 (MARCH 15, 1996)
MA960017 (MARCH 15, 1996)
MA960018 (MARCH 15, 1996)
MA960019 (MARCH 15, 1996)
MA960020 (MARCH 15, 1996)
MA960021 (MARCH 15, 1996)
New York
NY960002 (MARCH 15, 1996)
NY960003 (MARCH 15, 1996)
NY960004 (MARCH 15, 1996)
NY960005 (MARCH 15, 1996)
NY960006 (MARCH 15, 1996)
NY960007 (MARCH 15, 1996)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 23rd day of August 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–21920 Filed 8–29–96; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments

concerning the proposed extension of the information collection request for the 1,2-Dibromo-3-Chloropropane 29 CFR 1910.1044. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 29, 1996. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection technique or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 96–10, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Vivian Allen at (202 219–8076.

SUPPLEMENTARY INFORMATION:

I. Background

The 1,2-Dibromo-3-Chloropropane Standard and its information collection is designed to provide protection for employees from the adverse health effects associated with occupational exposure to 1,2-dibromo-3-chloropropane. The standard requires employers to monitor employee exposure to 1,2-dibromo-3-chloropropane (DBCP), to monitor employee health and to provide employees with information about their exposures and the health effects of injuries. In addition employers are required to notify OSHA Area Directors of regulated areas and of emergencies.

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in the 1,2-Dibromo-3-Chloropropane Standard. Extension is necessary to provide continued protection to employees from the health hazards associated with occupational exposure to DBCP.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: 1,2-Dibromo-3-Chloropropane.

OMB Number: 1218–0101.

Agency Number: Docket Number ICR 96–10.

Affected Public: Business and other for-profit, Federal and State government, Local or Tribal governments.

Total Respondents: Since the Environmental Protection Agency suspended all registration of end use of DBCP, there are no respondents.

Frequency: On Occasion.

Total Responses: 0.

Average Time Per Response: 0.

Estimated Total Burden Hours: 1.

Estimated Capital, Operation/Maintenance Burden Cost: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 22, 1996.

Adam M. Finkel,

Director, Directorate of Health Standards Programs.

[FR Doc. 96–22224 Filed 8–29–96; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits application under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) has received a request for a waste management permit to be issued under the Antarctic Conservation Act of 1978 to Forum International for a sky diving expedition of up to 40 people to the South Pole, Antarctica.

FOR FURTHER INFORMATION CONTACT: Ms. Nadene Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On July 10, 1996, the National Science Foundation received a waste permit application from: Forum International Inc., Friendship Expedition '97, Application for Waste Disposal Permit, Prepared for: NSF Office of Polar Programs, Date: June 28, 1996.

A. Background of Forum International, Inc.

Forum International, Inc. (FII) was founded in 1965 as a non-profit educational organization. Forum is dedicated to providing a world-wide forum for education, research and action on a transdisciplinary supra-national and ecosystemic basis with special emphasis on environmental integrity, social responsibility, human health and fitness in their widest sense and the ecosystemic interrelation among these various factors.

B. Profile of Expedition Leaders and Demonstration of Ability

FII's Technical Director and Expedition Leader for the Friendship Expedition is Robert D. ''Bob'' Christ of West Chester, PA USA. Bob is an ATP rated pilot with over 4,000 hours of logged flight time. He is also a United States Parachute Association-rated Accelerated Freefall Instructor/Examiner with 1,400 logged skydives as well as a FAA-certified Senior Parachute Rigger. Bob is a veteran of two North Pole Skydiving Expeditions.

C. Equipment to be Used

The Friendship Expedition originates in Punta Arenas, Chile and travels aboard an IL–78 (or functionally equivalent where equipment is specified) to the South Pole where our expedition members will exit at an altitude of 18,000 ft. MSL. Awaiting our arrival at the South Pole will be an AN–74 STOL (Short Take-Off and Land) ski-equipped jet transport. Upon dropping the personnel at the South Pole, the IL–78 will proceed to the blue-ice runway at Patriot Hills and await the arrival of the expeditioners from the Pole. Once the expeditioners arrive at Patriot Hills aboard the AN–74, they will board the IL–78 for the return trip to Punta Arenas. Motorized equipment will be limited to the IL–78 and AN–74. Two 30man Arctic tents will be used as housing for the ground crew of the AN–74 as well as the expeditioners at the South Pole. Propane heating for cooking and temperature control will be used within the tents.

D. Trip Profile and Objectives

The trip is broken into two segments associated with the operation of the individual aircraft. The AN–74 will travel from Punta Arenas to King George Island and refuel for the trip to the South Pole. It will then land at Patriot Hills and refuel from internal tank storage then proceed to the South Pole to set up base camp to await the arrival of the expeditioners. Once the expeditioners are prepared for evacuation, the crew of the AN–74 will break camp and fly all to Patriot Hills for equipment change. The AN–74 will then refuel from fuel aboard the IL–78 and proceed to King George Island then on to Punta Arenas for the termination of the expedition.

The IL–78 will leave Punta Arenas with 40 expeditioners in route to the South Pole. After checking the winds at the Pole and making a flight at 500 feet for altimeter calibration, the aircraft will climb to the exit altitude of 18,000 feet for exit. After dropping the expeditioners, the IL–78 will proceed to Patriot Hills to set up camp and await the arrival of the expeditioners. Upon arrival of the expeditioners, the crew of the IL–78 will break camp and proceed back to Punta Arenas with the expeditioners aboard. This profile will be accomplished within three days.

VHF radio communications will be maintained in accordance with procedures established by the Standing Committee on Antarctic Logistics and Operations of the Council of Managers of National Antarctic Programs. Proper notification will be given of visits to the South Pole Station so as to properly coordinate flight operations.

E. Fuel Use and Emissions

Fuel for this expedition will be limited to the local equivalent of AIWAIN–8 Aviation Jet Fuel and Propane LPG. The jet fuel will be aboard and consumed in the IL–78 as well as the AN–74. Jet fuel will be stored internally within the IL–78's cargo hold (the IL–78 is a tanker version of the popular IL–76—the backbone of the Russian air cargo industry). The AN–74 will store fuel internally as well as in the metric version of 55 gallon drums within its cargo hold. Emissions will be limited to that consumed by the drive sections of the propulsion turbines of the aircraft. The propane usage will be limited to heating and cooking stoves within the tents at the respective camp locations at the South Pole and Patriot Hills.

F. Other Waste Generation and Disposal

The only other waste products generated during this operation will be food refuge and human wastes. All solid wastes will be carried aboard the aircraft to receive proper disposal back at Punta Arenas. Human fecal matter will receive the same treatment as other solid waste. All liquid refuse will be buried in snow pits in accordance with the provisions of 45 CFR Part 671. However, no wastes will be disposed of in the vicinity of the South Pole Station and surrounding research sites.

G. Compliance With 45 CFR Part 671

All US citizen expedition members will receive copies of 45 CFR Part 671 and will know its provisions in order to be on The Friendship Expedition. the responsible member and point of contact for this expedition is as follows: Robert D. ''Bob'' Christ, 115B East Biddle Street, West Chester, PA 19380, Phone: (610)431–3237, e-mail: forum@chesco.com

All citizens of other nationalities will comply with that country's regulatory requirements, but in no instance will they be in violation of the environmental provisions of 45 CFR Part 671.

H. Itinerary for the Expedition

On or about, January 4, 1997 AN–74 leaves Punta Arenas for King George Island then on to Patriot Hills where they will rest for the trip to the Pole. On or about, January 5, 1997 AN–74 leaves Patriot Hills for the South Pole and sets up camp outside of NSF compound. On or about, January 6, 1997 IL–78 leaves Punta Arenas for the South Pole, drops expeditioners and proceeds to Patriot Hills.

On or about, January 1, 1997 AN–74 leaves the South Pole with expeditioners and travels to Patriot Hills. The expeditioners then change equipment for their return trip to Punta Arenas. AN/4 refuels and proceeds to King George Island then on to Punta Arenas for the termination of the expedition.

I. Analysis of Environmental Impact

The exposure of pollutants to the Antarctic Environment will be limited to emissions from the turbines of the jet aircraft and emissions from propane stoves within the camp sites. All specially Protected Areas as well as Sites of Special Scientific Interest will be avoided. The Aircraft flight routes will travel mostly over routes established by the Standing Committee on Antarctic Logistics and Operations of the Council of Managers of National Antarctic Programs. All of the stopover points are base locations where current permanent bases are maintained. The Friendship Expedition's marginal Cumulative Impact Effects from previous operations by other operators are minimal. There will be no incineration of any waste products. All equipment and baggage will be inspected for the presence of exotic organisms before leaving Punta Arenas and same will be eliminated before departure for Antarctica. Since the planned stopover points are essentially ice-bound, the risk of impacting terrestrial fauna and flora are minimal. The environmental impact of this operation will be transitory and minimal.

Safety and Contingency Plans

A. Fuel Spill Contingency Plan

Abroad the AN–74, fuel will be stored in the metric equivalent of 55 gallon drums. These drums are made to Russian military specifications to be air-dropped and are extremely rugged. If fuel is spilled, it will be limited to a maximum of the contents of the drums. Fuel absorbent mats and drip pans will be used during refueling operations. The batteries aboard the aircraft for system operations as well as batteries for portable radios are contained in separate compartments from other pollutants. Spill kits will be carried aboard the aircraft in case of accidental spillage from the aircraft machinery or battery leakage.

B. Emergency Evaluation and Medical Considerations

A total of two equipped doctors will be abroad the aircraft for this operation and will arrived with the expedition members. All airborne operations will be conducted so that if injury does occur, immediate evaluation can be accomplished. Food and warming tents will be established at the camps at Patriot Hills and the South Pole. Short wave radio communications will be maintained at all times between base camp in Punta Arenas and the 2 field camp locations at Patriot Hills and the South Pole. All aircraft are equipped with survival equipment and emergency supplies.

C. Monitoring and Audit Arrangements

Proper accounting of the fuel used as well as any ending inventory will be maintained. All items taken from Punta Arenas will be inventoried at the beginning of the expedition and either consumed or brought back for proper disposal. Documents and accounting records are available at any time for

inspection by representatives of the National Science Foundation or USAP.

Supplemental Factors

A. Participant Qualifications and Minimum Experience Requirements

In order to participate on this expedition, the participants will require a minimum of 500 parachute jumps. Also, they are required to undergo Flight Physiological Training under a program approved by the aviation board of their respective country. There will be approximately 5 high-profile members of the expedition who are not experienced skydivers who will be accompanying an experienced tandem skydiving instructor who will be responsible for their safety and conduct. Further training on Antarctic Operations will be conducted before departure from Punta Arenas. The majority of the participants are veterans of one of our North Pole Skydiving Expeditions and are experienced in cold weather operations.

B. Non-Interference With Other Scientific Projects

The Friendship Expedition will exercise caution not to interfere with projects at the South Pole Station as well as any other encountered along the travel route.

C. Conclusion

The Friendship Expedition represents no more than a minor or transitory impact upon the Antarctic Environment. This expedition is being undertaken and conducted by environmentally-responsible individuals with the goal of protecting and maintaining the Ecology of the Antarctic Continent for the generations to come.

Interested persons are asked to comment within 30 days of this notice.

Ms. Nadene Kennedy,

Permit Office.

[FR Doc. 96–22181 Filed 8–29–96; 8:45 am]

BILLING CODE 7555–01–M

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of amendment to a permit issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) Office of Polar Programs, has amended the waste management permit issued to Adventure Network International (ANI) under the Antarctic Conservation Act of 1978. The amendment is a modification to an existing permit which is not a material change to the terms and conditions of the permit.

FOR FURTHER INFORMATION CONTACT: Ms. Nadene Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On July 19, 1996, the National Science Foundation received a request from ANI to issue a new waste management permit for ANI operations within Dronning Maud Land and the Sor Rondone and surrounding mountains in Antarctica. The operations proposed, air transport of clients and members of some national antarctic programs and support of climbing expeditions, are substantively the same and supplement those described in the ANI permit 96WM2 for the period of December 27, 1995 to December 26, 2000. Considering the exemplary performance of ANI in the administration of the terms and condition of past permits, the current permit, and the minor nature of the request, the permit 96WM2 is amended to include the referenced locations of ANI operations for the pendency of the permit.

Erick Chiang,

Acting Deputy Director, Office of Polar Programs.

[FR Doc. 96–22180 Filed 8–29–96; 8:45 am]

BILLING CODE 7555–01–M

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by September 26, 1996. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1033.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. *Applicant:* R. Natalie P. Goodall, Sarmiento 44, 9410 Ushuaia, Tierra del Fuego, ARGENTINA.

Permit Application No. 97–002.

Activity for Which Permit is Requested: The applicant is a free-lance research biologist conducting research on marine mammals and birds in Tierra del Fuego, Argentina. This season the applicant will lecture onboard cruise ships visiting the Antarctic Peninsula and proposes to salvage skeletons and bones of cetaceans and marine birds (especially penguins) encountered during shore visits. The salvaged bones will be used to compare with those collected from similar species in Tierra del Fuego region. All salvaged materials will be stored in the applicant's research collection in Ushuaia, Argentina. No bones will be collected from large cetaceans, except earbones for identification purposes only.

Location: Antarctic Peninsula and adjacent islands.

Dates: December 1, 1995–April 30, 1997.

2. Applicant: Bill J. Baker, Department of Chemistry, Florida State University, 150 W. University Boulevard, Melbourne, Florida 32901.

Permit Application No. 97–004

Activity for Which Permit is Requested: Introduction of non-indigenous species into Antarctica.

The applicant proposes to take four slants each of four non-pathogenic microorganisms to McMurdo Station, for use exclusively in the Crary Lab, to perform antimicrobial assays on extracts from marine invertebrates. These microorganisms (*Asperguillus niger*,

Bacillus subtillis, Escherichia coli, and *Saccharomyces cerevisae*) will be handled using sterile techniques and will be disposed of by sterilization at the conclusion of the study.

Location: McMurdo Station, Ross Island, Antarctica.

Dates: October 1, 1996–February 28, 1997

3. *Applicant:* Douglas Quin, Wild Sanctuary, 13012 Henno Road, Glen Ellen, California 95442.

Permit Application No. 97–005.

Activity for Which Permit is Requested: Taking. The applicant is a participant in the Artist and Writer's Program and will make Digital Audio Tape (DAT) sound recordings of mammals and birds being studied by various researchers in the field this season. Although the applicant may need to be in close proximity to the wildlife to gain quality recordings, he plans to take care not to harass or otherwise upset the animals.

Location: Ross Island and McMurdo Sound vicinity.

Dates: November 1, 1996–December 21, 1996.

4. *Applicant:* Donald B. Siniff, Dept. of Ecology, Evolution and Behavior, 100 Ecology Building, University of Minnesota, 1987 Upper Buford Circle, St. Paul, Minnesota 55108. Permit Application No. 97–006.

Activity for Which Permit is Requested: Taking. Import into the U.S.

The applicant plans to tag and release approximately 350 Weddell adult seals and approximately 550 Weddell pups as part of a continuing investigation of the McMurdo Sound Weddell seal population, which was begun in the early 1960's and has continued to the present. In addition, blood and tissue samples will be taken from up to 200 individuals and imported to the U.S. for DNA extraction and toxins analysis. These samples are primarily to supplement future research into the paternity and genetic characteristics of the McMurdo populations specifically and Antarctic seals in general. Objectives of this research are 1) to continue the long-term tagging studies by tagging all pups born into the McMurdo Sound population and to replace tags on previously tagged individuals so they will not be lost from the tagged population, and 2) to update estimates of population parameters annually and to continue the analyses and test of hypotheses associated with this data base. Mark-recapture surveys, necessary to obtain all the estimates required for current capture-recapture models, will also be conducted.

A preliminary investigation into the feasibility of conducting lavage techniques using anesthesia will be performed to examine the prey utilization of Weddell Seals. Previous research of stomach samples from harvested seals indicated that Antarctic silver fish is the major prey constituent during the austral summer. Since stomach content is no longer a viable option, and otoliths from fecal samples are often too eroded for accurate age estimation, lavage techniques offer a non-lethal techniques of obtaining this data.

Location: McMurdo Sound vicinity, Antarctica.

Dates: October 1, 1996–September 30, 1997.

5. *Applicant:* Donald B. Siniff, Dept. of Ecology, Evolution and Behavior, 100 Ecology Building, University of Minnesota, 1987 Upper Buford Circle, St. Paul, Minnesota 55108. Permit Application No. 97–007.

Activity for Which Permit is Requested: Take. Import into the U.S. Enter Site of Special Scientific Interest.

The applicant proposes to enter the White Island Site of Special Scientific Interest (SSSI#18) to tag up to 15 adult Weddell seals, and tag and draw blood samples from approximately 5 Weddell pups, as part of a continuing population study. The White Island seal population has been a focus of interest dating to the early 1960's. This group of seals represents an isolated population that is very small and the evidence suggests it has very limited exchange of individuals with the McMurdo Sound population. Since intensive censusing was begun in the late 1980's, no new (tagged) adults have appeared in the population. Thus, the genetics of this population is of interest because it will increase understanding of such concepts as inbreeding depression and genetic drift.

Location: SSSI#18—North-west White Island, McMurdo Sound, Antarctica.

Dates: October 1, 1996–September 30, 1997.

6. *Applicant:* Phillip R. Kyle, Dept. of Earth & Environmental Science, New Mexico Tech, Socorro, New Mexico 87801. Permit Application No. 97–008.

Activity for Which Permit is Requested: Enter Site of Special Scientific Interest No. 11, Tramway Ridge, Mount Erebus.

The applicant proposes to access Tramway Ridge (SSSI#11) to measure the temperature of the soil as a means of monitoring the volcanic activity of Mount Erebus. In addition, as the only area of soil on Mount Erebus, he intends to measure the quantity of CO_2 in the soil and to measure its flux into the atmosphere. This will provide information on the degassing behavior of the magmatic system underlying Mount Erebus.

Location: Tramway Ridge, Mount Erebus, Ross Island (SSSI #11).

Dates: December 1, 1996–December 30.

7. *Applicant:* Wayne Z. Trivelpiece, Department of Biology, Montana State University, Bozeman, Montana 59717. Permit Application No. 97–009.

Activity for Which Permit is Requested: Taking, and Import into the U.S. The permit applicant proposes to capture up to 50 Adelie adults, from the pack-ice in the vicinity of Marguerite Bay, in order to collect diet samples using the water off-load technique. Birds will be released unharmed after handling.

Location: Pack ice in and around Marguerite Bay, Antarctic Peninsula.

Dates: January 1, 1997–March 15, 1997.

8. *Applicant:* David Ainley, H.T. Harvey & Associates, P.O. Box 1180, Alviso, California 95002. Permit Application No. 97–010.

Activity for Which Permit is Requested: Take; Import into the U.S.; Enter Specially Protected Area and Enter Sites of Special Scientific Interest.

The applicant is conducting research to attempt to explain why penguin populations have been decreasing in the Ross Sea, by intensive studies at colonies on Ross Island. This work will be incorporated into the long-term study of populations dynamics mentioned in the Royds management plan. The applicant proposes to enter Cape Crozier (SSSI #4) and Cape Royds (SSSI #1) for purposes of banding up to 2,500 Adelie chicks and 250 adults per year. Approximately, 45 adult Adelies per year will be fitted with radio transmitters to be worn for 2–3 weeks during January and then removed. Another 250 adults per year will be given PIT tags (Passively Interrogated Transponder). The applicant also proposes to capture 35 adult penguins on the beach each year at the three colonies of intensive study and 10 at Beaufort Island (SPA #4) to collect tissues for stable isotope analysis, pump stomachs, band chicks and look for banded emigrants from the Ross Island colonies. While conducting work on Adelie penguins, the team will re-band, as needed, a large number of South Polar Skuas to continue a population study begun in 1961.

The applicant plans to import into the U.S. penguin tissue samples and scavenge up to 165 chick carcasses to stable isotope analysis in the U.S., which will require several months to complete analysis.

Location: Cape Crozier (SSSI #4), Cape Royds (SSSI #1) and Cape Bird, Ross Island, and Beaufort Island (SPA #5), Ross Sea.

Dates: November 1, 1996–January 31, 2002.

8. *Applicant:* Gerald L. Kooyman, Center for Marine Biotechnology, and Biomedicine, Scripps Institution of Oceanography, University of California, San Diego, La Jolla, California 92093–0204. Permit Application No. 97–011.

Activity for Which Permit is Requested; Taking; Import into the U.S.; Enter Site Special Scientific Interest, and Enter Specially Protected Area. Ground counts will be made at two major Emperor colonies (Cape Washington and Coulman Island) and at a third smaller and most southern Emperor colony (Cape Crozier) bordering the Ross Sea. This is a continuation of the longest series of censuses of Emperor penguins in Antarctica. Cape Crozier remains small, less than 600 chicks, and its existence still seems tenuous after its decline to 15 chicks in the 1970's.

The applicant also proposes to capture up to 75 adult Emperor penguins, near the McMurdo ice edge and at Cape Washington. Some of these (about 10) will be maintained in an enclosure on the sea ice for up to 1 month while behavioral and physiological experiments are conducted. The birds will be allowed to dive at will through an ice hole. Approximately 30 adult Emperors will be captured/released/recaptured. Recorders will be attached to those birds for a few dives while they feed below the ice edge. Similar captures and releases with recorders will be accomplished near Cape Washington. Recaptures will occur after the two-week feeding commute. These experiments are designed to explore and comprehend the physiological responses that support the great diving capacities of those birds.

Seventy-five chicks will be collected over the season at Cape Washington. Fifty of these chicks will be weighed at fledging. Up to 5 chicks leaving the colony will be captured and released with satellite transmitters. Blood samples will be collected from an additional 5 chicks each week over the last month of development to measure selected hormone levels. After about one month, they will be released at the ice edge. If possible, the applicant proposes to collect 10 frozen eggs and salvage 2 adult Emperor carcasses for importation into the U.S.

Location: Beaufort Island (SPA #5), Cape Crozier (SSSI #4), Coulman Island, and Cape Washington, McMurdo Sound vicinity.

Dates: October 1, 1996–March 31, 1997.

9. *Applicant*; Wayne Z. Trivelpiece, Department of Biology, Montana State University, Bozeman, Montana 59717. Permit Application No. 97–012.

Activity for Which Permit is Requested: Taking; Import into the U.S.; and, Enter Site of Special Scientific Interest. The applicant is conducting a continuing study of behavioral ecology and population biology of the Adelie, gentoo, and chinstrap penguins and the interactions among these species and their principal avian predators: skuas, gulls, sheathbils, and giant fulmars. Up to 1000 Adelie and gentoo chicks, plus 300 adults of each of all three penguin species, will be banded. Up to 50 adults of each penguin species will be fitted with radio transmitters and time-depth recorders to continue studying penguin foraging habits. The study also involves stomach pumping of 40 adult penguins per species. In addition the principal avian predators of the penguins, mentioned above, will also be studied, requiring up to 200 adults and 30 chicks of each species to be banded, if possible. One (1) milliliter sample of blood will be collected from each of a maximum of 20 breeding adults of each penguin species for DNA analysis as part of a collaborative genetic study. All captured birds will be released unharmed. Carcasses and skeletons of penguins and other birds salvaged at the study site will be imported into the U.S. for educational and scientific study. The applicant also proposes to collect grass (*Deschampsia* sp.) specimens for a colleague at Montana State University who is examining bacteria on grasses throughout the world.

Location: SSSI #8—Western Shore of Admiralty Bay, King George Island, South Shertland Islands, Antarctica.

Dates: October 1, 1995–April 1, 1996.

10. *Applicant:* Diana W. Freckman, Natural Resource Ecology Laboratory, Colorado State University, Fort Collins, Colorado 80523–1499. Permit Application No. 97–013.

Activity for Which Permit is Requested: Import into the U.S. and Enter Sites of Special Scientific Interest. The applicant proposes to enter five (5) Sites of Special Scientific Interest to collect soil samples to examine the dispersal and survival of nematodes in the soils, as well as examining how functional communities develop, and how these communities may be affected by disturbance. Site access will be by helicopter to the landing pad designated for each site and the duration of the visit to the site will be limited to several hours with a group of no more than 4–5 people. Soil sampling protocols have been selected to minimize site disturbance. Manner of taking: Soil and/or rock samples will be placed in sterile plastic bags and returned to McMurdo where the nematodes will be immediately extracted. Remaining soil samples will be shipped to the U.S. for further biological and chemical analyses, and will be handled according to USDA guidelines.

The applicant also plans to introduce to Antarctica the nematode species *Aphelenchus avenae* as a standard in laboratory experiments to compare the anhydriotic strategy of *S. lindsayae* to provide insights into its response to varying environmental conditions. Extreme caution will be used to avoid contamination of the laboratory or outside environments with *A. avenae.* Cultures will be maintained in the lab in an incubator designated exclusively for this species. All work conducted with this nematode will be done under sterile conditions using a laminar flow hood. All cultures and materials used for this work will be autoclaved before disposal.

Location: Cape Royds, Ross Island (SSSI #1); Cape Crozier, Ross Island (SSSI #4); Caughley Beach, Cape Bird, Ross Island (SSSI #10); Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land (SSSI #12); and, Linnaeus Terrace, Asgaard Range, Victoria Land (SSSI #19).

11. *Applicant:* Arthur L. DeVries, Department of Physiology, 524 Burrill Hall, University of Illinois, 407 South Goodwin Avenue, Urbana, Illinois 61801–3704. Permit Application No. 97–014.

Activity for Which Permit is Requested: Introduction of Non-indigenous Species into Antarctica. Fifteen (15) specimens of New Zealand black cod, *Notothenia angustata,* will be cold acclimated in a closed seawater system in the aquarium at McMurdo Station. The cold acclimated specimens will be used in experiments to determine the role of the antifreeze glycopeptides in freezing avoidance, and for isolating DNA. The DNA will be screened for the presence of an ''unexpressed'' antifreeze glycopeptide gene. Sensitive blood serum freezing habit tests suggest cold acclimated black cod synthesize small amounts of antifreeze glycopeptide after acclimation to + 4__C for 6 weeks.

Some specimens will be injected with purified antifreeze glycopeptides to determine if the presence of the antifreeze glycopeptides in the circulation is sufficient to provide avoidance of freezing or if it needs to be

integrated into the membranes of protected cells by synthetic ice crystals and the fate of the ice is determined.

The integument of the cod will also be used in experiments to determine whether it is a barrier to ice propagation due to its physical properties or whether antifreeze glycopeptides provide a physiocochemical barrier in conjunction with the integument. Brain lipids will also be analyzed to determine the degree of unsaturation of the phospholipid fatty acids.

Upon completion of experiments, the black code will be sacrificed and preserved in 10% formalin.

Location: McMurdo Station, Ross Island, Antarctica.

Dates: October 1, 1996–March 31, 1997.

12. *Applicant:* Ron Naveen, Oceanites, Inc., 2378 Route 97, Cooksville, Maryland. Permit Application No. 97–015.

Activity for Which Permit is Requested: Taking; Enter Sites of Special Scientific Interest. The Antarctic Site Inventory project intends to collect data and information regarding the biological and physical features of Antarcitc Peninsula visitor locations. Survey of the various sites may involve slight disturbance to the animals at the site. Furthermore, the project may be requested to survey existing Sites of Special Scientific Interest (SSSI's) during the three-year period of this project. Access to the SSSI's is solely for survey purposes.

Location: Antarctic Peninsula visitor locations and Sites of Special Scientific Interest.

Dates: September 1, 1996–August 31, 1999.

Nadene G. Kennedy,

Permit Office, Office of Polar Programs.

[FR Doc. 96–22182 Filed 8–29–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 030–31621, 030–31622; License Nos. 20–27938–03G, 20–27938–02; EA 96–234]

HNU Systems, Inc., Newton Highlands, Massachusetts; Confirmatory Order Modifying License (Effective Immediately)

I

HNU Systems, Inc. (Licensee or HNU), is the holder of Byproduct Materials License Nos. 20–27938–03G and 20–27938–02 (Licenses) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The Licenses authorize the distribution, possession, and use of sealed sources in devices generally licensed, not to exceed 100 millicuries per source and 1,000 millicuries per foil, in accordance with the conditions specified therein. The Licenses were due to expire on March 31, 1996. However, on February 29, 1996, the Licensee filed a renewal application and, in accordance with 10 CFR 30.36(a), the Licenses are under a timely renewal.

II

As a result of a June 1995 inspection, a Confirmatory Action Letter (CAL) was issued on June 15, 1995 and a Notice of Violation (NOV) was issued on July 27, 1995 to HNU for numerous violations characterized in the aggregate as a Severity Level III problem. The violations included the failure to: (1) notify the NRC that the Radiation Safety Officer (RSO) listed on the Licenses had been laid off and had not been replaced; (2) conduct a physical inventory of radioactive materials; (3) conduct leak tests of sealed sources at the required six month intervals; (4) calibrate survey instruments at the required six month intervals; (5) perform monthly surveys; (6) monitor exposures of individuals to radiation and radioactive material; (7) review the radiation protection program content and implementation at least annually; (8) report to the NRC any transfers of generally licensed devices; (9) maintain radiation safety record notebooks; and (10) provide training to Licensee staff.

Subsequently, the NRC conducted a follow-up inspection from December 8, 1995, to April 23, 1996, to review the Licensee's implementation of the corrective actions taken in response to the June 1995 CAL and July 1995 NOV. Based on this inspection, the NRC identified several repetitive violations and determined that the Licensee had not implemented adequately the corrective actions in response to the Notice and CAL.

Therefore, the Commission required further information from HNU in order to determine whether the Commission can have reasonable assurance that in the future, should HNU be permitted by the NRC to continue to perform licensed activities under the Licenses, it will conduct the activities in accordance with NRC requirements, and whether further enforcement action is warranted against HNU. Accordingly, the NRC issued a Demand for Information (DFI) to the Licensee on June 7, 1996, which required the Licensee to submit, among other things to the NRC, within 30 days of the date of the DFI, in writing and under oath or affirmation:

1. a statement as to whether the Licensee will apply sufficient resources to manage an effective radiation safety program; and

2. a statement as to why the Licenses should not be revoked in light of the financial concerns and the repetitive violations.

In a letter, dated June 18, 1996, the Licensee responded to the DFI and indicated that it would: (1) commit the necessary resources to permit the RSO (who works part-time) to work up to 20 hours per week until full compliance with the radiation safety program requirement was achieved, which it stated could be done in 4 months, after which it believes that it can maintain compliance by the RSO working 10–12 hours per week; (2) designate an assistant RSO from a qualified member of the staff; (3) complete, by August 1, 1996, a Radiation Safety Refresher Course, including testing, for employees dealing with instruments containing sealed sources; (4) conduct an annual audit of the radiation safety program, and update quarterly reports of source transfers by October 1, 1996; (5) perform wipes of all sources taken from storage; (6) calibrate a second survey meter by July 15, 1996, to ensure one calibrated survey meter is available at all times; (7) continue its search for a missing 50 mCi Fe–55 source; (8) provide locked files for radiation safety records; (9) have an outside auditor conduct an audit of the organization after the program is brought into full compliance; and (10) meet the specified payment schedule that it negotiated with the NRC Fees Branch for the payment of fees.

In a followup call with the Licensee on July 18, 1996, the Licensee agreed that: (1) the RSO would work at least 20 hours per week, rather than 10–12 hours per week, until this condition was relaxed by the NRC; (2) it would have an outside auditor complete an audit of the organization by December 1, 1996; and (3) it would meet the other commitments made in its June 18, 1996 letter.

On August 7, 1996, the Licensee consented to issuing this Order with the commitments, as described in Section III below. The Licensee further agreed in its August 7, 1996 letter that this Order is to be effective upon issuance and that it has waived its right for a hearing. Implementation of these commitments will provide enhanced assurance that sufficient resources will be applied to the radiation safety program, and that the program will be conducted safely and in accordance with NRC requirements.

Therefore, I find that the Licensee's commitments as set forth in its June 18, 1996, and August 7, 1996 letters are acceptable and necessary, and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and on the Licensee's consent, the Order is immediately effective upon issuance.

III

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commissions's regulations in 10 CFR 2.202 and 10 CFR Part 30, it is hereby ordered, effective immediately upon issuance, that License Nos. 20–27938–03g and 20–27938–02, are modified as follows:

1. The Licensee's Radiation Safety Officer will work a minimum of 20 hours per week until this commitment is relaxed by the NRC;

2. An assistant RSO will be designated within 15 days of the date of the Order, and the Licensee will provide written notification to NRC Region I of the individual designated as assistant RSO and the individual's qualifications within 30 days of the date of the Order;

3. A radiation safety refresher course, including testing, will be given by October 1, 1996 to all employees working with instruments containing sealed sources.

4. The required annual audit of the radiation safety program, and all previously submitted quarterly reports of source transfers, will be completed by October 1, 1996, and submitted to NRC Region I by November 1, 1996;

5. Wipes will be performed of all sources taken from storage; in determining compliance with License Condition 12, appropriate actions will be taken if contamination greater than 0.005 Uci is identified, and appropriate wipe tests and source disposition records will be maintained, effective immediately;

6. At least one calibrated survey meter will be available at all times;

7. Radiation Safety Records will be placed in locked files within 15 days of the date of the issuance of this Confirmatory Order;

8. An experienced outside independent auditor will conduct and complete an audit of the Licensee's adherence to the requirements of its NRC Licenses by December 1, 1996. The Licensee shall submit the name and qualifications of the outside auditor to the NRC for approval by October 1, 1996, and the outside auditor shall provide the audit results simultaneously to both HNU and the NRC; and

9. The Licensee will notify Mr. Francis Costello, Chief, Nuclear Materials Safety Branch 3, NRC Region I, if it does not adhere to the specified payment schedule that it negotiated with the NRC Fees Branch for the payment of fees, as noted in the Conditional Order Extending Time, dated June 24, 1996. If the payment schedule is not met, notification will be made within 10 business days from the missed payment due date.

The Regional Administrator, Region I, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

IV

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person other than the Licensee, adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

This Order is immediately effective upon issuance. In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. *An answer or a request for hearing shall not stay the effectiveness of this Order.*

Dated at Rockville, Maryland this 22d day of August, 1996.

For the Nuclear Regulatory Commission.

Joseph R. Gray,

Acting Director, Office of Enforcement.

[FR Doc. 96–22183 Filed 8–29–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–285]

Omaha Public Power District; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–40 issued to Omaha Public Power District (the licensee) for operation of the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

The proposed amendment would revise Paragraph 2.B(2) of Facility Operating License No. DPR–40 to allow source materials in the form of depleted or natural uranium as reactor fuel and to revise Technical Specification 4.3.2 to include depleted uranium in describing the reactor core.

Before 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.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously

evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will allow the use of source material as reactor fuel. The use of source material as reactor fuel would not affect the physical plant or its operation in any way that could increase the probability of an accident. The use of depleted uranium in fuel rods near the exterior of the core reduces neutron leakage to the reactor pressure vessel, thereby decreasing the associated embrittlement effects. Its use will not introduce any new kind, or additional amount of fission product material. The use of source material as reactor fuel will not affect the Safety Limits, Limiting Conditions for Operations, or other safety analyses that support these requirements. Reactor core operating limits will continue to be determined and controlled using NRC approved methodologies as required by Technical Specification 5.9.5.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes would not introduce any new modes of operation, setpoint changes, or changes in the operation of plant equipment. The use of source material as reactor fuel will not introduce any new kind, or additional amount of fission product material. Reactor core operating limits will continue to be determined and controlled using NRC approved methodologies as required by Technical Specification 5.9.5.

3. The proposed change does not involve a significant reduction in a margin of safety.

The use of source material as reactor fuel will not affect the Safety Limits, Limiting Conditions for Operations, or other safety analyses that support these requirements. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 30, 1996, 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 party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102. If a request for a hearing or petition for leave to intervene 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 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 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 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. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman, Director, Project Directorate IV–2: 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 20555–0001, and to Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502, 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 August 23, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 26th day of August 1996.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–22342 Filed 8–29–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–277 and 50–278]

Peco Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56 issued to PECO Energy Company (the licensee) for operation of the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, located in York County, Pennsylvania.

The proposed amendment would revise the safety limit minimum critical power ratios (SLMCPRs) to support use of GE–13 fuel at PBAPS, Units 2 and 3.

Before 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.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed TS [technical specification] changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the cycle-specific SLMCPRs for incorporation into the TS, and its use to determine cycle-specific thermal limits, have been performed using USNRC [U.S. Nuclear Regulatory Commission]-approved methods as discussed in ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–11, and U.S. Supplement, NEDE–24011–P–A–11–US, November 17, 1995 and interim (reconfirmation) implementing procedures. This change in SLMCPRs cannot increase the probability or severity of an accident.

The basis of the SLMCPRs calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid boiling transition if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling and fuel damage in the event of a postulated accident. The fuel licensing acceptance criteria for the SLMCPR calculation apply to PBAPS, Unit 2, Cycle 12 in the same manner as they have applied previously. The probability of fuel damage is not increased. Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

(2) The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The SLMCPR is a TS numerical value, designed to ensure that transition boiling does not occur in 99.9% of all fuel rods in the core during the limiting postulated accident. It cannot create the possibility of any new type of accident. The new SLMCPRs are calculated using USNRC-approved methods (''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–11, and U.S. Supplement, NEDE–24011–P-A–11–US, November 17, 1995) and interim (reconfirmation) implementing procedures.

(3) The proposed TS changes do not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS Bases will remain the same. The new SLMCPRs are calculated using USNRC-approved methods (''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P-A–11, and U.S. Supplement, NEDE–24011–P-A–11–US, November 17, 1996) and interim (reconfirmation) implementing procedures which are in accordance with the current fuel licensing criteria.

The SLMCPRs remain sufficient to ensure that greater than 99.9% of all fuel rods in the core will avoid boiling transition if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 30, 1996, 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 party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene 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 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 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 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. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: 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 20555–0001, and to J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, 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 March 25, 1996, as supplemented by letter dated August 23, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 27th day of August 1996.

For the Nuclear Regulatory Commission.

Joseph W. Shea,

Project Manager, Project Directorate I–2 Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–22343 Filed 8–29–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26558]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 23, 1996.

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 September 16, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 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.

EUA Cogenex Corporation, et al. (70–8879)

EUA Cogenex Corporation ("Cogenex") and EUA Cogenex-Canada, Inc. ("Cogenex-Canada") (collectively, "Applicants"), both of P.O. Box 2333, Boston, Massachusetts 02107, and both wholly-owned subsidiary companies of Eastern Utilities Associates, a registered holding company, have filed an application-declaration under sections 9(a), 10, 12(b) and 13 of the Act and rules 45, 54, 90 and 91 thereunder.

Applicants propose: (i) for Cogenex-Canada to form and fund a wholly owned subsidiary ("Newco") which will enter into a general partnership with Monenco Agra, Inc. ("MA"), a nonassociate Canadian business corporation, for the purpose of providing energy conservation services to industrial sector customers in Canada ("Territory"); (ii) for Newco to form and fund a general partnership with MA ("JV ESCO"); (iii) for the Applicants to guarantee third-party obligations of Newco and the JV ESCO in an aggregate amount, together with other investments in Newco, not exceeding $15 million; and (iv) for Cogenex-Canada and its associate companies (other than an associate company which is a public utility company) to furnish goods and services to JV ESCO.

Cogenex-Canada proposes to form JV ESCO as a Canadian general partnership. Cogenex-Canada and MA will each own a 50% general partnership interest in JV ESCO and share equally in the capital contributions, allocation of profits and losses and distributions of JV ESCO. JV ESCO will be governed by a management committee comprised of one representative of each partner. Cogenex-Canada and MA will make capital contributions in an amount initially expected to be approximately $1,000 each, which will be used by JV ESCO for working capital purposes.[1] Cogenex-Canada and MA will subcontract personnel to JV ESCO at cost as needed until such time, if any, as JV ESCO employs its own personnel.

Cogenex-Canada and MA entered into a letter agreement ("Letter Agreement") dated January 11, 1996 in which they agreed to perform initial marketing, sales, auditing, bidding, job procurement and performance activities in preparation of forming JV ESCO and to develop a long-term business plan for JV ESCO. The term of the Letter Agreement is one year ("Interim Period"), unless terminated sooner by: (i) the formation of JV ESCO; (ii) the decision of one or both of Cogenex-Canada and MA; (iii) the bankruptcy or insolvency of either party; or (iv) failure to obtain the necessary corporate and regulatory approvals. Cogenex-Canada and MA will assign all contracts and business opportunities obtained during the Interim Period within the Territory at cost to JV ESCO. The Applicants and MA will also be reimbursed by JV ESCO for their expenses incurred during the Interim Period but not previously reimbursed, except for products and services provided by affiliates of the Applicants and MA, which will be reimbursed at standard market rates.

Cogenex-Canada will purchase stock from, and make capital contributions, loans and open account advances to, Newco ("Investments"). Such issuance and sale of securities, capital contributions, loans and open account advances will be exempt from the requirement of Commission authorization pursuant to rules 45 and 52. In addition, Applicants state that JV ESCO may borrow from third party lenders through loans exempt from the requirement of Commission authorization by rule 52(b). Cogenex-Canada and Cogenex propose to guarantee obligations of Newco and JV ESCO in an aggregate amount that, together with the Investments, will not exceed $15 million.

The Applicants request that any goods or services furnished by Cogenex-Canada or any of its associate companies (other than an associate company that is a public utility company) to the JV ESCO be furnished at prices that will not exceed (i) cost to

[1] Applicants state that capital contributions to JV ESCO will be exempt from the requirement of Commission authorization pursuant to rule 45(b)(4).

the extent that such services are pass-through services from EUA Service Corporation, and (ii) market prices to the extent such goods and services originate from other associate companies, pursuant to an exception from the requirements of section 13(b) and rules 90 and 91 thereunder. The types of goods and services which Cogenex-Canada and its associate companies would provide to the JV ESCO would include marketing, accounting and engineering services and products used in energy conservation projects. JV ESCO will not be providing goods or services to Cogenex-Canada or its associate companies.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22229 Filed 8–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22170; File No. 812–10118]

Morgan Stanley Universal Funds, Inc. et al.

August 23, 1996.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Morgan Stanley Universal Funds, Inc. (''MS Fund''), Morgan Stanley Asset Management Inc. (''MSAM'') and Miller Anderson & Sherrerd, LLP (''MAS'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the MS Fund and shares of any other investment company that is designed to fund insurance products and for which MSAM and MAS, or any of their affiliates, may serve as investment adviser, administrator, manager, principal underwriter or sponsor (collectively, the ''Funds'') to be sold to and held by: (a) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); and (b) qualified pension and retirement plans outside the separate account context (''Qualified Plans'').

FILING DATE: The application was filed on May 1, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 17, 1996, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writers interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Morgan, Lewis & Bockius LLP, Attention: Richard W. Grant, Esq. and James B. Kimmel, Esq., 2000 One Logan Square, Philadelphia, Pennsylvania 19103–1993.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. The MS Fund, an open-end, management investment company organized as a Maryland corporation, currently consists of 17 separate investment portfolios. The MS Fund may create additional portfolios in the future.

2. MSAM and MAS serve as the investment advisers to the MS Fund. They are wholly owned subsidiaries of Morgan Stanley Group, Inc. and are registered as investment advisers under the Investment Advisers Act of 1940.

3. The MS Fund intends to offer its shares to variable annuity separate accounts and variable life insurance separate accounts established by insurance companies that may or may not be affiliated with one another and to Qualified Plans.

4. The Participating Insurance Companies will establish their own separate accounts and design their own variable annuity and variable life insurance contracts (''Contracts''). The Funds will offer shares to the separate accounts and fulfill any conditions that the Commission may impose upon granting the order requested in the application.

5. The Funds can increase their respective asset bases by selling shares to Qualified Plans. The Qualified Plans may choose a Fund as the sole investment option, or as one of several investment options, under a Plan. Participants in the Qualified Plans may or may not be given an investment choice, depending upon the Qualified Plan. Shares of a Fund sold to a Qualified Plan will be held by the trustee(s) of the Qualified Plan as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). ERISA does not require pass-through voting to be provided to participants in Qualified Plans.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (''UIT''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is available to a separate account's investment adviser, principal underwriter, and depositor. The exemptions provided under Rule 6e–2(b)(15) are available only where the management investment company underlying the UIT offers its shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.'' The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is referred to as ''mixed funding.'' The use of a common investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' The relief provided under Rule 6e–2(b)(15) is not applicable to a scheduled premium variable life insurance separate account that owns shares of an underlying fund where the underlying fund offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) does not provide exemptive relief for either mixed funding or shared funding.

2. Applicants state that with respect to Rule 6e–2, exemptive relief is also necessary if shares of the Funds are also to be sold to Qualified Plans since the relief under Rule 6e–2 is available only where shares are offered exclusively to

separate accounts of insurance companies.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions provided under Rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Therefore, Rule 6e–3(T) permits mixed funding, but does not permit shared funding.

4. Applicants state that with respect to Rule 6e–3(T), exemptive relief is also necessary if shares of the Funds are also to be sold to Qualified Plans since the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts of insurance companies.

5. Applicants state that changes in the tax law have created the opportunity for a Fund to increase its asset base through the sale of its shares to Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of the Contracts held in a Fund. Specifically, the Code provides that such Contracts shall not be treated as annuity contracts or life insurance contracts for any period in which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying variable contracts. Treas. Reg. § 1.817–5 (1989). The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

6. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same investment company to both separate accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Applicants therefore request relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit shares of the Funds to be offered and sold to Qualified Plans and to variable annuity and variable life separate accounts in connection with both mixed and shared funding.

8. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). Rules 6e–2(b)(15) (i) and (ii) and 6e–3(T)(b)(15) (i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the disqualification to affiliated individuals or companies that participate directly in the management or administration of the underlying investment company.

9. Applicants state that the partial relief from Section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of the Section. Applicants state that those 1940 Act rules recognize that it is not necessary to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert, applying the restrictions of Section 9(a) serves no regulatory purpose. The application states that the relief requested should not be affected by the proposed sale of shares of the Funds to Qualified Plans because the Plans are not investment companies are not, therefore, subject to Section 9(a).

10. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that the Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission interprets the 1940 Act to require such privileges.

11. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority. Also, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii) (B) and (C) of each rule.

12. Applicants represent that the sale of Fund shares to Qualified Plans does not affect the relief requested in this regard. As noted previously by Applicants, shares of the Funds sold to Qualified Plans would be held by the trustees of such Qualified Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) when the Qualified Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is

reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Qualified Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans.

13. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several, or all, states. Applicants note that where insurers are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other insurance companies are domiciled. Applicants submit that this possibility is no different and no greater than exists where a single insurer and its affiliates offer their insurance products in several states.

14. Applicants further submit that affiliation does not reduce the potential for differences among state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant portfolio or underlying fund.

15. Applicants also state that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by owners of the Contracts. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of a Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

16. Applicants state that there is no reason why the investment policies of a Fund would or should be materially different from what those policies would or should be if that Fund served as a funding medium for only variable annuity or only variable life insurance contracts. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurance company or type of Contract.

17. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation § 1.187–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury Regulations or the Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

18. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Qualified Plan is unable to net purchase payments to make the distributions, the separate account or the Qualified Plan will redeem shares of a Fund at their net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Qualified Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Contract.

19. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to the trustees of Qualified Plans. Applicants represent that the transfer agent for a Fund will inform each Participating Insurance Company of its share ownership in each separate account, and will inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

20. Applicants contend that the ability of a Fund to sell its shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of participants and Contract owners under the respective Qualified Plans and Contracts, the Qualified Plans and the separate accounts have rights only with respect to their shares of a Fund. Such shares may be redeemed only at net asset value. No shareholder of a Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Finally, Applicants state that there are no conflicts between Contract owners and participants under the Qualified Plans with respect to the state insurance commissioners' veto powers (direct with respect to variable life insurance and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. This does not mean that there are inherent conflicts of interest between shareholders. The state insurance commissioners have been given the veto power in recognition of the fact that an insurance company cannot simply request redemption of shares held in its separate account and have those shares redeemed out of one Fund and the proceeds invested in another Fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. In contrast, trustees of Qualified Plans can make the decision quickly and implement the redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Contract owners and the interests of Qualified Plans conflict, the issues can be almost immediately resolved because the trustees of the Qualified Plans can, independently, redeem shares out of the Funds.

22. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of

organizing and operating an investment funding medium; the lack of expertise with respect to investment management; and the lack of name recognition by the public of certain insurers as investment professionals. Applicants contend that use of the Fund as common investment media for the Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of MSAM and MAS, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Contracts which may then increase competition with respect to both the design and the pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Thus, Applicants represent that Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Qualified Plans should increase the amount of assets available for investment by the Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification.

Applicants' Conditions

Applicants have consented to the following conditions if an order is granted:

1. A majority of the Board of Directors of a Fund (''Board'') shall consist of persons who are not ''interested persons'' of the Fund, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualificaction, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict among the interests of the Contract owners investing in the separate accounts and in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are managed; (e) a difference in voting instructions given by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners.

3. If a Qualified Plan becomes an owner of 10% or more of the assets of a Fund, such Plan will execute a fund participation agreement with that Fund. At the time of its initial purchase of the shares of the Fund, the Qualified Plan will acknowledge this condition in its application to purchase the shares.

4. The Participating Insurance Companies, MSAM and MAS (or any other investment adviser of a Fund), and any Qualified Plan that executes a Fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (the ''Participating Entities''), will report any potential or existing conflicts to the Board. Participating Entities will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with an information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of the Participating Insurance Companies and Qualified Plans investing in the Fund, and these responsibilities will be carried out with a view only to the interests of Contract owners and Qualified Plan participants.

5. If it is determined by a majority of the Board, or by a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant Participating Entities shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the separate accounts from a Fund and reinvesting such assets in a different investment medium including another portfolio of that Fund, or submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity Contract owners or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the Qualified Plans from a Fund or individual portfolio thereof and reinvesting those assets in a different investment medium, including another portfolio of that Fund; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard voting instructions of the owners of the Contracts, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of a Fund, to withdraw its separate account's investment in that Funds, and no charge or penalty will be imposed as a result of such withdrawal.

6. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Entities under the agreements governing their participation in the Funds. The responsibility to take such remedial action shall be carried out with a view only to the interests of Contract owners and participants in Qualified Plans.

7. For purposes of condition 5, a majority of the disinterested members of the Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but, in no event will a Fund, or any of its advisers, be required to establish a new funding medium for any Contract. Further, no Participating Insurance Company shall be required by condition 5 to establish a new funding medium for any Contract if an offer to do so had been declined by a vote of a majority of Contract owners materially affected by the irreconcilable material conflict.

8. A Board's determination of the existence of an irreconcilable material conflict and its implications will be

made known promptly and in writing to all Participating Entities.

9. Participating Insurance Company will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners.

Accordingly, the Participating Insurance Companies will vote shares of a Fund held in their separate accounts in a manner consistent with voting instructions timely received from Contract owners. Each Participating Insurance Company will vote shares of a Fund held in the Participating Insurance Company's separate accounts for which no voting instructions from Contract owners are timely received, as well as shares of that Fund which the Participating Insurance Company itself owns, in the same proportion as those shares of the Fund for which voting instructions from Contract owners are timely received. Participating Insurance Companies will be responsible for assuring that each of their separate accounts participating in a Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Funds.

10. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of a Fund), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, (although the Fund is not within the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

11. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Further, each Fund will disclose in its prospectus that (a) the Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies and for certain qualified pension and retirement plans, (b) material irreconcilable conflicts possibly may arise, and (c) the Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

12. If and to the extent that Rules 6e–2 and 6e–3(T) under the 1040 Act are amended (or if Rule 6e–3 is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds and/or the Participating Entities, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

13. No less frequently than annually, the Participating Entities shall submit to the relevant Board such reports, materials, or data as that Board may reasonably request so the Board may carry out fully the conditions contained in these express conditions. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by a Board. The obligations of the Participating Entities to provide these reports, materials, and data to a Board shall be a contractual obligation under the agreements governing their participation in the Fund.

14. All reports received by a Board of potential or existing conflicts, and all Board action with regard to (a) determining the existence of a conflict, (b) notifying Participating Entities of a conflict, and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

Conclusion

For the reasons and upon the facts stated above, Applicants asserts that the requested exemptions are 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.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22228 Filed 8–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 22172; 812–10304]

Quantitative Group of Funds, et al.; Notice of Application

August 26, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Quantitative Group of Funds (''Quantitative''), The One Group (''One Group,'' together with Quantitative, the ''Trusts''), Quantitative Advisors Inc. (''Quantitative Advisors''), Banc One Investment Advisors Corporation (''Banc One,'' and together with Quantitative Advisors, the ''Advisors''), and Boston International Advisors, Inc. (''BIA'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: The order would permit the implementation, without shareholder approval, of new sub-advisory contracts for a period of up to 120 days following the date of the change in control of BIA, the sub-adviser to the Trusts. The order also would permit BIA to receive from the Trusts fees earned under the new sub-advisory contracts following approval by the Trusts' shareholders.

FILING DATE: The application was filed on August 15, 1996. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 20, 1996 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification of a

hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Quantitative and Quantitative Advisors, 55 Old Bedford Road, Lincoln, Massachusetts 01773; One Group, 3435 Stelzer Road, Columbus, Ohio 43219; Banc One, 774 Park Meadow Road, Columbus, Ohio 43271; and BIA, 75 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trusts are open-end, management investment companies registered under the Act. Quantitative International Equity Fund and Quantitative Foreign Frontier Fund are series of Quantitative and The One Group International Equity Index Fund is a series of One Group (the series are referred to collectively as the ''Funds''). Quantitative Advisors serves as investment adviser to the Quantitative Funds and Banc One serves as investment adviser to the One Group Fund. BIA provides sub-advisory services to each Fund pursuant to certain sub-advisory agreements (the ''Existing Sub-Advisory Agreements'').

2. Independence Investment Associates, Inc. (''IIA''), pursuant to an agreement dated July 31, 1996 (the ''Stock Purchase Agreement'') among IIA, BIA, and all of the stockholders of BIA (the ''Stockholders''), will acquire, subject to the satisfaction or waiver of certain conditions, control of BIA by purchasing 100% of BIA's outstanding shares of capital stock from the Stockholders (the ''Stock Purchase''). Following the consummation of the transactions provided for under the Stock Purchase Agreement (the ''Closing''), it is anticipated that BIA will change its name to Independence International Associates, Inc.

3. The Closing is subject to the satisfaction or waiver of several conditions, including certain conditions relating to the acquisition of advisory client consents. The Stock Purchase Agreement provides that transfer of ownership of BIA's shares will take place at the Closing. BIA reasonably believes that the Closing may take place by October 1, 1996, although unforeseen circumstances could cause a delay. The Stock Purchase will result in a change of control of BIA. Accordingly, the change of control will result in the assignment of the Existing Sub-Advisory Agreements and the termination of each such agreement according to its terms.

4. Applicants seek an exemption to permit the implementation, without shareholder approval, of new sub-advisory agreements among the Funds, the Advisors, and BIA. The requested exemption would cover an interim period of not more than 120 days (the ''Interim Period'') beginning on the Closing date and continuing through the date new sub-advisory agreements are approved or disapproved by the Funds' shareholders (but in no event later than March 1, 1997). During the Interim Period, hat portion of the advisory fees paid the Advisors to BIA for sub-advisory services would be paid into escrow.

5. The sub-advisory agreements among BIA, the Advisors, and each Fund to be entered into upon consummation of the Stock Purchase (collectively, the ''New Sub-Advisory Agreements'') are identical to the Existing Sub-Advisory Agreements, except for their effective dates, escrow provisions, and as described below. For each Fund, except the One Group Fund, the fee levels for sub-advisory services will remain the same as in the Existing Sub-Advisory Agreement. The New Sub-Advisory Agreement between BIA and Banc One (the ''New Banc One Agreement''), however, will provide for higher fees than those which are payable to BIA under its Existing Sub-Advisory Agreement with Banc One. These higher fees were separately negotiated from, and are in no way connected with, the Stock Purchase. The New Banc One Agreement will be submitted for the approval of the One Group Fund's shareholders, and the higher fees, if approved, will be payable only to BIA from and after the date of such approval. No exemption from the provisions of section 15(a) of the Act is being sought with respect to the approval of the higher fees.

6. In accordance with section 15(c) of the Act,[1] the board of trustees (the ''Board'') of Quantitative met on July 9, 1996 and the Board of One Group met on May 21, 1996 and determined that the New Sub-Advisory Agreements would be in the best interests of the respective Funds and their shareholders. The Boards, including a majority of the disinterested trustees, voted to approve the New Sub-Advisory Agreements.

7. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution. The arrangement would provide that: (a) the portion of the Advisors' fees payable by the Advisors to BIA during the Interim Period under the New Sub-Advisory Agreements would be paid into an interest-bearing escrow account maintained by the escrow agent [2]; (b) the amounts in the escrow account (including interest earned on such paid fees) would be paid to BIA only upon approval of the respective Fund's shareholders of such Fund's New Sub-Advisory Agreements or, in the absence of such approval, to the Fund; and (c) the escrow agent would release the monies only upon receipt of a certificate from an officer of the respective trust (none of whom is an interested person of BIA) stating that the monies are to be delivered to BIA and that the respective New Sub-Advisory Agreement has received the requisite Fund shareholder vote or, if the moneys are to be delivered to the respective Fund, that the Interim Period has ended, and the respective New Sub-Advisory Agreement has not received the requisite Fund shareholder vote. Before any certificate is sent, the respective Board will be notified.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 6(c), exempting them from section 15(a) of the Act to the extent necessary (i) to permit the implementation during the Interim Period, without prior shareholder approval, of the New Sub-Advisory Agreements and (ii) to permit BIA to receive from the respective Advisor upon approval by the respective Fund's shareholders any and all fees earned under the applicable New Sub-Advisory Agreement implemented during the Interim Period.

2. Section 15(a) of the Act prohibits an investment adviser from providing investment advisory services to an investment company except under a written contract that has been approved

[1] Section 15(c) provides, in relevant part, that it shall be unlawful for any registered investment company to enter into an investment advisory contract unless the terms of such contract have been approved by the vote of a majority of directors, who are not parties to such contract or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval.

[2] The higher fees that will be applicable under the New Sub-Advisory Agreement for the One Group Fund will not be deposited in an escrow account because they will not begin to accrue until after the One Group Fund's shareholders approve the New Sub-Advisory Contract.

by a majority of the voting securities of the investment company. Section 15(a) further requires that the written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. The Stock Purchase will result in an ''assignment'' within the meaning of section 2(a)(4) of the Existing Sub-Advisory Agreements, terminating each such agreement according to its terms.

3. Rule 15a–4 provides, in relevant part, that if an investment adviser's investment advisory contract with an investment company is terminated by assignment, the adviser may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of the investment company and if neither the investment adviser nor a controlling person thereof directly or indirectly receives money or other benefit in connection with the assignment. In the case of the Quantitative Funds, applicants cannot rely on rule 15a–4 because of the benefits to the Stockholders arising from the Stock Purchase. In the case of the One Group Fund, the applicants cannot rely on rule 15a–4 because of the increase in fees payable to BIA under the New Sub-Advisory Agreement.

4. Applicants state that a proxy solicitation to the shareholders of the Funds is a complicated and time-consuming task. The task will include the preparation, clearance, and mailing of proxy materials, and the solicitation efforts required to obtain the requisite votes. Because of the complexity of the proxy solicitation and the fact that the Funds have not had sufficient advance notice of the Stock Purchase, applicants state that it will not be possible for the Funds to obtain shareholder approval of the New Sub-Advisory Agreements in accordance with section 15(a) of the Act prior to the Closing.

5. Applicants submit that to deprive BIA of sub-advisory fees during the Interim Period for no reason other than the fact that the Closing will result in an assignment of the Existing Sub-Advisory Agreements would be an unduly harsh and unreasonable penalty and would serve no useful purpose. Applicants represent that the best interests of the Funds' shareholders would be served if BIA receives fees for services during the Interim Period as provided herein. These fees are an important part of BIA's total revenue and are important to maintaining its ability to provide services to the Funds.

6. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by this application that:

1. The New Sub-Advisory Agreements will have the same terms and conditions as the Existing Sub-Advisory Agreements, except in each case for the dates of execution and termination, the inclusion of escrow arrangements, and the inclusion of BIA's new name, and in the case of the New Sub-Advisory Agreement for One Group, the new fee arrangement (which will not be effective until shareholder approval).

2. That portion of each Advisors' fee earned by BIA during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such amounts) will be paid (a) to BIA in accordance with the New Sub-Advisory Agreement, only upon approval of the respective Fund's shareholders, or (b) in the absence of such approval prior to the expiration of the Interim Period, to the respective Fund.

3. The Funds will hold meetings of shareholders to vote on approval of the New Sub-Advisory Agreements on or before the earlier of the 120th day following the termination of the Existing Sub-Advisory Agreements or March 1, 1997.

4. BIA and IIA will bear the costs of preparing and filing this application and the costs relating to the preparation of proxy materials for the solicitation of shareholder approval from the Quantitative Funds' shareholders of the Quantitative Funds' New Sub-Advisory Agreements. BIA and IIA also will bear 50% of the costs relating to the preparation of proxy materials for the solicitation of shareholder approval from the One Group Fund's shareholders of the One Group Fund's New Sub-Advisory Agreement. The other 50% of the costs of solicitation will be borne by Banc One.

5. BIA will take all appropriate actions to ensure that the scope and quality of sub-advisory and other services provided to the Funds by BIA during the Interim Period will be at least equivalent, in the judgment of the respective Board, including a majority of the non-interested Board members, to the scope and quality of services previously provided. In the event of any material change in personnel providing material services pursuant to the New Sub-Advisory Agreements, BIA will apprise and consult with the Board of the affected Fund or Funds to assure that they, including a majority of the non-interested Board members, are satisfied that the services provided will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22226 Filed 8–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–22169; 812–10210]

Van Kampen American Capital Equity Opportunity Trust, et al.; Notice of Application

August 23, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Van Kampen American Capital Equity Opportunity Trust (the ''Trust''), Series 25 and subsequent series, and Van Kampen American Capital Distributors, Inc. (''Van Kampen American'' or the ''Sponsor'').

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a terminating series of the Trust, a unit investment trust, to sell portfolio securities to a new series of the Trust.

FILING DATE: The application was filed on June 18, 1996.

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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 17, 1996 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature

of the writer's request, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Parkview Plaza, Oakbrook Terrace, IL 60181.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, (202) 942–0581, or Elizabeth G. Osterman, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust, a unit investment trust registered under the Act, will consist of a series of unit investment trusts (each a ''Trust Series'' or ''Series''). Each Trust Series will be similar but separate and designated by a different series number. Van Kampen American is the Sponsor for each Trust Series.

2. Each Trust Series will contain a portfolio of common stocks of aggressive growth companies. The investment objective of each Trust Series is to seek capital appreciation. Currently, Van Kampen American Capital Equity Opportunity Trust, Series 25 consists of one underlying unit investment trust, the Aggressive Growth Series, Internet Trust 1, which invests in actively traded equity securities issued by aggressive growth companies engaged in either the enabling technology or communication services areas of the Internet.

3. Applicants anticipate that many, if not all, of the portfolio securities in each Trust Series will be actively traded (*i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares and equal in value to at least 25,000 United States dollars) on (a) an exchange (an ''Exchange'') which is either a national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934 or a foreign securities exchange that meets the qualifications set forth in the proposed amendment to rule 12d3–1(d) (6) under the Act, as proposed by the SEC,[1] and that releases daily closing prices, or (b) the Nasdaq-National Market System (''Nasdaq-NMS'') (the securities meeting the foregoing tests are referred to herein as ''Equity Securities''). For example, all of the portfolio securities in the Internet Trust 1 are listed on a national securities exchange or the Nasdaq-NMS.

4. Each Trust Series will terminate on a date after a specified period, generally one year. The Sponsor intends that, as each Trust Series terminates, a new Trust Series (''New Trust Series'') containing a portfolio of common stocks of aggressive growth companies with an investment objective of capital appreciation will be offered for the next period.

5. Each Trust Series has or will have a contemplated date (the ''Rollover Date'') on which holders of units in that Trust Series (the ''Rollover Trust Series'') may at their option redeem their units in the Rollover Trust Series and receive in return units of a New Trust Series, which will be created on or about the Rollover Date.

6. Applicants anticipate that there will be some overlap from one year to the next in the aggressive growth stocks selected for each Trust Series and, therefore, between the portfolios of each Rollover Trust Series and the related New Trust Series. In connection with its termination, absent relief, each Rollover Trust Series would sell all of its securities on the applicable Exchange or Nasdaq-NMS as quickly as practicable, but over a period of time so as to minimize any adverse impact on the market price. Likewise, a New Trust Series would acquire its securities in purchase transactions on the applicable Exchange or on Nasdaq-NMS. This procedure would result in brokerage commissions on securities of the same issue that are borne by the holders of units of both the Rollover Trust Series and the New Trust Series. Applicants therefore request an exemptive order to permit any Rollover Trust Series to sell Equity Securities to a New Trust Series and a New Trust Series to purchase such securities.

7. In order to minimize overreaching, the Sponsor will certify to the trustee of the relevant Trust Series, within five days of each sale from a Rollover Trust Series to a New Trust Series, (a) That the transaction is consistent with the policy of both the Rollover Trust and the New Trust Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of such transaction, and (c) the closing sales price on the Exchange or on Nasdaq-NMS for the sale date of the securities subject to such sale. The trustee will then countersign the certificate, unless, in the unlikely event that the trustee disagrees with the closing sales price listed on the certificate, the trustee immediately informs the Sponsor orally of any such disagreement and returns the certificate within five days to the Sponsor with corrections duly noted. Upon the Sponsor's receipt of a corrected certificate, if the Sponsor can verify the correct price by reference to an independently published list of closing sales prices for the date of the transaction, the Sponsor will ensure that the price of units of the New Trust Series, and distributions to holders of the Rollover Trust Series with regard to redemption of their units or termination of the Rollover Trust Series, accurately reflect the corrected price. To the extent that the Sponsor disagrees with the trustee's corrected price, the Sponsor and the trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

Applicants' Legal Analysis

1. Section 17(a) of the Act makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Each Trust Series will have an identical or common Sponsor, Van Kampen American. Since the Sponsor of each Trust may be considered to control each Trust Series, it is likely that each Trust Series would be considered an affiliate of the others.

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Under section 6(c), the SEC may exempt classes of transactions if, and to the extent that, such exemption is necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the proposed transactions satisfy the

[1] Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3–1). The proposed amended rule defined a ''Qualified Foreign Exchange'' to mean a stock exchange in a country other than the United States where: (1) trading generally occurred at least four days a week; (2) there were limited restrictions on the ability of registered investment companies to trade their holdings on the exchange; (3) the exchange had a trading volume in stocks for the previous year of at least U.S. $7.5 billion; and (4) the exchange had a turnover ratio for the preceding year of at least 20% of its market capitalization. The version of the amended rule that was adopted did not include the part of the proposed amendment defining the term ''Qualified Foreign Exchange.''

requirements of sections 6(c) and 17(b).[2]

3. Rule 17a–7 under the Act permits registration investment companies that might be deemed affiliates solely by reason of common investment advisers, directors, and/or officers, to purchase securities from, or sell securities to, one another at an independently determined price, provided certain conditions are met. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor the procedures for these transactions to assure compliance with the rule. A unit investment trust does not have a board of directors and, therefore, may not rely on the rule. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraph (e).

4. Applicants represent that purchases and sales between Trust Series will be consistent with the policy of each Trust Series, as only securities that otherwise would be bought and sold on the open market pursuant to the policy of each Trust Series will be involved in the proposed transactions. Applicants further believe that the current practice of buying and selling on the open market leads to unnecessary brokerage fees and is therefore contrary to the general purposes of the Act.

5. Applicants state that the condition that the securities must be actively traded on an Exchange or the Nasdaq-NMS protects against overreaching. This condition ensures that there will be current market prices available and thus, an independent basis for determining that the terms of the transaction are fair and reasonable. In addition, applicants note that, as a condition to the requested relief, the Trustee will review the procedures relating to the purchase and sale of Equity Securities. Furthermore, the Sponsor must certify to the Trustee that a transaction is consistent with the policy of both the Rollover Trust Series and New Trust Series, as set forth in their respective registration statements and reports filed under the Act. Lastly, the portfolio companies held in a Trust Series are described in the Trust Series' prospectus for investors to review. In light of these procedures, applicants believe that they satisfy the standards of sections 6(c) and 17(b), and thus, an exemption from section 17(a) is warranted.

[2] Section 17(b) applies to a specific proposed transaction, rather than an ongoing series of future transactions. *See Keystone Custodian Funds*, 21 S.E.C. 295, 298–99 (1945). Section 6(c) frequently is used, along with section 17(b), to grant relief from section 17(a) to permit an ongoing series of future transactions.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each sale of Equity Securities by a Rollover Trust Series to a New Trust Series will be effected at the closing price of the securities sold on the applicable Exchange or the Nasdaq-NMS on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each future Rollover Trust Series and New Trust Series.

3. The Trustee of each Rollover Trust Series and New Trust Series will (a) review the procedures discussed in the application relating to the sale of Equity Securities from a Rollover Trust Series to a New Trust Series and the purchase of those securities for deposit in a New Trust Series, and (b) make such changes to the procedures as the trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a–7.

4. A written copy of these procedures and a written record of each transaction pursuant to the order will be maintained as provided in rule 17a–7(f).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22230 Filed 8–29–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (The Vermont Teddy Bear Co., Inc., Common Stock, $0.05 Par Value) File No. 1–12580

August 26, 1996.

The Vermont Teddy Bear Co., Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Pacific Stock Exchange, Inc. (''PSE'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

In making the decision to withdraw the Security from listing on the PSE, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of the Security on the Nasdaq National Market System and on the PSE. The Company does not see any particular advantage in the dual trading of the Securities and believes that the volume of trading of its securities on the PSE is severely low.

Any interested person may, on or before September 17, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–22231 Filed 8–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37605; File No. SR–NYSE–96–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Restrictions on Exercise of Options on the New York Stock Exchange Composite Stock Index

August 26, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 8, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to issue an interpretation of Exchange Rule 709 (Other Restrictions on Exchange Option Transactions and Exercises) that clarifies that members and member organizations may only exercise options

on the New York Stock Exchange Composite Stock Index (''NYA Options'') while those options are open for trading on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 709 grants the Exchange discretion to impose restrictions on the exercise of an option dealt in on the Exchange if the Exchange deems the restriction to be advisable in the interests of maintaining a fair and orderly market in the option or its underlying security, or in the public interest or for the protection of investors. In furtherance of those goals, the Exchange has determined to act under Exchange Rule 709 to restrict the period during which a member or member organization may exercise NYA Options to hours during which those options are open for trading on the Exchange.

Paragraph (b) of Exchange Rule 717 (Trading Rotations, Halts and Suspensions) grants the Exchange discretion to halt or suspend trading in an option whenever the Exchange deems such action appropriate in the interests of fair and orderly market and for the protection of investors. So, for instance, Rule 717(b) allows the Exchange to halt trading in NYA Options where trading in the Exchange's equities market (which is the market on which all securities underlying NYA options trade) halts pursuant to Exchange Rule 80B (Trading Halts Due to Extraordinary Market Volatility).

Under that scenario, the Exchange would anticipate that, once imposed, the restriction against exercising NYA Options would remain in effect until trading in those options reopens. That reopening, in turn, would likely occur only when the Exchange's equities market reopens for trading.

In accordance with Exchange Rule 709, the Exchange will not impose the restriction against the exercise of NYA Options on the last trading day prior to the option's expiration date.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 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, N.W., Washington, D.C. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–96–23 and should be submitted by September 20, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22227 Filed 8–29–96; 8:45 am]

BILLING CODE 8010–01–M

Agency Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 2, 1996.

A closed meeting will be held on Thursday, September 5, 1996, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, September 5, 1996, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

Proposed order in administrative proceeding of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: August 28, 1996.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 96–22453 Filed 8–29–96; 11:17 am]
BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending August 23, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1660.
Date filed: August 21, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1996.
Description: Application of USAir, Inc., pursuant to 49 U.S.C. Section 41101 and 41108, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of persons, property and mail between the coterminal points Philadelphia, Pennsylvania; Boston, Massachusetts; Charlotte, North Carolina; and Pittsburgh, Pennsylvania and the terminal point London (Heathrow), United Kingdom.

Docket Number: OST–96–1661.
Date filed: August 21, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1996.
Description: Application of Jet America Charters, Lc. d/b/a Jet America, pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing interstate charter air transportation.

Docket Number: OST–96–1662.
Date filed: August 21, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1996.
Description: Application of Jet America Charters, Lc. d/b/a Jet America, pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing world wide foreign charter air transportation.

Docket Number: OST–96–1664.
Date filed: August 23, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 20, 1996.
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Department of Transportation's Procedural Regulations, applies for a new or amended certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property and mail between Las Vegas, Nevada, on the one hand, and Mexico City, Mexico, on the other hand. Delta further requests route integration authority to integrate this authority with all of Delta's existing certificate and exemption authority, to the extent permitted by applicable international agreements.

Paulette V. Twine,
Chief, Documentary Services Division.
[FR Doc. 96–22172 Filed 8–29–96; 8:45 am]
BILLING CODE 4910–62–P

Coast Guard

[CGD 96–043]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) will meet to discuss various issues relating to merchant marine personnel, including safety, training, and qualifications. The meetings are open to the public.

DATES: A meeting of the working groups will be held on Thursday, September 26, 1996. A meeting of MERPAC will be held on Friday, September 27, 1996. The meetings are scheduled to run from 8:30 a.m. to 4:00 p.m. each day. Written material and requests to make oral presentations should reach the Coast Guard on or before September 13, 1996.

ADDRESSES: Both meetings will be held in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. Written material and requests to make oral presentations should be sent to Commander Greg Jones, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Greg Jones, Executive Director of MERPAC, or Mr. Mark Gould, Assistant to the Executive Director, telephone (202) 267–0229, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of September 27, 1996, Meeting

(1) Subcommittee Reports.
  (a) International Convention on the Standards of Training, Certification and Watchkeeping (STCW).
  (b) Prevention Through People (PTP).
(2) Other Issues to be Discussed.
  (a) Regional Examination Center (REC) Activities.
  (b) Tankerman regulations—REC enforcement.
  (c) National Maritime Center—course approvals and examinations.
  (d) Proposal to reduce the number of forms currently used to issue licenses. This will eliminate outdated license forms.
  (e) Licensing 2000.
  (f) Towing industry pilot training and licensing.
  (g) STCW issues and changes in regulations.
  (h) As time allows, other issues brought up by the public or MERPAC members.

Procedural

Both meetings are open to the public. At the discretion of the Chairman, members of the public may present oral presentations during the September 27, 1996, meeting. Persons wishing to make oral presentations at the September 27, 1996, meeting should notify the Executive Director no later than September 13, 1996. Written material for distribution to the committee should reach the Coast Guard no later than September 13, 1996. If a person submitting material would like a copy distributed to each member of the committee in advance of a meeting, that person should submit 20 copies to the Executive Director no later than September 13, 1996.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: August 27, 1996.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 96–22207 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–96–43]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 19, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Haynes, (202) 267–3939, or Ms. Marisa Mullen, (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 26, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No: 28576.

Petitioner: Taxi Aero Marilia S.A.

Sections of the FAR Affected: 14 CFR § 145.47(b).

Description of Relief Sought: To permit Taxi Aero Marilia S.A., an FAA-certified repair station (NO. QL 4Y470M), to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial (INMETRO), Brazil's national standards organization, for the calibration standards of the U.S. National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards, to test its inspection and test equipment.

[FR Doc. 96–22256 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–M

[Docket No. 28671; Notice No. 96–13]

RIN 2120–AF95

Explosives Detection Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Amendment to Criteria for Certification of Explosives Detection Systems.

SUMMARY: The FAA is proposing to amend the current Criteria for Certification of Explosives Detection Systems (hereafter referred to as ''Criteria''). This amendment would introduce minimum performance standards for EDS equipment designed to identify detonators. The current Criteria, issued September 10, 1993, include minimum performance standards only for EDS equipment designed to identify main/bulk explosive charges. The proposed amendment would allow the FAA to certify EDS equipment which meets or exceeds either: (1) The minimum performance standards for explosive material categorized as main/bulk explosive charges; or (2) the minimum performance standards for explosive material categorized as detonators. This action is responsive to 49 U.S.C. 44913 [Formerly Section 108 of the Aviation Security Improvement Act of 1990, Public Law 101–604], which requires the Administrator to certify, prior to mandating its deployment, that EDS equipment ''can detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material which would be likely to be used to cause catastrophic damage to commercial aircraft.''

DATES: Comments must be received on or before October 29, 1996.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 28671, 800 Independence Avenue, SW., Washington, D.C., 20591. Comments that include or reference national security information or sensitive security information should not be submitted to the public docket. These comments should be sent to the following address in a manner consistent with applicable requirements and procedures for safeguarding sensitive security information: Federal Aviation Administration, Office of Civil Aviation Security Operations, Attention: FAA Security Control Point, Docket No. 28671, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Armen Sahagian, General Engineer (ACP–400), Office of Civil Aviation Security Policy and Planning, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 267–7076.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the notice by submitting such written data, views, or arguments as they may desire. Comments should identify the docket or notice number and be submitted in triplicate to either the Rules Docket or the FAA Security Control Point address specified above. All comments received, as well as a report summarizing each substantive unclassified public contact with FAA personnel on this notice, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this notice. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of comments received.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this notice must include with their comments a preaddressed stamped postcard on which the following statement is made: ''Comments to Docket No. .'' When the comment is received, the postcard will be dated, time-stamped, and mailed to the commenter.

Availability of Document

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the docket number of this notice.

Persons interested in being placed on a mailing list for future proposals should request from the above office a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Release of National Security and Sensitive Information

The Associate Administrator for Civil Aviation Security has determined that certain portions of the proposed amended Criteria are of national security concern and require safeguarding from unauthorized disclosure pursuant to Executive Order 12356 (National Security Information). Further, pursuant to 14 CFR Part 191 (Withholding Security Information from Disclosure Under the Air Transportation Security Act of 1974), certain unclassified information has been determined to be sensitive security information. Upon request, the complete proposed amended Criteria will be provided to prospective manufacturers of explosives detection equipment, and other interested parties with a bona fide need to have the complete proposed amended Criteria, provided such persons have appropriate authorization for access to U.S. Government national security information and/or sensitive security information.

Availability of Criteria

Persons requesting access to, or a copy of, the complete text (including all classified and sensitive security information) of the proposed amended Criteria may write to the Federal Aviation Administration, Office of Civil Aviation Security Operations, Attention: FAA Security Control Point (ACO–400), Docket No. , 800 Independence Avenue, SW., Washington, DC 20591.

Individuals requesting the classified portion of the proposed amended Criteria must include information regarding authorizations and security clearances for access to U.S. Government national security information, and sufficient explanatory information supporting the request to demonstrate a bona fide need to know the information contained in the Criteria.

Background

The proposed amended Criteria are responsive to the statutory mandate for testing and certifying EDS. The FAA has had a long-standing research and development (R&D) effort to counter the threat of explosive materials to civil aviation. Along with other technologies, the FAA invested in detonator detection R&D beginning in 1985. However, based upon early research, the FAA focused its R&D resources primarily on the detection of main/bulk explosive charges, because it appeared to be the most technologically feasible approach. The effort resulted in the September 10, 1993, Criteria [58 FR 47804], which established minimum performance standards for main/bulk explosive charges detection equipment. Recent technological advances suggest that equipment capable of detecting the different types of detonators used to initiate or detonate an explosive may also be an effective means of screening checked baggage. FAA now considers it appropriate to propose minimum performance standards for the detection of detonators.

In October 1995 the FAA completed its compilation and analyses of technical design information obtained during visits to 38 detonator manufacturers located in the United States and 20 other countries. These analyses were the most extensive examinations yet on the types, materials, and configurations of detonators. As a result, the FAA developed a comprehensive database on detonators manufactured worldwide, as well as global detonator production and consumption profiles. The types of detonators specified in this proposed amended Criteria were based, in part, upon reports which identified the types of detonators used in terrorist acts, as well as those likely to be used in future attempts to destroy or sabotage civil aviation, other modes of transportation, and physical structures. This analysis was conducted by the FAA with advice and consultation from U.S. and international explosive materials experts, and Agencies of the United States and other governments.

Development of the Proposed Amended Criteria

The primary proposed change to the September 10, 1993, Criteria is the introduction of minimum performance standards for the detection of detonators. These standards are included in the portion of the document not published in the Federal Register because they involve national security and sensitive information. The unclassified section of the proposed amended Criteria published in this notice, contains relatively minor editorial changes. The principal purpose of these proposed changes is to state that it is possible to obtain certification of an EDS to automatically detect explosive materials in two distinct ways: either by identifying bulk/main explosive charges, or by identifying detonators.

The changes to the publicly available portion include a definition for the term ''explosive material''. The definition distinguishes between two principal components of explosive material: bulk/main explosive charges and detonators. To facilitate testing of EDS candidate equipment under either of the two methods of explosive material detection, the proposed amended Criteria references separate management test plans. The FAA previously developed a management test plan for EDS certification of bulk/main explosive charges detection equipment. A Notice of Availability of the draft management test plan was published in the Federal Register on June 22, 1993, for public comment [58 FR 33967]. That management test plan, entitled FAA Management Plan for EDS Certification Testing, was based upon the National Academy of Science's General Testing for Protocol for Bulk Explosive Detection Systems. A separate management test plan for EDS certification of detonator detection equipment is currently being developed. The FAA expects to issue a Notice of Availability of a draft management test plan for EDS certification of detonator detection equipment in the near future.

Additionally, the FAA is proposing to delete references to ''checked baggage in international operations'' and replace them with a more general reference to ''checked baggage.'' While the current rule in 14 CFR 108.20 is limited to the screening of checked baggage for international flights, certification as to the inherent capability of an EDS to detect explosive materials in checked baggage is not a function of the origin or destination of the flight on which the bag is transported. The FAA believes that it is important to separate certification issues from the economic and policy issues related to deployment.

The FAA is not proposing any substantive changes to the minimum performance standards for EDS

certification of bulk/main explosive charges detection equipment. Nor do the proposed minimum performance standards for EDS certification of detonator detection equipment embody any change to other aspects of the September 10, 1993, Criteria (e.g., throughput rate, overall detection rate, false alarm rate). The FAA is soliciting comments only on those portions of the proposed amendment that represent a change from the September 10, 1993, Criteria.

Regulatory Evaluation

The FAA has considered the impact of this proposed amendment to the EDS Criteria as required under Executive Order 12866 and under the Department of Transportation's regulatory policies and procedures. The FAA has determined that this action is not significant under either of these directives. In addition, the FAA has determined that no cost-benefit analysis is needed for the amendment of the Criteria and related matters such as the Management Test Plans. Any final EDS deployment decision will be subject to further review, according to the requirements of Executive Order 12866. In this regard, the Department determined that the rule authorizing deployment of an EDS for screening international flights was a major rule as defined in the Executive Order. Based upon circumstances and information available at the final rule stage in 1989, the FAA determined that the EDS available at that time, the Thermal Neutron Analysis (TNA) device, would be cost-beneficial. The FAA has not required, nor will it require the deployment of TNA or any other EDS until such equipment meets the prescribed requirements of 49 U.S.C. 44913. The FAA's deployment strategy requires deployment of effective EDS equipment in a cost-effective manner.

Information relevant to deployment decisions was developed in the 1989 final rule [54 FR 36946] in terms of the development, installation, and annual operating costs of a TNA device. However, as the EDS certification process proceeds and policies affecting EDS deployment are developed, all relevant issues influencing the ultimate decision on the timing and scope of deployment will be reviewed. The FAA will analyze the information submitted by manufacturers during the certification testing process to determine its effect on the scope and timing of deployment.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensue that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a ''significant economic impact on a substantial number of small entities.'' Small entities are independently owned and operated small businesses and small not-for-profit organizations.

Under FAA Order 2100.14A, the criterion for a ''substantial number'' is a number that is not less than 11 and that is more than one-third of the small entities subject to the rule. This Order indicates size and ''significant impact'' thresholds for specific entity types related to the aircraft industry. There is no entity categorization in this Order for manufacturers of this type of equipment. The closest applicable Standard Industrial Classification for these manufacturers is No. 3728, which is for ''manufacturers of aircraft parts and auxiliary equipment not elsewhere classified.'' For such small entities, the applicable size threshold is 175 employees. The FAA's threshold for ''significant impact'' for each of these manufacturers is $13,130 per year.

The small entities that could be potentially affected by the implementation of this proposed action are small business enterprises that are or might seek to become manufacturers of EDS equipment. The number of small business enterprises that are in, or that might seek to enter, this market cannot be determined.

The proposed amended Criteria would impose minimal costs on those small business enterprises. These costs are primarily for obtaining access to or copies of the classified and sensitive security information portions of these proposed amended Criteria. Because the incremental cost imposed by this proposed action is expected to be small and certainly less than the aforementioned threshold level ($13,130 per year), the FAA finds that this proposed action would not have a significant economic impact on a substantial number of small entities.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA's policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA is not aware of any differences that this proposal would present if adopted. Any differences that may be presented in comments to this proposal, however, will be taken into consideration.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), there are no requirements for information collection associated with this proposal.

The Proposed Amendment Criteria (Excluding Sensitive Portions)

The following sets forth the entire text of the proposed amended Criteria except those portions of the document that contain either national security information that requires safeguarding pursuant to Executive Order 12356, or sensitive security information that requires safeguarding pursuant to 14 CFR part 191. [Note: Paragraph markings (U) indicate that the content of the paragraph is unclassified consistent with standard procedures for paragraph markings in the original classified document.]

[Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 447505, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.]

Criteria for Certification of Explosives Detection Systems

Introduction

(U) Prior to any requirement for the deployment or purchase of explosives detection equipment under 14 CFR 49 U.S.C. 44913 [formerly Section 108 of the Aviation Security Improvement Act of 1990, Public Law 101–604], requires the FAA to certify that, based upon the results of tests conducted pursuant to protocols developed in consultation with experts from outside the FAA, such equipment can detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive materials likely to be used in attacks against commercial aircraft.

(U) These criteria establish the minimum acceptable performance requirements for an Explosives Detection System (EDS) to meet the mandate of 49 U.S.C. 44913 for certification by the FAA, and supersede previous EDS performance requirements established by the FAA.

Explosive Materials Definition

(U) For purposes of these Criteria for Certification of Explosives Detection Systems: ''Explosive materials'' consist of bulk/main explosive charges and detonators; a ''bulk/main explosive charge'' is an explosive which may be detonated or initiated by a detonator; and a ''detonator'' is a device, containing an initiating or primary explosive, used for initiating detonation of the bulk/main explosive charge.

Explosives Detection System (EDS) Definition

(U) An EDS is an automated device, or combination of devices, which has the ability to detect, in passengers checked baggage, the amounts, types, and configurations of explosive materials as specified by the FAA. The term ''automated'' means that the ability of the system to detect explosive materials, prior to the initial automated system alarm, does not depend on human skill, vigilance, or judgment.

[*Sensitive Portion of Document Deleted:* In the full text of the classified Criteria document, this portion addresses alarm resolution requirements subsequent to the initial automated alarm.]

General Operational Requirements

(U) The EDS must detect and differentiate explosive materials from among all other materials found in checked baggage.

(U) The detection must not be dependent on the shape, position, orientation, or configuration of the explosive materials.

(U) The EDS must not pose a health hazard to system operators or the public (as detailed in 10 CFR 20, 51 [Nuclear Radiation] and 21 CFR 1020 [Ionizing Radiation]).

(U) The EDS must not cause damage or significant residual alteration of the luggage or its contents, other than highly sensitive materials such as photographic film.

Detection Requirements

(U) The detection of explosive materials in checked baggage is affected by the type, quantity, and configuration of the bulk/main explosive charges or detonators, as well as the bag and its contents. Depending on the type of detection equipment used, the EDS must reliably detect a mix of types and quantities of explosive materials selected by the FAA when any of these charges or detonators are present in checked baggage.

(U) The term ''checked baggage'' applies to all passenger bags destined for the cargo hold, including originating and transfer baggage, regardless of whether or not the bags accompany a passenger on a particular flight.

[*Sensitive Portion of Document Deleted:* In the full text of the classified Criteria, this portion contains two tables. The first table identifies the types and quantities of explosive materials (bulk/main explosive charges) that must be detected, the minimum detection rate for each category of bulk/main explosive charges, and the overall detection and maximum false alarm rates. The first table also specifies the requirement to detect the minimum quantity and larger quantities of each listed bulk/main explosive charge. The second table lists the makes, models, and U.N. classification numbers of detonators that must be detected, and the overall detection and maximum false alarm rates. The throughput requirement that appears in both the main/bulk explosive charges and detonator tables, is quoted in the Overall Performance Requirements section below, because it is the only item that is not sensitive security information.]

Overall Performance Requirements

(U) All the criteria pertaining to detection rate, false alarm rate, and throughput are based exclusively on the fully automated component(s) or elements(s) of the system.

[*Sensitive Portion of Document Deleted:* In the full text of the classified Criteria document, this portion includes information regarding requirements for no human intervention, detection rate, and false alarm rate.]

(U) The cumulative minimum automated system throughput processing rate during the certification tests must be at least 450 bags/hour (not including alarm resolution).

Other Operational Considerations

(U) In addition to the mandatory criteria discussed above, there are a number of other operational considerations that will influence any future FAA decision to require the purchase, deployment, and use of EDS for screening checked baggage. While these considerations are not mandatory for certification of EDS equipment, they should be factored into development and design decisions made by potential manufacturers and vendors of EDS equipment.

(U) The FAA has not yet established precise EDS parameters which would serve to define what is practical or cost-effective (e.g., precise physical characteristics such as unit weight and size, or precise unit cost). Given the variety of airport and air carrier operating environments, the FAA does not wish to foreclose the development of technologies which may work under some, but not all, operating conditions.

(U) The FAA can, however, provide potential manufacturers and vendors, as well as air carriers and airports, with the following guidance. In general, EDS equipment that is less costly, smaller, and lighter is more practical for use in a variety of airports than a system that is more expensive, larger, and heavier—especially if such equipment would require separate structures or substantial modifications of existing terminal structures for installation or operation. Also, systems which are easily operated and maintained, and are proven to be reliable, will be more acceptable than systems that require extensive specialized training for operation, calibration, and maintenance.

(U) In addition, systems with throughput rates that substantially exceed the minimum rate established in the certification criteria are operationally more efficient in many applications, and are less likely to cause delays and congestion when large numbers of passenger bags must be screened in short periods of time. Further, systems that can be more easily integrated into existing passenger and baggage processing systems would presumably be more acceptable to potential users.

(U) Trade-offs are often made among these and other operational considerations during the course of system design. For example, reliability, maintainability, and availability can usually be improved, but often at the expense of an increase in purchase price. While such trade-offs may not affect certification, they will be considered during decisionmaking to require deployment of certified EDS.

System Certification

(U) The FAA will certify EDS equipment based upon the mandatory detection criteria and develop a list of certified equipment that would be eligible for use by air carriers. Additional action must be taken by the FAA to require the deployment of certified EDS to screen checked baggage.

[*Sensitive Portion of Document Deleted:* In the full text of the classified Criteria document, this portion contains information on the Act's requirement to detect likely-to-be-used explosive materials.]

(U) The FAA will not require air carriers to use certified EDS equipment until such time as the FAA determines that such equipment is available in sufficient quantities to satisfy air carrier and airport operational concerns, and is practical for use under realistic air carrier operating conditions (e.g., cost, size, weight, reliability, maintainability, and availability), and cost-effective.

(U) The FAA will only certify complete systems. It will not certify or allow for use, individual component devices. Prior to final certification, the FAA will require manufacturers and vendors to provide full system documentation. This documentation will include, but is not limited to: recommended system installation and calibration procedures; minimum

essential test equipment and devices; routine field testing procedures and test objects to be used; routine and emergency operating procedures; field preventative maintenance and repair procedures; and, training programs.

Certification Testing

(U) Testing of bulk/main explosive charges detection equipment presented to the FAA for EDS certification, will be performed in accordance with the FAA's Management Plan for EDS Certification Testing, based upon a General Testing Protocol for Bulk Explosives Detection Systems, (National Advisory Board, final report 1993).

(U) Testing of detonator detection equipment presented to the FAA for EDS certification, will be performed in accordance with the FAA's Management Plan for EDS Certification Testing of Detonator Detection Equipment, based upon FAA's General Testing Protocol for Detonator Detection Systems.

(U) The FAA Technical Center in Atlantic City, New Jersey will perform certification tests for producers of candidate explosives detection systems. The EDS Certification Test Director in the Office of Aviation Security Research and Development is the point of contact.

(U) As required by both the FAA Management Plan for EDS Certification Testing, and the FAA Management Plan for EDS Certification Testing of Detonator Detection Equipment, manufacturers seeking FAA certification for their candidate EDS must submit complete descriptive data and their test results to the FAA prior to receiving permission to ship their equipment to the FAA Technical Center. The FAA reserves the right to visit manufacturers' facilities for technical quality assurance purposes, require and/or monitor in-house tests, and review associated data prior to granting permission to ship equipment for certification testing.

(U) There may be extenuating circumstances that make it impractical for the equipment to be accommodated at the FAA Technical Center. Therefore, the FAA will consider requests for an exception that would permit equipment to be tested at a facility other than the FAA Technical Center. The written request must explain in detail why an exception is in the best interest of the U.S. Government and indicate the methods and procedures that will be used to conduct a test equivalent to those conducted at the FAA's facility.

(U) The FAA may recognize, on a reciprocal basis, EDS testing and certification conducted by a foreign government's aviation security organization. Such recognition by the FAA will be considered only if certain conditions are met. These conditions include, but are not limited to, the negotiation of an appropriate security technical exchange agreement which assures compliance with the FAA Criteria for Certification of Explosives Detection Systems using strict quality control procedures that are consistent with FAA testing procedures. The agreement must also provide for full reciprocity for certifications issued by both the foreign government aviation security organization and the FAA.

(U) All direct costs associated with testing and certification (e.g., insurance, shipping, installation, set-up technical operation, maintenance, calibration, disassembly, and FAA laboratory testing costs) must be borne by the manufacturers or vendors. Both the FAA Management Plan for EDS Certification Testing, and the FAA Management Plan for EDS Certification Testing of Detonator Detection Equipment contain specific information on the incremental costs associated with tests performed at the FAA Technical Center facilities, or other locations.

[*Sensitive Portion of Document Deleted:* In the full text of the classified Criteria, this portion contains information pertaining to test objects used in EDS certification testing.]

Component Testing

(U) As part of the FAA Security R&D program, the FAA Technical Center evaluates explosives detection devices (EDD), that do not meet all of the EDS performance standards. An EDD is an automated, uncertified EDS that is capable of meeting the partial detection requirements for bulk/main explosive charges, or detonators in the criteria. for instance, some of the devices that the FAA has evaluated have relatively low throughput rates and higher false alarm rates than the maximum acceptable rate. It will be possible under certain circumstances, for example, for a manufacturer of an automated EDD to have the FAA test and evaluate the device, even though it is not expected to fully meet the EDS certification criteria (e.g., false alarm rate or throughput).

(U) Although only complete systems can be certified, the FAA may attest to the performance, of, but not certify or approve for use, EDDs or individual components. Attesting to the performance of EDDs is intended to assist manufacturers and vendors who are seeking partners with whom they can create a functioning EDS composed of multiple devices.

(U) Testing of EDDs will only be conducted: (1) On a first-come, first-served basis; (2) if adequate resources and facilities are available at the FAA Technical Center to permit such testing (The FAA will also consider requests to test the equipment at a facility other than the FAA Technical Center; these requests will be given the lowest priority and will be performed only if it does not delay other testing being performed by the FAA Technical Center.); (3) at a lower precedence than EDS certification testing; and (4) if the FAA determines from the manufacturer's test data that there is a substantial likelihood that the device will meet the partial detection criteria.

Issued in Washington, D.C. on August 22, 1996.

Cathal L. Flynn,

Associate Administrator for Civil Aviation Security.

[FR Doc. 96–22251 Filed 2–29–96; 8:45 am]

BILLING CODE 4910–13–M

Availability of Solicitation for Aviation Research Grants and Cooperative Agreements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Cancellation of Closing Date.

SUMMARY: The Federal Aviation Administration (FAA) is cancelling the closing date on Grants for Aviation Research Program Solicitation No. 96.1 until further notice. This cancellation increases opportunities to provide maximum safety in the national air space system. Proposals may be submitted for grants and cooperative agreements which address the long and short-term technical needs of the National Airspace System (NAS) pursuant to Section 9205, Aviation Research Grant Program, and Section 9208, Catastrophic Failure Prevention Research Program, of the FAA Research, Engineering, and Development Authorization Act of 1990 (Pub. L. 101–508), and section 107 of the Aviation Security Improvement Act of 1990 (Pub. L. 101–604).

DATES: Proposals may be submitted to the address below until further notice.

ADDRESSES: Inquiries or requests for a solicitation and application material should be directed to: Colleen Peranteau, AAR–201, Office of Research and Technology Applications, William J. Hughes Technical Center, Building 270, Room B115, Atlantic City International Airport, New Jersey 08405, Voice: (609) 485–8410, Fax: (609) 485–6509.

SUPPLEMENTARY INFORMATION:

Background

Title IX, The Aircraft Safety and Capacity Expansion Act of 1990 (Pub. L. 101–508), Section 9205, states its purpose is ''to conduct aviation research into areas deemed by the Administrator to be required for the long-term growth of civil aviation.'' The Catastrophic Failure Prevention Research Grant Program, Section 9208, directs the FAA ''to conduct aviation research relating to development of technologies and methods to assess the risk and prevent defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances which could result in a catastrophic failure of an aircraft.'' And the Aviation Security Grant Program (Pub. L. 101–604) provides for grants for ''the conduct of research, development, and implementation of technologies and procedures to counteract terrorist act against civil aviation.''

A detailed description of specific research areas, additional requirements, and selection criteria are set out in the solicitation: Grants for Aviation Research, Solicitation 96.1.

Dated: August 16, 1996.

Andres G. Zellweger,

Director, Office of Aviation Research.

[FR Doc. 96–22255 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application (#96–01–C–00–ALS) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at San Luis Valley Regional Airport—Bergman Field, Submitted by the San Luis Valley Regional Airport Board of Control, Alamosa, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at San Luis Valley Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 30, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael M. Hackett, Airport Manager, at the following address: San Luis Valley Regional Airport Board of Control, P.O. Box 419, Alamosa, CO 81101.

Air carriers and foreign air carriers may submit copies of written comments previously provided to San Luis Valley Airport Board of Control, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 286–5525; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–01–C–00–ALS) to impose and use PFC revenue at San Luis Valley Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 23, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the San Luis Valley Airport Board of Control, Alamosa, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 29, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: March 1, 1997

Proposed charge expiration date: May 1, 2024

Total requested for use approval: $288,835.87

Brief description of proposed project: Construction of parallel taxiway, including related signage and marking.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: All taxi/commercial operators filing or required to file FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airport Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the San Luis Valley Regional Airport.

Issued in Renton, Washington on August 23, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–22254 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 96–27]

Notice of Request for Extension of Currently Approved Information Collection; Highway Performance Monitoring System

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 USC 3501, 3506(c)(2)(A)), the FHWA solicits comment on its intent to request the Office of Management and Budget (OMB) to extend the information collection for FHWA's Highway Performance Monitoring System.

DATES: Comments must be submitted on or before October 29, 1996.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC–10, Room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. James Getzewich, Highway System Performance Division, Office of Highway Information Management, (202) 366–0175, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Office hours are from 7:30 a.m. to 4:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highway Performance Monitoring System. (HPMS).

OMB Number: 2125–0028.

Background: Public comment is requested regarding the burden associated with collection of information. The data for the Highway Performance Monitoring System (HPMS) are collected under authority of 23 U.S.C. 307, which places the responsibility on the Secretary of Transportation for management decisions which affect transportation. 23 CFR 1.5 provides the Federal Highway Administrator with authority to request information to administer the Federal-Aid Highway Program. Estimates of future highway needs of the Nation are mandated by Congress on a biennial basis [23 U.S.C. 307(e)]. Additionally, HPMS data serve as the information source for the ''Highway Safety Performance'' report prepared by the Federal Highway Administration (FHWA) pursuant to Section 207 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424). The HPMS data collected are essential to FHWA and Congress in evaluating effectiveness of the Federal-aid highway programs, providing mileage components of apportionment formulae, and evaluating highway safety programs. The information is used by FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems.

Interested parties are invited to send comments regarding any aspect of these information collections, including, but not limited to: (1) Ways to enhance the quality, utility, and clarity of the collected information; (2) the accuracy of the estimated burden; and (3) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB extension of this information collection.

Respondents: 50 States, DC, Commonwealth of Puerto Rico, plus four territories (American Samoa, Guam, Northern Marianas, and Virgin Islands).

Estimated Total Annual Burden: The estimated burden hours for this information collection is 119,680 hours.

Frequency: The data is collected by the respondents and submitted to FHWA annually.

Authority: 23 U.S.C. 315; 49 CFR 1.48. 44 U.S.C. 3506(c)(2)(A).

Issued on: August 21, 1996.

Diana Zeidel,

Deputy Associate Administrator for Administration.

[FR Doc. 96–21929 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–22–M

[FHWA Docket No. 96–31]

Notice of Request for Extension of Currently Approved Information Collection; A Guide To Reporting Highway Statistics

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to extend the information collection for FHWA's A Guide to Reporting Highway Statistics.

DATES: Comments must be submitted on or before October 29, 1996.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC–10, room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Howard, 400 7th Street, SW, (202) 366–2833, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: A Guide to Reporting Highway Statistics.

OMB No.: 2125–0032.

Background: Public comment is requested regarding the burden associated with this collection of information. The authority to collect this information is contained in the Department of Transportation (DOT) Act of 1966 (P.L. 89–670; 49 U.S.C. 301 (4), which charges the Secretary of Transportation to promote and undertake development, collection, and dissemination of technological, statical, economic, and other information relevant to domestic and international transportation. Title 23, United States Code, Section 307(a) authorizes the DOT to engage in studies to collect data concerning highway development financing, modernization, safety, maintenance, and traffic conditions and to publish the results of such research. Title 23, United States Code, Section 307(e) requires the Secretary of Transportation to report biennially to Congress on the Nation's highway needs. The Commercial Motor Vehicle Safety Act of 1986 established a major Federal interest in the States' driver licensing programs. The driver license data collected under this Guide are critical in evaluating the effects of the regulations mandated by the Act. The Act also established a three-part grant program to aid the States in the development and implementation of licensing procedures for commercial drivers and requires that the ''supplemental'' grant funds be distributed among the States according to the number of commercial driver tests administered and the number of commercial licenses issued. The various forms included in the Guide are designed to provide for the reporting of statistics that show motor-fuel usage, motor-vehicle registrations and use, drivers, and the taxes and fees paid and collected from these sources and the purposes for which these funds are expended. The Guide provides for the collection of information that describes policies and procedures for assembling statistical data from the existing files of State agencies on motor-vehicle registration and fees, motor-fuel use and taxation, driver licensing, highway taxation and finance, and other related subjects, and the reporting of these data to the Federal highway Administration.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Respondents: The overall annual reporting burden is shared by the 50 States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Marianas and the Virgin Islands.

Estimated Total Annual Burden: The annual reporting burden is estimated to be 38,738 hours.

Frequency: The respondents are required to report on an annual basis.

Authority: Title 23, U.S. Code, Section 307(e); 23 U.S.C. 315, 49 CFR 1.48.

Issued on: August 21, 1996.

Diana Zeidel,

Deputy Associate Administrator for Administration.

[FR Doc. 96–21930 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–22–M

Surface Transportation Board [1]

[STB Finance Docket No. 33009]

Richard D. Robey—Continuance in Control Exemption—Juniata Valley Railroad Company

Richard D. Robey (Robey), a noncarrier individual, has filed a notice of exemption to continue in control of Juniata Valley Railroad Company (Juniata), upon Juniata's becoming a Class III rail carrier. Consummation was expected to occur on or after August 15, 1996.

Juniata, a noncarrier, has concurrently filed a joint notice of exemption in *SEDA-COG Joint Rail Authority and Juniata Valley Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation,* STB Finance Docket No. 33008, to operate approximately 12.3 [2] miles of rail line acquired by SEDA-COG Joint Rail Authority from Consolidated Rail Corporation known as the Lewistown Cluster in Mifflin County, PA.

Robey controls seven other nonconnecting Class III rail carriers: [3] North Shore Railroad Company; Nittany & Bald Eagle Railroad Company, Shamokin Valley Railroad Company; West Shore Railway Services, Inc., Stourbridge Railroad Company, Inc., Wellsboro and Corning Railroad Company; and Union County Industrial Railroad Company.

Robey states that: (1) Juniata will not connect with any of the other railroads in its corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect Juniata with any other railroad in its corporate family; and (3) the transaction does not involve a Class I railroad. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33009, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Richard R. Wilson, Vuono & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: August 22, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22205 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

[Docket Nos. 41242 et al.[1]]

Central Power & Light Company v. Southern Pacific Transportation Company

AGENCY: Surface Transportation Board, Transportation.

ACTION: Request for comments.

SUMMARY: The Board is seeking comments on certain common legal and policy issues raised by these cases which have industry-wide significance for rail carriers and their captive shippers. The immediate issue in these cases is whether a captive shipper can obtain prescription of a rate for the ''bottleneck'' segment of its rail shipments (the portion of the movement for which no alternative transportation route is possible), based upon a challenge to the reasonableness of a local rate that has generally not been applied to its traffic. The broader issues involved are whether and how a captive shipper can obtain a competitive route for the non-bottleneck portion of its moves and whether a rate reasonableness analysis can be limited to the bottleneck segment, relying on competition to constrain the rates charged on the segment of a move that is subject to competition.

The Board is soliciting comments and briefing on these issues from all interested persons and will hold an oral argument. The oral argument will be limited to the generic issues addressed in the Board's decision and will not address other issues specific to an individual case.

DATES: Comments are due by September 30, 1996.

ADDRESSES: Send an original and 10 copies of submissions, referring to Nos. 41242 *et al.* to: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

One copy of each submission should be sent to counsel for each party of record in each of the cases.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional details, including a fuller description of the issues, appear in the Board's full decision. To purchase a copy of the full decision, write to, call, or pick up in person from DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: August 23, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22275 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

[2] Counsel has confirmed that the Lewiston Cluster consists of a total of approximately 12.3 miles.

[3] Robey has concurrently filed a notice of exemption in *Richard D. Robey—Continuance in Control Exemption—Lycoming Valley Railroad Company,* STB Finance Docket No. 33011.

[1] This notice embraces: No. 41295, *Pennsylvania Power & Light Co.* v. *Consolidated Rail Corp.*; and No. 41626, *MidAmerican Energy Co.* v. *Union Pac. R.R. and Chicago and North W. Ry.* A fourth case—No. 41604, *Western Resources, Inc.* v. *The Atchison, T.&S.F. Ry.*—involves similar issues, but has been stayed pending judicial resolution of certain contract interpretation matters.

Surface Transportation Board [1]

[STB Finance Docket No. 33013]

Kansas Southwestern Railway Company, L.L.C.—Acquisition Exemption—The Atchison, Topeka and Santa Fe Railway Company

Kansas Southwestern Railway Company, L.L.C. (KSW), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire approximately .46 miles of rail line owned by The Atchison, Topeka and Santa Fe Railway Company between milepost 0+740 feet at Kiowa, KS, and milepost 0+3168 feet south of Kiowa, KS. KSW will operate the property. Consummation was expected to occur on or after August 13, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33013, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Karl Morell, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Decided: August 22, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22200 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

[STB[1] Finance Docket No. 33004]

Reading Blue Mountain & Northern Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation

Reading Blue Mountain & Northern Railroad Company (RBMN), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41: (1) to acquire and operate a total of approximately 104.22 miles of rail line; and (2) to acquire a total of approximately 2.8 miles of incidental trackage rights owned by Consolidated Rail Corporation (Conrail) and located in the Commonwealth of Pennsylvania. The proposed transaction was to be consummated on the date of final agreement of the parties but not sooner than August 20, 1996, the effective date of the exemption.

The lines involved in the acquisition by purchase are described as follows: the Lehigh Line from MP 119.4 at Lehighton Yard to MP 130.5 at a point near M&H Jct., and from MP 130.6 at a point near M&H Jct. to MP 147.1 at Frazer, a distance of 27.6 miles;[2] the Lehigh Line from MP 143.8 at Frazer to MP 161.2 at Laurel Run, a distance of 17.4 miles; the Lehigh Line from MP 164.2 at Laurel Run to MP 212.2 at Mehoopany (500 feet west of the west portal of Vosburg Tunnel), a distance of 48.0 miles; the Taylor Secondary line from MP 136.7 at Taylor to MP 142.5 at Pittston, a distance of 5.8 miles; the Keyser Valley Industrial Track from MP 136.37 at Taylor to MP 140.7 at Cayuga, a distance of 4.33 miles; the Dunmore Running Track from MP 0.0 at Duryea Jct. to MP 0.7 at Topps Gum, a distance of 0.7 miles; and the Kerr-McGee Lead from MP 0.0 at Avoca to MP 0.3 at the end of the track, a distance of 0.3 miles.

The incidental trackage rights involved are described as follows: the Lehigh Line between MP 130.5 and MP 130.6, a distance of 0.1 miles; between Conrail's interchange with C&S at Packerton Jct., across Conrail's Track No. 2 to a connection with Track No. 1 that RBMN is acquiring, a distance of 0.1 miles;[3] through Taylor Yard to connect the Taylor Secondary Line and the Keyser Valley Line, a distance of approximately 0.8 miles; and from MP 136.7 at Taylor Yard to a point east of Bridge 60 at Scranton, a distance of approximately 1.8 miles.[4]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33004, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P. O. Box 796, West Chester, PA 19381–0796.

Decided: August 22, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22202 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

[STB[1] Finance Docket No. 33020]

Reading Blue Mountain & Northern Railroad Company—Acquisition of Trackage Rights Exemption—C&S Railroad Corporation

Reading Blue Mountain & Northern Railroad Company (RBMN), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire overhead trackage rights and operate over approximately 18 miles of rail line owned by the C&S Railroad Corporation, between milepost 18± at Mauck Chunck Jct., PA, and milepost 0± at Packerton Jct., PA.[2] Consummation was expected to occur on or after August 20, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33020, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch,

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

[2] Conrail is conveying only Track No. 1 between MP 119.4 and MP 130.5, retaining Track No. 2; and is conveying incidental trackage rights to RBMN over the single track between MP 130.5 and MP 130.6.

[3] RBMN has concurrently filed a notice of exemption in *Reading Blue Mountain & Northern Railroad Company—Acquisition of Trackage Rights Exemption—C&S Railroad Corporation,* Finance Docket No. 33020.

[4] Conrail is in the process of selling the portion of Taylor Yard containing these lines to Delaware and Hudson Railway Company, Inc. (DHC), but will retain permanent trackage rights through Taylor Yard which it will assign, with the consent of DHC, to RBMN.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

[2] RBMN is acquiring overhead trackage rights only and will not be allowed to serve any additional customers.

RBMN also has concurrently filed a notice of exemption in *Reading Blue Mountain & Northern Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation,* Finance Docket No. 33004.

1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P. O. Box 796, West Chester, PA 19381–0796.

Decided: August 22, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22206 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[STB Finance Docket No. 33011]

Richard D. Robey—Continuance in Control Exemption—Lycoming Valley Railroad Company

Richard D. Robey (Robey), a noncarrier individual, has filed a notice of exemption to continue in control of Lycoming Valley Railroad Company (Lycoming), upon Lycoming's becoming a Class III rail carrier. Consummation was expected to occur on or after August 15, 1996.

Lycoming a noncarrier, has concurrently filed a notice of exemption in *SEDA-COG Joint Rail Authority and Lycoming Valley Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation,* STB Finance Docket No. 33010, to acquire approximately 38.0 [2] miles of rail line owned by Consolidated Rail Corporation known as the Williamsport Cluster in the counties of Clinton and Lycoming, PA.

Robey controls seven other nonconnecting Class III rail carriers: [3] North Shore Railroad Company; Nittany & Bald Eagle Railroad Company, Shamokin Valley Railroad Company; West Shore Railway Services, Inc.; Stourbridge Railroad Company, Inc.; Wellsboro and Corning Railroad Company; and Union County Industrial Railroad Company.

Robey states that: (1) Lycoming will not connect with any of the other railroads in its corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect Lycoming with any other railroad in its corporate family; and (3) the transaction does not involve a Class I railroad. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33011, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Richard R. Wilson, Vuono & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: August 22, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22201 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

[STB [1] Finance Docket No. 33008]

SEDA–COG Joint Rail Authority and Juniata Valley Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation

SEDA–COG Joint Rail Authority (Authority) and Juniata Valley Railroad Company (Juniata), noncarriers, have filed a joint verified notice of exemption under 49 CFR 1150.31 for Authority to acquire through purchase and for Juniata to operate approximately 12.3 [2] miles of rail line owned by Consolidated Rail Corporation known as the Lewistown Cluster in Mifflin County, PA. Juniata will become a Class III rail carrier.[3] Consummation was expected to occur on or after August 15, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33008, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Richard R. Wilson, Vuono & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: August 22, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22203 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

[STB [1] Finance Docket No. 33010]

SEDA–COG Joint Rail Authority and Lycoming Valley Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation

SEDA–COG Joint Rail Authority (Authority) and Lycoming Valley Railroad Company (Lycoming), noncarriers, have filed a joint verified notice of exemption under 49 CFR 1150.31 for Authority to acquire through purchase and for Lycoming to operate approximately 38.0 miles of rail line owned by Consolidated Rail Corporation known as the Williamsport Cluster in the counties of Clinton and Lycoming, PA. Lycoming will become a Class III rail carrier.[2] Consummation

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

[2] Counsel has confirmed that the Williamsport Cluster consists of a total of approximately 38.0 miles.

[3] Robey has concurrently filed a notice of exemption in *Richard D. Robey—Continuance in Control Exemption—Juniata Valley Railroad Company,* STB Finance Docket No. 33009.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[2] Counsel has confirmed that the Lewistown Cluster consists of a total of approximately 12.3 miles.

[3] This proceeding is related to STB Finance Docket No. 33009, wherein Richard D. Robey, a noncarrier individual, has filed a notice of exemption to continue in control of Juniata upon Juniata's becoming a Class III rail carrier.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[2] This proceeding is related to STB Finance Docket No. 33011, wherein Richard D. Robey, a noncarrier individual, has filed a notice of exemption to continue in control of Lycoming upon Lycoming's becoming a Class III rail carrier.

was expected to occur on or after August 15, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33010, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Richard R. Wilson, Vuono & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: August 22, 1996.

By the Board, Joseph D. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22204 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

August 20, 1996.

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 1995, Public Law 104–13. 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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0748.

Form Number: IRS Form 2678.

Type of Review: Extension.

Title: Employer Appointment of Agent.

Description: 26 U.S.C. 3504 authorizes an employer to designate a fiduciary, agent, etc., to perform the same acts as required of employers.

Respondents: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government.

Estimated Number of Respondents: 95,200.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (as necessary).

Estimated Total Reporting Burden: 47,600 hours.

OMB Number: 1545–1398.

Form Number: IRS Form 9620 (formerly RNO 91819).

Type of Review: Extension.

Title: Race and National Origin Identification.

Description: The Internal Revenue Service does not have a form for the collection of Race and National Origin Identification from applicants. This scanning form on its own and when combined with other IRS tracking forms (i.e., Form AA) will allow the Service to determine its applicant/employee pool, and thereby, enhance its recruitment plan.

Respondents: Individuals or households, Federal Government.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: Semi-annually, Annually.

Estimated Total Reporting Burden: 2,500 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–22174 Filed 8–29–96; 8:45 am]

BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

August 23, 1996.

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 1995, Public Law 104–13. 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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0119.

Form Number: IRS Form 1099–R.

Type of Review: Extension.

Title: Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

Description: Form 1099–R is used to report distributions from pensions, annuities, profit-sharing or retirement plans, IRAs, and the surrender of insurance contracts. This information is used by IRS to verify that income has been properly reported by the recipient.

Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Governments.

Estimated Number of Respondents: 350,000.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 16,535,774 hours.

OMB Number: 1545–0415.

Form Number: IRS Form W–4P.

Type of Review: Extension.

Title: Withholding Certificate for Pension or Annuity Payments.

Description: Used by the recipient of pension or annuity payments to designate the number of withholding allowances he or she is claiming, an additional amount to be withheld, or to elect that no tax be withheld, so that the payer can withhold the proper amount.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 12,000,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—40 minutes.

Learning about the law or the form—20 minutes.

Preparing the form—49 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 21,720,000 hours.

OMB Number: 1545–0795.

Form Number: IRS Form 8233.

Type of Review: Revision.

Title: Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.

Description: Compensation paid to a nonresident alien (NRA) individual for independent personal services (self-employment) is generally subject to 30% withholding or graduated rates. However, compensation may be exempt from withholding because of a U.S. tax treaty or personal exemption amount. Form 8233 is used to request exemption from withholding.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 480,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—26 minutes
Learning about the law or the form—19 minutes
Preparing and sending the form to the IRS—42 minutes
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 705,600 hours.

OMB Number: 1545–0877.
Form Number: IRS Form 1099–A.
Type of Review: Extension.
Title: Acquisition or Abandonment of Secured Property.
Description: Form 1099–A is used by lenders to report foreclosures and abandonments of property that is security for a loan.

Respondents: Business or other for-profit.
Estimated Number of Respondents: 12,916.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 42,051 hours.

OMB Number: 1545–0922.
Form Number: IRS Forms 8329 and 8330.
Type of Review: Extension.
Title: Lender's Information Return for Mortgage Credit Certificates (MCCs) (Form 8329); and Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs) (Form 8330).

Description: Form 8329 is used by lending institutions and Form 8330 is used by state and local governments to report on mortgage credit certificates (MCCs) authorized under Internal Revenue Code (IRC) section 25. IRS matches the information supplied by lenders and issuers to ensure that the credit is computed properly.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 10,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8329	Form 8330
Recordkeeping	3 hr., 35 min.	4 hr., 32 min.
Learning about the law or the form	1 hr., 12 min.	1 hr., 23 min.
Preparing and sending the form to the IRS	1 hr., 18 min.	1 hr., 31 min.

Frequency of Response:
Form 8329—Annually
Form 8330—Quarterly
Estimated Total Reporting/Recordkeeping Burden: 75,800 hours.

OMB Number: 1545–1410.
Form Number: IRS Form 8840.
Type of Review: Extension.
Title: Closer Connection Exception Statement for Aliens.
Description: Form 8840 is used by an alien individual, who otherwise meets the substantial presence test, to explain the basis of the individual's claim that he or she is able to satisfy the closer connection exception described in Regulations Section 301.7701(b)-2.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 350,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—13 minutes
Learning about the law or the form—8 minutes
Preparing the form—1 hour., 14 minutes
Copying, assembling, and sending to the IRS—35 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 759,500 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Alexander T. Hunt (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 96–22175 Filed 8–29–96; 8:45 am]
BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

August 23, 1996.

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 1995, Public Law 104–13. 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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Office/Office of International Financial Analysis

OMB Number: 1505–0010.
Form Number: FC–2.
Type of Review: Extension.
Title: Monthly Consolidated Foreign Currency Report of Major Market Participants.
Description: Collection of information on Form FC–2 is required by law. Form FC–2 is designed to collect timely information on foreign exchange contracts purchased and sold; foreign exchange futures purchased and sold; net options position, delta equivalent value long or short; non-capital assets and liabilities.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 4 hours.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 480 hours.

OMB Number: 1505–0012.
Form Number: FC–1.
Type of Review: Extension.
Title: Weekly Consolidated Foreign Currency Report of Major Market Participants.
Description: Collection of information on Form FC–1 is required by law. Form FC–1 is designed to collect timely information on foreign exchange spot forward, and futures purchased and sold; net options position, delta equivalent value long or (short); net reported dealing position long or (short).
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 25.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Weekly.
Estimated Total Reporting Burden: 1,300 hours.

OMB Number: 1505–0014.
Form Number: FC–3.
Type of Review: Extension.
Title: Quarterly Consolidated Foreign Currency Report.
Description: Collection of information on Form FC–3 is required by law. Form FC–3 is designed to collect timely information on foreign exchange

contracts purchased and sold; foreign exchange futures purchased and sold; non-capital assets and liabilities; cross currency interest rates swaps.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Respondent: 8 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 1,600 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–22176 Filed 8–29–96; 8:45 am]

BILLING CODE 4810–25–P

Fiscal Service

Financial Management Service; Proposed Collection of Information: ACH Vendor Miscellaneous Payment Enrollment Form

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the information collection for the ''ACH Vendor Miscellaneous Payment Enrollment Form.''

DATES: Written comments should be received on or before October 29, 1996.

ADDRESSES: Direct all written comments to Financial Management Service, 3361–L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marilyn Feingold, 401–14th Street, SW., Washington, DC 20227, (202) 874–6725.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: ACH Vendor Miscellaneous Payment Enrollment Form.

OMB Number: 1510–0056.

Form Number: SF 3881.

Abstract: This form is used to collect payment data from vendors doing business with the Federal Government. The Treasury Department, Financial Management Service will use the information to electronically transmit payments to vendors' financial institutions.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50,000.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility: (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: August 23, 1996.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 96–22190 Filed 8–29–96; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit ''Alexander the Great'' (see list),[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of all of the listed exhibit objects at the Florida International Museum, St. Petersburg, Florida, from on or about October 1, 1996, through on or about April 6, 1997, and of a portion of the listed exhibit objects at the Portland Museum of Art, Portland, Oregon, thereafter, is in the national interest. Public Notice of this determination is ordered to be published in the Federal Register.

Dated: August 27, 1996.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 96–22222 Filed 8–29–96; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (69 Stat. 985, 22 U.S.C. 2459), Executive order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit ''Jasper Johns: A Retrospective.'' (See list)[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Museum of Modern Art, New York, New York, from on or about October 16, 1996, through on or about January 21, 1997, is in the national interest. Public Notice of this determination is ordered to be published in the Federal Register.

Dated: August 27, 1996.

Wallace Stuart,

Acting General Counsel.

[FR Doc. 96–22223 Filed 8–29–96; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg, Assistant General Counsel, at 202/619–6084; the address is Room 700, U.S. Information Agency, 301–4th Street, S.W., Washington, D.C. 20547–0001.

[1] A copy of this list may be obtained by contacting Paul W. Manning, Assistant General Counsel, at 202/619–5997; the address is Room 700, U.S. Information Agency, 301–4th Street, S.W., Washington, D.C. 20547.

Federal Register

Friday
August 30, 1996

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

Safety Standards for Scaffolds Used in the Construction Industry; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–205]

RIN 1218–AA40

Safety Standards for Scaffolds Used in the Construction Industry

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) hereby revises the construction industry safety standards which regulate the design, construction, and use of scaffolds. The final rule updates the existing scaffold standards and sets performance-oriented criteria, where possible, to protect employees from scaffold-related hazards such as falls, falling objects, structural instability, electrocution and overloading.

In particular, the final rule has been updated to address types of scaffolds—such as catenary scaffolds, step and trestle ladder scaffolds, and multi-level suspended scaffolds—not covered by OSHA's existing scaffold standards. In addition, the final rule allows employers greater flexibility in the use of fall protection systems to protect employees working on scaffolds and extends fall protection to erectors and dismantlers of scaffolds to the extent feasible. Another area that the final rule strengthens is training for workers using scaffolds; the conditions under which such employees must be retrained are also specified in the final rule. Finally, the language of the rule has been simplified, duplicative and outdated provisions have been eliminated, overlapping requirements have been consolidated, and the performance orientation of the rule has been enhanced to allow employers as much flexibility in compliance as is consistent with employee protection.

DATES: *Effective dates.* This standard will become effective on November 29, 1996, except for § 1926.453(a)(2), which will not become effective until an Office of Management and Budget (OMB) Control number is received and displayed for this ''collection of information'' in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OSHA will publish a document in the Federal Register announcing the effective date of § 1926.453(a)(2).

Incorporation by reference. The incorporations by reference of certain publications listed in this final rule are approved by the Director of the Federal Register as of November 29, 1996.

Compliance date: Employers are required to comply with the provisions of paragraphs (e)(9) and (g)(2) of § 1926.451, which address safe access and fall protection, respectively, for employees erecting and dismantling supported scaffolds starting on September 2, 1997.

Comments. Written comments on the paperwork requirements of this final rule must be submitted on or before October 29, 1996.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard, the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Suggestions and information regarding the drafting of non-mandatory Appendix B, ''Criteria for Determining the Feasibility of Providing Fall Protection and Safe Access for Workers Erecting or Dismantling Supported Scaffolds'' should be submitted to the Docket Officer, Docket S–205, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Anne C. Cyr, Occupational Safety and Health Administration, Office of Information and Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone: (202) 219–8148.

SUPPLEMENTARY INFORMATION:

I. Background

Congress amended the Contract Work Hours Standards Act (40 U.S.C. 327 et seq.) in 1969 by adding a new section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (CSA), significantly strengthened employee protection by authorizing the promulgation of construction safety and health standards for employees of the building trades and construction industry working on federal and federally-financed or federally-assisted construction projects. Accordingly, the Secretary of Labor issued Safety and Health Regulations for Construction in 29 CFR part 1518 (36 FR 7340, April 17, 1971).

The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 et seq.) authorized the Secretary of Labor to adopt established federal standards issued under other statutes, including the CSA, as occupational safety and health standards. Accordingly, the Secretary of Labor adopted the Construction Standards, which had been issued under the CSA, as OSHA standards (36 FR 10466, May 29, 1971). The Safety and Health Regulations for Construction were subsequently redesignated as 29 CFR part 1926 (36 FR 25232, December 30, 1971). Standards addressing scaffolds, §§ 1926.451 and 1926.452, were adopted in subpart L of part 1926 as OSHA standards as part of this process.

Various amendments were made to subpart L during the first two years of the OSH Act. The amendments revised scaffold provisions that addressed planking grades, wood pole scaffold construction, overhead protection, bracket scaffold loading, and plank spans. Also, substantive provisions concerning pump jack scaffolds, height of catch platforms, and guardrails were added (37 FR 25712, December 2, 1972).

Based on concerns regarding the effectiveness of the existing scaffold standards, OSHA began a complete review of subpart L in 1977. The Agency consulted the Advisory Committee on Construction Safety and Health (ACCSH) several times regarding draft revisions to subpart L. The transcripts of these meetings are part of the public record for this rulemaking (Ex. 3–4). OSHA addresses specific recommendations from the ACCSH, as well as those submitted by other rulemaking participants, in the Summary and Explanation section, below.

On November 25, 1986, OSHA issued a notice of proposed rulemaking (NPRM) on scaffolds used in construction (51 FR 42680). The proposal set a period, ending February 23, 1987, during which interested parties could submit written comments or request a hearing. The Agency twice granted requests for more time to submit comments and hearing requests. OSHA first extended the comment and hearing request period to June 1, 1987 (52 FR 5790, February 26, 1987) and then extended that period to August 14, 1987 (52 FR 20616, June 2, 1987). OSHA received 602 comments on the proposal, along with several hearing requests.

On January 26, 1988, OSHA announced that it would convene an informal public hearing on March 22, 1988 to elicit additional information on

specific issues related to scaffolds, fall protection and stairways and ladders (53 FR 2048). The informal public hearing was held on March 22–23, 1988, with Administrative Law Judge Joel Williams presiding. At the close of the hearing, Judge Williams set a period, ending May 9, 1988, for the submission of additional comments and information. OSHA received 31 submissions, including testimony and documentary evidence, in response to the hearing notice. On August 11, 1988, Judge Williams certified the rulemaking record, including the hearing transcript and all written submissions to the docket, thereby closing the record for this proceeding.

In 1988, the American National Standards Institute (ANSI), an organization which sets voluntary consensus standards, approved a revision of ANSI A10.8–1977, *Scaffolding*, updating its safety requirements for the use of scaffolds in construction and demolition operations. Section 6(b)(8) of the OSH Act requires that when an OSHA standard differs substantially from an existing national consensus standard, the Secretary must publish ''a statement of the reasons why the rule as adopted will better effectuate the purposes of the Act than the national consensus standard.'' In compliance with that requirement, OSHA has reviewed the requirements of this final rule with reference to the corresponding provisions of ANSI A10.8–1988. The Agency discusses the relationship between the provisions of subpart L and corresponding provisions of ANSI A10.8–1988 in the *Summary and Explanation*, below.

On March 29, 1993, OSHA reopened the rulemaking record for subpart L (58 FR 16509) to obtain additional comments and information regarding fall protection and safe means of access for employees erecting and dismantling scaffolds; the use of crossbraces in scaffold systems; and the use of repair bracket scaffolds. The comment period was scheduled to end on May 28, 1993. On May 26, 1993, the Agency extended the comment period (58 FR 30131) to June 29, 1993, in response to a request for additional time to submit comments. OSHA received 46 comments in response to the March 29 notice. Those comments are discussed below in relation to the pertinent provisions of the final rule.

On February 1, 1994, OSHA again reopened the rulemaking record (59 FR 4615) to obtain comments and information regarding scaffold stairways; repair bracket scaffolds; tank builder scaffolds; a NIOSH study of workplace fatalities; and scaffold-related material incorporated from the proposed part 1910, subpart D rulemaking. The comment period, which ended on March 18, 1994, elicited 46 comments. Those comments are also discussed below in relation to the pertinent provisions of the final rule.

A wide range of employers, businesses, labor unions, trade associations, state governments, and other interested parties contributed to the development of this record. OSHA appreciates these efforts to help develop a rulemaking record that provides a sound basis for the promulgation of revised subpart L.

Based on its review of existing subpart L, OSHA believes that certain provisions in the existing standards are outdated, redundant, or ambiguous. In addition, some types of scaffolds used in construction (e.g., catenary scaffolds) are not clearly addressed by the existing standards, and some provisions cover only certain types of scaffolds when they should apply to all. The final rule eliminates those unnecessary, outdated and redundant provisions (e.g., revised subpart L states the requirement for guardrails once, rather than 19 separate times as in the existing standard).

OSHA is coordinating the revision of part 1926, subpart L, with the ongoing rulemakings initiated to revise the General Industry (part 1910, subpart D) and Shipyard (part 1915, subpart N) scaffold standards, so that those standards will be consistent, where appropriate.

II. Hazards Involved

Scaffold-related incidents resulting in injuries and fatalities continue to occur despite the fact that OSHA has had a scaffold standard (existing subpart L) in place since 1971 (Exs. 1, 2, 3, 42, 43, 44 and 45). However, the Agency believes that compliance with the standard being published today will be better than it has been in the past because this standard has been simplified, brought up to date, and strengthened to provide additional protection.

Although specific accident ratios cannot be projected for the estimated 3.6 million construction workers currently covered by subpart L, the Economic Analysis that accompanies this final rule estimates that, of the 510,500 injuries and illnesses that occur in the construction industry annually, 9,750 are related to scaffolds. In addition, of the estimated 924 occupational fatalities occurring annually, at least 79 are associated with work on scaffolds.

OSHA prepared the following statistical estimates (based on 4.5 million construction workers then covered by subpart L) to support the 1986 proposal for subpart L, based on a review of accident data prepared by the Bureau of Labor Statistics (BLS) (Ex. 3–1). The revised scaffold standards contain a number of provisions designed specifically to address the findings of this analysis.

a. Seventy-two percent of the workers injured in scaffold accidents covered by the BLS study attributed the accident either to the planking or support giving way, or to the employee slipping, or being struck by a falling object. Plank slippage was the most commonly cited cause.

b. About 70 percent of the workers learned of the safety requirements for installing work platforms, assembling scaffolds, and inspecting scaffolds through on-the-job training. Approximately 25 percent had no training in these areas.

c. Only 33 percent of scaffolds were equipped with a guardrail.

The following are recent examples, from the OSHA Integrated Management Information System (IMIS) data, of the types of accidents that continue to injure and kill employees working on scaffolds.

- In July, 1991, two employees were working on a pump jack scaffold doing roofing work. The scaffold became overloaded and broke. The employees fell 12 feet to the ground, resulting in one fatality and one serious injury.
- In August, 1992, two workers were erecting an aluminum pump jack scaffold. As they were raising the second aluminum pole, the pole apparently contacted an overhead power line. The pole being raised was 29 feet 10 inches long and the line was 28 feet 10 inches high. The line was approximately 11 feet from the house. One employee died and the other suffered severe burns and was hospitalized. The surviving employee noted that he thought they had enough room to work around the power lines, which were not de-energized or shielded.
- In July, 1993, a foreman climbed up the frame of a 45 foot high tubular welded frame scaffold to check on an employee who was sandblasting inside a stack at a steam plant. The scaffold was not equipped with guardrails and there was no access ladder. After talking to the employee, the foreman either fell from the unguarded platform or fell while climbing down the scaffold end frame, resulting in his death. There were no witnesses to the fall.

Based on its analysis of the available data and its field experience in enforcing construction standards, the Agency has determined that employees using scaffolds are exposed to a

significant risk of harm. Specifically, scaffold related fatalities still account for approximately 9% of all fatalities in the construction workplace. In addition, the above data indicate that the revised final standard would have prevented many of these accidents more effectively than compliance with the existing scaffold standards. Consequently, OSHA finds that the revision of its scaffold standards for construction is necessary to improve employee protection. OSHA has determined that, as revised, the standard clearly states employers' duties and the appropriate compliance measures.

For additional discussion of incidence rates, significance of risk, and the protectiveness of the final rule, see Section IV, Summary of the Final Economic Analysis.

III. Summary and Explanation of the Final Rule

The following discussion explains how the final rule corresponds to or differs from the proposed scaffold standard and the existing standard, and how the comments and testimony presented on each provision influenced the drafting of the final rule. Except where otherwise indicated, proposed provisions which did not elicit comment have been promulgated as proposed, for reasons stated in the preamble to the proposed rule which is hereby incorporated by reference (51 FR 42680).

Subpart L—Scaffolds. The title of subpart L of OSHA's Construction standards has been changed from ''Scaffolding'' to ''Scaffolds'', as proposed. The word ''scaffold'' is used in the title and throughout the final rule in lieu of the longer word ''scaffolding.'' This change does not affect the scope of subpart L. OSHA did not receive any comments concerning the title of the subpart.

Section 1926.450 Scope, application and definitions applicable to this subpart. Paragraph (a) of § 1926.450 states the scope and application of subpart L. The final rule will apply to all scaffolds used in construction, alteration, repair (including painting and decorating), and demolition operations covered under 29 CFR part 1926, except that crane or derrick suspended personnel platforms will continue to be regulated under § 1926.550(g). Language explicitly excluding these platforms has been added to the final rule. The relationship between § 1926.550(g), which covers these platforms, and subpart L is discussed further in relation to § 1926.451(c)(2) and NPRM Issue 3, below. In addition, aerial lifts are covered exclusively in § 1926.453, as noted in paragraph (a) of § 1926.450. Proposed paragraph (a) covered *all* scaffolds.

A commenter (Ex. 2–38) recommended that OSHA explicitly exempt personnel platforms suspended by cranes or derricks from this final rule. The commenter stated ''[t]his would avoid confusion, both for the Compliance Officer and the employer.'' As noted above, the Agency recognizes the need for an exemption and has revised paragraph (a) accordingly.

Another commenter (Ex. 2–18), representing the elevator industry, suggested that OSHA revise the scope of proposed subpart L to exclude ''False cars used in elevator construction that are equipped with independent safeties that operate on the guardrails * * *'' The commenter supported the suggestion as follows: ''An elevator false car operates on fixed guiderails * * * equipped with safeties that ride on the guiderails * * * and are operated automatically by the slackening of the hoisting rope. Past OSHRC (Occupational Safety and Health Review Commission) decisions have recognized that a false car is a unique tool and is not a scaffold.'' The commenter did not cite any specific OSHRC decisions to support its assertion.

OSHA disagrees with this commenter on this point, because the findings in two enforcement cases involving the Otis Elevator Company (12 OSHRC 1470 and 12 OSHRC 1513 (1985)) clearly indicate that the scaffold standards of subpart L cover false cars. In *Otis Elevator Company*, 12 OSHRC 1513 (1985), the final order stated:

> The evidence in this case showed that the false cars were used as elevated working space from which employees installed permanent elevator rails. The ability to raise and lower the false cars by means of cables from overhead supports does not remove false cars from the applicability of the scaffold standard, and a false car is found to be a scaffold within the meaning of 29 CFR 1926.452(b)(27).

The Agency notes that elevator false cars fit the definition of a ''scaffold'' in final rule § 1926.450(b) in that they are temporary elevated work platforms used for supporting employees. Accordingly, there are no apparent grounds for disputing that elevator false cars are properly regulated under part 1926, subpart L. Therefore, OSHA will continue to regulate temporary elevated work platforms, such as false cars and go-devils used in elevator shaft construction, as scaffolds.

The Scaffolding, Shoring and Forming Institute (SSFI) (Ex. 2–367) recommended that OSHA include ''Window cleaning'' within the scope of subpart L, because ''[w]indow cleaning is a common activity that, for the overwhelming majority of instances, uses transportable suspended scaffolds.'' In addition, the Scaffold Industry Association (SIA) (Ex. 2–368) suggested that OSHA add ''scheduled and unscheduled maintenance (including but not limited to painting and decorating, tuck pointing, sand blasting, water proofing and window cleaning)'' to the scope of subpart L, because maintenance is a type of work ''regularly performed on scaffolds addressed in this subpart and, therefore, should be included in the scope.''

Another commenter (Ex. 2–462) stated that expanding the scope of subpart L to include maintenance would create confusion and ''would greatly reduce the safety standard already in place for Powered platforms for exterior building maintenance'' (29 CFR 1910.66).

The Agency is not expanding the scope to include building maintenance because building maintenance (such as window cleaning) is a general industry activity, addressed under the appropriate scaffold and powered platform standards of 29 CFR part 1910.

OSHA received a general comment (Ex. 2–29) which noted that § 1910.66 addressed powered platforms used for exterior building maintenance in general industry and urged OSHA to ensure that the corresponding regulatory language in the construction standard for scaffolds was consistent. As discussed above, the Agency agrees, and is coordinating its General Industry, Shipyard and Construction rulemaking activity so that employers in those industries have consistent regulation, to the extent that workplace conditions permit.

Paragraph (b) of § 1926.450 lists and defines all major terms used in subpart L. Proposed terms and definitions which elicited no comments and which have been promulgated unchanged or with only minor editorial revisions are not addressed below. Those terms include ''adjustable suspension scaffold'', ''boatswains' chair'', ''body belt'', ''body harness'', '' brace'', ''cleat'', ''coupler'', ''crawling board'', ''double pole scaffold'', ''exposed power lines'', ''fabricated decking and planking'', ''float (ship) scaffold'', ''form scaffold'', ''hoist'', ''interior hung scaffold'', ''ladder stand'', ''lean-to scaffold'', ''lower level'', ''mobile scaffold'', ''multi-level suspension scaffold'', ''multi-point adjustable scaffold'', ''open sides and edges'', ''overhand bricklaying'', ''platform'', ''pole scaffold'', ''pump jack scaffolds'', ''roof bracket scaffold'', ''runner'', ''self-

contained adjustable scaffold'', ''shore scaffold'', ''single-point adjustable suspension scaffold'', ''single pole scaffold'', ''step platform and trestle ladder scaffold'', ''stone setter multi-point adjustable suspension scaffold'', ''supported scaffold'', ''suspension scaffold'', ''tube and coupler scaffolds'', ''tubular welded frame scaffold'', ''two-point suspension scaffold'', ''unstable objects'', ''vertical pickup'', ''walkway'', and ''window jack scaffold''.

As proposed, OSHA is revising its definitions for particular types of scaffolds by specifying whether a particular type of scaffold is a ''supported'' or a ''suspension scaffold.'' OSHA believes that adding this information will make it easier for employers to identify the appropriate general requirements in final rule § 1926.451.

In addition, the Agency has revised subpart L definitions by deleting language that limits the use of a particular type of scaffold. Such substantive limitations are more appropriately placed in regulatory text. Accordingly, for example, OSHA has revised the definition for ''bricklayers' square scaffolds'' (a scaffold composed of framed wood squares which support a platform, limited to light and medium duty) by deleting the words ''limited to light and medium duty''. Similarly, OSHA has revised the definition for ''coupler'' to be ''a device for locking together the component tubes of a tube and coupler scaffold'', deleting language addressing the material used for the coupler because such requirements are more properly located in §§ 1926.451 or 1926.452.

The following discussion covers the terms for which definitions are being added or revised in this final rule and those proposed terms which elicited comments.

''Bearer (Putlog).'' This definition is the same as the definition proposed except that the word ''Putlog,'' an industry-used term, has been added to the definition. A commenter (Ex. 2–29) suggested putlog should be included in the proposed definition ''to show a close or synonymous relationship to the term 'bearer' '' and because ''it is a widely used and understood term.'' The Agency agrees with the commenter and has revised the proposed definition accordingly.

''Bricklayers' Square Scaffold'' is defined in existing § 1926.452(b) and the proposed definition is substantively unchanged in the final rule. The definition deletes the existing § 1926.452(b) requirements that bricklayers' square scaffolds be constructed of ''wood'' and that the platform capacity be limited to ''light and medium duty.'' The revised definition recognizes that bricklayers' square scaffolds can be constructed of materials other than ''wood'' and that their capacity is not limited to ''light and medium duty'' as long as they can meet the capacity requirements set forth in final rule § 1926.451(a)(1).

A commenter (Ex. 2–23) suggested that OSHA adopt the ANSI A10.8–1977 definition for Bricklayers' Square Scaffold which specifies the use of ''wood'' and the ability to sustain light to medium loads. As stated above, OSHA believes it would be inappropriate to limit technological advances that would provide for the use of other materials with greater capacities. Therefore, the Agency has not made the suggested revision.

''Carpenters' bracket scaffold.'' This term means a supported scaffold consisting of a platform supported by brackets attached to building or structural walls. The final rule is identical to the proposal. The SIA (Ex. 2–368) suggested that because different trades (i.e., cement finishers) use this type scaffold, the term be renamed ''bracket scaffold'' exclusively. OSHA recognizes that this type of scaffold is used by several trade groups. However, OSHA believes that it is widely recognized in the construction industry that ''carpenters' bracket scaffolds'' are not used only by carpenters. Therefore, the Agency is not making the suggested revision.

''Catenary scaffold.'' This type of scaffold is not specifically addressed in OSHA's existing rule but is covered in final rule § 1926.452(r). This term refers to a suspension scaffold consisting of a platform supported by two essentially horizontal and parallel ropes which are secured to structural members and may be supported by vertical pickups. The proposed definition has been changed to replace the language ''fastened to'' with ''supported by'' and a phrase has been added explaining that horizontal ropes ''may be supported by vertical pickups.''

One commenter (Ex. 2–23) suggested that OSHA insert the word ''wire'' between the words ''parallel'' and ''rope.''

However, OSHA does not intend to restrict the type of material used for suspension scaffold rope as long as it is ''capable of supporting without failure six times the maximum intended load'' as set forth in final rule § 1926.451(a)(3).

Two commenters (Exs. 2–23 and 2–368) suggested OSHA replace the words ''fastened to'' with ''supported by'' in this definition. OSHA agrees that the suggested words more accurately describe the function of the horizontal ropes with relation to the platform and is revising the proposed definition accordingly.

In addition, the SIA (Ex. 2–368) suggested that OSHA add the phrase ''and may be supported by vertical pickups''. OSHA agrees with the commenter. Vertical pick-ups can act as supports for sagging horizontal ropes. Also, because final rule § 1926.452(r)(1) refers to vertical pickups, OSHA believes that it is appropriate to include this phrase in the definitions.

''Chimney hoist.'' This term is being added to recognize a specific type of multi-point adjustable suspension scaffold used to gain access to worksites inside chimneys.

''Competent person.'' This term is being added to the final rule as a matter of convenience for users. The definition is identical to that found in § 1926.32.

''Continuous run scaffold (run scaffold)'' means a two-point or multi-point adjustable suspension scaffold constructed using a series of interconnected braced scaffold members or supporting structures erected to form a continuous scaffold. This term is being added to recognize this type of system. The Agency notes that the key element here is that the scaffold members must be interconnected so that the erected scaffold acts as a single unit. This would preclude planking across two independent scaffolds without joining them so the resulting scaffold acts as one unit. This system allows erecting a lengthy scaffold without requiring a continuous planked platform, as long as the smaller platform is properly guarded.

''Deceleration device.'' This term means any mechanism, such as a rope grab, rip stitch lanyard, specially-woven lanyard, tearing or deforming lanyard, automatic self-retracting lifelines/lanyard, which serves to dissipate a substantial amount of energy during a fall arrest, or otherwise limits the energy imposed on an employee during fall arrest. The proposed definition, which was effectively identical, has been editorially revised for the sake of clarity.

Three commenters (Exs. 2–13, 2–368 and 2–516) suggested that rope grabs and some self-retracting lifelines are not ''deceleration devices'' but are actually fall arrest devices. OSHA notes, however, that it is difficult to differentiate clearly between system components, as suggested, because fall arrest (stopping) and energy absorption (braking) are closely related. The Agency also observes that the performance criteria for personal fall arrest equipment address the entire system, not just ''fall arresters'' or

''energy absorbers''. Accordingly, OSHA has not made the suggested change.

''Equivalent.'' This term is used in the final rule to allow alternative means of complying with the standard. The definition provides that the employer must be able to demonstrate that the alternative means of compliance will provide an equal or greater degree of safety than that attained by using the method or item specified in the standard. The final definition is identical to the proposed definition, except that minor editorial changes have been made for the sake of clarity. The final rule definition is consistent with the corresponding definitions in § 1910.66 and in part 1926, subparts M and X.

The SIA (Ex. 2–368) suggested that OSHA not require the employer to ''demonstrate whether or not the scaffold is of 'equal or greater degree of safety' because the employer is too many steps removed from the manufacturer'' and because requiring the employer to test for equivalency would create a significant danger that failure would occur. However, the proposed language reflects the Agency's longstanding position that employers who choose to deviate from criteria set in OSHA standards must be able to demonstrate that employee protection has not been adversely affected. The employer has the flexibility to establish equivalence by any effective means, including information available from equipment suppliers and taking into account the specific circumstances of the work to be done.

''Eye'' or ''eye splice'' means a loop with or without a thimble at the end of a wire rope. This term is being added to the final rule to clarify the Agency's intent that this type of connection is an acceptable way to connect wire ropes without significantly affecting their strength or capacities. The term is used in final rule § 1926.451(d) (8) and (9).

''Fabricated frame scaffold'' means a supported or suspended frame scaffold consisting of platform(s) supported on fabricated end frames with integral posts, horizontal bearers, and intermediate members. This is the term for the type of scaffold presently identified as ''tubular welded frame scaffold.'' OSHA has determined that the current term is too restrictive because the words ''tubular'' means round and ''welded'' means that metal components are involved. The provisions of final rule § 1926.452(c), Fabricated frame scaffolds, are not subject to such limitations. They address fabricated frames and related scaffold components whether the component parts are square or round, or made of metal, plastic, wood, or some other material. The final rule definition is identical to that in the proposed rule.

Two commenters (Exs. 2–13 and 2–320) suggested using the existing term ''tubular welded frame'' and one commenter (Ex. 2–23) suggested using the term ''Fabricated tubular frame (Tubular welded frame scaffold)'' instead of the proposed term. However, as explained above, OSHA does not intend to restrict this term to ''tubular'' or ''welded'' components.

''Failure.'' This term is used in performance-oriented paragraphs such as §§ 1926.451 (a)(1) and (a)(3), which address scaffold capacity. Because the word might otherwise be interpreted to mean only breakage or a physical separation of scaffold components, the final rule definition clearly indicates that load refusal (the point where the ultimate strength of a component is exceeded) is also considered to be failure. This is the point where structural members lose their ability to carry loads although they have not broken or separated. The term is the same as the term defined in Subpart X of Part 1926, Ladders and Stairways. The definition for ''failure'' in the final rule is the same as proposed.

One commenter (Ex. 2–40) suggested that the term ''ultimate strength'' was not clearly defined. Another commenter (Ex. 2–38) suggested deleting the last sentence of the proposed definition (Load refusal is the point where the ultimate strength is exceeded) to avoid confusion between ''ultimate strength'' and ''overloading without breaking.'' As OSHA stated above, ''ultimate strength'' may be exceeded without component parts breaking or separating. Therefore, the Agency believes the suggested changes are unnecessary.

''Guardrail system.'' This term refers to perimeter protection composed of vertical barriers which are erected to prevent employees from falling. The final rule definition is essentially identical to the proposed definition. This term replaces the definition of ''guardrail'' in the existing rule, which appeared at § 1926.452(b)(10). The old definition was rail secured to uprights and erected along the exposed sides and ends of platforms. OSHA believes that this definition did not adequately reflect the manner in which toprails, midrails and other intermediate members, and toeboards combine to provide effective fall protection. The final rule definition of guardrail clearly indicates that the entire system, including toprail, midrail (or other intermediate protection), and uprights, is covered when guardrails are addressed in final rule § 1926.451(e). The definition of guardrail system used in the proposed rule stated that a guardrail system was ''a vertical barrier erected to prevent employees from falling from an open side or edge of a scaffold platform or walkway''. The proposed definition also distinguished between ''Type I guardrails'', which were capable of providing fall protection without the use of personal fall arrest systems, and ''Type II guardrails'', which would need to be supplemented by personal fall arrest systems (as explained below, OSHA has not maintained this distinction in the final rule).

The SIA (Ex. 2–368) suggested replacing the word ''prevent'' with the word ''protect'' in the proposed definition of ''guardrail system''. According to standard dictionary meanings of both words, ''prevent'' more accurately describes the function of the guardrail system, which is to keep the employee from going past the perimeter of the scaffold in the first place. Therefore, the Agency is not making the suggested change.

Three commenters (Exs. 2–13, 2–53 and 2–370) recommended that OSHA retain the guardrail rules in the existing scaffold standard and eliminate the concept of ''Type I'' and ''Type II'' from the proposed definition of guardrail systems. The commenters suggested that the old rule's definition of guardrail protection would provide more fall protection than the definition used in the proposed rule. For reasons discussed further below, OSHA finds that the final rule's requirements for guardrail systems, which are essentially identical to those in the proposed rule, provide more protection than the requirements in the existing rule. However, OSHA has deleted the discussion of ''Type I'' and ''Type II'' guardrails from the final rule for the sake of clarity and has added specific criteria for guardrails to final rule § 1926.451(g).

''Horse scaffold'' means a supported scaffold consisting of a platform supported by construction horses. Horse scaffolds made of metal are sometimes known as trestle scaffolds. The proposed definition was similar except that it did not include the term ''trestle scaffold.'' The SIA (Ex. 2–368) suggested revising the definition to specify that horse scaffolds ''may be constructed of wood, metal, or a combination of both. The metal horses may be referred to as 'trestle horses'.'' Under OSHA's performance-oriented approach to subpart L, an employer may use any construction materials (e.g., wood or metal) that enable the scaffold to comply with the capacity requirement set forth in § 1926.451(a)(1). However,

the Agency agrees that it would be useful to indicate that some horse scaffolds constructed of metal are known as trestle scaffolds. OSHA has revised the definition accordingly.

''Ladder jack scaffold.'' The final rule definition, which is identical to that in the proposed rule, states that this type of scaffold is a supported scaffold consisting of a platform supported by brackets attached to ladders.

A commenter (Ex. 2–23) stated that the capacity of this type of scaffold should be limited to ''light duty'' and that the words ''light duty'' should be included in this definition. As discussed above, OSHA believes it is inappropriate for definitions to include substantive requirements. In any event, the Agency has determined that a ladder jack scaffold which complies with the capacity criteria of § 1926.451(a)(1) and the other pertinent subpart L requirements will be considered acceptable. Accordingly, OSHA has not made the suggested change.

''Landing.'' This new term, which has been added to ensure that the requirements of final rule § 1926.451(e)(4) are clearly understood, refers to a platform at the end of a flight of stairs.

''Large area scaffold'' means a pole scaffold, tube and coupler scaffold, systems scaffold, or fabricated frame scaffold erected over substantially the entire work area, for example; A scaffold erected over the entire floor area of a room. The Agency has added this term and definition, along with final rule § 1926.452(d), to provide a reference point in the standard for this widely used type of scaffold.

''Lifeline'' means a component consisting of a flexible line for connection to an anchorage at one end to hang vertically (vertical lifeline) or for connection to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage. A vertical lifeline is sometimes known as a dropline. A horizontal lifeline is sometimes known as a trolley line. This definition, which was not part of the proposed rule, has been added for the sake of clarity. The definition in part 1926, subpart M, Fall Protection, is consistent with the definition in final subpart L. The proposed terms ''dropline'' and ''trolley line'', along with their definitions, have been deleted as separate definitions and have been incorporated into this final rule definition.

One commenter (Ex. 2–57) stated that a ''trolley line'' was a ''horizontal lifeline'' and suggested that OSHA set ''strength requirements.'' While final rule subpart L does not set numerical load requirements for ''horizontal lifelines'', criteria for such equipment are provided in § 1926.502(d), subpart M, as referenced by a note to final rule § 1926.451(g)(3).

''Masons' adjustable supported scaffold.'' OSHA proposed this term, which was not defined in existing subpart L, so employers who used ''self-contained adjustable scaffolds'' in masonry operations would have a clear reference point in revised subpart L. The final rule is identical to the proposed rule definition.

One commenter (Ex. 2–23) suggested replacing the parenthetical reference to self contained adjustable scaffolds with the definition for such scaffolds in ANSI A10.8–1977. However, to limit redundancy and confusion, OSHA does not believe that this term should be defined by the format suggested by the commenter.

''Masons' multi-point adjustable suspension scaffold.'' This term replaces the term ''Masons' adjustable multiple-point suspension scaffold'' in the existing standard. The term means a two-point or multi-point adjustable suspension scaffold designed and used for masonry operations. The final rule definition is the same as that proposed.

One commenter (Ex. 2–23) suggested OSHA adopt the definition for this term from ANSI A10.8–1977, which contains the language ''continuous platform.'' However, it is not OSHA's intent to limit this type of scaffold to a single ''continuous platform.'' All types of multi-point suspension scaffolds covered by subpart L may consist of more than one platform. Multi-point scaffolds are not limited by the number of suspension wires, platforms, or the location of attachment of the suspension wires to the platform or platforms (Example: A multi-point scaffold may consist of one platform suspended by four wires or it may consist of two platforms suspended by four wires). Additionally the definition suggested by the commenter did not include the words ''masonry operations.'' OSHA is including the words ''masonry operations'' in this definition so it applies specifically to such scaffolds used in the masonry trade.

''Maximum intended load'' means the total load of all persons, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to be applied to a scaffold or scaffold component at any one time. This term replaces the existing terms ''maximum rated load'' and ''workload''. The term addresses the types of loads which are to be included when determining the maximum load. OSHA has been concerned that the word ''rated'' in the existing term ''maximum rated load'' does not clearly express how the safety factor of four (existing rule paragraph 1926.451(a)(7)) or six (existing rule paragraph 1926.451(a)(2)) is to be incorporated into the determination of the maximum load. The final rule definition and final rule § 1926.451(a)(1) clearly indicate that the maximum intended load is determined without regard to safety factors. Once the maximum intended load is determined, the employer *then* applies the pertinent safety factor to determine the requisite strength for the system in question.

The final rule definition is the same as in the proposed rule except the word ''employees'' has been replaced with the word ''persons''. The SIA (Ex. 2–368) suggested this change because ''[p]ersons other than employees might be on a scaffold thus overloading it.'' OSHA agrees that the weight of all ''persons'' needs to be considered when calculating the maximum intended load.

One commenter (Ex. 2–23) suggested that OSHA add the closely related term ''scaffold load rating'' which includes definitions for the words ''heavy-duty loading,'' ''medium-duty loading,'' ''light-duty loading'' and ''special loading.'' The Agency provides examples of appropriate measures for ''heavy-duty,'' ''medium-duty'' and ''light-duty'' scaffold in non-mandatory Appendix A of final rule subpart L. Accordingly, the Agency believes the appropriate information is available and no further changes are necessary.

Two comments (Exs. 2–13 and 2–320) suggested replacing the proposed term and definition of maximum intended load with the term ''Maximum Rated Load.'' The commenters suggested that the term ''Maximum Rated Load'' takes into account safety factors established by the designer or manufacturer.

OSHA agrees that the term ''Maximum Rated Load'' does include built-in safety factors. As stated above, by not including the words ''safety factor'' in this definition or replacing the proposed term with ''Maximum Rated Load,'' which implies built-in safety factors, OSHA clearly indicates that the minimum safety factor of 4:1 as set forth in final rule § 1926.451(a)(1) applies. The Agency believes it is appropriate to take into account the ''expected'' burden as well as the burden a scaffold ''can'' support without failure.

''Needle beam scaffold'' means a suspension scaffold supported by needle beams. The final rule definition is the same as the proposed definition. One commenter (Ex. 2–23) suggested

that OSHA limit the use of this type of scaffold to ''light-duty''. However, as discussed earlier, the Agency does not intend to limit the capacity of a scaffold as long as it meets the pertinent requirements of § 1926.451(a). OSHA has provided examples of measures that would enable a scaffold to comply with these requirements in non-mandatory Appendix A.

''Outrigger.'' This term means the structural member of a supported scaffold used to increase the base width of a scaffold in order to provide support and stability for the scaffold. The terms, ''outrigger beam'' and ''outrigger scaffold'' are new definitions provided to explain the difference between these three similar terms. The final rule differs from the proposal, which defined outrigger as ''the structural member of a supported scaffold used to increase the base width of a scaffold in order to provide greater stability for the scaffold.'' The wording change was made in response to a comment from the SIA (Ex. 2–368), suggesting that OSHA replace the word ''greater'' with the words ''support and increased.'' OSHA agrees that the suggested wording more accurately expresses the Agency's intent.

''Personal fall arrest system.'' This term, which replaces the proposed term ''body belt/harness system'', refers to a system used to arrest the fall of an employee from a working level. It consists of an anchorage, connectors, and a body belt or body harness and may include a lanyard, deceleration device, lifeline, or suitable combinations of these. The final rules on fall protection (part 1926, subpart M) and powered platforms (§ 1910.66) also define ''personal fall arrest system'' in this manner. The final rule definition is essentially the same as that proposed for ''body belt/harness systems'', and the phrase ''personal fall arrest systems'' appears in the final rule wherever the phase ''body belt/harness systems'' was used in the proposed rule. A commenter (Ex. 2–13) suggested that the definition be reworded to indicate clearly that lifelines and deceleration devices are not always included as a part of a body belt/harness system. OSHA agrees and has clarified this point in the revised definition.

OSHA has deleted the proposed term ''platform unit'' and has incorporated the proposed definition language into final rule § 1926.451(b)(1)(i), which addresses the construction of scaffold platforms.

''Power operated hoists.'' This new term refers to hoists which are powered by other than human energy. The final rule language differs from the proposed language, which used the term ''mechanically-powered hoists''. OSHA has revised the terms ''mechanically powered'' and ''manually powered'' hoists to read ''power operated hoists and manually operated hoists'', because the Agency has determined that the language should be consistent with ANSI A10.8–1988, paragraph 6.

''Qualified.'' This term is being added to the final rule as a matter of convenience for users. The definition is identical to that found in § 1926.32.

''Rated load.'' This new term addresses the maximum load that a hoist is allowed to lift. The discussion of final rule § 1926.451(a)(1), below, addresses the use of this term.

''Repair bracket scaffold.'' This new term has been added to address the type of scaffold addressed by final rule § 1926.452(x). This term is discussed below in conjunction with the discussion of that paragraph.

''Scaffold.'' This term refers to a temporary elevated platform (supported or suspended) and its supporting structure, including points of anchorage, used for supporting employees or materials or both. The definition also clearly indicates that crane or derrick suspended personnel platforms are not scaffolds. The Agency has added the phrase ''including points of anchorage'' to the definition of scaffold in the final rule to indicate clearly that points of anchorage are considered to be part of a scaffold.

''Stair tower (Scaffold stairway/tower).'' This new term has been added to describe the means of access addressed by final rule § 1926.451(e)(4). This term is addressed in relation to that provision below.

''Stall load.'' This new term has been added to identify the maximum load that a hoist can lift without stalling or shutting down. The use of this term is discussed in relation to final rule § 1926.451(a)(2), below.

''Stilts'' mean a pair of poles or similar supports with raised footrests, used to permit walking above the ground or working surface. This term and definition has been added to recognize this type of scaffold, which is used by many trades in the construction industry to allow employees to walk elevated above the ground or working surface. Final rule paragraph § 1926.452(y) addresses the safe use of this type of scaffold both as a scaffold itself, and on other types of scaffolds (large area scaffolds).

''System scaffold'' means a scaffold consisting of posts with fixed connection points that accept runners, bearers, and diagonals that can be interconnected at predetermined levels. This new term has been added to the final rule to recognize the existence and acceptance of this type of scaffold. The definition is identical to the definition for the same term found in ANSI A10.8–1988.

''Tank builders' scaffold'' means a supported scaffold consisting of a platform supported by brackets that are either directly attached to a cylindrical tank or are attached to devices that are attached to such a tank. In the February 1, 1994 notice of record reopening (59 FR 4618), OSHA suggested a definition of ''tank builders' scaffold'' for consideration. That definition was very similar to the final rule definition except that the reopening notice definition did not specifically refer to cylindrical tanks and did specify that the platform was welded to the steel plates of the tank.

The commenters (Exs. 43–19, 43–23, 43–33, 43–34, 43–35, 43–39, 43–40, 43–42, and 43–43) who responded to the proposed definition for tank builders' scaffold stated:

> A ''tank'' is not necessarily a cylinder. The scaffold is used on structures that can be cylindrical, rectangular, conical, spherical, spheroidal, or elliptical. Also, ''tanks'' are constructed of material other than metal; e.g., fiberglass, wood, etc. Some tanks have vertical walls that are so thin that a bracket could not be welded to it; rather, the bracket would have to be bolted. We would further comment that the bracket is often inserted into a device which is welded to the steel plate. So we would suggest not referencing the bracket being attached to the structure, but rather the bracket being attached to a device that is affixed to the structure.

In addition, eleven commenters (Exs. 43–19, 43–21, 43–23, 43–27, 43–33, 43–34, 43–35, 43–39, 43–40, 43–42, and 43–43) stated that the criteria of an April 4, 1975 variance (40 FR 15139), which addressed tank builder scaffolds, would be adequately addressed by general provisions of the final rule and the definition of ''tank builders' scaffold''.

The 1975 variance order stated:

> The applicants' business, which is part of the tank building industry, involves the erection of relatively large steel plate segments of circumferential rings. Due to the unique nature of the construction involved, special procedures, including special scaffolding, have been developed. For example, as opposed to more conventional scaffolds, tank scaffolds must be highly portable and have a relatively low density of occupancy by [workers]. These scaffolds are raised up the shell of the tank as new rings of steel are added and work is completed at the level below.
>
> Most plate structures are fabricated from standard length plates * * * each approximately 31.416 feet (9.42 m.) long, [with] brackets [normally] welded to them while they are on the ground prior to being

placed into position on the tank wall. Scaffolding and guardrail supports are then attached to these brackets. If the applicants were to comply with [requirements] that [the maximum spacing for supports be no more than 8 feet (2.4 m.) for guardrails or 10 feet (3.0 m.) for planking], they assert it would be necessary to lay out each steel plate into sections with the brackets located approximately 7.854 feet (2.36 m.) apart. Instead, the applicants wish to lay out the plates into three equal sections with brackets located approximately 10′ 6″ (3.15 m.) apart.

* * * Because the contour of the steel plates of the tank face is curved and the adjacent edge of the scaffold platform is straight, there is an open space between them. As a result, applicants have installed taut wire rope on the scaffold brackets that extends midway between the innermost edge of the scaffold platform and the curved plate structure of the tank face to serve as a safety line in lieu of an inner guardrail assembly.

Since the information submitted to OSHA in relation to the variance addressed scaffolds used on cylindrical steel tanks, the Agency is applying the criteria of the variance only to structures that are approximately cylindrical. The Agency believes that non-cylindrical structures should be addressed on a case-by-case basis under the general provisions of the final rule. OSHA notes that 9 of the 11 commenters (Exs. 43–19, 43–23, 43–33, 43–34, 43–35, 43–39, 43–40, 43–42, and 43–43) mentioned above also stated ''[t]ank builders place the scaffold inside of a cylinder, traditionally, to erect the tank.'' However, the Agency believes that the requirements of the variance, as modified in Appendix A of the final rule, can reasonably be applied to cylindrical tanks that are constructed of materials other than steel. The final rule definition for ''tank builders' scaffold'' has been worded accordingly.

OSHA has not promulgated specific requirements for tank builders' scaffolds in the final rule because the Agency believes that the requirements for those scaffolds are adequately addressed in the general provisions of the final rule. The Agency notes that it has placed several provisions (some of which have been editorially modified) of the variance in Appendix A for the benefit of employers who use tank builders' scaffolds, and that the introductory text to the Appendix clearly indicates that following the Appendix will be considered to constitute compliance with the requirements of this standard with regard to scaffolds used in the construction of cylindrical tanks. However, employers choosing not to follow the Appendix must still comply with the applicable requirements of § 1926.451, particularly paragraphs (a) and (f).

''Top plate bracket scaffold.'' This term is being added to the final rule to recognize a type of scaffold which is similar to carpenters' bracket scaffolds and form scaffolds. This type of scaffold consists of a platform supported by brackets that hook over or are attached to the top plate of a wall. Such scaffolds are used in residential construction when employees are setting roof trusses.

OSHA has deleted the following terms, which are defined in the old scaffold standard, from the definition section of the final rule, because those terms are now defined in other subparts or because the final rule no longer uses the terms in question: ''heavy duty scaffold,'' ''light duty scaffold,'' ''medium duty scaffold,'' ''midrail,'' ''toeboard,'' and ''working load.'' In addition, the proposed definitions for ''drop lines'', and ''trolley line'' have been deleted from this final rule, since they have been incorporated into the definition of ''lifeline''.

Under Issue L–12 in the preamble of the proposed rule, OSHA solicited testimony and related information on a suggestion by the ACCSH (Tr. 206, 6–9–87) that definitions for ''ramp'' and ''runway'' be added to the standard. The ACCSH indicated that the added definitions would facilitate clear understanding of the requirements in proposed § 1926.451(c)(4) (final rule § 1926.451(e)(4)). As noted under the discussion of the Issue, a member of the ACCSH recommended that the Agency use the definition of ramp developed by the National Safety Council.

The one comment (Ex. 2–593) OSHA received addressing the Issue supported defining the two terms. The commenter did not provide any suggested wording but indicated that the definitions should be ''clear and consistent with existing OSHA and ANSI definitions.''

In the final rule, OSHA has replaced the proposed term ''runway'' with the term ''walkway'', to indicate the Agency's regulatory intent clearly . However, the Agency believes that ''ramp'' is a commonly understood term and does not require a specific OSHA definition. Accordingly, OSHA has not added a definition for ''ramp'' to the final rule.

Paragraph 1926.451(a) Capacity

Final rule paragraph (a) sets the minimum strength criteria for all scaffold components and connections. The final rule sets scaffold capacity requirements that are substantively the same as those in existing subpart L, while eliminating ambiguities and apparent inconsistencies. The introductory text of the proposed paragraph, which stated that ''the following requirements applied to all types of scaffolds except as indicated:'', has been deleted in the final rule because the Agency has determined that it is too similar to the introductory text of paragraph (a)(1) and, therefore, is unnecessary.

Paragraph (a)(1) requires that each scaffold and scaffold component be capable of supporting, without failure, its own weight and at least 4 times the maximum intended load applied or transmitted to it. Paragraphs (a)(2), (a)(3), (a)(4), (a)(5) and (g) of § 1926.451 provide exceptions to this general rule, and are discussed below. This provision is based on existing § 1926.451(a)(7), which requires that scaffolds and scaffold components ''be capable of supporting without failure at least four times the maximum intended load''.

The final rule clearly provides that the 4 to 1 factor for a component applies only to the load which is actually applied or transmitted to that component, and not to the total load placed on the scaffold. Existing § 1926.451(a)(7), taken literally, could be read to require that each separate scaffold component be able to support four times the maximum intended load (MIL) of the entire scaffold. For example, the existing provision could be interpreted to require that a crossbrace on a supported scaffold be capable of supporting the same load as a scaffold leg, that is, be sized to support four times the entire MIL regardless of where the load is placed on the scaffold and regardless of the fact that the function of a brace is to prevent sway and not directly to support the MIL. Such an approach was not OSHA's intent. The Agency intended that each component be adequate to meet the 4 to 1 factor, but only for the portion of the MIL applied or transmitted to that component. The MIL for each component depends on the type and configuration of the scaffold system. Final rule paragraph (a)(1), which is effectively identical to the corresponding language in proposed paragraph (a)(1), clearly expresses the Agency's intent. The proposed provision has been editorially revised and reorganized for the sake of clarity. In particular, the exceptions to proposed paragraph (a)(1), which provide different coverage for suspension scaffolds, have been clearly delineated as separate paragraphs (a)(2) through (a)(6) in the final rule.

Paragraph (a)(2) of the final rule requires that direct connections to roofs and floors and counterweights used to balance adjustable suspension scaffolds be capable of resisting at least 4 times the tipping moment imposed by the scaffold operating at either the rated

load of the hoist *or* at 1.5 (minimum) times the tipping moment imposed by the scaffold operating at the stall load of the hoist, whichever is greater. Proposed paragraph (a)(2) simply required that direct connections to roofs and floors, and counterweights used to support suspension scaffolds, be capable of providing a resisting moment of at least four times the tipping moment. The proposed provision was intended to clarify that the safety factor of four to one also applies to direct connections to floors and roofs and to counterweight systems. These areas are as integral to the scaffold system as the scaffold platform itself. OSHA has revised the proposed provision to account for the need to base the factor of safety for adjustable suspension scaffolds on the rated load of the hoist and the stall load of the hoist.

Several commenters (Exs. 2–8, 2–28, 2–64, 2–367, and 2–516) indicated that the factors of safety for adjustable suspension scaffolds should be based on the rated load of the hoist. Four of those commenters (Exs. 2–28, 2–64, 2–367 and 2–516) and the SIA (Ex. 2–368) recommended that the stall capacity of the hoist be considered in the factors of safety.

One of these commenters (Ex. 2–28) stated that many suspended scaffolds are rigged by inexperienced persons who do not realize that if the scaffold catches on an obstruction, the maximum lifting power (stall load) of the hoist can be developed and transmitted to the counterweights and anchorages. This commenter suggested adding one of the following requirements to proposed § 1926.451(a)(2) as an alternative to four times the tipping moment: (1) or 4,000 pounds, whichever is greater; (2) or 150 % of the maximum pulling power of the hoist, whichever is greater; or 4 times the rated load of the hoist, whichever is greater. The SIA (Ex. 2–368) recommended changing the resisting moment of proposed § 1926.451(a)(2) to ''at least 1.5 times the stall capacity of the hoist or four times the maximum intended load, whichever is greater.''

Three commenters (Exs. 2–8, 2–28, and 2–516) indicated that Underwriters Laboratories (U.L.) standard 1323 (Standard for Scaffold Hoists) limits the maximum output of a scaffold hoist to 3 times the rated working load of the hoist. One commenter (Ex. 2–64) recommended that OSHA limit the stall load of a hoist to no more than three times the rated load of the hoist. Another commenter (Ex. 2–8) stated that if the safety factor for suspended scaffolds is not based upon the highest rated working load of any component, normally the hoist, failure can occur.

Two commenters (Exs. 2–8 and 2–516) presented examples of the relationship between the stall load of a hoist and the rated load of the same hoist. One commenter (Ex. 2–8) provided the following example:

> A typical hoist with a ''rated working load'' of 1000 lbs. can exert a pulling force of 3000 lbs. if an obstruction is encountered such as a window ledge or air conditioner while ascending. If one designs for a maximum intended load of only 500 lbs. because of a short light scaffold platform or a work cage and the counterweight or suspension system is designed for 4:1 MIL then the ultimate load that the suspension can support is 4 × 500 lbs. MIL or 2000 lbs. A 3000 lb. hoist pull can cause failure or even wire rope failure if 6 × MIL is used. No one intends to stall a hoist on an obstruction but it does occur. Therefore, a suspended scaffold should be designed for safety factors based upon MIL or rated working load of the hoist whichever is greater.

OSHA agrees that the safety factors for the counterweights, riggings, direct connections to roofs and floors, and suspension ropes of adjustable suspension scaffolds should be related to the rated load of the hoist and the stall load of the hoist, and not be based on the maximum intended load. OSHA agrees with the commenters who stated that failure can result if the factors of safety are based on the maximum intended load. Furthermore, the Agency also agrees with the commenters (Exs. 2–28 and 2–368) who indicated that these factors of safety should be based on 1.5 times the stall load of the hoist.

The Agency notes that the stall load of a hoist is equal to three times the rated load of that hoist. When one applies the 4 to 1 safety factor required (4 × rated load = 4/3 × stall load) the result would be 1.33 times the stall load. However, while using 1.33 times the stall load would provide the required safety factor, OSHA is using 1.5 times the stall load based on the above comments. The Agency believes that such a requirement reduces the possibility of failure due to improperly installed equipment as well as the dynamic loads that can be developed when an obstruction is encountered. Accordingly, the Agency has changed the final rule language so that it requires a factor of safety of four times the maximum rated load of the hoist or 1.5 times the stall load of the hoist, whichever is greater.

Paragraph (a)(3) of the final rule provides that ''[e]ach suspension rope, including its connecting hardware, used on non-adjustable suspension scaffolds shall be capable of supporting, without failure, at least 6 times the maximum intended load applied or transmitted to that rope.'' This is the same requirement as the proposed rule except that final rule paragraph (a)(3) applies only to non-adjustable suspension scaffolds, while the requirements for adjustable suspension scaffolds have been placed in final rule paragraph (a)(4), below. The proposed rule did not distinguish between these two types of scaffolds. Proposed paragraph (a)(4)(i) has been redesignated to § 1926.451(f)(11) of the final rule, to consolidate all requirements for wire rope used with suspension scaffolds. In addition, proposed paragraphs (a)(4)(ii) and (iii) have been moved to non-mandatory Appendix A, so that examples of measures that would comply with final paragraph (a) are consolidated in one place.

Paragraph (a)(4) of the final rule provides that ''[e]ach suspension rope, including connecting hardware, used on adjustable suspension scaffolds shall be capable of supporting, without failure, at least 6 times the maximum intended load applied or transmitted to that rope with the scaffold operating at either (a) The rated load of the hoist, or (b) 2 (minimum) times the stall load of the hoist, whichever is greater''.

This provision addresses adjustable suspended scaffolds and is similar to proposed paragraph (a)(3) except that the proposed paragraph contained the language ''maximum intended load applied or transmitted to the rope'' instead of ''rated load of the hoist (or at least 2 times the stall load of the hoist, whichever is greater)''. The proposed rule was based on existing § 1926.451(a)(19).

Three commenters (Exs. 2–8, 2–64, and 2–516) recommended that OSHA use ''rated capacity of the hoist'' instead of ''maximum intended load.'' This recommendation was based on the belief that the safety factor for adjustable suspended scaffolds should be based on the highest rated work load of any component, normally the hoist. The Agency agrees and has modified the proposed rule accordingly. In addition, the Agency has included language that accounts for the stall load of the hoist in the factor of safety for the same reasons that were discussed in regard to final rule § 1926.451(a)(2), except that the factor to be applied to the stall load has been increased from 1.5 to 2 in order to account for the 6:1 factor of safety applied to suspension ropes. This factor of safety does not include an added margin as does the factor of safety in paragraph (a)(2). One commenter (Ex. 2–516) recommended an 8:1 factor of safety for suspension ropes on adjustable suspension scaffolds. This recommendation was based on several factors that can reduce the effective

strength of a rope: (1) A termination rating of 80% of the wire rope design strength; (2) time-use of the rope; (3) energy applied to the system when the overspeed brake is actuated; and (4) failure of the brake to set or the loss of one end of the platform rigging. The commenter concluded that these factors can reduce the factor of safety from 6:1 to 1.15:1, with failure occurring if anything else goes wrong such as the free end of the platform swinging through its arc.

OSHA notes that this commenter addresses a worst case scenario which would involve violations of other provisions of the final rule. The Agency believes that each of the elements of the scenario will be prevented by compliance with the final rule. For example, final rule § 1926.451(d)(6) requires winding drum hoists to contain not less than four wraps of the suspension rope at the lowest point of scaffold travel, thereby reducing the force applied to the termination at the winding drum. In addition, final rule § 1926.451(d)(12)(v) prohibits the use of U-bolt clips at the point of suspension for any scaffold hoist. Also, final rule § 1926.451(a)(3) requires that suspension rope connections be considered part of the rope and that they be taken into account when determining whether a rope is capable of withstanding without failure at least six times the loads imposed upon it.

Further, final rule § 1926.451(d)(10) requires that a competent person inspect suspension ropes prior to each workshift or after any occurrence which could affect a rope's structural integrity. Paragraph 1926.451(d)(10) also requires that defective or damaged ropes be removed from service. For these reasons, OSHA believes that the final rule adequately addresses the commenter's concerns.

The third commenter (Ex. 2–29) recommended that OSHA include the weight of the scaffold and all its components in calculating maximum intended load. The Agency believes the above described changes made to proposed paragraph (a) resolve the concerns raised by this comment.

Paragraph (a)(5) of the final rule, which was not part of the proposed rule, requires that the stall load of any scaffold hoist not exceed 3 times its rated load. OSHA finds that this requirement is reasonably necessary to prevent accidental overloading of suspension scaffold support systems. OSHA notes that U.L. standard 1323 limits the output force of a scaffold hoist to three times the rated load of the hoist. As far as OSHA has been able to determine, the other laboratories which test and list scaffold hoists adhere to the requirements of U.L. 1323.

A commenter (Ex. 2–64) recommended that OSHA limit the stall load of scaffold hoists to three times the rated load of the hoist. The Agency agrees that it is appropriate to add the suggested provision, for the reasons described above.

Final rule paragraph (a)(6) requires that scaffolds be designed by a qualified person and constructed and loaded in accordance with that design. The provision also indicates that non-mandatory Appendix A provides examples of criteria, including design specifications, that will enable the employer to comply with paragraph (a) of this section. Proposed paragraph (a)(1), which focused on supported scaffolds, also referenced Appendix A for acceptable criteria.

Non-mandatory Appendix A provides examples of design and construction measures that employers can use to comply with final rule § 1926.451(a). This Appendix is based on the requirements set by existing §§ 1926.451(c)(1)–(4) and by Tables L–3 through L–19. OSHA has recognized that employers can design and construct scaffolds which satisfy the performance requirements of the final rule without following the specifications set by the existing rule, and drafted both the proposed and final rule § 1926.451(a) accordingly. The Agency believes that the above-cited specifications could assist an employer in complying with the capacity requirements of the final rule, so OSHA has relocated that language to non-mandatory Appendix A.

In Issue 5 of the preamble to the NPRM, OSHA requested comment on whether or not all scaffold units (such as planks and decks) should have their capabilities or grades marked on them. Some commenters (Exs. 2–41, 2–46, 2–51, 2–54, 2–73, 2–367, 2–495, 2–512, 2–516, and 2–534) indicated they favored the requirements for such markings. Two commenters (Exs. 2–495 and 2–534) stated ''very few people would know which grade for any species of wood qualifies that plank as scaffold grade.'' Those commenters recognized that there was a lack of consensus concerning the maximum safe loads on certain plank spans, stating that ''[a]t the same time, we believe it may be premature to require that all planks be so marked since agreement on methodology of determining load displacement has not been reached by the engineering profession.''

Another commenter (Ex. 2–54) indicated that marks would not wear off platform units because ''[i]n most instances, planks are placed and not moved [and are] generally not rubbed against each other constantly.'' Another commenter (Ex. 2–516) stated ''[i]f it is so worn that the mark is lost, it probably needs retesting anyway.''

One commenter (Ex. 2–51) stated that while grade marks would wear off, it seems unlikely ''that every plank on an entire job would simultaneously suffer such a fate. We believe that invariably, there would be some plank where grade stamping was legible if grade stamping ever existed.''

Another commenter (Ex. 2–41) stated ''[k]nowledge of the capacity of each [piece of] equipment is basic to implementation of this proposal.''

In addition, the SSFI (Ex. 2–367) pointed out that fabricated plank stages and platforms are currently marked as to their capacity. They stated that this ''practice should be continued for fabricated planks, stages, and platforms, as these are designed for unique applications.'' The commenter also stated ''there is no common practice within the industry to have solid sawn lumber marked as to their load capacity.'' The SSFI recommended ''that the solid sawn lumber or laminated veneer be repeatedly and continuously grade[-]stamped along the side edge of the material at the time the plank is initially purchased.''

Another commenter (Ex. 2–51) stated that ''[s]ince 1980, Timber Products Inspection has been involved in five cases where plank failure has resulted in injury and litigation. In all five cases the planks that failed were purchased as rough Canadian Spruce #1 and better or #2 and better. None of the planks were grade-stamped and one plank was identified as Lodge pole pine instead of spruce.''

Another commenter (Ex. 2–35) recommended that OSHA adopt the language of the ANSI A10.8 draft scaffold standard that requires ''solid sawn scaffold plank to bear the grade stamp of a grading agency approved by the American Lumber Standards Committee.'' The commenter also stated ''it is essential to assure use of scaffold members of adequate strength and stiffness.''

In addition, a commenter (Ex. 2–534) stated:

> We are strong advocates of requiring that all plank to be used as scaffold plank be required to be stamped or embossed as ''SCAFFOLD PLANK''. To most people, all planks look alike. Very few people would know which grade for any species of wood qualifies that plank as scaffold grade unless the grade stamp is explicit for flatwise use as ''Scaffold Plank''.
>
> * * * There is everything to gain, and nothing to lose, by requiring marks that

communicate to answer the bottom line question, ''Is this plank OK as a scaffold plank?''

In addressing Issue 5, the ACCSH recommended (Tr. 6/9/87, pp. 64–65) that all planking and decks, etc., be properly marked as scaffold materials. The Advisory Committee indicated that a performance standard, which would allow employers to determine how they wanted to mark these materials, would be appropriate. Among the options envisioned by the ACCSH to distinguish the materials intended solely for scaffold system use were color-coding systems, stamping, and tagging.

On the other hand, some commenters expressed the view that a marking requirement would be impractical (Exs. 2–15, 2–20, 2–22, 2–368, and 2–390). In addition, commenters (Exs. 2–20, 2–53, 2–55, and 2–390) stated that the requisite costs would be burdensome, and others (Exs. 2–13, 2–15, 2–69, and 2–368) stated that, while manufactured or fabricated planks or platforms were often or usually marked, carrying this over to wooden components was inadvisable, citing anticipated problems with the volume of planks to be marked and the marks wearing off. Several commenters (Exs. 2–20, 2–55, 2–70, and 2–390) pointed out the marks would lend a possibly false sense of security or safety, and some (Exs. 2–20, 2–55, 2–69, and 2–390) added that maintaining the marks would be neither feasible nor economical. One commenter (Ex. 2–70) stated ''The user of platform units can calculate the maximum load that can be placed on a scaffold and it is up to management personnel to ensure that the scaffolding is not overloaded. I feel that the marking of platform units does not, in itself, insure a safe scaffolding.''

After careful evaluation of the above comments, the Agency has decided not to require marking of platform units. OSHA has determined that, while markings can increase confidence in and use of appropriate platform units, they do not add to the inherent safety of the scaffold. Furthermore, the absence of markings does not establish a lack of quality.

In addition, materials quality is only one of several factors which must be considered when erecting a scaffold platform. Other significant elements include unit size, span, and load applied. A platform unit, whether wood or metal, solid sawn or prefabricated, which is marked as appropriate for use as a plank, may be appropriate for use in one set of conditions but not in another (i.e., longer span or higher load). Similarly, a platform unit which does not have the quality characteristics to allow its use in one situation may be acceptable for use in another (i.e., shorter span or lighter load) whether or not it is marked. The important consideration in all situations is that the platform be capable of supporting the load with a design factor of four.

OSHA believes the grading rules of recognized independent inspection agencies, such as the American Lumber Standards Committee (ALSC), provide useful information about wood plank selection and use. Planks that are marked and used in accordance with pertinent grading rules of the ALSC or other recognized independent inspection agency will be deemed to meet the four-to-one requirement. Therefore, given the extent to which the private sector has voluntarily adopted plank grading and marking programs, the Agency has concluded that any benefit resulting from the addition of marking requirements would be minimal.

Wood products such as Canadian spruce, which are alleged to be unacceptably inferior in some applications, could have standards developed for their use by a recognized grading agency. OSHA believes there are combinations of thickness, quality, span, loads, and other factors that can be established for all species of wood used for platforms.

Issue 17 of the preamble to the NPRM asked whether the Agency should specify a minimum slippage capacity of 4,000 pounds and a minimum breakage capacity of 16,000 pounds for couplers used on tube and coupler type scaffolds. The SSFI and SIA (Exs. 2–367 and 2–368) opposed such a requirement, stating that ''the entire scaffold structure should be required to withstand the specified design loads.'' They also noted that this special component requirement was unlike other OSHA requirements. The SIA (Ex. 2–368) also stated:

> It is redundant and unnecessary to specify a quantitative value for clamp strength since the required safety factors already in existence provide the proper strength for the intended load. There may be cases where the clamps should be of higher value or lower value, depending on usage. Consequently, requiring a numerical value may produce the catastrophe which the proposed rule is trying to avoid in the first place. Existing rules require design by competent individuals, which provides the proper safeguards against abuse and eliminates the need for the proposed rule.

Also, a commenter (Ex. 2–15) indicated that a British standard (BS 1129) recognizing 2800 lb. has been in place for 20 years ''with satisfactory results.'' The commenter stated that most American clamps are built to BS1129, and went on to indicate that the same 2800 lb. figure is generally sufficient, except for possible heavy-duty applications in a specific configuration. The commenter further felt that specifying a 4,000 lb. minimum slippage capacity would ''outlaw'' many clamps.

One commenter (Ex. 2–22) stated that both slippage and minimum breakage capacities ''should be equivalent to that required on the other parts of the scaffold.''

Another commenter (Ex. 2–128) stated ''couplers for tube and clamp [scaffolds] should be rated by the manufacturer in accordance with a recognized testing standard [and] certified by an engineer.'' In addition, a commenter (Ex. 2–13) expounded on the relationship between the torque applied to tighten a coupler and the slippage capacity, and noted that proper torque values needed to be determined by tests or calculations.

The ACCSH (Tr. 6/9/87, pp. 138–147) recommended that OSHA specify both minimum slippage and breakage capacities and should require employers to obtain manufacturer's specifications and/or certifications that a scaffold meets minimum standards. However, the ACCSH did not endorse the suggested 4000 and 16,000 pound limits and did not propose any other limits.

After a careful review of the above comments, OSHA has determined that the capacity provisions set out in final rule § 1926.451(a) will appropriately address the concerns regarding scaffold strength and that additional specifications would be redundant.

Issue 21 of the preamble to the NPRM requested public comment on appropriate field test procedures or certifications for determining the capacity of scaffolds and scaffold components such as planks and ropes. As noted above, existing § 1926.451(a)(7) and proposed § 1926.451(a)(1) require scaffolds to be capable of supporting, without failure, at least four times the maximum intended load. OSHA has recognized, however, that field testing of scaffolds and scaffold components with loads four times greater than the maximum intended load could cause damage that would render the scaffold and scaffold components unusable.

One commenter (Ex. 2–54) mentioned reliance on testing laboratories to ensure that rope and planks meet industry standards. Another commenter (Ex. 2–64) stated that scaffolds' and support systems' rated capacities should be marked when manufactured and that any field testing beyond that set forth in a manufacturer's instructions would be superfluous and could conflict with those instructions.

The SSFI (Ex. 2–367) and the SIA (Ex. 2–368) both stated that field testing of supported scaffolds would permanently damage equipment or render it useless, and that a visual check of the scaffolding before use should ensure safety ''as the manufacturer already warrants the appropriate safety factors.'' The SIA also stated that current testing methods ''are not suitable for checking the ultimate capacity of scaffold components.'' The SIA further stated that for metal components, visual inspection is the only practical method available. For wooden components, the SIA stated that inherent material variables make obtaining repeatable results from a suitable bending test impossible. On the other hand, the SIA recommended that suspension scaffolds be field tested with the intended load.

Two other commenters (Ex. 2–495 and 2–534) agreed with the SIA that it is impossible to obtain repeatable results from a bending test. However, they stated that a minimum threshold design value for flat-wise bending of planks could be derived from available information for flat-wise bending for any specie of plank. Those commenters also stated that field testing would not necessarily permanently damage or render a plank useless. They stated that strength testing of used planks could be accomplished by combining visual inspections with deflection testing using a safe load and deflection testing machines that are currently available.

One commenter (Ex. 2–516) indicated that a reasonable level of load testing for scaffold machinery might be found ''somewhere near 1.25 times [the] rated load'' and that ''any field tests should be a ratio of rated load, not failure load.'' The commenter assumed different safety factors for moving equipment, suspended scaffold hoists, and fixed structures. The commenter also questioned whether the safety factor referred to in Issue 21 was for static, dynamic, or shock loads, and noted that 4 to 1 is not an engineering safety factor but a gross factor. In addition, the commenter stated:

> Any device or mechanism designed for a structural safety factor of four-to-one certainly can be tested at some level less than four-to-one without structural failure. * * * It is difficult to comprehend the rationale of prohibiting testing of a structure using 1½ times rated load for fear it will collapse, when the structure must not collapse at *4 times* rated load. There would then be doubt in my mind as to its ability to meet that 4-to-1 criterion.

Also, the commenter (Ex. 2–516) pointed out that any test of wood components should consider the effects of aging material, and he listed a number of variables for which some testing adjustments would be required. These variables included ''fatigue, finish,'' and ''material test scales.''

Two commenters (Exs. 2–13 and 2–69) indicated there would be no need for field testing since scaffolds should be designed for their intended load with an added safety factor. In particular, one of those commenters (Ex. 2–13) stated ''[t]here are no appropriate field tests for such items as planks and ropes. A simple visual inspection is all that is required by a competent person.''

The ACCSH (Tr. pp. 163–174, 6–9–87) recommended that the manufacturer's design specifications be recognized as sufficient for manufactured scaffolds. The ACCSH also recommended that specifications or testing procedures be specified for job-made scaffolds.

After carefully considering the above comments, OSHA has decided not to require field testing of scaffolds. Based on the comments received, the Agency has determined that such testing is not needed and that, given the inspection and capacity requirements, it would be difficult or impossible to implement effectively for the range of materials in question.

Issue 23 of the preamble to the NPRM solicited comments on whether or not the Agency should revise paragraph 1.(b) of proposed non-mandatory Appendix A, which provides for selection of wood scaffold planks according to the grading rules established by a recognized independent inspection agency. In particular, OSHA asked if the language should be more specific and, if so, what that language should be.

Four commenters (Exs. 2–13, 2–22, 2–29, and 2–53) responded that the proposed Appendix A language was adequate. One commenter (Ex. 2–13) added ''it should be mandatory that the employer visually check all scaffold planks before they are used.'' Another commenter (Ex. 2–54) stated that scaffold planks ''should have identification'' to indicate that they are scaffold grade.

However, a commenter (Ex. 2–534) noted that ''it may be premature to require that all planks be so marked since agreement on methodology of determining load displacement has not been reached by the engineering profession.''

The SSFI (Ex. 2–367) recommended that scaffold planks be marked, and noted that the most plank failures are inspection related. The SIA (Ex. 2–368) recommended that OSHA revise paragraph (b) of proposed Appendix A to read, in part, as follows:

> All solid sawn planking shall be 'SCAFFOLD GRADE' plank and grade stamped as appropriate per the published grading rules of the recognized independent inspection agency and as approved by the Board of Review of the American Lumber Standards Committee. The maximum permissible spans for 2 × 10 inch (nominal 1½″ × 9¼″ minimum dressed (S4S), 1⅝″ × 9½″ minimum rough or 2″ × 10″ minimum rough, solid sawn wood planks shall be as shown in the following table.
>
> Paragraph 1(b) of Appendix A should be expanded and clarified to eliminate the confusion that exists over the use of nominal thickness scaffold grade planks on 10 ft. spans for light trades. This could be achieved by defining a scaffold grade plank in the manner done in Cal-OSHA standards.
>
> Cal-OSHA Section 1637(e) requires what it calls a ''structural plank'' for scaffold platforms as follows:
>
> ''Except as specified in certain other Orders, all planking shall be 2-inch (nominal) material selected for scaffold grade plank as defined in Section 1504 under the heading Lumber—'Structural Plank'.''

The ACCSH, in its June 9, 1987 (Tr. pp. 175–180), meeting, recommended that a competent person be responsible for the selection and use of scaffold materials, where scaffolding materials are not certified by the manufacturer.

After carefully considering the above comments, OSHA has decided to modify paragraph 1.(b) of non-mandatory Appendix A to the final rule to provide for identification of scaffold planks by the grade stamp of the recognized lumber grading association or independent lumber grading inspection agency under whose grading rules the planks were selected. OSHA is also modifying proposed Appendix A to provide that the association or agency under which the wood is graded should be certified by the Board of Review, American Lumber Standard Committee as set forth in the American Softwood Lumber Standard of the U.S. Department of Commerce. This added language clearly indicates what constitutes a ''recognized'' inspection agency.

As a separate matter, OSHA is modifying Appendix A to the final rule to provide that allowable spans of scaffold planks, other than 2 x 10 inch (nominal) or 2 x 9 inch (rough) solid sawn planks which are addressed in the table in paragraph 1 (b), shall be determined in accordance with the National Design Specification For Wood Construction published by the National Forest Products Association or with ANSI A10.8–1988, paragraph 5. OSHA notes that Appendix A is intended to help the employer comply with the scaffolding rules. The Agency believes that the above modifications will facilitate compliance with those rules.

Paragraph (a)(6) of the final rule, which was not part of the proposed rule, requires that scaffolds be designed by a qualified person and must be constructed and loaded in accordance with that design. OSHA believes that a ''qualified'' person can design a scaffold which satisfies the criteria of § 1926.451(a). This provision also notes that non-mandatory Appendix A contains examples of criteria that will enable employers to comply with paragraph (a) of this section.

Issue 24 of the preamble of the NPRM noted that existing §§ 1926.451(b)(16), (c)(4), (c)(5), (d)(9) and (g)(3) and proposed § 1926.451(b)(18)(i) and §§ 1926.452(a)(10), (b)(10), (c)(6) and (i)(8) require that an engineer design specified scaffold types and/or components that are not built or loaded in accordance with Tables L–4 through L–13 of existing § 1926.451 or proposed § 1926.451 Appendix A, respectively. OSHA asked for comments regarding the extent to which the services of an engineer or of a qualified person would be needed to design scaffolds in accordance with the provisions of Appendix A or to design scaffolds that, while not in accordance with Appendix A, would comply with § 1926.451(a).

Two commenters (Exs. 2–69 and 2–437) responded that employers should be allowed to assess whether individual employees with several years of hands-on experience are capable of designing and modifying scaffolds or an engineer's services are required. Also, a commenter (Ex. 2–22) expressed the view that there was no need for further licensing and determinations because employers are responsible for ensuring that scaffolds meet regulations for capacity and that alterations of scaffold designs are made by qualified individuals. The AGC commenters (Exs. 2–20, 2–55, and 2–390) stated ''there are many individuals in the construction industry with many years of experience who are quite capable of scaffold design and modification. Employers should be permitted the flexibility to determine if such individuals are capable or if they should seek the services of an engineer.''

Another commenter (Ex. 2–54) noted that not all engineers are capable of designing scaffolds and that a good many people who work with scaffolds do not know all the scaffold limits or strengths. The commenter acknowledged that complicated scaffold designs require the skills of an engineer familiar with the equipment available. However, the commenter added that a competent worker who has followed an engineer's drawings to erect a scaffold can at times recall and use that experience in another situation requiring a complicated scaffold structure.

In addition, a commenter (Ex. 2–21) stated that no additional specification requiring the use of engineering services was warranted. The commenter explained that ''[c]onditions on most construction jobs change daily and can best be handled by qualified foremen or supervisors on the job.'' Also, a commenter (Ex. 2–31), addressing pumpjack scaffolds specifically, responded that although he was not an engineer himself, he knew at least as much as anyone else about pumpjack scaffolds. He felt that an engineer could be supplanted by someone with recognized expertise but added that he did not believe a specific definition of someone qualified to design a scaffold system could be made.

Both the SSFI (Ex. 2–367) and the SIA (Ex. 2–368) recommended that a ''qualified person,'' as defined in proposed ANSI A10.8, be allowed to design those scaffolds that would not require the services of a registered engineer. They quoted the proposed ANSI definition as follows:

> A term describing one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve problems relating to the subject matter, the work, or the project.

The suggested definition is identical to the definition of ''qualified'' in § 1926.32(l).

Two Saf-t-Green commenters (Exs. 2–14 and 2–15) stated that people other than engineers were capable of designing scaffolds. In particular, one commenter (Ex. 2–15) stated ''There are many good, practical scaffold designers who are not engineers. They should not be excluded.''

On the other hand, some responses to Issue 24 stated that the services of a registered or professional engineer were needed (Exs. 2–3, 2–9, 2–13, 2–70, 2–128, and 2–516). One such commenter (Ex. 2–13) stated that he backed using registered professional engineers ''with the knowledge and training required for [designing] a life support system'' and queried where ''an equivalent qualified responsible person could be found?'' One commenter (Ex. 2–70) offered a brief response, ''when in doubt, consult an engineer.'' Another commenter (Ex. 2–516) responded:

> I would rather take my chances with the engineer [-designed scaffold system]. At least he knows some limits. Any other definition lets anyone determine by *themselves* that they are eminently qualified. All it then takes to be qualified is a big ego, a little knowledge, and a pile of frame scaffold.

A comment from Aluma-Systems, Incorporated (Ex. 2–128) expressed the belief that an engineer's services should be required for all but the simplest of scaffold structures. The commenter indicated that the Province of Ontario requires that a professional engineer design any scaffold which exceeds 15 meters in height (approximately 50 feet), any suspension scaffold where the scaffold consists of more than one platform, or any suspension scaffold where the weight of the platform and its components exceed 363 kg.

In addition, two commenters (Exs. 2–12 and 2–53) responded that the existing regulations were sufficient or adequate. One of the two (Ex. 2–12) stated that there was already sufficient regulation and questioned whether rules could be made to cover all situations.

In its June 9, 1987, meeting, the ACCSH (Tr. pp. 180–183) recommended that OSHA authorize a competent person, rather than a qualified person, to follow Appendix A for scaffold design, but that a registered professional engineer be required to design scaffolds where conditions are not covered by Appendix A. The Agency notes that a competent person, as defined in § 1926.32(f) and in the final rule for subpart L, is able to detect hazards and has the authority to have hazards corrected. On the other hand, ''qualified'', as defined in § 1926.32(m) and in the final rule for subpart L, refers to a person who has the ability to solve or resolve safety and health problems.

After carefully considering the above comments, OSHA believes that the proposed rule adequately addressed the conditions under which a scaffold must be designed by an engineer. Accordingly, the above-listed proposed requirements (§ 1926.451(b)(18)(i) [now final rule § 1926.451(d)(3)(i)] and §§ 1926.452(a)(10), (b)(10), (c)(6), and (i)(8)) have been promulgated in the final rule. As discussed below, proposed rules § 1926.452(a)(10) and (b)(10) have been revised to distinguish more clearly between those circumstances where the employer would need the services of a registered professional engineer and those situations where the services of a qualified person, who could refer to non-mandatory Appendix A, would be sufficient.

The Agency believes that there are qualified persons who can properly design scaffolds without reference to Appendix A. The Agency also believes that there will be circumstances where the ''qualified person'' retained to comply with paragraph (a)(6) will need to be a registered professional engineer.

Paragraph 1926.451(b) Scaffold Platform Construction

Paragraph 1926.451(b) of this final rule provides criteria for the construction of scaffolds. Paragraph (b)(1) requires all platforms, except walkways and those platforms used by employees performing scaffold erection and dismantling operations, to be fully decked or planked. In addition, paragraph (b)(1)(i) requires that platform units be placed so that spaces between units do not exceed 1-inch, except where employers establish that more space is needed. For example, this would be necessary to fit around uprights when using side brackets to extend platform width. Paragraph (b)(1)(ii) provides that, where the exception created by paragraph (b)(1)(i) applies, employers shall place platform units as close together as possible, with the space between the platform and uprights not to exceed 9½ inches. OSHA set 9½ inches as the maximum space allowed, because the minimum width for scaffold units that could be expected to sustain a working load is just over 9½ inches. This provision, which is effectively identical to the provision in the proposed rule, codifies the Agency's longstanding interpretation of existing § 1926.451(a)(4), which addresses guardrails on scaffolds, to require that guardrails be erected as close as possible to the platform planking. Because guardrails normally can be conveniently attached only at the scaffold uprights, OSHA has required the platforms to be sized such that there is no gap between the outermost plank edge and the guardrail. However, most prefabricated end frames do not have a lateral spacing between uprights which can accommodate an integral number of commercially-available planks. In order to comply with the existing rule, some employers have modified the last plank (notched, slanted, or cut it to size). This can lead to a significant reduction in plank strength, and possibly cause tipping of the plank (sideways) if eccentrically loaded. Therefore, to deal with this problem, proposed and final rule paragraph (b)(1) have modified the corresponding requirement of the existing standard by requiring the span between uprights to be planked or decked as fully as possible, but allowing up to 9½ inches between the planking or decking and the guardrail supports. As explained above, 9½ inches is the maximum allowable open space.

One commenter (Ex. 2–29) stated that the 1-inch opening allowed by proposed paragraph (b)(1)(i) would be large enough to ''allow many tools and small materials to fall through'', and recommended a maximum space of ¼ inch between units. OSHA, however, finds that such a small maximum space would pose unreasonable compliance burdens, and is retaining the 1-inch maximum.

The SSFI and the SIA (Exs. 2–367 and 2–368) stated that compliance with proposed paragraph (b)(1) would be impossible when erecting or dismantling scaffolds. In particular, the SIA (Ex. 2–368) stated:

> For example: On a multi-level supported scaffold where construction work is to be performed only at the top level, lower levels would not be planked. Erectors would only use sufficient planks required to construct the scaffold.
>
> Load requirements limit the number of levels that can be planked on many installations. The additional cost in labor and material would be staggering. In addition, the fatigue factor created by installing full planking from one level to the next would create a greater hazard to the erectors.

The Agency agrees with the SIA comments and acknowledges that a requirement to fully plank under these conditions would unreasonably interfere with the erection and dismantling process. The Agency also agrees that a requirement to fully plank every intermediate platform level, where no work other than scaffold erection or dismantling operations will occur, is overly burdensome. Therefore, OSHA has revised proposed paragraph (b)(1), which already excepted walkways from the requirement for full planking or decking, to add an exception to the final rule to the planking requirements for erection or dismantling operations. In a situation where no work, other than erecting or dismantling the scaffold, is being done at intermediate levels, the final rule requires only that the planking established by the employer as necessary to provide safe working conditions for employees erecting or dismantling the scaffold be used. On the other hand, if scaffold erection or dismantling is being performed from an intermediate level platform that is being or will be used as a work area, that platform must be fully planked in accordance with paragraph (b)(1).

Paragraph (b)(2) of the final rule requires that all scaffold platforms and walkways be at least 18 inches (46 cm) wide, with lesser widths allowed for ladder jack scaffolds, top plate bracket scaffolds, pump jack scaffolds, roof bracket scaffolds, and boatswains' chairs, and for scaffolds in areas shown to be too narrow to accommodate an 18-inch wide surface. Proposed paragraph (b)(2) also required a minimum 18-inch width, with exceptions for ladder jack scaffolds (12 inches) and boatswains' chairs (any width). The rationale for setting a 12-inch minimum width for ladder jack scaffolds, as discussed in the preamble of the proposal (51 FR 42684–85), was the difficulty of handling one 18-inch wide plank or two 9-inch planks on a ladder, which the Agency considered more hazardous than working on a 12-inch wide plank. In the final rule, OSHA has also included pump jack scaffolds in the exception to paragraph (b)(2) for which a minimum platform width of 12 inches is permitted, based on a commenter's statement (Ex. 2–31) that OSHA's performance criteria for pump jack scaffolds enable employees to work safely on platforms that are 12 inches or 14 inches wide. The commenter also indicated that requiring pump jack scaffold platforms to be at least 18 inches, instead of 12 inches, wide would create ''an economic hardship * * * for this very prevalent size aluminum platform.'' OSHA agrees that pump jack scaffolds with platforms as narrow as 12 inches can satisfy the performance criteria of the final rule and has revised paragraph (b)(2) accordingly.

In addition, the Agency is recognizing top plate bracket scaffolds and adding them to the list of scaffolds which are permitted to have platforms not less than 12 inches in width. As discussed above in the definition section, these are supported scaffolds, similar to carpenters' bracket scaffolds and form scaffolds, which consist of a platform supported by brackets that hook over or are attached to the top plate of a wall. These scaffolds are used in residential construction for setting trusses, usually for high ceiling situations (e.g., cathedral ceilings, atria). The Agency has determined that use of this type of scaffold, even with a 12-inch wide platform, provides greater protection for employees setting trusses than the use of ladders, makeshift scaffolds or walking the top plate. OSHA concludes that it would be less safe to require wider platforms for top plate scaffolds because setting up this type of scaffold would then require handling and positioning an 18-inch wide platform or two nine-inch wide platforms, and handling and positioning larger, heavier brackets, which is usually done from ladders. OSHA finds that this would be more hazardous than working on one 12-inch wide platform equipped with fall protection.

As proposed, OSHA is deleting the requirement that appeared in the existing scaffold rule at § 1926.451(l)(1), which sets the minimum dimensions of

a boatswains' chair at 12 inches by 24 inches, because, with the advent of slings and molded seats, the Agency believes that setting minimum dimensions is overly restrictive. This performance-oriented approach is reflected by the inclusion of language in paragraph (b)(2)(i) which specifically exempts boatswains' chairs from any width requirements.

The SIA (Ex. 2–368) suggested that platforms as narrow as 12 inches wide be allowed in areas where entryways are restricted. Another commenter (Ex. 2–64) suggested that suspension scaffolds designed for special applications (e.g., to fit through manholes) be permitted to be as narrow as 12 inches. OSHA realizes that there may be instances where the nature of the work being performed makes it impossible to make platforms and walkways at least 18 inches wide. Where the employer can establish that such a situation exists, the Agency will accept platforms and walkways that are less than 18 inches wide, provided both that such platforms and walkways are as wide as is feasible *and* that employees are adequately protected from fall hazards by the use of guardrails and/or personal fall arrest systems, as required by paragraph (g).

Final rule paragraph (b)(3) (proposed as paragraph (b)(4)) sets the requirements for the space between the front edge of a platform and the face of the structure where the scaffold is being used. Paragraph (b)(3) requires that, except as provided in paragraphs (b)(3)(i) and (b)(3)(ii), the front edge of all platforms must be no more than 14 inches from the face of the structure, unless the employer implements guardrail systems or personal fall arrest systems that comply with paragraph (g) of the final rule to protect employees from falling between the platform and the structure. Final rule paragraph (b)(3)(i) requires that the front edges of outrigger scaffolds be no more than three inches from the face of the structure, as is required by § 1926.451(g)(4) of OSHA's existing standard. Final rule paragraph (b)(3)(ii) requires that the front edges of scaffolds used for plastering and lathing operations be no more than 18 inches from the face of the structure.

The 18-inch dimension was developed from data collected by Wang Associates (Ex. 5) which show that a shorter distance between the scaffold platform and the wall is not feasible for the operators of plastering and lathing equipment because of interference with the tools used during such operations. However, these same operations cause the employee to stand back from the edge and the hazard of falling is correspondingly reduced. The SIA (Ex. 2–368) supported the 18-inch provision as being necessary for the types of work covered, while acknowledging that in some cases 14 inches would be adequate.

Final rule paragraph (b)(3) is effectively identical to proposed paragraph (b)(4), except that the proposed provision specified ''Type I'' guardrails instead of requiring compliance with paragraph (g). OSHA has deleted the designations ''Type I'' and ''Type II'' from the final rule for subpart L, as discussed above in relation to the definition of ''Guardrail system''.

Existing § 1926.451(a)(4) requires guardrails on all open sides and ends of a scaffold platform, but does not specify how far away a scaffold platform may be from a building before the side facing the building is considered to be an ''open side.'' OSHA's existing scaffold rule has often been interpreted to mean that no open space is allowed. However, zero clearance during all phases of construction is not feasible. The 14-inch limit in proposed paragraph (b)(4) recognized that during construction the face of the wall being built often moves out toward the scaffolds. There must be sufficient space at the beginning of work to allow for the installation of insulation, lathing, plaster, masonry units, ledges, facings and other architectural or structural additions. The spacing must be allowed for from the start, because it is not practical to move large scaffolds away from the wall as wall construction progresses outward. When the initial set back distance must be more than 14 inches, the platform can often still be kept within 14 inches of the building by the use of side brackets or extensions on supported scaffolds, and by angulated roping, static lines, or equivalent means on suspension scaffolds.

Two commenters (Exs. 2–41 and 2–465) questioned the use of 14 inches in this provision, suggesting that a maximum of 12 inches be allowed. While OSHA recognizes that the suggested 12-inch spacing could be marginally more protective, the Agency also recognizes that, as discussed above, in many cases an unobstructed working space of at least 14 inches is necessary. OSHA also notes that ANSI A10.8–1988, paragraph 4.5.9, allows up to a 16-inch space for supported scaffolds and a 12-inch space for suspended scaffolds. In support of OSHA's position, the SIA (Ex. 2–368) endorsed the proposed language as the proper solution to the problem, while noting that it would prefer 18 inches. The Agency believes that the 14-inch space appropriately addresses both the safety concerns and the need to allow necessary room for many of the jobs normally performed from scaffolds.

Final rule paragraph (b)(4) requires each end of a platform unit, unless cleated or otherwise restrained by hooks or equivalent means, to extend over the center line of its support at least six inches (15 cm). This provision is virtually identical to proposed paragraph (b)(5), which was based on existing § 1926.451(a)(14). The use of cleats, hooks, and similar securing devices would also be allowed as alternatives to the six inch extension in the proposed and final rules, because of their ability to restrain movement of platform units.

OSHA received one comment (Ex. 2–40) on this provision, which stressed the importance of securing platform units against movement.

Final rule paragraph (b)(5) (proposed paragraph (b)(6)) addresses the maximum distance platform units may extend over their supports. In particular, paragraph (b)(5)(i) provides that each end of a platform unit 10 feet (3 m) or less in length shall not extend over its support more than 12 inches (30 cm) unless the unit is designed, and installed so that the cantilevered portion of the unit is able to support employees or material without tipping or has guardrails which prevent employee access to the cantilevered end. In addition, paragraph (b)(5)(ii) provides that each platform unit greater than 10 feet in length shall not extend over its support more than 18 inches (46 cm), unless the unit is designed and installed so that the cantilevered portion of the unit is able to support employees without tipping, or that the unit has guardrails which block employee access to the cantilevered end.

OSHA proposed to change the maximum overhang allowed by existing § 1926.451(a)(14) from 12 inches to 18 inches because many planks in use are 10 feet long, and are used to span eight foot distances. OSHA also notes that ANSI A10.8–1988, paragraph 4.17, limits planks from extending more than 18 inches over their supports, without regard to the length of the plank.

OSHA's thinking at the time of the proposal was that the existing requirement was unnecessarily restrictive, and that strict adherence to the existing maximum overhang limit would require platform units to be cut if they extended beyond the 12-inch limit.

Although no comments were received on this provision, OSHA has concluded, upon further consideration of this matter, that the maximum overhang allowed, unless the above specified

measures have been taken, should be limited to 12 inches for planks 10 feet or less in length, and 18 inches for planks greater than 10 feet in length. The Agency concludes that allowing an 18-inch overhang as a matter of course would be unsafe, because the weight of an employee on an 18-inch overhang could easily tip a 10-foot plank. However, an 18-inch overhang on a plank that is longer than 10 feet would be permissible because the additional weight of the longer platform would offset the weight of the employee on the overhang. In addition, an employer who seeks to use platform units that overhang the supports more than the prescribed distance would be required to satisfy the performance criteria of paragraph (b)(5) of the final rule.

Under final rule paragraph (b)(6), where platform units are abutted to create a long platform, each abutted end shall rest on a separate support surface. Abutted platform units do not rest one on another, but instead are end-to-end. Consequently, one unit does not support the other, and proper support can only be provided by separate support surfaces. This provision is virtually identical to proposed paragraph (b)(7), except that the final rule has deleted the words ''butt plate or equivalent means of support'', because those words add nothing to the requirement for ''separate support.'' This provision is based on existing § 1926.451(b)(12), which currently applies only to wood pole scaffolds. OSHA has determined that all scaffolds need proper platform support and, accordingly, has promulgated this provision.

The Agency has also added a note to this provision stating that common support members such as ''T'' sections or hook-on platforms designed to rest on common supports are not prohibited by this provision. The Agency is doing this to prevent confusion since these commonly used support members might be considered not to meet the requirements of this provision.

Final rule paragraph (b)(7) provides that where platforms are overlapped to create a long platform, the overlap shall occur only over supports, and shall not be less than 12 inches (30 cm) unless the platforms are nailed together or otherwise restrained to prevent movement. This provision is virtually identical to proposed paragraph (b)(8) which was based on existing § 1926.451(a)(12).

Final rule paragraph (b)(8) requires that at all points of a scaffold where the platform changes direction, such as turning a corner, any platform that rests on a bearer at an angle other than a right angle shall be laid first and platforms which rest at right angles over the same bearer shall be laid second, on top of the first platform. This provision is virtually identical to proposed paragraph (b)(9), which was based on existing § 1926.451(b)(13). While this provision in OSHA's existing standard addresses only wood pole scaffolds, OSHA has determined, as with final rule paragraph (b)(6), that the existing requirement is appropriately applied to the construction of all scaffold platforms.

Final rule paragraph (b)(9) provides that wood platforms shall not be covered with opaque finishes, except that platform edges may be covered or marked for purposes of identification. Platforms may be coated periodically with wood preservatives, fire-retardant finishes, and slip-resistant finishes, but the coating may not obscure the top or bottom wood surfaces. This paragraph is intended to ensure that structural defects in platforms are not covered from view by the use of an opaque coating or finish. Hairline cracks can significantly reduce the strength of a wood member, so early detection of structural defects is important. Opaque finishes can cover such cracks and make them difficult to discover. The edges of platform units are excepted from this rule to allow identification marks, grading marks, or other similar type of marks to be placed on the unit edges.

This provision is virtually identical to proposed paragraph (b)(10). The proposal addressed the use of wood preservatives, fire retardant finishes and slip-resistant finishes in a ''note'', while the final rule has incorporated the pertinent language directly into the regulatory text. In short, those finishes may be used as long as they do not obscure the top or bottom wood surfaces.

Final rule paragraph (b)(10) requires that scaffold components manufactured by different manufacturers not be intermixed unless the component parts fit together without force and the resulting scaffold's structural integrity is maintained by the user. Scaffold components manufactured by different manufacturers shall not be modified in order to intermix them unless the resulting scaffold is determined by a competent person to be structurally sound. OSHA expects that the competent person who evaluates the scaffold will have the appropriate knowledge, skill and experience regarding scaffold systems and components.

This provision is identical to proposed paragraph (b)(11), except that the proposal did not contain the phrase ''and the resulting scaffold's structural integrity is maintained by the user''. The SIA (Ex. 2–368) suggested the added language, citing the ''latest ANSI A10.8 draft.'' The Agency acknowledges that a scaffold may lack the requisite structural integrity even though the intermixed components ''fit together without force.'' OSHA agrees that the requirement to maintain structural integrity should be clearly stated in this provision and has revised the final rule accordingly.

One commenter (Ex. 2–29) stated ''[m]any, if not all, scaffold manufacturers void any liability if their scaffold components are intermixed * * * A standard requirement should not result in a lesser degree of safety; neither should it encourage an employer to take a course of action that could increase his liability.'' The SSFI (Ex. 2–367) stated ''[i]t would be the Institute's recommendation that scaffold components not be intermixed even though they may re[a]dily fit together without force. Many times the capacity or bracing alignment would not be the same as other types of scaffold, thus creating a hazardous situation.'' OSHA agrees that an unsafe condition could exist when parts are intermixed, unless adequate precautions are taken, and believes that paragraph (b)(10), as modified, in conjunction with § 1926.451(a), provides for adequate precautions to be taken by the employer to ensure against this eventuality.

Paragraph (b)(11) of the final rule provides that scaffold components made of dissimilar metals shall not be used together unless a competent person has determined that galvanic action will not reduce the strength of any component to a level below that required by § 1926.451(a). This provision, while effectively identical to proposed paragraph (b)(12), differs from §§ 1926.451(c) (1), (2) and (3) of OSHA's existing rule, which prohibit the use together of any dissimilar metals on tube and coupler scaffolds. The proposed rule was intended to extend the prohibition to all scaffolds, because the problem of dissimilar metals causing galvanic action can occur on any scaffold, not just tube and coupler scaffolds. However, the proposed rule was not intended to prohibit all uses of dissimilar metals because there are many combinations which do not produce significant galvanic reactions.

One commenter (Ex. 2–41) expressed skepticism as to the ability of a competent person to discern that galvanic action has not reduced the strength of any component. However, OSHA finds that any competent person, as defined by this subpart, would be able to identify the causes and significance of any deterioration in

scaffold components. In particular, OSHA expects the competent person, who is on site and required to inspect the scaffold, to recognize deterioration due to galvanic reactions, and to take prompt corrective action.

Paragraph 1926.451(c) Criteria for Supported Scaffolds

Final rule § 1926.451(c) sets criteria for the use of supported scaffolds. Paragraph (c)(1) of the final rule requires that supported scaffolds with a height to base width ratio of more than four to one (including outrigger supports, if used) be restrained from tipping by guying, tying, bracing, or equivalent means. That provision is based on existing § 1926.451(e)(1), which covers manually-propelled mobile scaffolds. Any type of supported scaffold can topple if its center-of-gravity is too high, and OSHA has therefore expanded the coverage of this paragraph in the final rule. Final rule paragraph (c)(1)(i) provides that guys, ties, and braces shall be installed at locations where horizontal members support both inner and outer legs. In addition, paragraph (c)(1)(ii) requires, as follows:

(1) Guys, ties, and braces shall be installed according to the scaffold manufacturer's recommendations or at the closest horizontal member to the 4:1 height and be repeated vertically at locations of horizontal members every 20 feet (6.1 m) or less thereafter for scaffolds 3 feet (0.91 m) wide or less and every 26 feet (7.9 m) or less thereafter for scaffolds greater than 3 feet (0.91 m) wide;

(2) The top tie, guy or brace of a completed scaffold shall be placed no further than the 4:1 height from the top; and

(3) Such guys, ties and braces be installed at each end of the scaffold and at horizontal intervals not to exceed 30 feet (9.1 m) (measured from one end [not both] towards the other).

This provision of the final rule is essentially the same as proposed paragraph (b)(13), except that the maximum vertical spacing has been changed to allow for the scaffolds to be supported at their strongest points. Proposed paragraphs (b)(13)(i) and (b)(13)(ii), which specified the horizontal spacing for ties, guys, and braces, were intended to replace existing §§ 1926.451 (b)(4), (c)(12), and (d)(7). These paragraphs of the existing rule required pole scaffolds, tube and coupler scaffolds, and fabricated frame scaffolds to be tied and braced at intervals no greater than 26 feet vertically (25 feet for wood pole scaffolds) and 30 feet horizontally (25 feet for wood pole scaffolds). These paragraphs have been misinterpreted over the years to mean that scaffolds less than 26 feet high by 30 feet long (25 by 25 for wood pole scaffolds) do not need guys, ties, or braces. Proposed paragraph (b)(13)(ii) was intended to replace the 26- and 25-foot vertical rule and require all scaffolds required by the 4 to 1 rule to have guys, ties, or braces also to have such connections installed at each end of the scaffold and at horizontal intervals not to exceed 30 feet (measured from one end only).

The following are examples of how this requirement is to be applied: (a) If a scaffold is five feet wide, 18 feet high and 50 feet long, no vertical or horizontal ties and braces are required because the height is less than four times the width and the four to one rule does not require connections; (b) if the scaffold is five feet wide, 50 feet high, and 25 feet long, ties and braces are required at least at the 20- and 40-foot levels at both ends of the scaffold (four ties and braces in all); (c) if the scaffold is five feet wide, 50 feet tall, and 70 feet long, ties and braces are required at least at the 20- and 40-foot levels. These would be installed starting from either end, at least at the zero, 30, 60, and 70-foot horizontal distances (eight ties and braces in all).

The SSFI (Ex. 2–367) disagreed with the 20-foot limit for bracing intervals in proposed paragraph (b)(13)(i) and suggested a 20-foot limit for scaffolds 3 feet wide or less, and a 26 foot limit for scaffolds more than 3 feet wide. In addition, this commenter suggested that bracing be at bearing locations or as recommended by the manufacturer. OSHA agrees with this commenter's suggested bracing intervals, because the Agency believes that properly erected scaffolds more than 36 inches wide are more stable than those which are narrower, and has modified this provision of the final rule accordingly.

The SIA (Ex. 2–368) stated:

We are in agreement with the proposed wording used to define the location of guys and ties as a function of the scaffold base width dimension. This proposed wording adequately defines where scaffolds must be guyed or tied to achieve proper scaffold stability. To correctly transmit the stabilizing forces through the scaffold, however, the guys or ties must be placed at locations where horizontal members support both the inner and outer legs. Guying or tying a scaffold leg at mid span could buckle the leg and cause an unexpected scaffold failure. To avoid this danger, it is recommended that the tie be placed at the closest horizontal member *above* the 4:1 base to height ratio and repeated vertically at locations of horizontal members every 20 to 26 feet in height thereafter. The top tie shall be placed no further than a 4:1 base to height ratio from the top.

OSHA agrees that guys, ties, and braces should be placed at points of scaffold structural strength, and has modified this provision of the final rule accordingly. Furthermore, the Agency agrees with the SIA's recommendation that the top tie, guy, or brace be placed no more than the 4:1 height to base ratio from the top of the scaffold, and has modified the provision accordingly. However, OSHA does not agree with the SIA suggestion that guys, ties and braces be installed at the closest horizontal member *above* the 4 to 1 base to height ratio, and has revised the language of this provision to reflect the Agency's finding that these components be installed at the closest horizontal member *to* the 4:1 height, whether above or below, to maximize stability.

In addition, the SIA recommended that OSHA require employers to consider loads due to wind and weather when guying, tying, or bracing is installed, whenever scaffolds are partially or fully enclosed. The Agency notes that these matters are addressed in the general capacity requirements of final rule § 1926.451(a) and in § 1926.451(f)(13), which requires that wind screens not be used unless the scaffold has been secured against the forces imposed.

Another commenter (Ex. 2–38) suggested using the same language as in existing § 1926.451(e)(1), which requires that the height of a manually propelled mobile scaffold not exceed four times the minimum base dimension, ''because it is more understandable.'' Also, a commenter (Ex. 2–40) stated ''since the standard does not address the issue of cantilevered work platforms (or their effect on stability), the allowable height to base width ratio of equal to four or less seems high.''

Another commenter (Ex. 2–23) recommended a ratio of 3 to 1, but provided no rationale to support its suggestion. OSHA notes that the final rule 4:1 ratio is consistent with the requirement in ANSI A10.8–1988, paragraph 4.31, that free-standing scaffolds with height to base ratios of more than 4:1 be restrained from tipping by guying or other means.

Based on these concerns, in the final rule OSHA has added paragraph (c)(1)(iii), which requires that scaffolds with eccentric loads (such as cantilevered work platforms) be restrained from tipping through the use of ties, guys, braces or outriggers.

Final rule paragraph (c)(2) requires that supported scaffold poles, legs, posts, frames, and uprights bear on base plates and mud sills or other adequate firm foundation. In particular, final rule paragraph (c)(2)(i) requires that such footings be level, sound, rigid, and capable of supporting the scaffold in a

loaded condition without settling or displacement.

In addition, final rule paragraphs (c)(2) (ii) and (iii) provide that unstable objects shall neither be used to support scaffolds or platform units, nor be used as working platforms, respectively. The reason for these requirements is almost self-explanatory: every scaffold must stand on a firm footing if it is to withstand the load that employees, equipment, and materials place on it.

Final rule paragraph (c)(2)(iv) provides that front-end loaders and similar pieces of equipment shall not be used as scaffold supports unless they have been specifically designed by the manufacturer for such use. In addition, final rule paragraph (c)(2)(v) requires that fork-lifts not be used to support scaffold platforms unless the entire platform is attached to the fork and the fork-lift is not moved horizontally while the platform is occupied. Both these requirements relate to the need for solid support for scaffold platforms and reflect the fact that front-end loaders, fork-lifts and other such equipment are not generally designed for this purpose.

Paragraph (c)(2) of the final rule is identical to proposed paragraph (b)(14), except for two provisions, final rule paragraphs (c)(2) (iv) and (v), which have been added based on input generated by responses to Issue 3 of the preamble of the NPRM. Proposed paragraph (b)(14) consolidated existing requirements that scaffold uprights rest upon a stable, firm, level footing.

Issue 3 asked if OSHA should prohibit the use of cranes, derricks, forklifts, front-end loaders, and similar pieces of equipment for the support of scaffold platforms. In addition, OSHA asked what pieces of equipment should be prohibited and what other related provisions would be necessary to ensure employee safety.

Several commenters from the Associated General Contractors of America (AGC) (Exs. 2–20, 2–55, and 2–390) and the ACCSH (Tr. 6/9/87, pp. 40–41) noted that OSHA had undertaken rulemaking regarding the use of cranes and derricks to hoist personnel platforms (NPRM published February 17, 1984, 49 FR 6280). The AGC commenters stated that the proposed regulations for crane suspended work platforms already addressed the concerns raised in Issue 3.

Another commenter (Ex. 2–53) called for the development and issuance of specific crane suspended platform regulations, and one respondent (Ex. 2–29) commented that the current regulations on crane suspended work platforms were acceptable.

On August 2, 1988 (53 FR 29116), OSHA issued a final rule (§ 1926.550(g)) which regulates the use of cranes and derricks to hoist personnel platforms. Therefore, there is no longer a need for subpart L to address that subject.

Regarding the use of front-end loaders, one commenter (Ex. 2–33) responded, in part, that ''front-end loaders should not be used to hoist worker-loaded scaffold platforms'' and added that the ''[u]se of forklifts for this purpose should be limited in accordance with * * * OSHA's General Industry Standards for powered industrial trucks, 29 CFR 1910.178(m)(12).'' The same commenter also stated ''If large platforms are used in this manner, consideration should be given to requiring bracing of forks to safeguard against tipping or slipping of the truck or its forks.''

Another commenter (Ex. 2–70) stated simply ''[w]e do not utilize forms of equipment to support platforms.'' Two other commenters (Exs. 2–367 and 2–368) stated ''the practice of using cranes, derricks, fork-lifts, etc., [to support scaffold platforms] is unsafe and should be prohibited.''

One commenter (Ex. 2–5), a manufacturer of heavy-duty materials-handling equipment, including forklifts and cranes, stated that ''[f]or years, we have made the users of our equipment aware that these are intended solely for the handling of materials and not for personnel.'' The commenter went on to say their company recommends that ''OSHA develop rules prohibiting the use of forklifts, front-end loaders and similar pieces of equipment for the support of scaffold platforms,'' and provided the following rationale:

> This class of equipment depends on a hydraulic cylinder(s) to lift and hold the load[-]engaging means. When new, the cylinder has little leakage past the sealing means, usually packings, but it does have leakage. After use, the leakage increases. This allows the load[-]engaging means to 'drift' downward, possibly endangering personnel on the scaffold platform. Additionally, the load[-]engaging means of a forklift are usually supported on bearings or sliding members and chains. With use, wear occurs at these points. If excellent maintenance is not performed, and worn parts [are not] promptly replaced, sufficient wear can occur which is not evident when handling heavy loads, since their gravitational mass overcomes the friction and keeps the chain tight; however, when supporting a light load such as a scaffold platform, there is insufficient mass to overcome the friction with the load [-]engaging means left suspended when the mechanism is lowered, with a sudden drop of the load [-]
> engaging means when dislodged. We have knowledge of this happening at least two times at Cape Kennedy when a work platform was raised by a 15,000 pound[-]capacity forklift of our manufacture. Each time serious injury to the man on the platform occurred.

The ACCSH has recommended (Tr. 6/9/87, pp. 32–48) that OSHA prohibit the use of front-end loaders and other similar earth-moving equipment for scaffold support. ACCSH also recommended that OSHA develop rules allowing the use of forklifts as scaffold platforms only while the equipment is stationary and while proper fall protection is provided.

Several commenters (Exs. 2–13, 2–20, 2–22, 2–24, 2–54, 2–55, and 2–390) favored allowing the use of cranes, derricks, front-end loaders, and forklifts to support scaffold platforms, in general terms. Three other commenters (Exs. 2–29, 2–33, and 2–176) favored allowing the use of forklifts, under specified conditions, to support scaffolds.

Three commenters from the AGC (Exs. 2–20, 2–55, and 2–390) stated that, in certain instances, where access to a work area was difficult and the work assignment was of short duration, using scaffold framing might be more hazardous than using equipment for work platform support. They added that appropriate personal protective equipment could be used for employee safety in these situations.

Another commenter (Ex. 2–22) opposed the contemplated prohibition, stating ''[t]here are a variety of field situations in which the use of such devices is the only safe way to handle a particular problem. Not only is there no diminution in the safety level afforded to employees in such situations, but the level of safety may actually be improved.''

Also, a commenter (Ex. 2–24) termed the ''suggestion that cranes, forklifts, and other equipment could not be used as platform supports'' as ''totally unrealistic.'' The commenter provided some alternatives and examples (e.g., long ladders) describing them as involving the use of generally dangerous equipment. The commenter also noted that when using this equipment as scaffold support, additional protective measures would be necessary. These measures would include having the operator at the controls at all times, having railings on platforms used above 10 feet in height, and providing safety training.

The Boston Cement Masons and Asphalt Layers Union (BCMALU) (Ex. 2–54) indicated that the use of this equipment to support scaffold platforms might be practical in certain circumstances. This commenter also added that employers ''should note the use of this equipment in their Daily Report and explain why they used it.''

A carpentry contractor (Ex. 2–176) said that forklift scaffold(s) with properly constructed scaffold platforms should be permitted, provided they are equipped with proper railings, and added that ''[i]f the workers working from the scaffold do not ride up and down, there is no danger of their falling off.''

One commenter (Ex. 2–29) stated that ''[f]orklift[-]mounted work platforms might also be acceptable provided suitable requirements and restrictions are specified.'' Another commenter (Ex. 2–13), expressing guarded support of the possible prohibition, stated that since this ''equipment is readily available at job sites * * * [it] will continue to be used to support workers at elevated working locations.'' The same commenter further suggested that a minimum requirement for the safe use of such equipment would be to have a competent engineer responsible for the design and safe use of the resulting scaffold.

After a careful review of the above comments, OSHA finds there is insufficient reason to totally ban the use of forklifts, front-end loaders, and other similar equipment as scaffold supports. OSHA notes that the commenters are in general agreement that all equipment not specifically designed to support scaffold platforms must not be used. Accordingly, the Agency has promulgated new paragraphs (c)(2) (iv) and (v) in the final rule to provide guidance for the safe use of specific equipment as scaffold supports. In particular, the added provision requires that, in the case of fork-lifts, the entire scaffold platform be secured to the forklift. *All* supported scaffolds, including those supported by forklifts, front-end loaders and similar pieces of equipment, must comply with the applicable requirements of § 1926.451 for capacity, construction, access, use, and fall protection.

Paragraph (c)(3) of the final rule requires that supported scaffold poles, legs, posts, frames, and uprights be plumb and braced to prevent swaying and displacement. This provision, which is identical to proposed paragraph (b)(15), consolidates existing § 1926.451 (a)(15), (b)(1), (c)(6) and (e)(8), all of which require that uprights be secure, plumb, and braced to prevent swaying and displacement of the scaffold.

Paragraph 1926.451(d) Criteria for Suspension Scaffolds

Final rule paragraph (d) sets criteria for the use of suspension scaffolds. Paragraph (d)(1) of the final rule requires that all suspension scaffold support devices, such as outrigger beams, cornice hooks, parapet clamps, and similar devices, rest on surfaces capable of supporting at least 4 times the loads imposed on them by the scaffold operating at the rated load of the hoist (or at least 1.5 times the loads imposed on them by the scaffold operating at the stall load of the hoist, whichever is greater).

Proposed paragraph (b)(16) required all suspension scaffold support devices such as outrigger beams, cornice hooks, parapet clamps, and similar devices, to rest on surfaces capable of supporting the reaction forces imposed by the scaffold hoist operating at its maximum rated load. Both the proposed and final rule are based on existing § 1926.451(h)(9), which requires that outrigger beams rest on suitable wood bearing blocks. Final rule paragraph (d)(1) differs from the proposed provision regarding the way in which the load to be sustained is expressed. The proposed rule used the term ''maximum rated load'' instead of the final rule's terms ''rated load of the hoist'' and ''stall load'' of the hoist.

Three commenters (Exs. 2–64, 2–367 and 2–516) recommended a 4 to 1 safety factor based on the rated load of the hoist. Another commenter (Ex. 2–41) stated that reaction force should include all forces, not just those from the hoist, and indicated that some safety factor was needed. The Agency agrees that a clarification is warranted here, and has modified the final rule to reflect this input. In addition, the text has been modified to be consistent with final rule §§ 1926.451 (a)(2) and (a)(4). The Agency concludes that this is necessary in order to adequately address the issue of the hoist reaching its stall load when the scaffold strikes an obstruction. OSHA has determined that the hoist stall capacity needs to be greater than the hoist rated capacity so that the rigging system will be able to support the loads imposed by obstructions as well as the load being lifted. This matter is addressed in greater detail above, in relation to final rule § 1926.451(a)(1).

Final rule paragraphs (d)(2), (d)(3) and (d)(4) set requirements for outrigger beams used with suspension scaffolds. Paragraph (d)(2) of the final rule requires that suspension scaffold outrigger beams, when used, be made of structural metal, or equivalent strength material, and be restrained to prevent movement. This is identical to proposed paragraph (b)(17), except as discussed below. The proposal was based on existing §§ 1926.451(h)(4) and (k)(8).

The SIA (Ex. 2–368) stated that if the intent of proposed paragraph (b)(17) was to prohibit the use of wood outrigger beams, the Agency should simply say so. The proposed language clearly indicated that outrigger beams must be made of structural metal. However, upon further consideration of this provision, OSHA believes that other materials should be allowed if their strength and other pertinent characteristics are equivalent to those of structural metal. The Agency has therefore revised the proposed rule accordingly. This revision is in line with the Agency's policy to permit alternative materials or practices which provide equivalent protection to employees. Also, OSHA has added the words ''when used'' to indicate clearly that the provision does not *require* outrigger beams to be used but only applies when outrigger beams are used.

Final rule paragraph (d)(3) sets requirements for the stabilization of outrigger beams. The introductory language of the paragraph requires that outrigger beams be secured directly to the supporting surface or be stabilized using counterweights, except that masons' multi-point adjustable suspension scaffolds shall not be stabilized by counterweights. The rule does not allow counterweights for stabilizing such masons' suspension scaffolds because, with the large loads often placed on masons' multi-point adjustable suspension scaffolds and the large counterweights that would be necessary to anchor such systems, OSHA is concerned that the supporting roof or floor would become dangerously overloaded.

Final rule paragraph (d)(3) is identical to proposed paragraph (b)(18), except for a few minor editorial changes as described below. The final rule clarifies existing §§ 1926.451 (h)(4) and (j)(5), which require simply that outriggers be securely fastened or anchored. Counterweights are not addressed in the existing standard. OSHA has determined that it is necessary to set criteria for counterweights in the final rule, however, because counterweights are often the only way to anchor an outrigger beam without damaging the supporting surface.

Paragraph (d)(3)(i) provides that direct connections shall be evaluated by a competent person who affirms, based on that evaluation, that supporting surfaces can support the anticipated loads. In addition, the paragraph requires masons' multi-point adjustable suspension scaffold connections to be designed by an engineer experienced in such scaffold design. OSHA anticipates that compliance with these provisions will ensure that roof or floor decks are capable of supporting the loads to be imposed.

Final rule paragraphs (d)(3)(ii) through (d)(3)(v) require that counterweights be made of non-flowable material; be specifically designed for use as scaffold counterweights; be secured to outrigger beams to prevent accidental displacement; and not be removed from an outrigger beam until the scaffold is disassembled, respectively. These requirements are necessary to ensure that counterweights are used only for their intended purpose and are not displaced or removed prematurely.

Final rule paragraphs (d)(3)(vi) through (d)(3)(x) set requirements for securing outrigger beams. In particular, outrigger beams not stabilized by direct connections to the supporting surface shall be secured by tiebacks (paragraph (d)(3)(vi)). Tiebacks must be as strong as the suspension ropes (paragraph (d)(3)(vii)), be secured to a structurally sound anchorage (paragraph (d)(3)(ix)), and be installed perpendicular to the structure unless opposing angle tiebacks are installed (paragraph (d)(3)(x)). In addition, paragraph (d)(3)(viii) requires that outrigger beams be placed perpendicular to their bearing support, with the exception described more fully below.

With regard to proposed paragraph (b)(18)(i) (paragraph (d)(3)(i) in the final rule), a commenter (Ex. 2–40) stated ''we believe that improper connections are almost always responsible for the failure of scaffolds. Therefore, criteria for torsion strength evaluation of bolted (direct) connections should be included in the standard.'' OSHA believes that the corresponding requirement in final rule paragraph (d)(3)(i) for evaluation of direct connections by a competent person will provide adequate assurance that those connections are designed and made appropriately, because the competent person must have the ability to identify any problems with the direct connections and the authority to have any problems corrected.

Proposed paragraph (b)(18)(ii) (paragraph (d)(3)(ii) in the final rule) required that counterweights be made of non-flowable solid material. That, in effect, prohibited the practice of using sandbags or water-filled buckets as counterweights. The reason for the prohibition is that counterweights are easily displaced and may leak. Final rule paragraph (d)(3)(ii) is virtually identical, except that the word ''solid'' has been deleted, because that term is redundant with the term ''non-flowable'', and a sentence has been added that explicitly prohibits the use of sand, gravel and other similar material as counterweights.

A commenter (Ex. 2–41) stated that the proposed paragraph would cause confusion, inquiring whether, if five 70 pound weights are considered ''solid,'' 350 one pound weights also would be considered ''solid''? The Agency would consider five 70 pound weights as meeting this requirement, because objects of this weight would be unwieldy and less prone to dislocation. However, 350 one pound weights would not meet this requirement because their light weight would make them more prone to being dislocated, thus possibly compromising their effectiveness as a counterweight. OSHA has added the sentence ''Sand, gravel, and similar materials that can be easily dislocated shall not be used'' to indicate more clearly what materials are not allowed for use as counterweights.

Paragraph (d)(3)(iii) of the final rule requires that counterweights be specifically designed for use as counterweights. This provision, which was not part of the proposed rule, has been added in response to input received regarding Issue 26 in the preamble of the NPRM. That Issue asked if OSHA should require that counterweights be designed for no other purpose than to counterweight the system, thereby prohibiting the use of construction materials, such as concrete masonry units, rolls of felt, etc., as counterweights.

One commenter (Ex. 2–22) opposed requiring that counterweights be designed for no other purpose than to counterweight the system. This commenter stated that such a requirement would be unnecessarily costly. This commenter also stated ''So long as the material used meets the objective of the safety requirement, there is no need to cause the expenditure of money on specific materials that do not enhance the safety of the employee * * *''

Several commenters (Exs. 2–13, 2–29, 2–43, 2–53, 2–54, 2–64, 2–367, 2–368 and 2–465) supported a requirement that counterweights be specifically designed for no other purpose than to counterweight the system. These commenters also supported a ban on the use of construction material as counterweights. The SIA (Ex. 2–368) added that such a requirement would be practical, feasible, of negligible cost and would prevent accidents which occur when construction materials used as counterweights are removed for other purposes.

Another commenter (Ex. 2–13) stated:

> Counterweights should be designed for their specific use and permanently marked with their weight otherwise they are worthless. Construction material, of any kind, should be banned for use as counterweights. There is no assurance that proper counterweighting is being accomplished with construction materials. Also, the material could be removed for use by others, thus providing an unstable condition.

Two commenters (Exs. 2–64 and 2–367) stated that there should be a requirement that counterweights be identified or marked. The SSFI (Ex. 2–367) recommended that ''each counterweight be identified as to its weight'' and should also ''have the ability to be fastened directly to the outrigger system.'' Another commenter (Ex. 2–64) wanted counterweights to be ''clearly marked with their actual weight (stamped, painted, etc.), so that workers will use the proper amount of weight.''

In addition, a commenter (Ex. 2–8) stated ''[c]onstruction materials should not be use[d]. We have seen masons remove block used as counterweight.''

Also, the ACCSH (Tr. pp. 188–190, 6–9–87) recommended that counterweights be designed for no other purpose than to counterweight the system. One member stated ''Certainly OSHA should require counterweights be designed for no other purpose. It seems to me that the same day I first read this question I received from OSHA a copy of 'Fatal Facts' that involved this very issue.''

After carefully considering the above comments and the ACCSH recommendation, OSHA has determined that it is reasonably necessary to require that counterweights be designed for no other purpose than to counterweight the system, and to prohibit the use of construction materials as counterweights. In addition, OSHA has determined that it is appropriate to require the marking of counterweights with their weights because that information is needed for the proper design, selection and installation of counterweights.

Proposed paragraph (b)(18)(iii), which required that counterweights be connected to outrigger beams by mechanical means, is identical to final rule paragraph (d)(3)(iv), except that the phrase ''to prevent accidental displacement'' has been added to the final rule to clarify the Agency's regulatory intent. The BCMALU (Ex. 2–54) recommended that the Agency clarify the reason for this provision. The Agency agrees and has revised the provision accordingly.

Proposed paragraph (b)(18)(iv) required that counterweights not be removed from a scaffold until the scaffold is disassembled. Final rule paragraph (d)(3)(v) is identical to the proposed paragraph, except that the

final rule specifies that the counterweights may not be removed from the ''outrigger beam'', rather than from the ''scaffold.'' One commenter (Ex. 2–41) pointed out that counterweights used with suspension scaffold outrigger beams are not placed on the scaffold, as stated in the proposed rule, but are installed on the outrigger beam above. The Agency agrees, and has revised the provision accordingly.

Proposed paragraph (b)(18)(v) required outrigger beams to be secured by tiebacks equivalent in strength to the suspension ropes. This provision was intended to provide a backup system in case the counterweights became displaced. Although tiebacks alone may not keep a scaffold from tipping, they will keep the system from falling to the ground and from causing a progressive failure of nearby scaffolds and scaffold sections. The intent of the proposed paragraph has been carried forward in final rule paragraphs (d)(3)(vi) and (vii), which require the use of tiebacks when direct connections are not used, and require tieback strength equivalent to that of the suspension ropes, respectively.

The SSFI and the SIA (Ex. 2–367 and 2–368) noted that outrigger beams which are bolted to the structure become part of the structure and do not require tiebacks. The Agency agrees that only counterweighted outrigger beams need to be secured with tiebacks and has incorporated appropriate language into paragraphs (d)(3)(vi) and (d)(3)(vii) accordingly.

In addition, final rule paragraph (d)(3)(viii) requires that outrigger beams be placed perpendicular to the face of the structure, except that, where the employer establishes that such placement is prevented by obstructions, the outrigger shall be placed as near to the perpendicular as possible and shall be secured using opposing angle tiebacks. This provision has been added as a partial response to a commenter (Ex. 2–41) who stated that requiring tiebacks to be installed parallel to the centerline of the beam, as required by proposed paragraph (b)(18)(vii), is only safe when the beam is perpendicular to the edge. OSHA agrees with this comment because a non-perpendicular beam/tieback arrangement creates a pendulum effect that could endanger employees. However, the SIA (Ex. 2–368) has pointed out that there may be circumstances where obstructions prevent the outrigger beam from being placed perpendicular to the edge. The SSFI and the SIA (Exs. 2–367 and 2–368) suggested that, in such cases, opposing angle tiebacks be required. OSHA agrees that opposing angle tiebacks are appropriate where obstructions prevent perpendicular placement of outriggers, and has revised the final rule language accordingly.

Proposed paragraphs (b)(18) (vi) and (vii) required that tiebacks be secured to structurally sound anchorages and that they be parallel to the outrigger beam. Those provisions correspond to final rule paragraphs (d)(3) (ix) and (x). OSHA has revised this language, drawing on examples in the preamble of the NPRM, to provide more specific direction regarding what constitutes a structurally sound anchorage.

Three AGC commenters (Exs. 2–20, 2–55 and 2–390) stated that the OSHA interpretation of what is considered an acceptable point of anchorage (51 FR 42686) was too strict and that the Agency should permit the use of any available roof structural anchor points since they are only accommodating a back-up or secondary support system. The Agency disagrees with this position because the secondary support system must be capable of providing adequate support in the event of rigging failure. The revised final rule paragraph specifically identifies structural members of the building or structure as appropriate anchor points, and identifies standpipes, vents, other piping systems, and electrical conduit, as structural elements that do not provide appropriate anchorages.

Proposed paragraph (b)(18)(vii) required that tiebacks be installed parallel to the centerline of the beam. The proposed language has been revised in final rule paragraph (d)(3)(x) to recognize that opposing angle tiebacks are acceptable alternative means of installation. In addition, OSHA has replaced the proposed term ''parallel'', with the term ''perpendicular'' for the sake of clarity.

A commenter (Ex. 2–29) stated ''since tieback anchorages are not always available exactly where needed, perhaps the wording of these requirements should be revised to allow tiebacks to be at an angle, e.g., not to exceed 10 degrees from the centerline of the outrigger * * *.'' OSHA acknowledges that anchorages are not always conveniently located and that there may be circumstances where it is necessary to install the tieback at an angle. However, OSHA believes that when this is done, it is also necessary to require an opposing angle tieback to be used so that the pivot radius of the beam is minimized. Consequently, single tiebacks installed at an angle are not allowed by the final rule.

Paragraph (d)(4) of the final rule specifies the construction requirements for outrigger beams used with suspension scaffolds. This provision requires that suspension scaffold outrigger beams be: provided with stop bolts or shackles at both ends; securely fastened together with the flanges turned out when channel iron beams are used in place of I-beams; installed with all bearing supports perpendicular to the beam center line; and set and maintained with the web in a vertical position. In addition, when an outrigger beam is used, the shackle or clevis with which the suspension rope is attached to the outrigger beam shall be placed directly over the hoisting machine, i.e., over the center line of the stirrup. (These requirements are found in paragraphs (d)(4)(i) through (d)(4)(v).)

These requirements are effectively identical to those in proposed paragraph (b)(19). The SIA (Ex. 2–368) recommended that OSHA drop the word ''single'' from proposed paragraph (b)(19)(v) because this requirement applied to all outrigger beams, not just to ''single outrigger beams''. The Agency agrees, and has revised this provision of the final rule accordingly.

Final rule paragraph (d)(5) sets requirements for suspension scaffold support devices other than outrigger beams. These devices include cornice hooks, roof irons, parapet clamps, or similar devices. Under this provision, those devices must be: made of steel, wrought iron, or materials of equivalent strength; supported by bearing blocks; secured against movement by tiebacks installed at right angles to the face of the building or structure unless opposing angle tiebacks are installed and secured to a structurally sound point of anchorage on the building or structure (sound points of anchorage include structural members, but do not include standpipes, vents, other piping systems, or electrical conduit); and tiebacks shall be equivalent in strength to the strength of the hoisting rope.

Final rule paragraph (d)(5) is identical to proposed paragraph (b)(20), except that some minor editorial changes have been made for the sake of clarity. In particular, OSHA has revised proposed paragraph (b)(20)(i), which specified ''mild steel, wrought iron, or equivalent materials,'' by deleting the word ''mild'' and changing ''equivalent materials'' to ''materials of equivalent strength.'' These revisions are based, in part, on input from a commenter (Ex. 2–41), who indicated that the term ''mild steel'' is not defined in readily available sources. The other change was made to indicate clearly that the strength of the specified materials was the characteristic by which 'equivalence' would be gauged.

Proposed paragraph (b)(20)(iii) required the use of tiebacks, installed at right angles to the face of the structure wherever possible; secured to a structurally sound portion of the building; and equivalent in strength to the hoisting rope. As stated in the preamble to the NPRM (51 FR 42686), vents, standpipes, other piping systems, and electrical conduits are not acceptable points of anchorage because they are often made of materials that cannot support the loads that would be imposed on them if the support device were to fail. OSHA has revised the proposed provision so that final rule paragraph (d)(5)(iii) allows opposing angle tiebacks, as well as tiebacks at right angles, and has incorporated the NPRM preamble list of unacceptable anchorage points to facilitate compliance. In addition, the Agency has relocated the requirement for tieback strength equivalent to that of the hoisting rope to a separate provision (final rule paragraph (d)(5)(iv)).

Two commenters (Exs. 2–64 and 2–368) suggested a requirement that devices covered by proposed paragraph (b)(20) be marked to indicate their capacity. OSHA has not done so because the Agency believes that such markings are not necessary given the capacity requirements set in final rule § 1926.451(a).

Paragraph (d)(6) of the final rule specifies the minimum length of suspension rope to be used with different kinds of hoists. In particular, winding drum hoists are required to have at least four wraps of suspension rope at the lowest point of scaffold travel. All other types of hoists are required to have suspension rope long enough to lower scaffolds to the level below, without having the rope end pass through the hoist, or to have the rope end configured or provided with means so that the end does not pass through the hoist.

This provision, which is identical to proposed paragraph (b)(21), elicited one comment. The BCMALU (Ex. 2–54) recommended that OSHA require that the rope be long enough to allow the scaffold to be lowered to the lowest point on the job-site without the rope passing through the hoist or that the scaffold be initially set up at the highest point at which it will be used on that job-site. OSHA believes that the proposed provision adequately addressed the issue of rope run-through and, accordingly, has not made the suggested revision in the final rule.

Final rule paragraph (d)(7) states ''The use of repaired wire rope as suspension rope is prohibited.'' This provision differs from proposed paragraph (b)(22), which stated ''The repairing of wire suspension rope is prohibited.'' The proposed requirement was based on OSHA's view that there is no way to determine the strength capacity of a repaired wire rope without the danger of over-stressing the repair and thus rendering the rope unsafe for use on scaffolds. The Agency recognizes that the proposed rule did not clearly state OSHA's intent. The act of repairing wire suspension rope is not in itself hazardous. OSHA is, however, concerned that repaired rope not be used to suspend a scaffold. Accordingly, OSHA has revised this provision to prohibit the use of repaired wire rope as suspension rope.

Paragraph (d)(8) of the final rule provides that wire suspension ropes shall not be joined together except through the use of eye splice thimbles connected with shackles or coverplates and bolts. This is virtually identical to proposed paragraph (b)(23). This provision, which was not in OSHA's existing scaffold standard, reflects OSHA's determination that the specified measures are the only acceptable ways to connect wire ropes without significantly affecting rope strength.

The SSFI and the SIA (Exs. 2–367 and 2–368) suggested revision of the proposed text to read ''wire suspension ropes shall not be joined together except through the use of eyesplice thimbles connected with shackles or cover plates and bolts.'' OSHA agrees that the suggested phrase ''through the use of eye splice thimbles connected'' expresses the Agency's intent more effectively than the proposed phrase ''by eyesplicing'' and has revised the language of the final rule accordingly. The SIA further indicated that this requirement should apply only to wire suspension ropes used with manual hoists. However, the Agency concludes that final rule paragraph (d)(8) is applicable to the joining of all wire suspension rope, not just that which is used with manual hoists, because compliance with that provision is necessary to ensure that the wire ropes on *all suspended scaffolds* are rigged properly. Therefore, OSHA is not making the suggested change.

Paragraph (d)(9) of the final rule provides that the load end of wire suspension ropes shall be equipped with proper size thimbles and secured by eye splicing or equivalent means. This provision is identical to proposed paragraph (b)(24), which was based on existing § 1926.451(h)(10) and existing § 1926.451(j)(7).

Final rule paragraph (d)(10) requires that ropes be inspected for defects by a competent person prior to each workshift and after every occurrence which could affect a rope's integrity. In addition, paragraph (d)(10) provides that wire rope shall be replaced if the rope has any physical damage which impairs its function and strength; any kinks that might impair the tracking or wrapping of rope around the drum(s) or sheave(s); six randomly distributed broken wires in one rope lay or three broken wires in one strand in one rope lay; abrasion, corrosion, scrubbing, flattening or peening causing loss of more than one-third of the original diameter of the outside wires; evidence of any heat damage resulting from a torch or any damage caused by contact with electrical wires; or evidence that a secondary brake has been activated during an overspeed condition and engages the suspension rope (paragraphs (d)(10) (i) through (vi)).

Proposed paragraph (b)(25) provided simply that ''Defective or damaged ropes shall not be used as suspension ropes or drop lines.'' The proposed language was based on existing § 1926.451(w)(5), which prohibits damaged ropes from being used on float or ship scaffolds. The danger of a broken line is a problem not confined to float or ship scaffolds, so OSHA has extended this provision in the final rule to cover all suspended scaffolds.

The one comment (Ex. 2–38) on the proposed provision pointed out that guidelines indicating when rope would be considered to be defective should be provided. The Agency agrees that employers need to know what OSHA means by ''defective or damaged rope''. Accordingly, final rule paragraph (d)(10) incorporates the language of ANSI A10.8–1988, paragraph 6.7.10, because OSHA finds that those consensus provisions represent good industry practice.

Paragraph (d)(11) of the final rule requires that swaged attachments or spliced eyes on wire suspension ropes not be used unless they are made by the wire rope manufacturer or a qualified person. This provision is essential to ensure the strength and integrity of such attachments as eyes and is identical to proposed paragraph (b)(26).

Paragraph (d)(12) of the final rule requires that, when wire rope clips are used on suspension scaffolds, there shall be a minimum of 3 wire rope clips installed, with the clips a minimum of 6 rope diameters apart; employers shall follow the manufacturer's recommendations when installing clips, retightening clips after initial loading, and inspecting and retightening clips at the start of each workshift; U-bolt clips (a variety of wire rope clip) shall not be used at the point of suspension for any

scaffold hoist; and when U-bolt clips are used, the U-bolt shall be placed over the dead end of the rope, and the saddle shall be placed over the live end of the rope.

Proposed paragraph (b)(27) simply stated ''When wire rope clips are used on suspension scaffolds, they shall be retightened after initial loading and shall be inspected and retightened periodically thereafter''. OSHA believed at the time of the proposal that such performance language conveyed the requirements necessary to ensure that clips were installed and retightened properly.

Two commenters (Exs. 2–23 and 2–54) recommended that OSHA specify the minimum number of clips required. In particular, one commenter (Ex. 2–23) recommended a minimum of 3 clips spaced at least 6 rope diameters apart, with the U-bolt over the dead end of the wire rope. This commenter added that the clips must not be staggered.

The SIA (Ex. 2–368) recommended that the clips be tightened to the manufacturer's recommended torque. Another commenter (Ex. 2–64) suggested that only ''J'' type clamps be used on suspension scaffold lines and that the clips be inspected and retightened at the start of each workshift thereafter.

The Agency agrees that more specific requirements are needed so that employers know how to install and retighten wire rope clips. OSHA believes that the requirements of ANSI A10.8–1988, paragraph 6.7.11.3, appropriately address the concerns raised by commenters, and has incorporated those provisions into paragraph (d)(12) of the final rule. In addition, the Agency agrees that a minimum of 3 clips spaced at least 6 rope diameters apart is necessary for safe rigging when wire rope clips are being used. OSHA notes that several drawings in ANSI A10.8–1988 which depict the proper rigging of suspension scaffolds show three wire rope clips on the suspension ropes.

Final rule paragraph (d)(13) requires that suspension scaffold power-operated hoists and manually operated hoists be of a type tested and listed by a qualified testing laboratory. This is virtually identical to proposed paragraph (b)(28), except that OSHA has revised the proposed terms ''mechanically powered'' and ''manually powered'' hoists to read ''power operated hoists and manually operated hoists'' in the final rule. This revision brings paragraph (d)(13) into line with the language of ANSI A10.8–1988, paragraph 6. This provision consolidates existing provisions §§ 1926.451 (h)(2), (i)(3), (j)(2), and (k)(1).

Paragraph (d)(14) of the final rule requires that gasoline-powered equipment and hoists not be used on suspension scaffolds. This provision is similar to proposed paragraph (b)(29), except that the final rule now prohibits all gasoline-powered equipment or hoists, not just gasoline powered hoists.

The proposed provision was based on existing § 1926.451(k)(2) which allows units to be either electrically or air motor driven. OSHA has determined that gasoline hoists pose unacceptable fire hazards, given the confined area of a suspended scaffold and the difficulties employees would face trying to escape the scaffold if the hoist was incapacitated and on fire.

The BCMALU (Ex. 2–54) strongly recommended that OSHA prohibit the use of all gasoline-powered equipment and hoists on suspension scaffolds because of the high potential for fire. The commenter cited an example of an accident in which two employees were severely burned using a gasoline-powered water blaster. The Agency agrees with this concern and has revised the provision in the final rule accordingly.

Paragraph (d)(15) of the final rule requires that gears and brakes of power operated hoists used on suspension scaffolds be enclosed. This is virtually identical to proposed paragraph (b)(30), except a change in terminology has been made (''mechanically powered'' to ''power operated''), consistent with the changes made and discussed above under paragraph (d)(13). The proposed rule was based on existing § 1926.451(k)(3).

Final rule paragraph (d)(16) provides that, in addition to the normal operating brake, suspension scaffold power operated hoists and manually operated hoists shall have a braking device or locking pawl which engages automatically when a hoist makes either of the following uncontrolled movements: an instantaneous change in momentum or an accelerated overspeed. This provision is different from proposed paragraph (b)(31), which required a brake or pawl to automatically engage ''when the normal speed of descent of the hoist is exceeded.'' The proposed provision was based on existing § 1926.451(k)(4) but differed from the existing standard in that it applied to manual as well as to powered hoists.

One commenter (Ex. 2–8) stated that OSHA should modify the proposed provision to specifically address an instantaneous change in momentum and an accelerated overspeed. OSHA agrees that the suggested revision is appropriate, noting that ANSI A10.8–1988, paragraph 6.3.4.1 addresses both instantaneous stopping type secondary brakes and deceleration type secondary brakes. The Agency has revised the final rule's language accordingly.

The SSFI and the SIA (Exs. 2–367 and 2–368) recommended that OSHA apply this requirement only to powered hoists. OSHA disagrees with these commenters, noting that, as written, the provision requires a braking device (for powered hoists) *or* a locking pawl (for less sophisticated or manual hoists). The Agency concludes that these precautions are necessary on all suspension scaffold hoists and, accordingly, has not made the suggested revision.

Paragraph (d)(17) of the final rule provides that ''Manually operated hoists shall require a positive crank force to descend.'' This is the same requirement as proposed paragraph (b)(32), except the term ''manually operated hoists'' replaces the proposed term ''manually-powered hoists'' for the same reasons as discussed above in relation to final rule paragraphs (d)(13) and (d)(15).

Issue 27 in the preamble to the NPRM sought comments regarding proposed § 1926.451 (b)(32) (paragraph (d)(17) of the final rule) which addresses means of preventing ''free-running'' of hoists during descent. OSHA's view was that compliance with the proposed paragraph would preclude this dangerous condition.

One commenter (Ex. 2–31), whose remarks related solely to pumpjack scaffolds, stated that ''[u]nder ordinary circumstances, free[-]running does not occur during descent of a pumpjack.''

The ACCSH recommended requiring a positive crank force to lower a scaffold (Tr. 190–191, 6/9/87). The SSFI (Ex. 2–367) and the SIA (Ex. 2–368) commented that the proposed provision would preclude the use of a ''boat winch'' type system. The SIA further noted that, to their knowledge, free-running hoists are ''rare in the marketplace.'' They added that the requirement was feasible and practical and would involve negligible additional cost. NIOSH (Ex. 2–40) agreed with the proposed provision. The BCMALU (Ex. 2–54) stated that although a positive crank force might be slower than a free-running hoist, it would be safer which ''is the name of the game, safety.''

One commenter (Ex. 2–29) stated that a positive crank force should be required for hoists used to lower manually-powered scaffolds. Another commenter (Ex. 2–53) stated that the proposed requirement is needed. In addition, a commenter (Ex. 2–64) stated

that a positive crank force is essential unless the descent speed can be controlled by some other means.

After carefully considering the above comments and the ACCSH's recommendation, OSHA has determined that this requirement is necessary to eliminate the dangerous condition of ''free-running'' hoists during descent and to ensure employee safety.

Final rule paragraph (d)(18) provides that two-point and multi-point suspension scaffolds shall be tied or otherwise secured to prevent them from swaying, as determined necessary based on an evaluation by a competent person. This paragraph requires, in addition, that window cleaners' anchors not be used for the purpose of preventing swaying. This prohibition is based on the fact that window cleaners' anchors are not designed for the load that could be imposed. This provision was not part of the proposed rule.

Issue 7 in the preamble of the NPRM asked if the existing § 1926.451(i)(9) and proposed § 1926.452(p)(5) requirement that employers secure two-point adjustable suspension scaffolds to prevent swaying should be extended to cover all suspended scaffolds.

Six commenters (Exs. 2–13, 2–22, and 2–43, 2–471, 2–494, and 2–516) expressed some measure of support for the idea of extending this provision to cover all suspended scaffolds.

One commenter (Ex. 2–13) stated as follows:

> All exterior scaffolds should be stabilized at each work location or provide a method of stabilization as described in OSHA 1910.66 [powered platform standard for General Industry] or by Intermittent Stabilization, as contained in OSHA STD 1–3.3. In addition, all new buildings over 35 feet in height should be provided with a permanent engineered methods or means of rigging.
>
> The vast majority of suspended scaffold accidents that do occur are due to deficient rigging.

A later comment from the same individual (Ex. 2–494) stated ''[w]ith prior planning, there are ways that all scaffolds can be stabilized * * * Unstabilized scaffolds are a hazard to the occupants, other workers, and pedestrians below.''

Another commenter (Ex. 2–471) stated as follows:

> Any shear wall, with the technology available since November 1982, as described in OSHA Instruction STD 1–3.3, can be made *safe* by the installation and the use of Intermittent Stabilization Building Anchors, to prevent a suspended scaffold from being displaced by wind forces.
>
> Merely providing perimeter protection and separate safety lines will *not* prevent the scaffold and its occupants from being blown about, being upset, or violently contacting the structure being serviced, all of which could cause death or injury.

Two commenters (Exs. 2–64 and 2–368) stated that it is neither possible nor practical to tie in all suspended scaffolds. They stated that there are many job situations (e.g., sheer or glass walls, or no wall at all) where stabilization would not work because there are no points where tie-ins can be made. OSHA acknowledges that there are circumstances where suspension scaffolds used in construction have no structure against which to be secured. The present rulemaking takes into account the likelihood that ''permanent engineered methods'' or ''intermittent stabilization building anchors'' will not be in place during construction operations. The applicability of § 1910.66 and OSHA STD. 1–3.3 is limited because they apply to post construction scaffold activities (such as window washing and light building maintenance).

The BCMALU (Ex. 2–54) simply expressed support for the existing requirement that two-point suspension scaffolds be secured to prevent swaying.

Three commenters from the AGC (Exs. 2–20, 2–55, and 2–390) said that single-point suspension scaffolds do not have a tendency to sway. They explained that ''[s]waying generally occurs on two-point suspensions because of uncoordinated movements by two or three employees working on the platform as well as the fact that larger platforms permit movement by employees. This is not the case in single-point suspensions.''

Another commenter (Ex. 2–29) stated that ''[s]ingle-point boatswains' platforms should not be included [under this provision] * * * since this would greatly restrict their use.''

OSHA agrees with the AGC commenters that single-point scaffolds should not be covered by this provision because, by their nature, they do not have a tendency to sway. Single-point scaffolds generally consist of a seat or a small cage which prevents employee movement and scaffold swaying, and therefore, do not pose the same hazard as multi-point scaffolds.

One commenter (Ex. 2–41) stated ''based on much research, it is my opinion that the primary purpose for suspended scaffold restraint on a platform which has no open sides is to prevent the walking-working surface from becoming unstable during normal work activities. The restraint also closes the open side during work activities * * *'' In addition, the SIA (Ex. 2–368) noted that ''[w]here the work platform is provided with guardrails on all sides and workers are protected by * * * safety lines, the protection should be adequate.'' Another commenter (Ex. 2–516) noted that ''[t]here may be limited situations where suspended scaffolds for construction cannot be tied into the building or structure. However, this is not a reason for not having [fall] protection. Any suspended platform not tied in then definitely needs guardrails on all four sides.''

In response to Issue 7, the ACCSH recommended (Tr. 79–87, June 9, 1987) that, where determined necessary by a competent person, all suspended platforms be secured to prevent swaying. The Advisory Committee indicated that the expertise of the competent person would enable the employer to determine the situations where it was appropriate to secure suspended scaffolds against swaying.

After careful consideration of the comments received, OSHA has decided not to require the use of tie-ins to protect single-point suspended scaffolds from swaying. As noted above, this type of scaffold generally consists of a seat or small cage which limits employee movement and swaying. However, the Agency does agrees with the ACCSH that the expertise of a competent person will enable the employer to determine when it is appropriate to secure two-point and multi-point suspended scaffolds and has worded the final rule accordingly.

In addition, Issue 18 in the preamble of the NPRM asked if there should be a height limit above which single and two-point adjustable suspension scaffolds may not be used, and if so, what the height should be, and why.

Four commenters (Exs. 2–20, 2–55, 2–69, and 2–390) responded by asking ''what type of equipment could be used above the limit that would be safe, practical, feasible and economical?'' One commenter (Ex. 2–69) added that the hoist lifting capacity is the only height limitation for this type of scaffold. Another commenter (Ex. 2–13) agreed with that point and stated that OSHA should not try to limit the working height of suspension scaffolds. Two other commenters (Exs. 2–22 and 2–64) simply agreed that there should not be a height limitation. One of those commenters (Ex. 2–22) added that following ''the safety standards'' eliminates unsafe conditions.

Some Issue 18 commenters (Exs. 2–41, 2–54, 2–312) felt that the height of a suspended scaffold was not a problem. One commenter (Ex. 2–41) stated that a ''height limit in construction should not be a factor in the safe use of equipment.'' As an example, he observed that ''single-point scaffolds

have been used in 950 foot elevator shafts for elevator installation * * *'' The BCMALU (Ex. 2–54) indicated that a greater height would make workers more aware of hazards and thus more cautious. The commenter also stated ''[i]t seems most employers and employees are more safety conscious in high places and careless at 5 to 10 feet from the ground.'' In addition, he commented that he did not see how OSHA could restrict use of this equipment because there are situations where these types of scaffolds are the only equipment that can be used. Also, a commenter (Ex. 2–312) stated that ''[w]e have outfitted chimney workers for years so they could work on chimneys that stood 800 to 1000 feet in height. Never a single accident reported.'' The commenter explained that descent devices and the chair board systems use ''one friction principle'' and for these, more rope means more friction with which to slow descent. In addition, the commenter recommended that subpart L require that all rope [for these suspended scaffolds] be continuous length of line, without splices. The commenter further noted that this requirement would limit the height somewhat.

The SSFI and the SIA (Exs. 2–367 and 2–368) expressed opposition to a height limitation for suspended scaffolds and recommended that ''the equipment should be designed by competent persons who will take into consideration all the hazards involved, thereby providing safe equipment for the specific job function.'' In addition, the SIA (Ex. 2–368) stated that suspended scaffolds are practical and feasible at any height when properly installed and used, and that the height limitation ''would be the ability of the hoist(s) to raise and lower the work platform.'' Another commenter (Ex. 2–465) stated that this equipment should be designed by a competent person ''who is thoroughly familiar with the hazards involved.'' That commenter also stated that suspended scaffolds are the most feasible and safest methods to use for work on smoke stacks, towers, and water tanks.

At its meeting of June 9, 1987, the ACCSH responded to Issue 18 by reiterating the position they previously adopted under Issue 7 regarding two-point suspended scaffolds. (Issue 7 is discussed above in reference to paragraph (d)(18) of the final rule.) While the ACCSH did not favor adopting a height limitation for single- and two-point adjustable suspended scaffolds, they did recommend that these types of scaffolds be secured to prevent swaying where necessary, as determined by a competent person (Tr. 6/9/87, pp. 148–150). One ACCSH member stated ''I would move that if swaying is prohibited, as discussed in Question Number 7, that no height limit for suspended scaffolds need be included.''

Based on the input received, OSHA has determined that suspended scaffolds which comply with the pertinent requirements of subpart L will be safe regardless of the height at which they are used. Therefore, the Agency has not added a height limitation to the final rule.

Final rule paragraph (d)(19) (proposed § 1926.451(b)(3)) requires that single function emergency escape and rescue devices not be used as working platforms. This paragraph also provides that the prohibition does not apply to systems which are designed to function both as working platforms and as emergency systems.

Proposed paragraph (b)(3) simply prohibited the use of emergency descent devices as working platforms because such devices are not normally designed for repeated in-place use. However, as stated in the preamble to the NPRM (51 FR 42685), the proposed provision was not intended to preclude the use of scaffold systems which have as an additional feature the capacity to function as an emergency descent device.

The proposed provision generated a number of comments (Exs. 2–8, 2–27, 2–29, 2–87 and 2–312) which recommended that OSHA define ''emergency descent device.'' Most of these commenters interpreted the regulatory language as prohibiting all emergency descent devices from being used as work platforms despite the clarification provided in the preamble. Therefore, OSHA has revised the final rule to indicate clearly that only devices whose sole function is to provide emergency escape and rescue are not to be used as working platforms.

Paragraph 1926.451(e) Access

Final rule paragraph (e) sets the requirements for safe access to scaffolds. This paragraph clarifies the requirements of existing § 1926.451(a)(13), which requires only that ''an access ladder or equivalent safe access shall be provided.'' The introductory text states that employers must provide scaffold access which complies with paragraph (e) for each affected employee. It also specifies that the access requirements for employees erecting or dismantling supported scaffolds are prescribed in paragraph (e)(9).

Proposed paragraph (c) began with a note which stated that the proposed paragraph did not apply to employees erecting or dismantling scaffolds. In the preamble to the NPRM (51 FR 42687), OSHA stated that requirements for safe access ''often are not feasible until a scaffold has been erected and properly braced.'' OSHA relied on the same rationale for the proposed exemption of erectors and dismantlers from the fall protection requirements of proposed paragraph (e).

OSHA received no comments on this proposed exemption directly. However, many of the comments on Issue 8, which requested input regarding the need to exempt employees erecting and dismantling scaffolds from the fall protection requirements of proposed paragraph (e) (promulgated as paragraph (g) of this final rule) stated that employees erecting and dismantling scaffolds should not be exempted from protection. In particular, as discussed below in relation to final rule paragraph (g), commenters stated that it was often feasible to provide fall protection for employees erecting or dismantling scaffolds.

Given the evidence that employers can often protect erectors and dismantlers from fall hazards, OSHA concluded that it was also appropriate to consider if there are circumstances where safe access can be provided for those employees. Accordingly, the Agency reopened the subpart L rulemaking record to solicit input regarding the proposed exemption (58 FR 16509, March 29, 1993). In particular, OSHA sought comments about employers' ability to provide safe access for erectors and dismantlers, the hazards that could be created by efforts to provide safe access, and the criteria to be satisfied by employers seeking to qualify for an exception from the proposed requirements for safe access.

Three commenters (Exs. 34–8, 34–22, and 34–29) supported an access requirement for scaffold erectors and dismantlers. One commenter (Ex. 34–8) said that its support depended on adding the words ''or equivalent means'' to such a requirement. OSHA notes that both proposed § 1926.451(c)(1) and final rule § 1926.451(e) contain the words ''or equivalent means.'' That commenter also stated that in utility boiler installations ''ladders and/or stairways are incorporated into scaffolding. Planking and ladders, where feasible, are used to support erection or dismantling. New access can be provided by cutting out sections of the boiler wall, but the cost for it in some areas may be prohibitive.'' The commenter added that safe access can

be provided on supported scaffolds 100% of the time in non-boiler installations.

Another commenter (Ex. 34–22) stated that where safe access cannot be provided, fall protection can be used. In addition, a commenter (Ex. 34–29) responded that safe access is practically always feasible, and presented ladders, lifts, and crane personnel baskets as examples. OSHA agrees that safe access can be provided for erectors and dismantlers in most instances through the use of various types of equipment, including (but not limited to) ladders, scaffold stairs, manlifts, and fall protection equipment. However, the Agency notes that the use of a ladder or fall protection equipment would require a significant degree of scaffold stability, which may not be present in an incomplete scaffold. Additionally, the safe use of stair towers, manlifts or crane personnel platforms is dependent on site conditions and the availability of the equipment and additionally requires the employer to comply with the regulations covering that equipment.

Scaffold Consultants (Ex. 34–5) described a hypothetical situation involving a scaffold 100 feet long by 50 feet high and planked on all levels. They raised the following points:

1. How many ladders are to be installed? If there is a ladder in the middle of the scaffold, certainly an erector will not walk 50 feet to a ladder and then back another 50 feet to relocate.

2. Ladders cannot be installed on the interior of the scaffold because of the continuous, fully planked decking.

3. If more than one ladder is to be installed, then it would of necessity be on the outside of the scaffold, forcing the erector to go outside the scaffold on each succeeding level, exposing the worker to a fall potential. Traditionally, each ladder section is installed after that level of scaffold has been completed, and the worker no longer has need to return to a lower level. You cannot install a ladder section for the next level up until the scaffold frames, bracing and planking have been erected.

The code already states (1926.451(a)(13)) that an access ladder or equivalent safe access shall be provided.

OSHA notes that providing safe access for erectors and dismantlers does not necessarily mean that all levels of a scaffold must be fully planked. In addition, the Agency cannot specify the number of ladders or other means of access that must be provided in all cases, because of the wide range of situations being addressed by this standard.

Regarding access for employees erecting or dismantling suspended scaffolds, two commenters (Exs. 34–32 and 34–39) stated that access is not required because suspended scaffolds are usually erected at ground level and the rigging is performed at the roof level. Another commenter (Ex. 34–8) stated that OSHA should consider deleting the proposed exemption as it relates to suspended scaffolds. OSHA agrees that if a scaffold is erected at ground level and rigging is performed at the roof level, employees are deemed to have safe access to and from the scaffold. However, erection and rigging not performed in this manner require safe access to be provided, in accordance with final rule paragraph (e).

Five commenters (Exs. 34–31, 34–32, 34–37, 34–39, and 34–43) opposed, in general, an access requirement for erectors and dismantlers. One commenter (Ex. 34–43) stated that the means of access would have to be removed from a scaffold before dismantling can proceed. In addition, four commenters (Exs. 34–9, 34–10, 34–12, and 34–17) stated that, while sectional ladders attached at the ends of the scaffold can be used for access once adequate support is available, portable ladders on the work platform may create a greater hazard. Furthermore, three commenters (Exs. 34–32, 34–37, and 34–39) stated that providing such access is not practicable on supported scaffolds on the grounds that not all scaffolds require an attached access and when one is required ''it is installed after the lift is installed,'' and ''it is not available for the erectors.''

In particular, the SIA (Ex. 34–37) stated that supported scaffold erectors access the scaffold as the erection/dismantling process progresses in either direction. Although acknowledging that erectors also access the scaffold from structures or ladders when convenient, the SIA added that access systems cannot be installed until the scaffold is structurally sound, which they stated does not occur in most cases until the scaffold is complete. OSHA finds, however, that there are many circumstances where outriggers, braces, ties, guys, and similar equipment can be used as the erection or dismantling processes proceed in order to secure, stabilize, or reinforce the lower levels of the scaffold so that safe access can be provided to these completed levels.

OSHA realizes that there may be instances where safe access cannot be provided to the actual level where employees are erecting or dismantling supported scaffolds. However, the Agency has determined that it is necessary and appropriate to provide these employees with safe access to and egress from the levels that have been completed.

Another commenter (Ex. 34–11) wrote that most jobs would not meet the requirements of proposed § 1926.451(c) without an exemption for erectors and dismantlers. This commenter called for a study to determine what procedures are needed to provide safe access. OSHA finds, however, that the rulemaking record provides the necessary support for promulgation of access requirements for these employees and, accordingly, has not adopted this commenter's suggestion. OSHA intends to monitor the effectiveness and compatibility of final rule paragraphs (e) and (g) carefully for the next several years, to make sure they are providing the necessary protection for construction workers. Based on the results of that monitoring, the Agency will determine if any further action is warranted.

Several commenters responded to OSHA's request for information about any hazards that would be created through efforts to comply with proposed paragraph (c). One commenter (Ex. 34–8) stated ''[i]n utility boiler installations hazards may outweigh benefits. Employees may attempt to use a ladder that is not properly secured. Would have to install more access doors and this is not always feasible. In other applications of supported scaffold problems are not anticipated.''

Four commenters (Exs. 34–9, 34–10, 34–12 and 34–17) stated:

Use of ladders, etc. to provide access to levels that are in the process of being dismantled would increase the potential to falls. This is [due] to the fact that the scaffold would no longer be stable enough to support the access equipment properly. The levels of scaffold [that] have been completely erected or not yet dismantled should retain the permanent access equipment intended to provide access throughout the length of intended service. The risks involved during the erection and dismantling process can be lessened by strict adherence to all procedures.

As discussed above, OSHA has determined that safe access can be provided to levels that have been completely erected or to levels that remain intact during dismantling operations.

Three commenters (Exs. 34–32, 34–37 and 34–39) stated ''[t]hese hazards cannot be eliminated during scaffold erection.'' In addition, two of the commenters (Exs. 34–32 and 34–39) stated ''[t]he erector travels both horizontally and vertically and may not be in the vicinity of an access system when descent is necessary. He may not be able to get safely to the access area if, for instance, planks have been moved. Most scaffolds are not fully

planked and planks are moved as erection progresses.''

On the other hand, two commenters (Exs. 34–11 and 34–29) said that providing safe access for erectors and dismantlers would not create hazards.

One commenter (Ex. 34–8) stated that employers should have their scaffolds evaluated by a competent person and that OSHA should consider erection and dismantling processes and procedures, accident statistics, and the type of work to be done on the scaffold before determining in a given situation that safe access is feasible.

Four commenters (Exs. 34–9, 34–10, 34–12 and 34–17) stated ''[c]ertainly the potential for greater risk should be the greater consideration. The circumstance that bears the most consideration is 'at what point is the scaffold capable of supporting a ladder or other access device'. At the point that this occurs permanent access ladders will be able to be attached to provide access.'' Those commenters also stated that an employer seeking exemption should be able to demonstrate that compliance with proposed paragraph (c) would create a greater hazard, be technologically infeasible, or be economically infeasible.

Three commenters (Exs. 34–32, 34–37, and 34–39) stated that providing a means of access to a scaffold under construction should not be required because scaffold erectors are trained to safely climb scaffolds and because worker access to a completed scaffold may be directly from the structure itself. The commenters further stated this would make adding an access system expensive and unnecessary. Those commenters also contended that a requirement to prove infeasibility would be expensive and time consuming, and is not supported by accident data.

In response to comments asserting a lack of accident data to support imposing burdens on employers whose employees erect or dismantle scaffolds, NIOSH (Ex. 34–40) stated ''[t]he lack of 'accident statistics' to scaffold erectors is likely to be due to insufficient detail in injury surveillance data, and not necessarily to a lack of injuries.'' In addition, NIOSH reviewed the accident data (Ex. 21) and concluded that ''[t]he fatality rate for scaffold erectors during scaffold erection and dismantling exceeds that for the entire U.S. construction industry.'' A review of construction accident reports shows that 10–20% of scaffold deaths and injuries occur during erection and dismantling; OSHA finds that many of these will be prevented by the final rule's fall protection requirements for these operations (see the Benefits Chapter of the Economics Analysis for this rule).

The Agency notes that the Occupational Safety and Health Review Commission has held (Hoffman Construction Company, 6 OSHRC 1274, January 4, 1978) that the safe access requirement of the existing standard (29 CFR 1926.451(a)(13) does not become operative until the scaffold is completed or use is imminent, and, therefore, does not apply to scaffold erection and dismantling operations.

OSHA has determined that although scaffold erectors and dismantlers are exposed to significant access-related hazards, requiring employers to provide safe access for erectors and dismantlers in all cases would often create a greater hazard or be infeasible. For example, commenters have described factors (e.g., instability of scaffold and lack of adjacent support) which can preclude the provision of safe access. The Agency agrees that there are some situations where an exemption from final rule paragraph (e) would be appropriate. However, other commenters have indicated that employers who carefully evaluate their scaffold operations can provide safe access or at least minimize employee exposure to hazards during these operations. Therefore, OSHA finds that it is appropriate for employers to be able to obtain relief from the access requirements when such relief has been determined, on a case by case basis, to be necessary. Accordingly, the Agency has added final rule paragraph (e)(9), discussed below, which requires (paragraph (e)(9)(i)) that employers have a competent person assess pertinent workplace conditions and decide what means of access is appropriate to use to protect the safety of erectors and dismantlers on any particular job.

Final rule paragraph (e)(1) provides that access to and between scaffold platforms more than two feet (0.6 m) above or below the point of access shall be by portable ladders, hook-on ladders, attachable ladders, scaffold stairways, stairway-type ladders (such as ladder stand), ramps, walkways, integral prefabricated scaffold access, or equivalent means, or by direct access from another scaffold, structure, personnel hoist, or similar surface. In addition, the final rule requires that crossbraces not be used as a means of access. This provision is identical to proposed paragraph (c)(1), except for some minor changes in terminology made in order to be consistent with existing industry terms, and the inclusion of scaffold stairways as another acceptable means of access. The final rule consolidates and updates existing § 1926.451(e)(5), which requires that ladders or stairways be provided and used on mobile scaffolds; existing § 1926.451(q)(3), which requires that connecting runways with substantial guardrails be used for access to plasterers', decorators', and large area scaffolds; and existing § 1926.451(y)(9), which requires that ladders be used for pumpjack scaffold access.

The SSFI and the SIA (Exs. 2–367 and 2–368) recommended the inclusion of scaffold stair/towers (scaffold stairways) as a recognized acceptable means of access. The Agency acknowledges that scaffold stairways are used regularly for scaffold access and agrees that those stairways should be addressed by subpart L. Accordingly, OSHA has incorporated regulatory text addressing scaffold stairways into final rule paragraph (e)(4), discussed below.

Paragraph (e)(2) of the final rule sets requirements for portable, hook-on and attachable ladders. A note to this paragraph indicates that additional requirements for the proper construction and use of portable ladders are contained in subpart X of this part—Stairways and Ladders—of the construction standards.

In particular, final rule paragraph (e)(2)(i) provides that portable, hook-on, and attachable ladders shall be positioned so as not to tip the scaffold.

In addition, final rule paragraphs (e)(2)(ii)-(vi) provide that hook-on and attachable ladders shall have bottom rungs positioned not more than 24 inches (61 cm) above the scaffold supporting level; have rest platforms at 35 foot (10.7 m) maximum vertical intervals on all supported scaffolds more than 35 feet (10.7 m) high; be specifically designed for use with the manufactured type of scaffold to be used; have a minimum rung length of 11–1/2 inches (29 cm); and have uniformly spaced rungs with a maximum spacing between rungs of 16–3/4 inches, respectively. Proposed paragraph (c)(2) was effectively identical, except that the maximum interval between rest platforms has been increased in the final rule from 20 feet to 35 feet and the maximum rung spacing has been increased from 12 inches to 16–3/4 inches, as discussed below.

Issue 28 in the preamble of the NPRM requested public comment on whether landing platforms should be required at 35-foot maximum intervals as required by existing § 1926.451(e)(5), or at 20-foot maximum intervals as required by proposed § 1926.451(c)(2)(iii). Three commenters (Exs. 2–13, 2–38, and 2–54) responded in support of the proposed rule's 20-foot maximum. One commenter (Ex. 2–13) favored the 20-

foot interval because it would ''allow a person to catch one's breath.'' He added that he could personally appreciate this requirement as he has climbed ladders for years. In addition, a commenter (Ex. 2–38) stated that ''[l]adders should be offset with landings every 20 feet to prevent falling more that 20 feet.'' Another commenter (Ex. 2–54) responded that the interval in the proposed rule ''would make it so workers were not always huffing and puffing and place less strain on ladders and how many workers might be on it at the same time.''

On the other hand, a commenter (Ex. 2–22) responded that the 35-foot height was ''an acceptable level for the safety of employees and * * * a practical field requirement.'' Another commenter (Ex. 2–53) stated ''[l]anding platforms should be required at 35 foot intervals. No need to change regulations.'' The SSFI and SIA (Exs. 2–367 and 2–368) stated that the proposed change to the 20-foot height was too restrictive and unnecessary. In particular, the SIA (Ex. 2–368) stated that, since most of the scaffolds which require access from the base have work platforms less than 28 feet from their base, ''the 20 foot interval requirement would place a rest platform too close to the work platform and would be unnecess[a]ry.'' This commenter added that there are no accident statistics to justify changing the height requirement from 35 ft. to 20 ft.

The ACCSH (Tr. 191–195, 6–9–87) discussed Issue 28 and recommended that OSHA adopt the proposed 20-foot requirement. One member stated ''[b]ecause employees are often carrying tools or equipment, the 20-foot requirement is reasonable.'' OSHA proposed to require landing platforms at 20-foot maximum intervals in an attempt to be consistent with existing §§ 1910.27 (d)(1)(ii), (d)(2) and (d)(5) of the general industry standards.

After a careful review of the evidence in the record as a whole, OSHA finds that requiring landing platforms at 20-foot intervals is not supported by evidence that such a change is needed for employee safety. In addition, evidence was submitted to show that many scaffolds already have work platforms only a few feet higher than the 20-foot level and further that establishing a new height, i.e., 20 feet, would interfere with widely accepted field practice. Accordingly, the final rule retains the 35-foot maximum intervals for landing platforms, because it adequately protects the safety of employees who are accessing scaffolds.

The SSFI (Ex. 2–367) took ''strong objection'' to proposed paragraph (c)(2)(vi), which required that there be a maximum spacing between rungs of 12 inches, because portable, hook-on, and attachable ladders have been produced for many years with uniformly spaced rungs that do not meet this requirement. The commenter recommended that OSHA replace this requirement with a requirement that rungs be uniformly spaced within each section.

The proposed paragraph was based on existing § 1910.26(a)(1)(iii), which prescribes maximum rung spacing for portable metal ladders used in general industry. The Agency notes that prior to the proposal there were no existing OSHA construction regulations addressing hook-on or attachable ladders, and the proposal was intended to recognize that these types of ladders are acceptable means of access.

OSHA agrees with the commenter that the rungs should be uniformly spaced to prevent misstepping. In addition, OSHA believes that the 16¾ rung spacing allowed on integral prefabricated scaffold access frames (end frames) (final rule § 1926.451(e)(6)(v)) should be applied to hook-on and attachable ladders as well, since these ladders are commonly used with end frames and this will provide uniform rung spacing for this application. OSHA has revised the language of the final rule paragraph (c)(2)(vi) accordingly.

Paragraph (e)(3) of the final rule sets requirements for stairway-type ladders. In particular, paragraphs (e)(3)(i) through (v) require that stairway-type ladders be positioned so that the bottom step is not more than 24 inches (61 cm) above the scaffold supporting level; be provided with rest platforms at 12 foot (3.7 m) maximum vertical intervals; have a minimum step width of 16 inches (41 cm) (except for mobile scaffold stairway-type ladders, which are permitted to have a minimum step width of 11½ inches); and have slip-resistant treads on all steps and landings. These provisions are identical to the corresponding provisions in proposed paragraph (c)(3), except that an exception has been added in a new final paragraph (e)(3)(iii) to the minimum rung width in proposed paragraph (c)(3)(iii). This change has been made to recognize that a minimum step width of 11½ inches is acceptable for mobile scaffold stairway-type ladders, as discussed below.

Proposed paragraph (c)(3)(iii), which was based on § 1910.29(a)(3)(ii), required a minimum step width of 16 inches. The SIA (Ex. 2–368) stated that it is necessary to distinguish between stairway-type ladders and mobile scaffold stairway-type ladders where the stairway-type ladder is a secondary feature of the platform. The commenter noted that reduced step width is necessary on this type of equipment due to space constraints, and pointed out that the reduced step width is consistent with normal ladder minimum widths. OSHA agrees, noting that this type of equipment has been demonstrated to be safe over decades of use, and has revised the final rule accordingly.

Final rule paragraph (e)(3)(iv) requires slip-resistant treads on all stairs and landings. This rule is based on general industry rule § 1910.29(a)(3)(iv), which requires the steps to be fabricated from slip-resistant treads.

Final rule paragraph (e)(4), which has been added based on the response to the NPRM and the February 1, 1994 notice of reopening (59 FR 4615), sets requirements for scaffold stairway towers used for access to scaffolds and other elevated work surfaces. OSHA has determined that compliance with the provisions described below will enable employees to use scaffold stairways safely.

The SSFI and the SIA (Exs. 2–367 and 2–368) suggested that OSHA recognize scaffold stairway/towers as acceptable means of access. They noted that reference to these types of access units had been omitted from the proposal even though they are in common use and are a safe method of obtaining access to scaffold units. Both commenters recommended that OSHA revise the rule to add requirements for inside and outside handrails; 19-inch minimum length landing platforms; 19-inch minimum width for stair units; and slip-resistant surfaces for treads and landings.

In addition, a commenter (Docket S–041, Ex. 3–414) to the Notice of Proposed Rulemaking for part 1910 subpart D (Walking and Working Surfaces) stated:

> As in the case of guardrails, the stair rails section is based on the use of this product in permanently installed locations in buildings or industrial structures. It does not consider stair rails used in conjunction with scaffold applications.
>
> Scaffold suppliers utilize step units which have been fabricated specifically to be used as access to scaffold platforms. These step units are manufactured with hand rails which are sold as a component of these step units. The OSHA standard should state that these fabricated step units are acceptable for scaffold access. This will eliminate the confusion of the compliance officers in attempting to enforce permanent stair rail standards for scaffold access components.

On February 1, 1994, OSHA reopened the subpart L rulemaking record (59 FR 4615) to solicit comments and suggestions regarding the regulation of scaffold stairways, chimney bracket scaffolds and tank builders' scaffolds. In

particular, the Agency requested input on the provisions suggested by commenters. In addition, although OSHA did not intend subpart X to apply to stair towers, the Agency was interested in determining if, in fact, any of the provisions from part 1926, subpart X or from proposed part 1910, subpart D, would be appropriate requirements for scaffold stair towers.

The Agency was interested in receiving more input on the need for specific regulations for scaffold stairways, chimney bracket scaffolds and tank builders' scaffolds, with special emphasis on fall protection requirements, including requirements for handrails and guardrail systems for the unprotected sides and edges of stairway landings. The provisions of final paragraph (e)(4) are the product of specific questions raised in the February 1 notice and OSHA's review of the responses to those questions.

Two commenters (Exs. 43–24 and 43–32) recommended that the Agency adopt the suggested provisions, although the first of these two commenters suggested that existing products that do not comply be accepted. Several other commenters (Exs. 43–6, 43–11, 43–13, 43–14, 43–22, 43–26, and 43–37) supported the adoption of various modified versions of the suggested provisions. For example, suggested minimum heights above the tread nose for handrails (or stairrails) ranged from 27 inches (68.6 cm) to 36 inches (91 cm).

A number of commenters (e.g., Exs. 43–4, 43–6, 43–9, 43–10) contended that for many years scaffold stairways have been designed and used in the same manner as they currently are, and have always provided a safe and effective means of access. These commenters opposed the promulgation of any provisions that would alter the criteria under which scaffold stairways are currently designed and used. Most of these commenters also reported that they know of no accidents that have occurred due to the use of scaffold stairways.

In addition, many commenters (Exs. 43–13, 43–14, 43–24, 43–26, 43–37, and 43–44) specifically opposed applying either the requirements of subpart X or the general industry standards (§ 1910.25 and § 1910.28) to scaffold stairways. These and other commenters mentioned above indicated that such an application would, in effect, ''outlaw'' scaffold stairways since they cannot meet the requirements of subpart X due to the fact that scaffold stairways must be designed and constructed to fit within the confines of 5 foot (4.5 m) by 7 foot (6.3 m) or 5 foot (4.5 m) by 10 foot (9.1 m) scaffold bays. As a result, according to these commenters, many employers would simply stop using most scaffold stairways, and would rely instead on other means of access that are not as safe as scaffold stairways. However, one commenter (Ex. 43–8) recommended that scaffold stairways covered by subpart L be consistent with subpart X and the general industry standards. Another commenter (Ex. 42–33) supported standardizing the existing stairway standard's requirements, including hand clearances, end rail projections, type of surface, and guarding of the open sides of landings.

Scaffold stairways can provide a safe and effective means of access, and the Agency has no intention of prohibiting the use of all existing scaffold stairways. However, the Agency does believe that some provisions governing the construction and use of scaffold stairways must be included in final subpart L, and that the provisions should be as consistent as possible with subpart X and the general industry standards, in order to ensure the safety of the employees who use scaffold stairways. Accordingly, OSHA has promulgated the provisions discussed below.

The introductory language of final rule paragraph (e)(4) requires that these units be positioned so that the bottom step is not more than 24 inches (61 cm.) above the scaffold supporting level.

Final rule paragraph (e)(4)(i) requires that a stairrail consisting of a toprail and a midrail be provided on each side of each scaffold stairway. Furthermore, final paragraph (e)(4)(ii) requires that the toprail of each stairrail system shall be capable of serving as a handrail, unless a separate handrail is provided.

Six commenters (Exs. 43–6, 43–11, 43–14, 43–26, 43–37, and 43–44) indicated that inside and outside handrails should incorporate midrails. Several commenters (Exs. 43–8, 43–13, 43–14, 43–24, 43–26, and 43–37) stated that scaffold stairways should incorporate handrails, stairrails and midrails. One commenter (Ex. 43–45) stated that scaffold stairways should have stairrail systems with midrails. Another commenter (Ex. 43–22) stated that inside and outside handrails should be constructed so that they function as both stairrails and handrails.

OSHA agrees that handrails, stairrails, and midrails are necessary for adequate employee protection. However, the Agency also believes that adequate protection can be provided when toprails of stairrail systems are capable of serving as adequate handrails. Paragraph (e)(4)(ii) of the final rule recognizes the capability of toprails to serve as handrails, but also requires that a separate handrail be provided when toprails are not capable of serving as a handrail.

Final rule paragraph (e)(4)(iii) requires that handrails, and toprails that serve as handrails, provide a handhold for employees grasping them to avoid falling. This provision is identical to § 1926.1052(c)(9), except for the explicit inclusion of toprails. Monsanto (Ex. 43–45) stated that handrails should have the shape and dimension necessary to provide a firm handhold, but provided no specific shapes or dimensions that would meet that suggested requirement. OSHA agrees that handrails must be shaped and sized in such a manner that a proper handhold is provided.

Final rule paragraph (e)(4)(iv) requires that stairrail systems and handrails be surfaced in a manner that prevents injury to employees from punctures or lacerations, and to prevent snagging of clothing. This provision is essentially the same as § 1926.1052(c)(8). Monsanto (Ex. 43–45) suggested that stairrail systems ''be free of projection and/or puncture/abrasion hazards.'' OSHA agrees that handrails should not present such hazards, and the final rule's language reflects this concern.

Final rule paragraph (e)(4)(v) requires that the ends of stairrail systems and handrails be constructed in a manner that does not constitute a projection hazard. This provision is essentially identical to § 1926.1052(c)(10).

Final rule paragraph (e)(4)(vi) requires that scaffold stairway handrails, and toprails that are used as handrails, have a minimum clearance of 3 inches (7.6 cm) between the handrail or toprail and other objects. This provision is essentially the same as § 1926.1052(c)(11). As mentioned above, one commenter (Ex. 42–33) stated that hand clearances for scaffold stairways should be the same as those for stairways covered by subpart X. OSHA agrees with this commenter and notes that inadequate hand clearances can render handrails essentially useless.

Final rule paragraph (e)(4)(vii) requires that stairrails be no less than 28 inches (71 cm) or more than 37 inches (94 cm) from the upper surface of the stairrail to the surface of the tread, in line with the face of the riser at the forward edge of the tread. This provision differs from the stairrail height requirements of subpart X, which was never intended to apply to scaffold stairways. Paragraph (e)(4)(vii) of the final rule is based on the following comments.

One commenter (Ex. 43–11) suggested stairrail height ranging from 27 inches (68.6 cm) to 37 inches (94 cm) vertically

above the nose of each step. Another commenter (Ex. 43–20) recommended a range of 22 inches (56 cm) to 41 inches (104 cm). One other commenter (Ex. 43–45) recommended stairrail systems ''no less than 36 inches (91 cm) high.'' However, several other commenters (Exs. 43–6, 43–13, 43–14, 43–26, and 43–37) recommended that stairrails be no less than 28 inches (71 cm) and no more than 37 inches (94 cm) above the nose of each step.

OSHA notes that § 1926.1052(c)(3) requires that stairrail systems installed before March 15, 1991, be no less than 30 inches (76.2 cm) high, and that those installed after March 15, 1991, be no less than 36 inches (91.4 cm) high. The Agency recognizes that this subpart X requirement may not have been appropriate for stairrails on some scaffold stairtowers, because the construction of stairtowers differs significantly from that of stairtowers addressed by subpart X. In particular, stairtowers are fashioned from scaffold components, must fit within the framing of scaffold units, and rise more steeply than other stairways. As a practical matter, the steeper the stairway, the closer the stairrail will be to the stair surface. Therefore, OSHA has concluded that it is appropriate and adequately protective for stairtower stairrails to be at least 28 inches, rather than 30 inches, high. Accordingly, a requirement that employers retrofit scaffold stairtowers with 30-inch high stairrails, or that employers phase in 30-inch high stairrails at some future time, would be unreasonable. OSHA believes that existing equipment and designs can comply with the 28-inch height requirement and should continue to be allowed in use. In addition, OSHA observes that stairtowers with 28-inch high stairrails are safer than ladders and that requirements to retrofit or redesign stairtowers could lead cost-averse employers to use ladders instead of stairtowers.

Final rule paragraph (e)(4)(viii) requires that scaffold stairways be provided with landing platforms that are at least 18 inches wide and at least 18 inches (45.7 cm) long at each level. This provision provides adequate protection for employees without impeding the use of most scaffold stairways now in use.

Several commenters (Exs. 43–6, 43–13, 43–20, 43–22, 43–24, and 43–33) who addressed the issue of landing platforms supported requiring landing platforms at least 19 inches (48.3 cm) wide at every level. Three other commenters (Exs. 43–14, 43–26, and 43–37) recommended that landing platforms at least 18 inches (45.7 cm) wide be required at each level. Four of those commenters (Exs. 43–6, 43–14, 43–26, and 43–37) also suggested adding to such a provision the alternative of providing a platform at least 30 inches long (76.2 cm) in the direction of travel at ''every 14 feet (4.5 m) maximum of stair elevation.'' Those commenters stated that this would ''allow the continued use of frame scaffolds spaced 6½ feet (2.1 m) vertically and system scaffolds which are based upon 7 foot (2.25 m) maximum vertical bearer spacing.''

In addition, two commenters (Exs. 43–11 and 43–45) recommended a minimum landing width of 24 inches (61 cm). Another commenter (Ex. 43–22) recommended that ''landing platforms extend the entire width of the scaffold instead of only one-half the width as they do now.''

OSHA believes that employee safety mandates that a landing meeting the requirements and specifications of this provision must be provided on stairtowers. The Agency also believes that landings must be as wide as the stairway itself (at least 18 inches (45.8 cm)) in the direction in which the stairway is measured and at least 18 inches long in the other direction as well.

Final rule paragraph (e)(4)(ix) requires that each scaffold stairway be at least 18 inches (45.8 cm) wide between stairrails. Several commenters (Exs. 43–6, 43–8, 43–11, 43–13, 43–14, 43–20, 43–22, 43–24, 43–26, 43–32, and 43–37) supported a minimum stair width of 19 inches (48.2 cm). However, the record provides no basis for OSHA to require that stairs be wider than their landings. In addition, 18 inches is the minimum width allowed for normal scaffolds.

Final rule paragraph (e)(4)(x) requires that treads and landings have slip-resistant surfaces. This provision is consistent with existing § 1926.1052(a)(7), which requires that slippery conditions on stairways be eliminated before the stairways are used to reach other levels.

Several commenters (Exs. 43–6, 43–8, 43–11, 43–13, 43–14, 43–20, 43–22, 43–24, 43–26, 43–32, 43–37, and 43–44) supported a requirement that treads and landings have slip-resistant surfaces. The Agency agrees with those commenters, and notes that scaffolds are often used in conditions that can create slippery surfaces.

Final rule paragraph (e)(4)(xi) requires that scaffold stairways be installed between 40 degrees and 60 degrees from the horizontal. Existing § 1926.1052(a)(2) requires that stairs be installed at between 30 degrees and 50 degrees from horizontal. OSHA believes that a minimum and a maximum angle must be specified in order to adequately protect employees from fall hazards. However, the Agency believes that compliance with existing § 1926.1052(a)(2) will not be feasible for stairways regulated under subpart L, because scaffold stairways must fit into the confines of scaffold framing.

Six commenters (Exs. 43–6, 43–13, 43–14, 43–24, 43–37, and 43–44) opposed the specification of a minimum and a maximum angle from the horizontal for scaffold stairways. However, five of these commenters (Exs. 43–6, 43–13, 43–14, 43–37, and 43–44) provided suggested values in case OSHA should decide to specify a minimum and a maximum angle anyway. Four (Exs. 43–6, 43–13, 43–14, and 43–37) of those commenters suggested a minimum angle of 40 degrees and a maximum angle of 55 degrees since the stairs must fit into 7-foot (2.25 m) or 10-foot (3.2 m) bays with landing platforms. The fifth commenter (Ex. 43–44) recommended angles of 35 degrees and 55 degrees. Three (Exs. 43–6, 43–14, and 43–37) of those commenters stated that once the angle approaches 80 degrees, the stairway becomes a ship's ladder. Another commenter (Ex. 43–11) agreed with that concept but placed the angle at 60 degrees.

One commenter (Ex. 43–11) recommended that the limits be set at 40 degrees and 80 degrees, while another commenter (Ex. 43–22) recommended a maximum angle of 50 degrees but provided no minimum value. Another commenter (Ex. 43–32) recommended a minimum angle of 30 degrees and a maximum angle of 50 degrees in order to make subpart L consistent with subpart X.

OSHA has determined that scaffold stairways installed in the range of 40 degrees to 60 degrees from the horizontal will provide safe employee access and will still be capable of fitting into the confines of the scaffold frames. Paragraph (e)(4)(xi) of the final rule reflects this determination.

Final rule paragraph (e)(4)(xii) requires that guardrails meeting the requirements of 1926.451(g)(4) be provided on the open sides and ends of each landing.

OSHA asked in the February 1, 1994 reopening notice if guardrails installed on scaffold stairways should comply with both subpart M (fall protection) *and* this subpart L.

One commenter (Ex. 43–8) recommended that such guardrails meet the requirements of subpart M for the sake of consistency. Another commenter (Ex. 43–13) suggested that only the

provisions of subpart L should apply. Two other commenters (Exs. 43–14 and 43–37) opposed any requirement for guardrails on landing platforms, unless work was to be performed from them, on the grounds that ''(n)o hazard or accident data supports this requirement.''

OSHA believes that employees on landing platforms must be adequately protected from fall hazards while on a landing whether they are working from the landing or not. However, the Agency recognizes that providing guardrails that meet the requirements of subpart M would be inappropriate for use on scaffolds and scaffold stair towers because they are built to other requirements. Instead, OSHA has determined that scaffold guardrails, as required in subpart L, are appropriate because employers build scaffold stairways using scaffold components, which are designed for 36 to 45-inch high guardrails. In addition, the Agency notes that scaffold stairways have been in use for many years and that guardrail systems that comply with subpart L have provided adequate safety for employees using these stairways. Accordingly, final rule paragraph (a)(4)(xii) requires guardrails between 36 and 45 inches in height be used on the open sides and ends of each landing.

Final paragraph (e)(4)(xiii) requires riser heights within each flight of scaffold stairs to be uniform within ¼ inch.

Four commenters (Exs. 43–8, 43–32, 43–44, and 43–45) recommended that OSHA require uniform riser height for all steps within each flight of stairs. Six commenters (Exs. 43–6, 43–11, 43–13, 43–14, 43–24, and 43–37) responded that a uniform riser height within ¼ inch (0.6 cm) is possible to achieve, except for the first step and the last step where variations in decking thickness and the use of screw jacks at ground level make achieving this degree of uniformity difficult. OSHA believes that a uniform riser height within ¼ inch (0.6 cm) for all steps in each flight of stairs is necessary in order to minimize the possibility that employees will slip, trip, and fall while they are on the stairs.

OSHA recognizes that there are situations where the level of the ground or of the structure to which the stair tower is connected will cause the spacing of the top or bottom step of the stairway system to deviate from uniformity with the other steps by more than ¼ inch. The Agency has determined that such deviation will not compromise employee safety, so long as the stair tower otherwise complies with the requirements of paragraph (e)(4).

Final paragraph (e)(4)(xiv) requires that tread depth be uniform, within ¼ inch, for each flight of stairs. This provision is consistent with existing § 1926.1052(a)(3), which requires tread depth uniformity in other types of stairs used in construction.

Monsanto (Ex. 43–45) supported requirements providing for uniformity of riser height and tread depth within each flight of stairs. OSHA believes that tread depth uniformity, within ¼ inch, as required in existing subpart X, is also appropriate for scaffold stairways. Uniform tread depth reduces the possibility that employees will slip and fall due to uneven footing.

Final rule paragraph (e)(5) sets requirements for ramps and walkways used to access scaffolds. Final rule paragraph (e)(5)(i) provides that ramps and walkways six (6) feet (1.8 m) or more above lower levels shall be provided with guardrail systems in accordance with the provisions of part 1926, subpart M—Fall Protection. In addition, final rule paragraph (e)(5)(ii) provides that ramps and walkways shall not exceed a slope of one (1) vertical to three (3) horizontal (20 degrees above the horizontal). Finally, final rule paragraph (e)(5)(iii) also requires that if the slope of a ramp or walkway is steeper than one (1) vertical in eight (8) horizontal, the ramp or walkway must have cleats not more than fourteen (14) inches (35 cm) apart which are securely fastened to the planking to provide secure footing.

The corresponding proposed paragraph simply required that ramps and runways be provided with guardrails in accordance with the provisions of proposed §§ 1926.501 and 1926.502 (Subpart M). As discussed above in relation to the final rule term ''ramps'', OSHA has replaced the term ''runways'' with the term ''walkways'', since the term ''walkway'', unlike the term ''runways'', is defined in this final rule.

A commenter (Exs. 2–37 and 2–103) stated ''[r]amps and walkways are used extensively * * * as a means of egress to an elevated surface. Ramps are also used for material handling equipment. Since no standard angle of elevation is addressed, an extreme angle of elevation and slippery surfaces would result in fall-type accidents and muscle strains.'' The commenter also stated that inadequately guarded walkways pose fall hazards. The commenter recommended language that would address the angle of elevation of ramps and would require cleats on ramps with slopes steeper than one (1) vertical in eight (8) horizontal to provide a safe foothold.

OSHA recognizes the need to indicate clearly what would be an appropriate slope for ramps used as access to scaffolds and has incorporated this language into the final rule as paragraphs 1926.451(e)(5)(ii) and (iii).

The Agency notes that final rule § 1926.451(f)(8) requires that employees be prohibited from working on scaffolds covered with snow, ice, or other slippery material except as necessary for removal of such material. OSHA considers scaffold access ramps and walkways to be part of the scaffold and will also apply § 1926.451(f)(8) to those ramps and walkways.

Final rule paragraph (e)(6) sets requirements for integral prefabricated scaffold access frames. Final rule paragraph (e)(6)(i) provides that such frames shall be specifically designed and constructed for use as ladder rungs. Also, final rule paragraph (e)(6)(ii) requires that the frames have a rung length of at least 8 inches (20 cm). Final rule paragraph (e)(6)(iii) prescribes that rungs less than 11½ inches in length shall be used for access only and not as work platforms unless fall protection, or a positioning device, is used. In addition, final rule paragraphs (e)(6)(iv) through (vi) require that integral prefabricated scaffold access frames be uniformly spaced within each frame section; provided with rest platforms at 35 foot (10.7 m) maximum vertical intervals on all supported scaffolds more than 35 feet (10.7 m) high; and have a maximum spacing between rungs of 16¾ inches (43 cm), respectively. In addition, final rule paragraph (e)(6)(vi) provides that non-uniform rung spacing caused by joining end frames together is allowed, provided the resulting spacing does not exceed 16¾ inches (43 cm). These provisions are similar to those in proposed paragraph (c)(5).

Regarding the proposed introductory text, the SSFI (Ex. 2–367) recommended using the words ''access frames'' instead of the word ''rung.'' OSHA agrees that the suggested language more clearly states the Agency's regulatory intent and has revised this paragraph in the final rule accordingly.

Paragraph (e)(6)(i) of the final rule is identical to proposed paragraph (c)(5)(i) except that the Agency has editorially revised the provision to express OSHA's intent more clearly. OSHA recognizes that the proposed language could have been misinterpreted to require only that the access frames be designed as scaffold rungs, with no requirement for them to be constructed in accordance with that design. OSHA anticipates that these rungs will be designed and constructed through consultation between the manufacturer and the end

user in order to satisfy the pertinent requirements of the final rule.

Final rule paragraph (e)(6)(ii) requires a minimum rung length of eight inches. In addition, final rule paragraph (e)(6)(iii) prohibits the use of rungs less than 11½ inches long as work platforms, unless affected employees are using personal fall arrest systems or positioning devices that comply with § 1926.502 (paragraphs (d) and (e), respectively). These two provisions evolved from proposed (c)(5)(ii), which required a minimum rung length of 11½ inches (29 cm). Morgen Manufacturing Company (Ex. 2–303) commented that scaffolds with integral prefabricated scaffold rungs which are only eight inches long also ''provide safe access [to a work platform] equivalent to that of a ladder.'' Further, the commenter stated that the 8-inch rungs ''provide surer footing and a better climb than does or can a ladder.''

Another commenter (Ex. 2–23) stated that all ladders should have a minimum rung length of 12 inches in order to avoid confusion.

To evaluate this point, Issue L–6 of the hearing notice asked if OSHA should revise proposed § 1926.451(c)(5)(ii) to allow rung lengths less than 11½ inches where the rungs were used for access only. The SIA (Ex. 10; Tr. 3/22/88, p. 159) supported the 11½-inch width requirement explaining ''[i]t's our understanding that the 11½-inch width was required * * * to allow the workman to stand on a rung with both feet * * * [A]n 8-inch rung would not be wide enough.'' Similarly, the SSFI (Ex. 5a–19) commented that its members would not support reducing ''the minimum rung width from 11½ inches to * * * eight inches.'' They added that practical usage indicates that 11½-inch ladder rungs are appropriate.

Bristol Steel and Iron Works, Inc. (Ex. 13) stated that scaffold rungs that were less than 11½ inches long were acceptable ''if they provide safe access equivalent to that of a ladder.''

Morgen Scaffold's notice of intention to appear at the hearing (Ex. 5a–10), testimony at the hearing (Tr. 20–32, 3–22–88), and post-hearing comments (Ex. 15), stated that OSHA should either revise the proposed rule as provided in Issue L–6 or grandfather the existing Morgen scaffolds to permit continued use of the 8-inch integral rung system.

Morgen contended (Ex. 5a–10, p. 2) that its scaffold tower's integral rungs provide a safe and stable footing and handhold for workers using the towers for access to connection points for installation and removal of bracing and accessories. Morgen's post-hearing comments (Ex. 15, p. 3) further contended that the Morgen integral-rung system was safer than those requiring the use of a ladder and offered the following rationale:

> Morgen feels that the tower provides a more secure area from which to install and remove the bracing and accessories than would a ladder. When using a ladder with any type of scaffolding, the worker is generally further from the connection point and must shift his weight off the ladder to install bracing.

At the hearings, Morgen acknowledged that at no time are workers able to put both feet on the same eight-inch rung (Tr. 3/22/88, p. 25). However, Morgen also stated that ''the size of the Morgen tower allows the worker to hug the tower, which is more secure than merely standing with both feet on one rung'' (Ex. 15, p. 3). Morgen also asserted that worker activities, rather than an arbitrary dimension, should be the main consideration (Ex. 15, p. 7). OSHA believes that the 11½-inch dimension is not an ''arbitrary dimension'', because this rung size is generally recognized as necessary to provide workers with level footing of sufficient size to enable them to stand on both feet, thus avoiding the need to balance on one foot.

Morgen recognized (Tr. 28) that it is appropriate for employees to use personal fall arrest or positioning devices while transporting or installing scaffold components. Morgen recommends that personal fall arrest systems be used to protect employees when tower inserts are being added ''because the worker must keep both hands free to guide the inserts into position'' (Ex. 15, p. 6). These same systems can be easily used during other scaffold erection and disassembly procedures.

Morgen also stated (Ex. 15, p. 8) as follows:

> Morgen has no objection to the institution of an industry wide requirement for the use of body belts while installing bracing, stiff arms, accessories and planking from integral ladder rungs. Morgen's objection to the language currently proposed is that it singles out Morgen and implies that the Morgen design is not safe. Morgen objects to that characterization and feels that its scaffold is among the safest in the industry. The characteristics which OSHA wants to address, concerning the safe installation of scaffold elements while in the air, are not unique to the Morgen scaffold and do not depend upon a specified rung length.

OSHA agrees that the concerns addressed are not unique to Morgen scaffolds. However, OSHA disagrees with the position that there is no practical difference between an eight-inch rung where an employee can stand only on one foot and must hug the tower to maintain balance and an 11½-inch rung where both feet may be placed on a single rung. OSHA also notes that § 1926.1053(a)(4)(ii) specifies 11½ inches as the appropriate minimum rung length on portable ladders.

After a careful evaluation of all the comments received, OSHA has determined that rungs which are at least 8 inches long but less than 11½ inches long can be used safely for scaffold access, because while climbing or descending the employee will normally have only one foot on a rung at any given time and the 8 inch rungs will accommodate this. However, employees who are assigned to use such rungs as work platforms must be provided additional protection by the use of personal fall arrest systems, or by positioning device systems, which comply with § 1926.502. This additional safeguard will ensure that employees required to work from rungs less than 11½ inches in width will be adequately protected from falling. This provision of the final rule has been revised accordingly.

Final rule paragraph (e)(6)(iv) is identical to proposed paragraph (c)(5)(iii), except that the term ''frame'' has been revised in the final rule to read ''each frame section,'' so that the provision clearly addresses situations where end frames are joined together, producing non-uniform spacing in the area where the frames are joined. OSHA was concerned that the proposal could have been misinterpreted to require absolutely uniform spacing for the entire height of the scaffold. That was not OSHA's intent, as evidenced by proposed (c)(5)(v) (final rule paragraph (e)(6)(vi)) which prescribed maximum spacing of rungs, but allowed for non-uniform spacing caused by the joining of end frames.

Proposed paragraph (c)(5)(iv) differed from final rule paragraph (e)(6)(v) in that the proposal required rest platforms at 20-foot intervals instead of 35-foot intervals. This revision is based on the response to Issue 28, as discussed above in relation to final rule paragraph (e)(2)(iii).

Proposed paragraph (c)(5)(v) differed from final rule paragraph (e)(6)(vi) in that the proposal required 16½-inch instead of 16¾-inch maximum spacing of rungs. This change reflects input from the SSFI (Ex. 2–367), which informed OSHA that 16¾ inches is the current industry guideline for rung spacing. In proposing 16½ inches OSHA intended to recognize the large number of frames already in existence without requiring a significant program of frame modification. Therefore, based on the

comment indicating that 16¾ inches, not 16½ inches, is the prevalent spacing, and because the additional one-fourth-inch spacing is not believed to be significant, OSHA has modified the final rule to recognize the 16¾ inch spacing limit.

Final rule paragraph (e)(7) provides that all steps and rungs of all ladder and stairway type access shall line up vertically with each other between rest platforms. Proposed paragraph (c)(6) was identical except that the final rule has added the phrase ''of all ladder and stairway type access'' so that the final rule more clearly expresses the Agency's intent.

Final rule paragraph (e)(8) provides that direct access to or from another surface shall be allowed only when the pertinent surfaces are not more than 14 inches (36 cm) apart horizontally and not more than 24 inches (61 cm) apart vertically. It is identical to proposed paragraph (c)(7) except for the addition of the phrase ''to or from another surface'' and some other minor editorial changes. The 14-inch dimension was chosen to be consistent with proposed § 1926.451(b)(4) (promulgated as final rule § 1926.451(b)(3)).

The 24-inch dimension is consistent with final rule paragraphs (e)(1), (e)(2)(ii) and (e)(3)(i), as discussed above.

Paragraph (e)(9) of the final rule sets access requirements for employees erecting or dismantling supported scaffolds. The introductory language of paragraph (e)(9) requires employers to comply with final paragraphs (e)(9)(i)–(iv) starting on September 2, 1997. OSHA has delayed implementation of this paragraph (as well as paragraph (g)(2)) so that affected employers have sufficient time to develop and implement the necessary measures. In addition, the delayed implementation allows time for OSHA to complete work on non-mandatory Appendix B, discussed below, which will provide examples of considerations that employers complying with paragraphs (e)(9) and (g)(2) would take into account. Paragraph (e)(9)(i) provides that the means of access for erectors or dismantlers shall be determined by a competent person, based on specific site conditions and the type of scaffold being erected. As discussed in relation to the introductory text of final rule paragraph (e), while the Agency originally proposed to exempt erectors and dismantlers working on supported scaffolds from requirements for safe access, careful review of the record has led OSHA to the conclusion that a competent person is the appropriate individual to decide what the appropriate means of access for scaffold erectors and dismantlers is on any particular job, based on specific site conditions.

As discussed below in relation to final rule § 1926.451(f)(7) (effectively identical to existing rule § 1926.451(a)(3) and proposed rule paragraph (d)(7)), employers are required to have the erection, dismantling or alteration of a scaffold conducted under the supervision and direction of a competent person who is qualified in the pertinent subject matter.

OSHA is developing non-mandatory Appendix B, which will be added at a later date, to provide examples of criteria for the competent person to consider when evaluating the feasibility and safety of the options for providing safe access. This final rule reserves Appendix B to enable OSHA to provide guidance on the feasibility of providing safe access and fall protection during erection and dismantling. Once that language has been added, access provided in accordance with non-mandatory Appendix B will be considered to meet the requirements of this provision.

Paragraph (e)(9)(ii) of the final rule requires that hook-on or attachable ladders be installed as soon as practical after the scaffold erection has progressed to the point permitting their installation and use. OSHA has included this provision because the rulemaking record (Exs. 34–9, 34–10, 34–12, and 34–17) indicates that sectional ladders can be used for access once adequate support is available.

Paragraph (e)(9)(iii) of the final rule recognizes that the end frames of tubular welded frame scaffolds that meet certain requirements can be safely used as a means of access for scaffold erectors and dismantlers. These requirements are based on section 1637(n)(2)(C) of the California code, as suggested by one of the commenters (Ex. 2–23).

Paragraph (e)(9)(iv) of the final rule provides that crossbracing is not an acceptable means of access on tubular welded frame scaffolds, because crossbraces are designed to provide diagonal stability to the scaffold and are not designed to withstand the forces that could be applied by employees climbing up and down on them. This provision is consistent with ANSI A10.8, section 4.18, and with the general prohibition in final rule paragraph (e)(1), discussed above. This requirement is being repeated here to ensure that the users are aware that the prohibition applies to scaffold erectors and dismantlers as well as to scaffold users. The Agency invites interested parties to provide OSHA with suggestions and information regarding appropriate guidance for the competent person.

Paragraph § 1926.451(f) Use

Paragraph (f) of the final rule addresses safe work practices for the use of scaffolds and the activities which take place on scaffolds.

Paragraph (f)(1) of the final rule provides that scaffolds and scaffold components shall not be loaded in excess of their maximum intended loads or rated capacities, whichever is less. This is identical to proposed paragraph (d)(1), except for the clarifying phrase ''whichever is less.'' This provision clarifies and consolidates existing §§ 1926.451(h)(1), (i)(8), (j)(1), (s)(6), (t)(4), (w)(1), (x)(3) and (y)(1)(iii). This final rule also complements § 1926.451(a)(1), which requires that scaffolds be capable of supporting four times the maximum intended load without failure. Compliance with this rule ensures that the scaffold's capacity is not exceeded.

A commenter (Ex. 2–64) suggested deleting the term ''maximum intended load.'' OSHA has not done so because, as discussed above in relation to the definition of this term, the Agency believes it is appropriate to take into account the ''expected'' burden as well as the burden a scaffold ''can'' support without failure.

Paragraph (f)(2) of the final rule prohibits the use of shore or lean-to scaffolds. The final rule is identical to proposed paragraph (d)(2), which was based on existing § 1926.451(a)(20). Such scaffolds are not properly designed nor properly constructed, and pose a serious threat to anyone working on them. The two commenters (Exs. 2–23 and 2–308) who addressed this provision simply agreed with the continued prohibition of shore and lean-to scaffolds.

Paragraph (f)(3) of the final rule requires that scaffolds and scaffold components be inspected for visible defects by a competent person prior to each work shift and after any occurrence which could affect a scaffold's structural integrity. Final rule paragraph (f)(3) is identical to proposed paragraph (d)(3), which was based on existing §§ 1926.45(i)(7) and (k)(5). Those existing provisions require inspections of certain types of suspension scaffolds. Given the importance of detecting defects in scaffolds and scaffold components, OSHA concludes that all scaffolds need to be inspected at the times specified in the final rule.

Issue 16 requested comment on the proposed frequency of scaffold

inspections for visible defects ''prior to each workshift.'' Two commenters (Exs. 2–13 and 2–69) stated that only certain types of scaffolds can be fully or partially inspected prior to each workshift. Those commenters agreed that two-point suspension scaffolds can be fully inspected, but they indicated that such an inspection could not be done for ''tubular welded frame scaffold covering a multi-story building.'' One of them (Ex. 2–13) added that proposed § 1926.451(d)(3) should specify the types of scaffolds to be completely inspected prior to each workshift and offered suspension and small supported scaffolds as examples. The other (Ex. 2–69) stated that inspecting a multi-story scaffold system could take the majority of the work shift.

OSHA acknowledges that the amount of time needed to perform visual inspection may depend on the type and size of the scaffold being inspected. However, OSHA believes that it is appropriate for the proposed inspection requirement to cover all types of scaffolds, because any scaffold (or scaffold component) can have or develop defects which would pose hazards for employees if allowed to remain in service without being inspected. In addition, OSHA believes that the time to conduct a careful inspection for ''visible defects'' will involve a reasonable amount of time when considered in relation to the scale of the work in question.

Another commenter (Ex. 2–64) stated that suspended scaffolds (''and associated equipment'') should be inspected according to the manufacturer's recommendations. In addition, this commenter provided a copy of the company's recommended inspection schedule for particular suspension scaffold components. This commenter also stated that ''improper maintenance was the most frequent cause of product incidents.''

One commenter (Ex. 2–43) stated that the ''[i]nspection procedures for swing stages are adequate'' but that ''[w]eekly or monthly inspections on rolling or stationary scaffolds should be mandated.'' Another commenter (Ex. 2–31) responded that the daily inspections (prior to each workshift) were ''appropriate for the pumpjack scaffolding user.''

Eight commenters (Exs. 2–15, 2–22, 2–53, 2–70, 2–367, 2–368, 2–407, and 2–465) supported specifying scaffold inspection frequency, without regard to the type or size scaffold inspected. In particular, a commenter (Ex. 2–22) stated that the inspection frequency should be no more ''than once per day or after an occurrence.'' Another commenter (Ex. 2–53) was of the opinion that scaffolds and scaffold components should be inspected for visible defects prior to each use. The ACCSH recommended that scaffold inspection should take place prior to use, and added that a competent person should handle the inspection (Tr. 6/9/87, 136–138).

The SIA (Ex. 2–368) also supported having a competent person perform the inspection but stated that a full inspection was not ''feasible every time a worker gets on a scaffold.'' The commenter stated that ''[i]nspection is a critical factor in accident prevention'' and agreed that the daily inspection, prior to each workshift, was appropriate. The SIA also discussed specific occurrences that might alter the condition of a scaffold, explaining that these ''would include unexplained shifting, movement, or malfunction of equipment where [the] scaffold is a mechanical device.''

In addition, the SSFI (Ex. 2–367) indicated that the recommendation for daily inspection coincided with the proposed ANSI A10.8 requirements for inspection. They added that a scaffold should be inspected when it ''has been altered, either by accident or design.''

The BCMALU (Ex. 2–54) supported the inspection of scaffolds and their components but did not indicate a preferred interval for such inspections.

After a careful review of these comments, OSHA has determined that inspections conducted by a competent person before each shift and after any occurrence that would affect the scaffold's integrity will adequately protect employees working on scaffolds and ensure that defects are detected in a timely fashion. Given the variety of scaffolds and situations that arise regarding their use, the Agency believes that specifying the inspection frequency would unnecessarily limit employers' flexibility.

One commenter (Ex. 2–308) stated that all inspection results should be in writing and be signed by a ''competent person.'' This commenter pointed out that the duration of a ''workshift'' needed to be defined if inspection was required before each shift. OSHA believes that such documentation is unnecessarily burdensome, especially in light of § 1926.451(f)(4) of this final rule, which requires immediate repair, replacement, bracing, or removal from service of any scaffold part that does not meet the strength requirements of § 1926.451 (a) or (g). In addition, the Agency recognizes that the length of workshifts varies and has determined that the protection afforded by this provision is needed whatever the length of the workshift. Accordingly, OSHA has not added the suggested revisions.

Several commenters (Exs. 2–37, 2–38, and 2–103) stated that there was a need to define ''competent person.'' OSHA notes that a general definition of this individual that applies to all construction work already exists in § 1926.32. Although the definition of competent person in that section applies to all construction work, OSHA believes that it is reasonable to repeat this definition of ''competent person'' in the final rule, as a matter of convenience for the user. However, the Agency notes that the criteria for a ''competent person'' depend on the situation in which the competent person is working. For example, a ''competent person'' for the purposes of this provision must have had specific training in and be knowledgeable about the structural integrity of scaffolds and the degree of maintenance needed to maintain them. The competent person must also be able to evaluate the effects of occurrences such as a dropped load, or a truck backing into a support leg that could damage a scaffold. In addition, the competent person must be knowledgeable about the requirements of this standard. A competent person must have training or knowledge in these areas in order to identify and correct hazards encountered in scaffold work.

Final rule paragraph (f)(4) requires that any part of a scaffold whose strength has been reduced to less than that required by §§ 1926.451(a) shall be immediately repaired or replaced, braced to meet those provisions, where appropriate, or be removed from service until repaired. This paragraph applies whenever a scaffold component, for any reason, lacks the required strength. In particular, under this provision employers must follow through to address problems identified pursuant to paragraph (f)(3) of this section. Proposed paragraph (d)(4) was effectively identical to final rule paragraph (f)(4), except that the proposal required action only when a competent person determined that the strength of a part had been compromised, and provided only for bracing of a part or its removal from service. This provision of the final rule thus clarifies and consolidates existing §§ 1926.451 (a)(8) and (o)(6). The proposed paragraph also recognized bracing as an acceptable means of compliance because OSHA foresaw circumstances where the removal of a damaged component could be extremely difficult or hazardous due to its location. However, provision for replacement of a damaged component was inadvertently left out of the

proposal. OSHA has included it in the final rule so that the text clearly expresses the Agency's intent.

Final rule paragraph (f)(5) provides that scaffolds shall not be moved horizontally while employees are on them, except that mobile scaffolds may be moved if the provisions of § 1926.452(w) for mobile scaffolds are followed, and then only if they have been designed by a registered professional engineer specifically for such movement. Final rule paragraph (f)(5) is very similar to the proposed paragraph (d)(5) except that ''laterally'' has been changed to ''horizontally'' for the sake of clarity. In addition, the proposed exception did not include scaffolds designed by registered professional engineers specifically for such movement. The proposed rule was intended to consolidate and reconcile existing §§ 1926.451(a)(3) (any scaffold movement must be conducted under the supervision of a competent person), (e)(6)–(8) (criteria for moving mobile scaffolds) and (p)(1) (needle beam scaffolds shall not be moved while in use).

Two commenters (Exs. 2–13 and 2–367) suggested that the Agency prohibit, in all instances, the moving of mobile scaffolds when employees are on them, but gave no specific rationale for their comments. The Agency is not acting on these suggestions because it has determined that the provisions of final rule paragraph § 1926.451(f)(7) requiring a competent person to supervise and direct any movement of a scaffold, and the requirements of § 1926.452(w), which specifically address the movement of mobile scaffolds, will provide adequate protection for employees. In addition, the Agency believes that making employees climb up and down the scaffold every time it is moved could actually expose them to greater risk of falling than remaining on a scaffold that is being moved under the direction of a competent person in accordance with the requirements of § 1926.452(w).

The SIA (Ex. 2–368) recommended that OSHA add another exception for some suspension scaffolds which are designed to be moved horizontally while occupied. The commenter cited as an example scaffolds used for the construction of bridges and other similar steel structures where it is impossible to move the scaffold at the ground level. The final rule allows this type of scaffold to be moved horizontally if the scaffold has been designed for such movement by a registered professional engineer.

Paragraph (f)(6) of the final rule addresses the use of scaffolds near exposed and energized power lines. In particular, this paragraph requires employers to maintain clearance between power lines and scaffolds, including any conductive materials on the scaffold. The minimum clearance for all uninsulated lines and for insulated lines of more than 300 volts is 10 feet. The minimum clearance for insulated lines of less than 300 volts is 3 feet. In addition, final rule paragraph (f)(6)(i) provides that scaffolds and materials may be closer to power lines than specified above only where necessary to do the work, and only after the utility company or electrical system operator has been notified of the need to work closer and the utility company or electrical system operator has deenergized the lines, relocated the lines, or installed protective coverings to prevent accidental contact with the lines.

The final rule provisions in paragraph (f)(6) are very similar to those in proposed paragraph (d)(6), except that the final rule addresses materials used on scaffolds; provides an exception for situations where the employer has contacted the utility company to have power lines de-energized, relocated or covered to prevent accidental contact; and sets three feet, rather than two feet, as the minimum clearance between scaffolds and insulated lines of less than 300 volts. OSHA has also editorially revised this provision for the sake of clarity.

The first two changes noted above were made based on input received in response to Issue L–5 of the hearing notice (53 FR 2051). First, the ACCSH (Tr. 6/9/87, p. 204) suggested that OSHA revise proposed § 1926.451(d)(6) to reflect concern that conductive material handled on a scaffold might contact exposed and energized lines even if the scaffold itself did not. To this end, the ACCSH recommended that the introductory language of proposed § 1926.451(d)(6) read as follows:

> Scaffolds shall not be erected, used or moved in such a way that they or any conductive material handled on them can come closer to exposed and energized power lines than as follows: * * *.

The Edison Electric Institute (EEI) testified (Tr. 190, 3–22–88) in favor of the suggested language, stating ''[w]e also support your contention that any conductive extension or persons moving on that scaffold, the platform, should also comply [with] 10 feet.''

Second, a commenter (Ex. 2–103) suggested that the Agency require employers to notify the power company when scaffolds are to be erected near energized power lines and request that the power company de-energize the line or provide protective covering to prevent accidental contact.

In Hearing Notice Issue L–5, OSHA indicated its expectation that adding the suggested language would provide primary employee protection from electrical shock hazards. The Agency further indicated that proposed paragraph (d)(6) would apply if the affected employer could not obtain assurances from the utility company that the lines had been de-energized or adequately protected from contact.

The SIA testified (Tr. 158, 3–22–88) that the suggested Issue L–5 wording was too vague and recommended that specification-type language, rather than performance-oriented terminology, ''may be more practical and enforceable when you are dealing with exposure of this type.'' The SIA further stated:

> We certainly do have the hazard there, particularly in people erecting the scaffolds and people working on them. There's a great problem when people go out to erect a scaffold around a building, there is high voltage wire close by. The question has always been, well how close can we get to it? Based on California in their table in some instances they say 6 feet. Some people say that is too close and I don't know but I think that is really something you need to address to get input from people who are experts in that area (Tr. 169).

EEI testified (Ex. 11; Tr. 180, 3/22/88) that OSHA should promulgate the proposed ten-foot minimum clearance between a scaffold and energized and exposed power lines; that the installation of protective devices on the power lines be done by ''trained utility line technicians''; that the ten foot proximity rule should apply to ''any conductive extension or persons'' on a scaffold (Tr. 190–191); and that the Hearing Notice Issue L–5 language regarding protective coverings for energized lines was ''not a safe standard * * *''

In addition, EEI supported requiring employers to notify utilities before erecting scaffolds in proximity to energized lines, so that the utilities could determine how to protect scaffold workers. EEI also stated (Tr. 181):

> Any final standard must make it clear that the 10 foot or more clearances are to be observed unless the line is deenergized or unless the utility plainly advises the employer that it is safe for the particular condition involved to erect a scaffold in closer proximity to the lines than the 10 feet allowed.
>
> It must also be made clear in the final standard that the utility will have no obligation to be [de]energized or to take steps to protect lines and that, if the utility deems it appropriate to do neither, that the 10-foot clearance distance as a minimum * * * must be observed.

The EEI described the procedures by which employers contact utilities when employees need to work in proximity to energized lines, as follows:

> In Wisconsin as part of a one-call system that originated for digging in the ground to avoid contact with buried facilities. We have incorporated notification for all electric facilities. So contractors in Wisconsin who are approaching a job where they detect the presence of overhead conductors can use the one-call system to notify the utility of their intent to work. And within 72 hours the utility comes out and inspects and tells them what they are proposing is reasonable or not. I am sure there are other states with similar provisions (Tr. 187).

In response to a question about how work could proceed when a scaffold must be erected within ten feet of an energized line and the utility refuses to de-energize the line, EEI testified (Tr. 198) that the architects and planners for the structure should consider the line when planning the project. Otherwise, he added, there ''* * * would have to be a delay until some appropriate protection or alternate feed for that facility was established.''

Bristol Steel (Exs. 5a–3 and 13) supported focusing attention on the safeguards necessary to address problems associated with power lines, stating that the proposed language to require maintaining a safe distance from power lines or de-energizing the lines to protect employees from the lines was warranted.

The SSFI (Ex. 5a–19) expressed support for the proposed requirement that an appropriate distance be maintained between scaffolds and energized power lines.

The third substantive change made in the final rule to proposed paragraph (d)(6) was the revision of proposed paragraph (d)(6)(iii) to increase the minimum clearance between scaffolds and lines to 3 feet instead of 2 feet. This change was based on the 1990 editions of two national consensus standards, the National Electrical Safety Code (NESC) and the National Electrical Code (NEC).

NESC Rule 234C specifies clearances from the nearest conductive surface to the nearest surface of a building or its projections or its attachments (scaffolds). The required horizontal clearance to buildings is intended to provide adequate working space between the conductors or cables and the building surface to permit workers with small hand tools to conduct maintenance on a building or other structure. Trained workers using specialized maintenance tools would also be provided with adequate clearance.

Specifically, NESC Rule 24C3c(2) states the following:

> Service-drop conductors shall not be readily accessible, and when not in excess of 750 volts, they shall have a clearance of not less than 3 feet in any direction from windows, doors, porches, fire escapes, or similar locations.

Section 24C3c(2) was added in the 1984 edition of the NESC to be consistent with Article 230–24(c) of the NEC. Article 230 of the NEC covers service conductors.

In the NEC, Article 230–24(c) covers clearances of all overhead service-drop conductors, and simply refers to Article 230–9, ''Clearances from Building Openings.'' Article 230–9, based on no wind loading, states the following: ''Service conductors installed as open conductors or multiconductor cable without an overall outer jacket shall have a clearance of not less than 3 feet from windows, doors, porches, fire escapes, or similar locations.''

With no wind loading, the horizontal clearance from the scaffold to the service conductors must be at least 3 feet. Where wind loading might cause the conductor to be displaced, the original clearance distance must be expanded to assure that at least 3 feet of clearance is maintained between the scaffold and the displaced conductor.

Paragraph (f)(7) of the final rule provides that scaffolds shall only be erected, moved, dismantled, or altered under the supervision and direction of a competent person. That paragraph further provides that the listed activities shall be performed only by experienced and trained employees selected for such work by the competent person. This provision is similar to proposed paragraph (d)(7), which was effectively identical to existing § 1926.451(a)(3).

OSHA received one comment (Ex. 2–23) which recommended the addition of ''and direction'' between the words ''supervision'' and ''of'' because it would otherwise infer that the supervision need not be at the scene directing the work. OSHA believes such direct supervision is necessary, and has revised the final rule to clarify this point. This commenter also suggested that a qualified person rather than a competent person be required by this provision. The commenter defined a qualified person as ''a person designated by the employer who by reason of experience or instruction is familiar with the operation to be performed and the hazards involved.'' OSHA acknowledges that the proposed language does not clearly address the qualifications of a competent person charged with directing scaffold work. Therefore, the Agency has revised the language to indicate clearly that the competent person must be ''qualified'' (as defined in § 1926.32(m)) in the subject matters for which that person has responsibility.

The Agency has also clarified that the actual work be performed by experienced and trained employees, selected by the competent person. This change is based on an ACCSH recommendation (Tr. 88–92, 6–9–87). In particular, a member of the Advisory Committee stated ''it needs to be employees that are properly trained and experienced being the only ones allowed to do this kind of work.'' OSHA agrees with this recommendation because, unlike other individuals on a finished scaffold, erectors and disassemblers are exposed to the hazards of working on a partially completed structure, and a competent person is needed to select the proper individuals to do this work.

Paragraph (f)(8) of the final rule provides that employees are prohibited from working on scaffolds covered with snow, ice, or other slippery material except as necessary for removal of such materials. This provision is identical to proposed paragraph (d)(8), which was intended to clarify existing § 1926.451(a)(17). The existing standard simply required that ''slippery conditions on scaffolds shall be eliminated as soon as possible after they occur.''

The Agency recognizes that the situation addressed by this provision differs from situations where workers could be required to work on scaffolds during storms or high winds, which is addressed by § 1926.451(f)(12) (discussed below). OSHA notes that snow and ice removal can be done from ground level on one level built-up scaffolds (approximately 6 feet) and on suspended scaffolds, since they are usually accessed at ground level. When dealing with a two or more level built-up scaffold, removal of slippery material would be conducted above the 10-foot trigger height requiring normal fall protection precautions. On the other hand, work on scaffolds during storms or high winds poses a much greater risk of falling for workers, especially on tall scaffolds where wind velocity can be much greater than at ground level. In these situations, materials handling, or even normal activities such as walking, are adversely affected to the point where guardrails alone might not be sufficiently protective. Under these circumstances, the Agency intends the competent person to determine if the work can be done safely, and the employer to ensure that those

employees are provided extra protection through the use of personal fall arrest systems or wind screens. This provision is discussed further below.

Paragraph (f)(9) of the final rule requires that, where swinging loads are being hoisted on, to, or near scaffolds such that the loads could contact the scaffold, tag lines or equivalent measures shall be utilized to stabilize the loads. This provision is effectively identical to proposed paragraph (d)(9). The proposed rule was based on § 1910.28(a)(15), which requires tag lines only when loads are being hoisted onto the scaffold. The provision covers all hoisting operations in proximity to scaffolds, because a swinging load can pose a hazard regardless of its destination. OSHA has made a minor editorial revision to the proposed rule for the sake of clarity.

Final rule paragraph (f)(10) requires that support ropes used with adjustable suspension scaffolds have sufficient diameter for functioning of the brakes and the hoist mechanism. As discussed above in relation to final rule § 1926.451(a), OSHA has relocated this provision, which is effectively identical to proposed paragraph (a)(4)(i), to consolidate the requirements for rope used with suspension scaffolds.

Paragraph (f)(11) of the final rule requires that suspension ropes be shielded when a heat-producing process is performed. When acids or other corrosive substances are used on a scaffold, the ropes shall be shielded, treated to protect against the corrosive substances, or shall be of a material which is not adversely affected by the substance being used. This provision is identical to proposed paragraph (d)(10). The proposal was essentially the same as existing § 1926.451(a)(18), which prohibits the use of any heat producing process on scaffolds supported by fiber or synthetic rope and requires that only treated or protected fiber or synthetic ropes be used near corrosive substances. Unlike the existing rule, the revised standard allows the use of heat producing processes, as long as the ropes are shielded. The provisions for protection of scaffolds and their components from corrosive substances and from heat-producing processes are consistent with ANSI A10.8–1988, Sections 4.27 and 4.28, respectively.

Final rule paragraph (f)(12) prohibits work on or from scaffolds during storms or high winds unless a competent person has determined that it is safe for employees to be on the scaffold and these employees are protected by a personal fall arrest system or wind screens. Wind screens shall not be used unless the scaffold is secured against the forces imposed. The proposed rule (paragraph (d)(11)) was based on general industry regulation § 1910.28(a)(18), which provides that employees shall not work on scaffolds during storms or high winds.

Proposed paragraph (d)(11) prohibited work on scaffolds during storms or when wind speeds exceeded 40-mph, unless body belt or harness systems were used or wind screens were erected. The proposed rule, like the final rule, provided that wind screens could only be used if the scaffold was secured against the forces imposed. Issue 6 of the NPRM requested comments on whether the proposed 40-mph limit was appropriate and on how to measure the wind speed.

Two commenters (Exs. 2–22 and 2–53) supported the proposed 40-mph limit. Two other commenters (Exs. 2–13 and 2–41) stated that 25 mph would be a more appropriate limit. Other commenters (Exs. 2–54 and 2–64) stated that 40 mph is too high a limit, because of the dangers high winds present, but did not suggest an alternative limit. Two commenters (Exs. 2–64 and 2–368) stated that no specific limit should be set because of the variations in wind speed from ground level to higher elevations, and from building side to building side. Several commenters from the AGC (Exs. 2–20, 2–55, 2–70, 2–390, and 2–516) stated that contractors are presently using ''good judgement'' in determining when work should cease and that there are no statistics to show otherwise.

The SSFI and the SIA (Exs. 2–367 and 2–368) stated that the most recent draft language used in the ANSI A10.8 standard should be used. As adopted, ANSI A10.8–1988, Section 4.22, provides ''[w]orkers shall not work on scaffolds during storms or high winds.'' In particular, the SSFI (Ex. 2–367) stated ''[t]here are too many variables for a specific wind speed to be determined by a governmental agency.'' That commenter also recommended that OSHA use the term ''high wind'' without specifying a wind speed, and that the Agency let individual workers determine if the work should be performed under those conditions. The SIA (Ex. 2–368) stated ''a set limit of mph can be misleading and dangerous in that the wind velocity can be 15 mph or lower, yet the side of the building the men are working on can have gusts in excess of 40 mph. * * * Wind will vary on each side of a building.''

The ACCSH (Tr. 65–79, 6/9/87) recommended that the determination of wind hazard should be made by a ''competent person.'' OSHA agrees that designating a competent person to evaluate wind conditions is the appropriate way to ensure that all the relevant information and the unique aspects of work locations are considered. OSHA believes this is a more appropriate way to address the problem than simply specifying a speed limit without regard to other factors. Accordingly, the Agency has revised the final rule to reflect the ACCSH suggestion to use a competent person and the suggestions to use the ANSI language.

Final rule paragraph (f)(13) provides that debris shall not be allowed to accumulate on platforms, where it could pose a slip, trip, or fall hazard to employees on or below the platform. This provision is identical to proposed paragraph (d)(12), which was based on existing § 1910.28(a)(20). This provision is consistent with ANSI A10.8–1988, Section 4.24.

Final rule paragraph (f)(14) provides that makeshift devices, such as but not limited to boxes and barrels, shall not be used on top of scaffold platforms to increase the working level height of employees. The Agency has concluded that these makeshift devices will not meet the pertinent criteria of this final rule, in terms of strength and stability.

Final rule paragraph (f)(15) prohibits the use of ladders on scaffolds to increase the employee's working level except when the employees are on large area scaffolds and the ladder is used in accordance with the applicable provisions of final rule paragraph (f)(15)(i)–(iv), discussed below.

The corresponding paragraph in the proposal provided simply that ladders and makeshift devices not be used to increase scaffold working heights. This provision was intended to ensure that workers were provided with a secure work platform, and to eliminate the hazard of tipping caused by portable ladders exerting a sideways thrust on scaffold systems. The pertinent provisions are consistent with the corresponding language in ANSI A10.8–1988, Section 4.29.

NPRM Issue 29 requested public comment on the need for the proposed prohibition against the use of ladders on scaffolds. Three commenters (Exs. 2–40, 2–53, and 2–69) favored the use of body/safety belts in such situations. Of these three, both NIOSH (Ex. 2–40) and another commenter (Ex. 2–69) noted that there would be no need to prevent the tipping of a scaffold from sideways thrust exerted by a ladder if the scaffold were secured laterally. Those commenters added that employees working above the guardrail system could be guarded from falls by using a body belt. In addition, NIOSH (Ex. 2–40)

provided examples, noting that tiebacks, guys, or braces would be used to secure a scaffold. NIOSH also suggested that OSHA consider requiring ''form scaffolds'' to be near the top of concrete forms. The commenter indicated that this would ''eliminate the need for workers to be above the scaffold fall protection system.'' However, NIOSH stated that no data exist to support this recommendation concerning form scaffolds. The other commenter (Ex. 2–53) who supported the use of personal fall arrest systems stated ''safety belts must be used'' when ladders or other devises are used on top of scaffolds to increase the working level heights of employees.

One commenter (Ex. 2–15) favored the proposed prohibition of the use of ladders or makeshift devices to raise the working level of employees, provided that the prohibition pertains only to scaffolds subject to tipping that do not completely cover an enclosed area. In particular, this commenter stated that the proposed prohibition should not apply to scaffolds built from wall to wall with the entire floor area covered and with a completely decked top (in effect, a large area scaffold) from which several trades could use ladders or small scaffolds to do their work. In addition, two commenters (Exs. 2–1 and 2–54) who addressed proposed paragraph (d)(13), rather than Issue 29, indicated that ladders can be used on large area scaffolds when additional precautions are taken.

One commenter (Ex. 2–64) supported applying the proposed prohibition to suspended scaffolds but did not address other scaffolds. Another commenter (Ex. 2–13) stated that no ladder or makeshift device ''should be used to increase the height of a scaffold.''

In addition, four commenters (Exs. 2–29, 2–43, 2–367 and 2–368) explicitly and unconditionally supported the proposed prohibition. Two commenters (Exs. 2–29 and 2–43) very briefly stated that the use of ladders and makeshift devices on top of scaffolds to raise working levels should be prohibited. The SSFI (Ex. 2–367) supported the proposed prohibition and stated that the use of ladders and makeshift devices on top of scaffolds makes scaffold systems unstable. The SIA (Ex. 2–368) supported the proposed prohibition and stated that accident statistics ''reveal a number of injuries and fatalities due to workers improvising ladders and makeshift devices to obtain greater working heights from scaffolds.''

After carefully considering the above comments and the recommendation from the ACCSH, OSHA has determined that the proposed prohibition of the use of ladders and makeshift devices on top of scaffolds is necessary to ensure employee safety. However, the Agency has also determined that the use of ladders on large area scaffolds is consistent with efforts to ensure employee safety. As noted above in the discussion of the definition for ''Large area scaffold'', these scaffolds cover substantially the entire work area, and are basically equivalent to working on a floor or large deck of a structure, where ladders can be used safely. Therefore, the final rule prohibits the use of makeshift devices on all scaffolds and prohibits the use of ladders on scaffolds other than large area scaffolds.

Furthermore, the OSHA has determined that the requirements in proposed § 1926.451(d)(13), which addressed the use of both ladders and makeshift devices in one provision, should be separated into two paragraphs so that the final rule clearly expresses the Agency's regulatory intent. The proposed rule has been revised accordingly.

Final rule paragraph (f)(15)(i) provides that when a ladder is placed against a structure which is not a part of the scaffold, the scaffold must be secured against the sideways thrust exerted by the ladder. This provision was suggested by NIOSH and other commenters on Issue 29. In addition, paragraphs (f)(15) (ii) through (iv) require that the platform units be secured to the scaffold to prevent them from moving; that the ladder legs are all on the same platform unit unless other means have been provided to stabilize the ladder against platform unit deflection; and that the ladder legs be secured to prevent them from slipping and being pushed off the platform unit. These provisions are based on suggestions made by commenters on Issue 29, as discussed above.

The Agency believes that compliance with these provisions will prevent the tipping and instability hazards that led OSHA to propose a prohibition against the use of ladders on all scaffolds, and has revised the final rule accordingly.

Final rule paragraph (f)(16) provides that platform units shall not deflect more than 1/60 of the span when loaded. This provision is identical to proposed paragraph (d)(14), and is intended to limit the amount platform units can deflect under load without becoming overstressed and without their ends being pulled from their supports.

Final rule paragraph (f)(17) requires employers to reduce the possibility of welding current arcing through suspension wire rope while employees are performing welding from suspended scaffolds by insulating the suspended platform and its rigging. OSHA is adding this new provision to protect employees from the electrocution and platform collapse hazards posed by arcing welding current. In particular, the Agency requires that employers rig affected scaffolds with insulated thimbles (paragraph (f)(17)(i)), insulated wire rope (paragraph (f)(17)(ii)), and insulated hoist mechanisms (paragraph (f)(17)(iii)). This paragraph also specifies precautions for grounding the scaffold to the structure on which welding is being performed (paragraphs (f)(17) (iv–vi)). These provisions are consistent with ANSI A10.8–1988, Section 6.2.9.

Issue 2 of the NPRM requested comment on the need to regulate welding equipment used on suspended scaffolds and solicited input regarding regulatory text then being considered by the ANSI A10.8 Committee. That text, divided into six items, was effectively identical to the language OSHA has promulgated in paragraph (f)(17).

Four commenters (Exs. 2–20, 2–55, 2–69, and 2–390) stated that this subject should be covered by the welding standards for construction (part 1926, subpart J), since the hazards involved in these operations related directly to welding. The National Constructors Association (NCA) (Ex. 2–53) went further, saying ''[t]here is no need to regulate electric welding equipment on scaffolds. NCA member companies do not have any experience that would indicate additional regulations.''

One respondent (Ex. 2–8) stated that OSHA needed to define the term ''suitable'' as used in describing an insulated thimble (Item (a) of Issue 2, promulgated as paragraph (f)(17)(i)), because ''[s]omeone might think that putting electric tape on a metal thimble is ''suitable'' insulation.'' OSHA agrees that the term ''suitable'' could be interpreted in a way that would result in inadequate insulation and has adopted regulatory text requiring an ''insulated thimble'' that provides appropriate protection for the equipment in use.

Another commenter (Ex. 2–13) stated ''[t]he only rule that could possibly help prevent accidents from welding on suspended scaffolds is to ground the scaffold. All the scaffold components are conductors and all could possibly be grounded through the suspension ropes. A secondary path, of lesser resistance, could possibly help.''

In addition, a commenter (Ex. 2–22) stated that requiring employers to cover each hoist with protective covers made from insulating material (Item (c) of Issue 2, promulgated as paragraph (f)(17)(iii)) would have a prohibitive

cost without having an impact on safety, noting that a ''great number'' of hoists are used on scaffolds. The commenter added that the provision requiring a grounding conductor to be connected from the unit to the structure (Item (d) of Issue 2, promulgated as paragraph (f)(17)(iv)) may not be practicable ''because in actual field situations the machines are constantly and frequently moved.'' In addition, the commenter stated that the requirement to turn off the welding machine if the unit grounding lead is disconnected at any time (Item (e) of Issue 2, promulgated as paragraph (f)(17)(v)) may be impractical, because ''in actual field situations the machine may be 50 or more feet from the scaffold.'' Another commenter (Ex. 2–29) suggested that ''[r]equirements should be more performance-oriented to allow alternative methods to protect the employees working with electric welding equipment on suspended scaffolds.''

Several commenters (Exs. 2–43, 2–54, 2–64, 2–367, and 2–368) expressed concern over the hazards of using electric welding equipment on suspended scaffolds and indicated that they favored promulgation of the measures raised in Issue 2. One commenter (Ex. 2–64) noted that OSHA had used the term ''unit'' instead of the terms ''scaffold'' or ''platform'' in Items (d) and (e) of Issue 2 and stated that one of those other terms should be used instead of ''unit'', for the sake of clarity. OSHA agrees that the term ''scaffold'' more clearly expresses the Agency's intent.

In addition, the SSFI (Ex. 2–367) and the SIA (Ex. 2–368) stated ''the specific recommendations developed by OSHA regarding electric welding equipment are felt to be practical and feasible as several manufacturers are already using or specifying many of the methods outlined within the suggested rules.''

Also, on June 9, 1987 (Tr. 26–30), the ACCSH recommended that OSHA regulate electric welding equipment on suspended scaffolds under subpart L. In particular, a member of the Advisory Committee stated ''[t]here's a very distinct possibility that you can arc within the suspended cables, burn the cable and drop the scaffold. That's exactly why it needs to be addressed.''

Another commenter (Ex. 2–516) expressed concern regarding the protection provided by insulated thimbles, because ''[a]n insulated thimble does not prevent the wire rope from hitting the conducting aluminum skin on the structure and closing the loop. It doesn't stop the huge current from burning out the power cord and melting the insulation on the 'hot' power leads.'' The commenter also stated that using more than one ground lead can allow current to ''get loose'', blowing out adjacent electrical systems and damaging platforms and their rigging. In particular, the commenter stated ''[p]art of our problem is that the current from welding machines is high enough to cause heat damage in metal. The damage manifests itself as melted metal at the material surface or interface between materials. This damage seriously reduces strength. Strength is needed to keep the platform from falling.''

The Agency acknowledges that insulated thimbles, alone, do not prevent arcing, and that grounding must be undertaken with great care to minimize stray currents. OSHA has determined that compliance with the provisions of paragraph (f)(17), taken together, will minimize the hazards of electric arcing during welding operations on suspended scaffolds. The Agency has concluded that it is appropriate to address the hazard of arcing welding current during welding operations on suspended scaffolds in the final rule for scaffolds, rather than in the welding standards, because the precautions in question relate to the scaffold rigging, not to welding procedures, and because placing the pertinent regulatory text in the rule will facilitate compliance.

Paragraph 1926.451(g) Fall Protection.

Paragraph (g) of the final rule sets fall protection requirements for employees working on scaffolds, including criteria for guardrail systems. As discussed above, fall hazards account for a high percentage of the injuries and fatalities experienced by scaffold workers. OSHA has determined that compliance with this paragraph will effectively protect employees from those hazards.

Final rule paragraph (g)(1) sets 10 feet as the threshold height above which fall protection is required and indicates (paragraphs (g)(1)(i)—(vii)) what fall protection measures are required for particular types of scaffolds. In addition, the introductory text references paragraph (g)(2), which addresses the fall protection requirements for employees erecting and dismantling supported scaffolds. Finally, a note has been added at the end of paragraph (g)(1), to indicate clearly that the fall protection requirements for employees installing suspension scaffold support systems on floors, roofs, and other elevated surfaces are set forth in subpart M (Fall protection) of the construction standards.

Proposed paragraph (e)(1), dealing with fall protection, was similar, except that it explicitly excluded erectors and dismantlers from coverage. As with the proposed access provision (proposed paragraph (c)), OSHA believed at that time that fall protection requirements would only be feasible when a scaffold was fully erected and properly braced. The following paragraphs first discuss the issue of height requirements for fall protection on scaffolds and then describe the issues surrounding fall protection for erectors and dismantlers.

The issue of the appropriate height at which to require fall protection for employees working on scaffolds is complex, involving analyses of accident statistics, economic issues, strongly held opinions, and most importantly, concern for employee protection. OSHA has been involved with this issue since its inception in 1971, when the Agency adopted, under Section 6(a) of the Act, a requirement that scaffolds used in construction require fall protection for employees working at heights greater than 6 feet. By 1972, however, it had become apparent that this height requirement was proving onerous and causing disruption for scaffold users in the construction industry, and the Agency accordingly revised the height requirement to 10 feet (37 FR 25712, December 2, 1972). This change recognized the fact that the relevant consensus standard, ANSI A10.8–1969, Section 3.3 had set the threshold height for scaffold fall protection at 10 feet, and that this had become the industry standard of practice. OSHA's action also underscored the need for consistency in height requirements for general industry and construction unless there are compelling reasons for a different height requirement (the general industry standard's height threshold had already been set at 10 feet, in accordance with the ANSI standard). An example of a situation where a different height requirement is appropriate is the fall protection height requirement for scaffolds used in shipyards (29 CFR 1915). This height threshold differs from that in general industry and construction because shipyard work is less transient and less dynamic than construction work. For example, it is not uncommon for a scaffold to be erected in the shipyard environment and to remain in place for several years as employees work on various vessels that are brought to the scaffold ''work station'' to be repaired. In addition, shipyard facilities are completed, finished structures, unlike construction sites, where activities and crews change daily. Finally, the 5-foot threshold for fall protection on scaffolds has a long history in this industry: it has been

standard industry practice since well before OSHA was established.

The fall protection height requirement in the final rule continues the height requirement that has been in place in OSHA's construction standards since 1972; this height threshold is also the current recommendation of the relevant ANSI standard, A10.8–1988. OSHA's decision on this issue is based on the Agency's professional judgment and its experience in enforcing this fall protection requirement in the existing scaffold standards, a review of the available accident statistics and studies, and an analysis of the record on this issue. The following paragraphs discuss this information in greater detail.

First, OSHA has been enforcing this limit for almost a quarter of a century and has found that employers working in all areas of construction, from commercial building to the specialty trades, recognize and comply with this limit. In addition, construction workers are familiar with and have been trained to use fall protection on scaffolds at heights of 10 feet and above. Thus, this height requirement reflects current industry practice and is widely observed by employers and employees alike.

Second, the accident data on falls among construction workers suggest that several other areas of construction safety—such as scaffold stability, protection from electrocution hazards, and protection from falling objects while working on scaffolds—may have a greater impact on injuries and fatalities than fall protection height. An unpublished BLS study, entitled Work Injury Report on Scaffolds, analyzed work injury reports related to scaffolds submitted from May to November 1978. The study showed that many causes contribute to scaffold-related injuries and fatalities (Ex. 3–1). For example, one-quarter of the accidents related to scaffolds occurred while workers were ascending or descending a scaffold or stepping onto or off a scaffold, and 72 percent of these accidents occurred when the planking or support collapsed or slipped (Ex. 3–1).

A recent OSHA review of the Agency's Integrated Management Information System (IMIS) records of falls in the construction industry in the period from April 1984 to June 1994 provided information regarding 32 fatalities and 60 injuries related to work on scaffolds that occurred during this interval. Of these, only three fatalities and six injuries involved heights in the 6 to 10-foot range.

OSHA received many comments on the height threshold for fall protection for work conducted on scaffolds (Exs. 2–3, 2–9, 2–13, 2–14, 2–15, 2–21, 2–22, 2–29, 2–31, 2–40, 2–41, 2–43, 2–45, 2–54, 2–57, 2–69, 2–70, 2–367, 2–368, 2–407, 2–465, 2–595, 5a-3, 5a-5, 5a-17, and, 5a-19). These commenters argued either for changing the existing rule's height threshold or for retaining it. Those in favor of a different limit argued for fall protection at all heights (Tr. 115–116, 6–8–87, ACCSH transcript), 4 feet (Exs. 2–14, 2–40, 2–45, 2–54, and 2–465), 5 feet (Ex. 2–29), and 6 feet (Exs. 2–15, 2–57). OSHA's Advisory Committee for Construction Safety and Health (ACCSH) urged the Agency to require fall protection on all scaffolds, regardless of elevation (Tr. 115–116, 6–8–87); however, at least one other rulemaking participant (Ex. 2–594) argued that such a requirement would be unrealistic. OSHA solicited other comments and data on this ACCSH recommendation in Issue L–2 of the hearing notice (53 FR 2050), and received several comments that such a requirement would not be appropriate (Exs. 5a-3, 5a-5, 5a-17, 5a-19). This group of commenters urged OSHA to retain the 10-foot requirement.

Those commenters favoring fall protection heights in the 4- to 6-foot range gave many reasons for their views. For example, one commenter (Ex. 2–14) stated that falls from heights of four to five feet could cause serious injuries ''especially if the fall occurs on a hard surface with debris scattered about.'' According to the Research & Trading Corporation (Ex. 2–45):

> [f]our feet is consistent with current [general industry] standards for scaffold guarding [Sec.1910.23(c)]. Four feet according to the NBS study on nets (NBSIR 85–3271) is the height beyond which a worker is most likely to hit his head when an accidental fall occurs, which is to be prevented if possible. Six feet is useful as a universal compromise for OSHA from its current slew of height requirements. However, it should be no more than six (6) feet.

Another commenter (Ex. 2–29) argued for five feet on the grounds that guarding any height above one section of scaffold, which is about five feet, would be protective. Both the ANSI Z359 committee and Saf-T-Green (Exs. 2–57 and 2–15) favored a 6-foot fall protection threshold. Saf-T-Green reasoned that an even lower limit might be preferable but acknowledged that there is ''some validity to the claim that one can jump clear of a small, low rolling tower as it tips if there is no guardrail. However, if the tower does not tip, a guardrail would protect against the employee falling over the edge.'' Another commenter (Ex. 5a-3) argued that consistency with the fall protection requirements of subpart M (Fall Protection) would suggest that a 6-foot threshold was appropriate for scaffolds.

Many commenters urged the Agency to retain the 10-foot fall protection threshold for scaffolds (Exs. 2–3, 2–9, 2–13, 2–21, 2–22, 2–39, 2–43, 2–69, 2–70, 2–367, 2–368, 2–407, 2–595, 5a-3, 5a-5, 5a-17, 5a-19). According to these commenters, it is important to establish the height at which fall protection is and is not required (Ex. 2–595) and the 10-foot threshold has proved both protective and cost-effective. For example, one commenter (Ex. 2–41) stated:

> . . . My investigations led me to believe that work at over ten foot elevated surfaces was at the very least four times as hazardous as work at grade, and the injuries were far more serious. I did not feel that any data I saw warranted a conclusion that the increased injury was due to anything but [a] higher population working at the [higher] level.

PPG Industries (Ex. 2–43) commented:

> PPG has no problem with the 10 foot height as it stands. The problem lies in the design of the equipment and the failure of workers to follow safe practices.

OSHA has carefully analyzed all of the comments and data available in the record and has determined that it is appropriate to maintain the 10-foot fall protection threshold in the final scaffold standard, as proposed. This is also the height requirement recommended by the current national consensus standard, ANSI A10.8–1988. This level differs from the 6-foot threshold for fall protection set in subpart M (Fall Protection) for other walking/working surfaces in construction because scaffolds, unlike these other surfaces, are temporary structures erected to provide a work platform for employees who are constructing or demolishing *other* structures. The same features that make scaffolds appropriate for short-term use in construction, such as ease of erection and dismantling also make them less amenable to the use of fall protection at the time the first level is being erected. For example, there may be no secure place on the first level for the installation of guardrails or personal fall arrest systems. Also there is often no structure adjacent to a scaffold when the first level has been erected that can be used to anchor a personal fall arrest system, because the adjacent structure is in the process of being built or demolished.

This scaffold standard contains many updated and strengthened requirements for safe erection and maintenance of scaffolds. In particular, the final rule

sets clear, performance-oriented requirements for scaffold capacity (§ 1926.451(a)); erection (§§ 1926.451 (b), (c) and (d)); access (§ 1926.451(e); and use (§ 1926.451(f)). The Agency has determined that compliance with the above-noted requirements will prevent many of the fall-related injuries and fatalities that would otherwise result from structural collapse or instability, including those occurring on scaffolds less than 10 feet in height, because properly erected scaffolds will not collapse during use.

In addition, OSHA intends to monitor the extent to which compliance with these revised subpart L requirements for structural integrity effectively protects employees on scaffolds from fall hazards when they are working between six and 10 feet above lower levels. At this time, the data are insufficient to persuade the Agency that the existing 10-foot threshold needs to be changed. OSHA will carefully review and examine its enforcement data over the next several years, together with any investigative reports and other information on incidents that involve fall hazards. The Agency also intends to work closely with NIOSH in performing such data collection and analysis. Should it appear that compliance with this final rule is not providing adequate fall protection for employees working on scaffolds between six and 10 feet above lower levels, the Agency will reevaluate the standards and determine what changes, if any, are warranted.

Paragraphs (g)(1)(i) through (vii) of the final rule specify the types of fall protection to be used on particular types of scaffolds. These provisions are essentially the same as the corresponding proposed provisions, except as discussed below. The proposed and final rule provisions effectively clarify and consolidate the fall protection requirements in existing § 1926.451(a)-(y), § 1926.500(c)(2), and § 1926.1910.29(a)(3)(vii).

Paragraph (g)(1)(i) of the final rule, like proposed paragraph (e)(1)(i), recognizes that personal fall arrest systems, not guardrails, are appropriate for use on boatswains' chairs, catenary scaffolds, float scaffolds, needle beam scaffolds, and ladder jack scaffolds. This provision consolidates the following paragraphs of the existing rule §§ 1926.451(1)(4)—boatswains' chairs; (p)(9)—needle beam scaffolds; (w)(6)—float scaffolds; and § 1926.752(k)—float scaffolds for steel erection. This requirement is being applied to catenary scaffolds and ladder jack scaffolds for the first time.

Paragraph (g)(1)(ii) of the final rule, like proposed paragraph (e)(1)(ii), requires personal fall arrest systems and guardrail systems for all single-point adjustable suspension scaffolds (except boatswains' chairs), and for all two-point adjustable suspension scaffolds. The requirement to have guardrails and personal fall arrest systems on two-point scaffolds, which carries forward language in § 1926.451(i)(8) of the existing rule, is based on the fact that a guardrail system alone does not provide adequate fall protection when a suspension rope fails and causes the scaffold to tip or hang from only one end. Personal fall arrest system protection is also necessary for single-point systems, because the fall hazard related to suspension rope failure is as serious as it is with the two-point scaffold. However, because personal fall arrest systems would be the primary means of fall protection on single-point and two-point systems, the provision allows a lower minimum strength guardrail system to be used. This approach is consistent with that taken in the proposed rule.

Paragraph (g)(1)(iii) of the final rule provides that ''Each employee on a crawling board (chicken ladder) shall be protected by a personal fall arrest system, a guardrail system (with minimum 200 pound toprail capacity), or by a three-fourth inch (1.9 cm) diameter grabline or equivalent handhold securely fastened beside each crawling board.'' This provision, like proposed paragraph (e)(1)(iii), is essentially the same as paragraph 1926.451(v)(2) of the existing rule, except that the existing rule permits grablines (lifelines) or equivalent handholds if they are securely fastened alongside crawling boards.

Paragraph (g)(1)(iv) of the final rule, like proposed paragraph (e)(1)(iv), provides that employees on self-contained scaffolds be protected by both personal fall arrest systems and guardrail systems when the platform is supported by ropes (as when the scaffold is being raised or lowered on some systems) and by guardrail systems when the platform is supported directly by the scaffold frame.

Paragraph (g)(1)(v) of the final rule, similar to proposed paragraph (e)(1)(v), requires guardrails to be used along scaffold walkways and to be located within 9½ inches horizontally of at least one side of the walkway. OSHA originally proposed that the walkways be located within 8 inches horizontally of the side of the walkway. However, for consistency with final rule § 1926.451(b)(1)(ii), the provision has been revised to allow an open space of up to 9½ inches. The provision that guardrails need only to be provided along one side applies only when the platform is used solely as a means of access to get from one point on the scaffold to another. If work activities other than access are performed on or from the walkway, then the platform is not considered to be a walkway (see definition of ''walkway''), and other provisions of paragraphs (g)(1), as appropriate, would apply.

Paragraph (g)(1)(vi) of the final rule provides that fall protection (i.e., a personal fall arrest system or guardrail) be provided on all open sides and ends of scaffolds from which employees are performing overhand bricklaying operations and/or related work, except those sides and ends next to the wall being laid. This requirement replaces a note that followed proposed paragraph (e)(1)(v), which stated that the fall protection requirements for employees performing overhand bricklaying from supported scaffolds are provided in § 1926.501, Fall protection (subpart M). OSHA has deleted the note from the final rule because the Agency has determined that, except for some system criteria which are referenced from subpart M, it is appropriate to cover all scaffold fall protection in this final rule for scaffolds in construction (subpart L).

Paragraph (g)(1)(vi) of the final rule is consistent with § 1926.501(b)(9), which addresses fall protection for employees performing overhand bricklaying while on elevated surfaces other than scaffolds.

Final paragraph (g)(1)(vii) requires that employees on scaffolds not addressed elsewhere in paragraph (g)(1) be protected either by guardrails or personal fall arrest systems. This provision is essentially the same as the fall protection requirement of proposed paragraph (e)(1), except that the term ''body belt/harness systems or Type 1 guardrail systems'' has been replaced by ''personal fall arrest systems or guardrail systems'' for the reasons discussed above.

Paragraph (g)(1) does not apply where there are no ''open sides or ends'' on the scaffold (see definition in § 1926.451(b)). For the scaffold to be considered completely enclosed, no perimeter face of the scaffold may be more than 14 inches from a wall. The requirements for fall protection will apply at openings such as hoistways, elevator shafts, stairwells, or similar openings in the scaffold platform, or openings in the walls of the structure surrounding the platform.

Proposed paragraph (e)(2) stated that each employee on a platform (except for a self-contained adjustable scaffold or a scaffold type covered by § 1926.452), less than 45 inches (1.1 m) wide, and 4

feet (1.2 m) or more above lower levels, shall be protected from falling to those lower levels by the use of a personal fall arrest system or guardrail system (with minimum 200 pound toprail capacity). Proposed paragraph (e)(2) also provided a blanket exemption for erecting/dismantling activities and referred to the use of a ''Type I guardrail system.''

This provision, based on existing § 1926.451(a)(4), has been dropped in the final rule because further analysis of the requirement showed that there was no real definable target for the requirement and that 99% of scaffolds would be excluded by the proposed provision.

Paragraph (g)(2) of the final rule addresses fall protection for employees erecting or dismantling supported scaffolds. Based on the rulemaking record, developed through NPRM Issue 8 discussed below, OSHA has determined that it is appropriate to delay the implementation of paragraph (g)(2) until September 2, 1997. The delay will allow affected employers sufficient time to implement the appropriate procedures for addressing the fall protection needs of employees erecting or dismantling scaffolds. In addition, deferring compliance will allow time for the Agency to complete non-mandatory Appendix B, which will provide examples of considerations that a competent person would take into account when evaluating fall protection options for scaffold erectors and dismantlers. As discussed above in relation to final rule paragraph (e)(9), the Agency has also deferred requirements for safe access for scaffold erectors and dismantlers until September 2, 1997.

Final paragraph (g)(2) requires that employers whose employees erect or dismantle supported scaffolds after September 2, 1997 ensure that a competent person determines the feasibility and safety of providing fall protection for such employees. This paragraph further requires that affected employers provide fall protection for employees erecting or dismantling supported scaffolds where the installation and use of such protection is feasible and does not create a greater hazard.

NPRM Issue 8 solicited comments concerning the proposed exemption of employers whose employees perform scaffold erection and dismantling operations from the fall protection requirements of proposed § 1926.451(e)(1). The Agency noted that, while supported scaffolds often do not have a place to which personal fall arrest systems can be properly attached, suspended scaffolds are often located such that personal fall arrest systems can be used.

On March 29, 1993, based on the response to Issue 8, OSHA reopened the public record for proposed subpart L (58 FR 16509) to obtain more information. The Agency stated that the rulemaking record supported deleting the proposed exemption of suspended scaffolds and indicated that a blanket exemption for supported scaffolds might be inappropriate. In particular, OSHA asked if employers should be required to provide fall protection for employees erecting or dismantling supported scaffolds, except where an employer can demonstrate that providing fall protection was either ''impracticable'' or ''would create a greater hazard.'' The Agency also sought information about current efforts and the ability to provide fall protection for employees erecting or dismantling scaffolds. In addition, OSHA asked if it was appropriate to require fall protection for those portions of a supported scaffold that have been, or remain, fully assembled, while exempting those areas where erecting or dismantling is underway.

The responses to NPRM Issue 8, and the March 29, 1993, reopening of the record on this Issue fell into two broad groupings. The first group either supported an across-the-board exemption from fall protection requirements for all erectors and dismantlers (Exs. 2–3, 2–9, 2–12, and 2–21); or supported an exemption for erectors and dismantlers of supported scaffolds only (Exs. 2–13, 2–15, 2–30, 2–69, 2–367 and 2–368); or specifically opposed a fall protection requirement for erectors and dismantlers, even with an exception for impracticability or greater hazard, favoring instead trained erectors and dismantlers, a hazard awareness program, controlled access zones, or a standardized procedure for erecting and dismantling scaffolds (Exs. 34–5, 34–9, 34–10, 34–12, 34–17, 34–17, 34–20, 34–31, 34–32, 34–37, and 34–43).

The second group either supported a requirement for fall protection at all times, including during erecting and dismantling (Exs. 2–22, 2–43, 2–45, 2–53, 2–497, 34–4, 34–11, and 34–35) or supported a requirement for fall protection except where the employer demonstrates that it is infeasible, unsafe, or creates a greater hazard during erecting and dismantling operations (Exs. 2–29, 2–54, 2–57, 2–70, 34–2, 34–18, 34–19, 34–22, 34–26, 34–29, 34–34, and 34–46). Each of these arguments is discussed below, along with OSHA's response to the points raised by the commenters.

Commenters that supported the proposed total exemption of erecting and dismantling operations from the fall protection requirements argued (Ex. 2–3) ''[t]his is a situation where someone must be exposed in order to do the job * * *''; or felt that fall protection would be detrimental to employee safety (Exs. 2–12 and 2–21). OSHA disagrees with these commenters and notes that the record describes many situations where it is feasible to provide fall protection for erectors and dismantlers.

Commenters that supported a fall protection requirement for erectors and dismantlers of suspended scaffolds, but not supported scaffolds (Exs. 2–13, 2–15, 2–30, 2–69, 2–367, and 2–368) argued that it is feasible and practical to require such protection for suspended scaffolds, but not for supported scaffolds, due to the lack of an appropriate tie-off area, and the possibility of drop lines becoming entangled during climbing and moving procedures which could pull the erector off the supported scaffold. The Agency agrees with these commenters that it is virtually always feasible to provide fall protection for workers erecting or dismantling suspended scaffolds because structures that are capable of supporting a suspended scaffold are also capable of providing a safe anchor point for personal fall protection equipment. On the other hand, OSHA finds that the record does not support an across-the-board exception from the requirements for fall protection for erectors and dismantlers of supported scaffolds.

Another group of commenters opposed a fall protection requirement but emphasized the importance of training in maintaining safety during erecting and dismantling operations. For example, some commenters (Exs. 34–9, 34–10, 34–12, and 34–17) recommended the following:

1. A formal hazard awareness program shall be implemented.

2. Enforce ''controlled access zones'' allowing only those people trained in the erection and dismantling of scaffolds to be present.

3. Develop and strictly enforce standard procedures for the erection and dismantling of scaffolding. These procedures may include but not be limited to the following:

a. Fully planking each level before moving on to the next highest level.

b. Fully securing each level with the proper guardrails prior to moving to the next higher level.

c. Providing proper access to all completed levels.

d. Develop methods for placing components on upper levels without placing unnecessary risks on employees.

e. Only those employees actually involved in the erection or dismantling shall be allowed on the scaffolding.

The Agency recognizes the importance of training and hazard awareness programs to employee safety, but finds that these precautions alone are not adequately protective because site conditions change and mistakes are made. The Agency finds that providing appropriate fall protection, whenever it is feasible or will not create a greater hazard, is the best way to ensure that erectors and dismantlers are appropriately protected from fall hazards.

The second group consisted of commenters that supported fall protection for erectors and dismantlers under some (Exs. 2–29, 2–54, 2–57, 2–70, 34–2, 34–19, 34–22, 34–26, 34–29, and 34–46) or all conditions (Exs. 2–22, 2–43, 2–45, 2–53, and 2–497). For example, some commenters argued that if a fall hazard exists, lifelines or some other fall arresting system should be in place. R&TC (Ex. 2–45) stated:

> The use of lightweight outrigger scaffold sections with guard rails, which can be pushed up the vertical scaffold poles prior to the new upper level height exposure during erection, seems to be promising as a fall protection means * * * Furthermore, many structures can provide overhead anchorage points for workers during scaffold erection and dismantling without such special scaffold platforms. For these situations, regular lifelines can easily be used for vertical and horizontal movement.

R&TC later added (Ex. 2–497) ''[w]hen an overhead anchorage is available, a bucket truck, manlift or other elevating platform can be used to install lifelines without a fall hazard.''

Commenters to the Reopening Notice (Exs. 34–4, 34–11, 34–18, and 34–35) also supported a fall protection requirement for erectors and dismantlers.

Some, such as Dynamic Scientific Controls (DSC) (Ex. 34–18) provided input on ways to provide fall protection for erectors and dismantlers. In particular, DSC provided a video showing a scaffold being erected by an employee who uses a retractable lanyard attached to the scaffold for fall protection. DSC stated that this method has been improved by crossbracing the first frame, tying-in to the structure, using the pulley bracket more often for attaching lifelines in order to reduce the lifeline angle to less than 45 degrees, and pinning legs before attaching the lifeline to a higher level. DSC added that using horizontal lifelines within each frame and extending the length of the scaffold can provide protection to workers as well. This commenter noted, however, that any fall arrest system attached to a scaffold should be an engineered system modelled for that type of scaffold, or should be designed by a skilled professional engineer.

In addition, the United Brotherhood of Carpenters and Joiners (Ex. 34–11) stated that the ability to provide fall protection can be greatly increased through modified erection, engineered attachment points designed into structures, additional scaffold bracing, guying, and outrigging.

Finally, DBI/SALA (Ex. 34–4) offered the following choices for fall protection: ''(1) Provide for or suggest a means for a feasible anchor; (2) If the current state of the art doesn't allow scaffolds to be used as anchors, maybe a redesign incorporating outriggers or whatever is required is appropriate.''

The Agency agrees that, if fall protection can be provided, it is the employer's responsibility to take the actions necessary to protect employees. However, OSHA has determined, based on the information in the record, that in some situations, it is not possible to provide fall protection for erectors and dismantlers of supported scaffolds.

Two commenters, Dynamic Scientific Controls (DSC) (Ex. 34–18) and the State of Hawaii (Ex. 34–34) commented that the employer should be required to show that fall protection is infeasible or creates a greater hazard for the scaffold erector in order to avoid providing fall protection. Another commenter (Ex. 2–54) added that employers ''should note in their Daily reports why they can't take [the] necessary precaution[s].''

OSHA agrees that employers must have valid reasons for not providing fall protection to scaffold erectors and dismantlers, but does not agree that the employer must put these reasons in writing. Compliance officers can substantiate employer claims of infeasibility or greater hazard through on-site observations and discussion with the competent person and other workers.

Many commenters (Exs. 2–29, 2–54, 2–57, 2–70, 34–2, 34–19, 34–22, 34–26, 34–29, and 34–46) supported a fall protection requirement for scaffold erectors and dismantlers, if feasible, or unless it would create a greater hazard. These commenters also provided insight into the potential problems of providing fall protection for erectors and dismantlers, and into the factors that must be considered when determining if fall protection is feasible in a particular situation or if the use of fall protection would create a greater hazard.

For example, the ANSI Z359 Committee (Ex. 2–57) stated:

> It is recognized that fall protection may, in general, be difficult or impractical to provide in erection and dismantling of supported scaffolds. This may be due to absence of suitable anchorages whether independent or integral to the scaffold. However, there are notable exceptions when independent overhead anchorages exist which may be used for vertical or horizontal lifelines. Further, some supported scaffolds can be rigged to provide integral fall protection without undue encumbrance of the work. There is concern that granting a broad exemption from fall protection requirements for supported scaffold erection/dismantling would reduce the protection even where it is today feasible. Such exemptions could also discourage future development of fall protection means to address this subject.

Miller & Long (Ex. 2–70) commented ''If there is an area where employees can tie off they should do so.''

The Boeing Company (Ex. 34–19) stated that fall protection for erectors and dismantlers could be provided through the use of boom supported elevated work platforms, scissors lifts, forklift platforms, temporary guardrails, fall arrest/restraint systems or other scaffolds.

The Scaffold Training Institute (STI) (Ex. 34–20) indicated that 100% fall protection for erectors is not achievable from a practical standpoint due to a lack of suitable anchorages. The Institute also stated that lifelines would become entangled in pipes, lines, platforms tubes, braces or other obstructions. STI was particularly concerned that snagged lifelines would restrict the motion of employees and could lead to falls for erectors whose work requires that they have freedom of motion in order to carry and to maneuver into place large, bulky components. The commenter added that the use of lanyards and lifelines can lead to increased fall hazards, and that a pendulum effect is created if an erector falls while attached to a lifeline that is anchored several feet away.

Duke Power (Ex. 34–29) stated ''[f]all protection harnesses tend to snag on things, butt straps hinder climbing . . . Fall protection also slows people down.''

SINCO (Ex. 34–22) stated that the effect on the mobility of employees varies with conditions and the type of fall protection equipment used, but stated that the effect can be limited by proper pre-planning and project management. In addition, both SINCO and Professor Ralph E. Bennett of Purdue University (Ex. 34–26) suggested that the scaffold must be properly tied or braced, with all components pinned together, and, that intermediate plank levels be provided to limit fall height during erection of the uppermost levels.

In addition, SINCO recommended that OSHA require affected employers to satisfy the following criteria for exemption:

• A qualified person has determined that fall protection creates a greater hazard than falling freely to the ground or the closest possible level;
• Tests prove that a scaffold or structure would definitely fail if used as an anchorage;
• There are no other means of fall protection available;
• Employees have been trained in the recognition and avoidance of hazards by use of the employer's prescribed methods of erection; and
• Compliance with the requirement for fall protection is likely to result in a more serious injury compared to the possibility of a life saved . . .''

SINCO observed that a greater hazard may exist if a falling person could pull a scaffold over. However, the commenter added that this hazard would involve more danger to employees on the ground than to employees on the scaffold. They contended that other employees on the scaffold may provide ''counter-balance'' that would prevent the scaffold from overturning. In addition, SINCO stated that this hazard can be prevented by reinforcing the scaffold's base through the use of outriggers, counterweights, or tie-downs. The commenter added that this hazard can be greatly reduced by requiring erectors to remain inside the frames to decrease any eccentric loading and through the use of shock absorbers.

Dow Chemical Co. (Ex. 34–46) commented that since each worksite is unique, fall hazards must be addressed through preplanning of the work with the aim of eliminating fall hazards and preventing falls. However, the commenter added, where fall hazards cannot be eliminated, a fall protection system should be used if it ''provides a more appropriately safe solution''. Dow also stated that a lanyard long enough to allow mobility can create tripping hazards and the potential for one worker to ''pull another worker from their task.'' The commenter added that ''people on-site must have the latitude to address [these hazards].''

OSHA notes that the Agency's own compliance experience concerning the potential problems of providing 100% fall protection for erectors and dismantlers is consistent with the positions put forth by the commenters. OSHA has determined that it would be useful to provide examples of the factors to be considered by a competent person when deciding what fall protection is appropriate for employees erecting or dismantling supported scaffolds. Accordingly, the Agency has reserved non-mandatory Appendix B, and will be developing informational text that can be added to subpart L at a later date to serve as a guide to assist employers in evaluating their worksite conditions.

Several commenters (Exs. 34–8, 34–9, 34–10, 34–12, 34–17, 34–22, and 34–26) addressing the topic of fall protection for erectors and dismantlers took no position as to an exception for these workers. However, they indicated that fully planking sections could reduce exposure to fall hazards. One of these commenters (Ex. 34–8) stated that, although full planking and stairway-type ladders would reduce exposure, their use is not always practical. In addition, four of these commenters (Exs. 34–9, 34–10, 34–12, and 34–17) stated that ladders attached at the end of the scaffold would be better because stairway-type ladders greatly reduce employee movement along the length of the scaffold.

Four other commenters (Exs. 34–32, 34–35, 34–37, and 34–39) indicated that such practices would be either infeasible or would create other hazards. The SIA and SSFI (Exs. 34–37 and 34–32) added that planking every level would overload tall scaffolds and that stairways are not needed because erectors do not continually climb up and down. The SIA also said that fully planking every level would require that all equipment be hoisted outside the scaffold, creating additional hazards. Another commenter (Ex. 34–46) stated that a requirement for fully planking sections ''would unnecessarily restrict local decisions for safety.''

The Agency has determined that, due to the large variety of supported scaffolds and an infinite number of unique site conditions that could affect the feasibility or safety of providing fall protection, neither a blanket exception nor a requirement for 100% fall protection is appropriate for erectors and dismantlers. OSHA agrees with commenters (Exs. 34–8, 34–22, 34–36, and 34–46) that the people on site (competent person) must have the flexibility to address fall hazards for erectors and dismantlers on a site-specific basis. Therefore, OSHA finds that the determination of what fall protection is feasible and can be used safely at a given worksite should be made by a competent person at the worksite. The competent person will need to have the ability and knowledge to decide whether fall protection can be provided for erectors and dismantlers under the specific site conditions, and, if so, what measures are appropriate.

Therefore, the Agency has revised the final rule to reflect this finding, while deferring compliance for one year to allow time for employers to develop and implement the appropriate procedures. In addition, as noted above, the Agency will be adding non-mandatory Appendix B at a later date, to provide examples of situations where it is feasible to provide fall protection during the erection and dismantling of supported scaffolds and the criteria the competent person would consider when deciding the appropriateness of fall protection during erection and dismantling. Interested parties are invited to provide OSHA with suggestions and information regarding the appropriate guidance for the competent person.

Paragraph (g)(3) of the final rule provides that personal fall arrest systems must comply with the pertinent provisions of § 1926.502(d) and, in addition, must be attached by lanyard to a vertical lifeline, horizontal lifeline, or scaffold structural member. However, when overhead obstructions such as overhead protection or additional platform levels are part of a single-point or two-point adjustable suspension scaffold, then vertical lifelines must not be used, because, in the event of a scaffold collapse, the overhead components would injure an employee who was tied off to a vertical lifeline. This provision is essentially the same as proposed paragraph (e)(3), except that the terms ''dropline'' and ''trolley line'' have been replaced by the terms ''vertical lifeline'' and ''horizontal lifeline'' to be consistent with the terms used in subpart M of this part—Fall Protection.

Paragraph (g)(3)(i) of the final rule requires that vertical lifelines, when used, be fastened to a fixed safe point of anchorage, be independent of the scaffold, and be protected from sharp edges and abrasion. Based on concern that inadequate anchor points may be used, this paragraph also incorporates the language of the note to proposed § 1926.451(e)(3), which stated that safe points of anchorage include structural members of buildings, but do not include standpipes, vents, other piping systems, electrical conduit, outrigger beams, or counterweights. This is the same requirement as was proposed in paragraph (e)(3)(i) of the NPRM and is consistent with the corresponding language in § 1926.451(i)(8) of the existing rule.

Paragraph (g)(3)(ii) of the final rule states that horizontal lifelines, when used, shall be secured to two or more structural members of the scaffold, and shall not be attached only to the suspension ropes. This is the same requirement as was proposed in paragraph (e)(3)(ii). It is designed to provide protection to the employee in the event of a suspension line failure.

Paragraph (g)(3)(iii) of the final rule provides that, when lanyards are connected to horizontal lifelines or structural members on a single-point or two-point adjustable suspension scaffold, the scaffold must be equipped with additional independent support lines and automatic locking devices capable of stopping the fall of the scaffold in the event one or more of the suspension ropes fail. The independent support lines must be equal in number and strength to the suspension ropes. This is the same requirement as proposed paragraph (e)(3)(iii). OSHA believes that in the event of a suspension rope failure, the additional support lines will keep the scaffold from falling.

Paragraph (g)(3)(iv) of the final rule provides that vertical lifelines, independent support lines, and suspension ropes must not be attached to each other, or be attached to or use the same point of anchorage, or be attached to the same point on the scaffold or body belt/harness system. This is essentially the same provision as proposed paragraph (e)(3)(iv), except that the requirements in the final rule also prohibit the attachment of lines and ropes ''to the same point on the scaffold or personal fall arrest system.'' This language reflects the incorporation of the note that accompanied proposed paragraph (e)(3) into paragraph (g)(3)(i) of the final rule, as discussed above.

Issue 19 in the preamble to the proposed rule noted that some single-point adjustable suspension scaffolds which are currently in use have two separate lines (one serves as an independent support line) attached to two separate anchor points; however, both lines are connected to a single point on the body support system. A failure of this single body support mechanism, or body support system, could result in an uncontrolled fall for the employee. OSHA sought comments on the question of whether the final rule should permit the use of such a system. The Agency also asked what criteria would need to be set to ensure that a single mechanism or body support system prevented failures. In addition, OSHA inquired about industry experience with this type of system.

Several commenters (Exs. 2–29, 2–312, 2–367, and 2–368) and the ACCSH (Tr. 6/9/89, pp. 150–151) were in agreement that OSHA should not permit the use of systems of the type described in Issue 19. One commenter (Ex. 2–29) stated simply that ''the standard should not allow single-point suspension scaffolds with two separate support lines to be connected to a single point on the body support system.''

The SSFI (Ex. 2–367) recommended ''that OSHA not permit the use of a lifeline and support line being tied to a single mechanism or body support system. It is our opinion that the lifeline should be an independent anchorage with independent support.'' Also, the SIA (Ex. 2–368) stated:

> We are opposed to the use of systems in which the lifeline and support line connect to a single mechanism or body support system. The primary suspension line and an independent fall arrest system should each be anchored to separate body support devices, so that in the event one line fails, the other will provide protection. The cost would be equal to the cost of the original suspension, but could be negligible in many instances.

After a careful review of the comments, OSHA has determined that the purpose of having separate lines would be defeated if lines were attached to a single point at either end and that point of attachment failed, and the final rule (paragraph (g)(3)(iv)) reflects this determination.

Final rule paragraph (g)(4) sets criteria for guardrail systems used to provide fall protection for employees working on scaffolds. These provisions are consistent with the corresponding language of recently revised subpart M of this part, Fall protection, except as necessary to address the particular circumstances of construction work performed from scaffolds.

Paragraph (g)(4)(i) of the final rule provides that guardrail systems be installed along all open sides and ends of platforms. This requirement is effectively the same as proposed paragraph (e)(4)(i) and existing § 1926.451(a)(4). OSHA has added language which clarifies when guardrails would need to be in place. In the case of suspended scaffolds, guardrails must be installed before any employee is allowed on a hoisted scaffold. In the case of supported scaffolds, installation must occur before employees are permitted to work from the scaffold. When an employee is on a supported scaffold during the scaffold erection process, fall protection is covered by final rule paragraph (g)(2). This clarification is based on language in the State of California Code, Title 8, paragraph 1637(i)(6) which was submitted to the docket by the California Department of Industrial Relations (Ex. 2–23).

Paragraph (g)(4)(ii) of the final rule provides that the top edge height of toprails or equivalent members on supported scaffolds manufactured or placed into service after January 1, 2000 must be between 38 inches (0.97 m) and 45 inches (1.2 m) above the platform surface. Furthermore, the top edge height of guardrails on supported scaffolds manufactured and placed into service before January 1, 2000 and on all suspended scaffolds where both a guardrail and a personal fall arrest system are required must be between 36 inches (0.9 m) and 45 inches (1.2 m). The final rule also provides that toprail height may exceed 45 inches if the other criteria of paragraph (g)(4) have been satisfied.

In the proposal, paragraph (e)(4)(ii) proposed a toprail height between 38 and 45 inches above the platform surface when the guardrail is the sole means of providing fall protection, and a toprail height between 36 and 45 inches when the guardrail is used in conjunction with a personal fall arrest system. The proposed minimum 36-inch toprail height reflected OSHA's belief that the minimum height requirement for a guardrail used with personal fall arrest systems should be less than that for a guardrail on which employees rely for fall protection.

As discussed in the proposed rule (51 FR 42690), the 38-inch lower limit on guardrail height was proposed in lieu of the 39-inch lower limit on guardrail height allowed by subpart M (Fall protection) to allow for guardrail height differentials caused by scaffold platform unit arrangements. In particular, a frame constructed to hold a toprail 42 inches above a flush-mounted prefabricated deck would be only 40 inches above a scaffold platform made with two-inch solid sawn planks. If the scaffold planks are overlapped to form a long platform, the guardrail height would drop to 38 inches.

In addition, the Agency has determined that employers should have the flexibility, when conditions warrant, to use toprails with heights higher than 45 inches, so long as the other protective criteria of paragraph (g)(4) are satisfied. The language of the proposed rule has been revised to reflect this flexibility. The language of paragraph (g)(4)(ii) of the final rule is consistent with the corresponding language in § 1926.502(b)(1), Fall protection (subpart M).

Issue 12 of the preamble to the proposed rule sought comments on whether OSHA should adopt the language in the 1977 edition of ANSI A10.8–1977, paragraph 3.3, which sets 36 inches above the work platform as the minimum guardrail height and on the effectiveness, feasibility and cost savings of requiring guardrails to be at least 36 inches high. Issue 12 noted that existing § 1926.451(a)(5), which requires that guardrails be ''approximately'' 42 inches high, has been interpreted over

the years by OSHA to allow a range of 36 inches to 45 inches above the work platform. These interpretations, dating from 1979, are based on OSHA Program Directive #200–67 (Revision 1), issued on October 24, 1978, and later renumbered as OSHA Instruction CPL 2.11A. OSHA notes that the 1988 edition of the pertinent ANSI standard, A10.8–1988, paragraph 4.5.1, accepts toprails that are installed between 36 and 45 inches above lower levels.

OSHA received many comments on the issue of guardrail heights (Exs. 2–9, 2–12, 2–13, 2–20, 2–21, 2–29, 2–41, 2–50, 2–53, 2–54, 2–55, 2–64, 2–69, 2–367, 2–368, 2–390, 2–476, and Tr. 6/9/87, pp 116–121). The comments received ranged from those stating that 36 inches was too low for the bottom of the range, that 36 inches was appropriate, that 45 inches was too high for the top of the allowable range of guardrail heights, and that no change should be made to the range allowed by existing OSHA interpretations (i.e., that allowable heights be between 36 and 45 inches above the work platform). The arguments presented by the commenters are summarized below, along with OSHA's response to these comments and the Agency's reasoning in reaching a final determination on the matter.

Several commenters (Exs. 2–9, 2–20, 2–21, 2–50, 2–53, 2–55, 2–64, 2–69, 2–367, 2–368, 2–390, and 2–476) argued for retention of 36 inches as the minimum guardrail height. The reasons given by these commenters were that ''no accident statistics justify changing the current range existing in OSHA standards'' (Ex. 2–368), that 36 inches is adequate or reasonable (Exs. 2–21, 2–53 and 2–69), that the height is practical, feasible, and would not incur unmeasurable costs (Ex. 2–64), and that 36 inches is current industry practice (Exs. 2–367 and 2–476). Typical of these comments was the comment of the SIA (Ex. 2–368):

> Guardrails on scaffolds are designed as a perimeter warning for workers confined to small working areas. Workers do not attain body motion speeds and momentum that require the drastic changes proposed.
>
> Doctoral papers and NBS studies used as a basis for the proposals do not deal with the ''real'' world. Dummies propelled against a guardrail do not represent a true comparison of a human being with sense and reflex ability.
>
> Guardrails for scaffolds, whether they be horizontal systems or crossbrace systems have historically been considered a perimeter indication. Work is performed in localized areas where movement is generally restricted from section to section. Workmen are not subjected to the hazard of ''momentum'' created by body movement over longer distances as in the case in peripheral railings or balconies and other crowded or congested areas where body weight and force may be accelerated * * *
>
> It is apparent that guardrails of most manufacturers will fall within the proposed 38-inches to 45-inches range. However, there are many in the stream of commerce, and widely used throughout industry, which will not. As an example, the GKN Kwikform scaffold system utilizes a post with guardrail attachment points every 37½″. This distance is based on the European standard spacing of one meter [approximately 39 inches]. There is no justification for outlawing the equipment which has been used safely for decades. It is more practical to retain the 36-inches to 45-inches range permitted in the various industry and ANSI standards.

The SSFI (Ex. 2–367) agreed with the SIA, stating as follows:

> The majority of scaffold guardrail posts, manufactured in this country since 1950, has been designed and manufactured to ANSI A10.8 Standard of 36″ to 42″ guardrail heights. The elimination of the lower 36-inch limit would result in the requirement to scrap all these posts and remanufacture new posts.
>
> The cost to replace guardrail units would be very expensive to the user. In 1983, we estimated that there were at least one million guardrail units being used. Retrofit changes at that time were estimated at $4 per unit or a total of $4,000,000. Replacement costs at $10 per unit would equal $10 million.

In response to this group of commenters, OSHA notes that the absence of accident statistics substantiating the need for higher guardrails reflects on the general inadequacy of occupational injury and illness recording and reporting systems but may well have little or nothing to do with guardrail heights and their relationship with fall hazards. It is OSHA's experience that few accident reports contain the detail that would be necessary to differentiate between the relative protectiveness of guardrail heights of 36 as opposed to 38 or 39 inches. In addition, although guardrails do function as perimeter indicators, they also provide fall protection, and it is this aspect of scaffold guardrails that is of concern in final rule paragraph (g)(4)(ii). Further, although ''[d]ummies propelled against a guardrail'' (Ex. 2–368) cannot precisely mimic the responses and movement of real workers in the actual work environment, the experiments dismissed by the SIA provide valuable information that cannot be disregarded by OSHA or other safety professionals.

OSHA recognizes the merit of the SIA and SSFI arguments about industry's use of scaffold components (e.g., posts) suitable for 36-inch guardrails (Exs. 2–367 and 2–368), although the Agency also notes that the $4 to $10 per scaffold unit cost for retrofit or replacement, respectively, would not be prohibitive even for the smallest scaffold-using business. Nevertheless, to respond to these concerns, the final rule grandfathers those guardrails manufactured to meet the 36-inch minimum height allowed by OSHA for many years and still accepted by ANSI A10.8–1988. The Agency concludes that allowing the continued use of these guardrails until they are replaced will eliminate any potentially adverse impact of the final rule's determination as regards minimum guardrail heights.

Many commenters (Exs. 2–12, 2–13, 2–29, 2–41, 2–54, 2–407, and Tr. 6/9/87, pp 116–121) share OSHA's concern, as stated in the preamble, that a minimum guardrail height of 36 inches is insufficiently protective. For example, one commenter (Ex. 2–407) stated:

> [T]he guardrail height requirement should be set from 38-inches to 45-inches with a midrail. Our experienced opinion has taught us that 36-inches would be very unsafe. Especially for taller person[s]. * * * As the industry has been set at 42″ for so many years we feel that the 38″ to 45″ all inclusive would be satisfactory to cover the 42″ which so many people would now have, thus creating no additional expense.

Two other commenters (Exs. 2–29 and 2–41) also expressed concerns about the adequacy of 36 inch high guardrails for tall employees, as did Lawrence Stafford, a member of both the ANSI A10.8 Committee and the SIA, who commented (Ex. 2–13)

> I and many other members of S.I.A. do not consider 36-inches as safe for all scaffold uses. Due to the narrow width of the platforms on suspended scaffolds, the outboard sides should be protected by a 42-inch high guardrail.

Arguing in the same vein, a representative of OSHA's Advisory Committee on Construction Safety and Health (June 9, 1987 meeting) stated: ''I think, if anything, people are getting bigger, not smaller. To leave something down at 36 inches only increases the hazard to the fellow working on a suspended scaffold where he needs a much as he can get * * *'' Another representative said that a 36-inch high guardrail ''strikes you in the wrong place * * * He goes over the rail or he backs up to it while he's doing some work, it hits him at the wrong point and he's gone.'' (Tr. 6/9/87, pp. 116–121).

Based on a review of the comments submitted on this issue, the Agency's experience in enforcing this requirement over the years, and OSHA's professional judgment, the final rule allows employers to position scaffold guardrails in the range of 38 to 45-inches on supported scaffolds, as proposed. This range is also consistent

with the guardrail criteria set in the revised standard (subpart M) for Fall protection. However, OSHA recognizes that plank overlap is a legitimate reason to accept a somewhat lower guardrail height on some scaffolds. Thus, although the record indicates that most scaffolds on the market fall within the 38- to 45-inch range (Ex. 2–368), some scaffolds have been manufactured to meet the 36-inch lower guardrail height limit accepted by ANSI. To allow the manufacturers of these scaffolds the necessary time to redesign their systems, the Agency is grandfathering 36-inch guardrail heights on all scaffolds manufactured and installed before January 1, 2000. These scaffolds may continue to be used throughout their normal service life, as long as they continue to meet the other requirements of subpart L.

Final rule paragraph (g)(4)(iii), which is effectively identical to proposed paragraph (e)(4)(iii), states that, when midrails, screens, mesh, intermediate vertical members (such as balusters), solid panels, or equivalent structural members are used, they are to be installed between the top edge of the guardrail system and the scaffold platform. This is essentially the same requirement as existing § 1926.451(a)(5), except that the existing language mentioned only midrails and provided for the use of midrails ''when required.'' In the final rule OSHA has revised the existing language to reflect the variety of options available and to express the Agency's intent clearly.

Final rule paragraphs (g)(4)(iv) through (vi) (proposed as paragraphs (e)(4)(iv)–(vi)) specify the criteria necessary to ensure that the midrails, screens, mesh, and baluster type protection required by paragraph (g)(4)(iii) will be properly placed and effective. Paragraph (g)(4)(iv) requires that midrails, when used, be installed at a height midway between the top edge of the guardrail system and the platform surface. Paragraph (g)(4)(v) requires that screens and mesh, when used, extend from the top edge of the guardrail system to the scaffold platform, and along the entire opening between the supports. Paragraph (g)(4)(vi) requires that intermediate vertical members (such as balusters or additional rails), when used, be not more than 19 inches (48 cm) apart.

The SSFI and SIA (Exs. 2–367 and 2–368) recommended the addition of the word ''approximately'' to the midrail height required in paragraph (iv). These commenters argued that, without the flexibility provided by this word, the provision was unnecessarily restrictive and did not properly address varying platform heights (such as where adjoining platforms overlap) or the height variations allowed for toprails. OSHA agrees that it is appropriate to allow for such variation, and the final provision reflects this suggestion.

Paragraph (g)(4)(vii) of the final rule provides that toprails or equivalent members be capable of withstanding, without failure, a force applied in any downward or horizontal direction at any point along their top edge of at least 100 pounds (445 n) for guardrail systems installed on single-point adjustable suspension scaffolds and on two-point adjustable suspension scaffolds, and at least 200 pounds (890 n) for guardrail systems installed on all other scaffolds.

The strength criteria for guardrail systems on single-point adjustable and two-point adjustable suspension scaffolds differ from the criteria set for guardrails used on other types of scaffolds because of the functions guardrails serve on these types of suspension scaffolds. Fall protection on these suspension scaffolds is provided by a combination of personal fall arrest systems (PFAS) and guardrails, rather than by either guardrails or PFAS alone. Guardrails on single-point adjustable and two-point adjustable suspension scaffolds delineate the scaffold edge, restrain movement, provide handholds, and prevent misstepping. A guardrail system can serve these functions without having the strength that would be needed if the guardrails were the primary means of providing fall protection. Therefore, OSHA has set the minimum capacity for guardrail systems used on single-point and two-point scaffolds at 100 pounds rather than at 200 pounds.

This is the same substantive requirement as was proposed in paragraph (e)(4)(vii); however, the language has been modified as discussed above to replace the proposed terms ''Type I'' and ''Type II'' guardrails with the pertinent performance criteria. One commenter (Ex. 2–44) recommended that the force requirements be changed to 100 pounds for Type I toprails and 80 pounds for Type II toprails. OSHA has maintained the proposed strength requirements, i.e., 100 pounds, for all toprails because the Agency believes that they are necessary to prevent employees from breaking through toprails if they fall against them.

Final rule paragraph (g)(4)(viii) provides that when the loads specified in paragraph (g)(4)(vii) are applied in a downward direction, the top edge may not drop below the height above the platform surface prescribed in paragraph (g)(4)(ii). Proposed paragraph (e)(4)(viii) was identical to the corresponding requirement in the final rule except that the proposal limited deflection to 38 inches on supported scaffolds (Type I guardrails) and 36 inches on suspended scaffolds (Type II guardrails). The parallel final rule provision does not contain the proposed guardrail designations, for the reasons discussed above, and the provision also reflects minor editorial changes.

Paragraph (g)(4)(ix) of the final rule states that midrails, screens, mesh, intermediate vertical members, solid panels, and equivalent structural members must be capable of withstanding, without failure, a force applied in any downward or horizontal direction at any point along the midrail or other member of at least 75 pounds (333 n) for guardrail systems with a minimum 100 pound toprail capacity, and at least 150 pounds (666 n) for guardrail systems with a minimum 200 pound toprail capacity. Except for the changes in guardrail system terminology discussed above, this provision is the same as proposed paragraph (e)(4)(ix).

The 150 pound force requirement is not specified in the existing standard. However, the existing requirements (e.g., § 1926.451(b)(15) et al.) require midrails to be made of 1 x 6-inch lumber (or other material providing equivalent protection). The existing standard also requires midrails to be not more than 8 feet long (§ 1926.451(a)(5)), and to be made of a minimum 1,500 fiber stress construction grade lumber (see § 1926.451(a)(9)). On the average, such wooden midrails can support loads up to approximately 160 pounds before breaking. Therefore, OSHA is replacing the specific reference to 1 x 6-inch lumber with the performance criterion of 150 pounds force. Similarly, OSHA has adopted a performance criterion of 50 pounds for toeboards in final rule paragraph § 1926.451(f)(3).

The only commenter (Ex. 2–44) on this issue recommended that the proposed force requirements be changed to 75 pounds for Type I and 40 pounds for Type II midrails. OSHA has not made this change because the Agency believes that the final rule's strength requirements for midrails are necessary to prevent employees from breaking through midrails or other intermediate members of the guardrail system. In addition, OSHA has not maintained the distinction between Type I and Type II midrails made in the proposal.

Final rule paragraph (g)(4)(x) (proposed paragraph (e)(4)(x)) provides that a separate guardrail section is not required on the ends of suspension scaffolds when the scaffold's support system (stirrup) or hoist prevents

passage of employees. One commenter (Ex. 2–8) suggested that OSHA specify a maximum space of 10 inches between the hoist or stirrup and the side guardrail or structure. Another commenter (Ex. 2–28) suggested that the language of this paragraph be changed from ''does not allow passage'' to ''does not allow normal passage without climbing over the stirrup.'' OSHA has not made the suggested changes because this requirement is clear as written.

Paragraph (g)(4)(xi) (proposed paragraph (e)(4)(xi)) of the final rule requires that guardrail systems be so surfaced as to prevent injury to an employee from punctures or lacerations, and to prevent the snagging of clothing. This provision is consistent with § 1926.502(b)(6), which sets criteria for guardrails used in construction, other than on scaffolds.

The language of the final rule is effectively identical to that in the proposed rule, except that the proposed rule contained the words ''which could cause an employee to fall.'' OSHA used those words to explain that one reason that guardrail systems should have smooth surfaces is to prevent snagging of clothing. OSHA did not intend by this language to limit protection to those situations where snagging would actually result in a fall. OSHA realizes that other hazards, such as exposure to falling objects, could arise if an employee's clothing snagged on a guardrail surface. In the final rule, OSHA has revised the proposed language accordingly.

The SSFI and SIA (Exs. 2–367 and 2–368) objected to the inclusion of this provision in the final rule. Both commenters stated that the provision would be ''impractical in the construction industry because of the different types of equipment used,'' and would be ''unquestionably over-restrictive for the construction industry.'' The SIA (Ex. 2–368) added ''As worded, even the standard guardrail posts could be considered hazardous.'' OSHA believes that this existing requirement is still needed and is promulgating the proposed provision as editorially revised. The Agency does not intend this provision to be interpreted to mean that guardrail system components have sanded or finished surfaces. Instead, OSHA intends that such surfaces be free of breaks and jagged edges that could cause cuts or lacerations, or snag employee's clothes.

Paragraph (g)(4)(xii) of the final rule, which is effectively identical to proposed paragraph (e)(4)(xii), requires that toprails and midrails not be so long as to constitute a hazard. This is identical to the corresponding provision in subpart M, (Fall protection) § 1926.502(b)(7), and is intended to protect employees from projection hazards.

Paragraph (g)(4)(xiii) of the final rule, which is identical to proposed paragraph (e)(4)(xiii), prohibits the use of steel banding and plastic banding as toprails or midrails. Although such banding can often withstand a 200 pound load, it can tear easily if twisted. In addition, such banding often has sharp edges which can cut a hand if seized. This is identical to the corresponding provision in subpart M (Fall protection), § 1926.502(b)(8).

Paragraph (g)(4)(xiv) of the final rule requires that guardrail systems using manila, plastic or synthetic rope as rails be inspected by a competent person as frequently as necessary to ensure that the guardrails comply with the performance criteria in final rule § 1926.451(g). This provision has been added based on the response to Hearing Notice Issue L–10.

Issue L–10 sought testimony and related information on an ACCSH recommendation (Tr. 212–214, 6/9/87) that the Agency bar the use of manila rope and plastic rope as toprails and midrails of guardrail systems used on scaffolds. This recommendation reflected ACCSH's concern that manila rope and plastic rope can lose strength quickly when exposed to water and sun.

The SIA (Exs. 5a-16 and 10, Tr. 3/22/99, pp. 160–161) disagreed with this view on the grounds that it should not be necessary to restrict the type of material that can be used because other provisions of the standard spell out system strength requirements for guardrails. Another commenter (Exs. 5a-3 and 13) agreed, noting that, particularly for short-term use, ''a rope is handy, adequate, and perfectly safe.'' This commenter stated that these ropes ''should not be barred from use on scaffolds providing they are capable of supporting a 100-pound load (Type II) or a 200-pound load (Type I) applied in any direction without excessive deflection.''

Zurn Industries (Ex. 2–81) commented that ''plastic rope'' should be defined, but did not provide such a definition. Zurn also stated ''[t]here are synthetic ropes made of plastic materials that do not sag or lose strength when exposed to water or sun.'' This commenter also suggested applying performance language to all materials used for guardrails since future technology might provide more advanced types of plastic rope.

After carefully considering the above comments and testimony, OSHA believes that it is not necessary to prohibit the use of manila, plastic or synthetic rope as guardrails on scaffolds. The Agency realizes that these types of ropes can deteriorate over time from environmental exposure. However, the Agency also realizes that such ropes can have a useful lifespan before significant deterioration occurs. Consequently, OSHA is promulgating final rule § 1926.451(g)(4)(xiv), which allows the use of plastic, manila or synthetic rope only on condition that such ropes be inspected as often as necessary to ensure their integrity. This provision is consistent with the approach taken in § 1926.502(b)(16), which sets generic performance criteria for guardrails used in construction.

Paragraph (g)(4)(xv) of the final rule permits the use of crossbracing in lieu of either a midrail or a toprail when certain criteria are met. This provision is based on responses to NPRM Issue 13 and the March 29, 1993, reopening of the record. In particular, crossbracing would be accepted in lieu of a toprail when the crossing point is between 38 and 48 inches above the work surface. Also, crossbracing would be accepted in lieu of a midrail when the crossing point is between 20 and 30 inches above the work surface. In addition, the end points of each upright must be no more than 48 inches apart, which will reduce the slope of the crossbracing and result in a surface that is similar to that of a standard guardrail.

The Agency received over 30 comments in response to Issue 13 and the March, 1993 reopening of the record on the issue of the use of crossbracing in lieu of guardrails (Exs. 2–13, 2–14, 2–20, 2–22, 2–26, 2–29, 2–30, 2–37, 2–43, 2–54, 2–55, 2–128, 2–330, 2–367, 2–368, 2–390, 2–476, 34–1, 34–9, 34–10, 34–11, 34–12, 34–15, 34–17, 34–19, 34–22, 34–29, 34–32, 34–34, 34–35, 34–37, 34–39, 34–43, 34–46, and Tr. 6/9/87, pp. 121–126). These comments are discussed below,

Issue 13 of the NPRM sought comments concerning whether OSHA should accept crossbracing on intermediate levels of supported scaffolds as an alternative to the existing and proposed rules requiring guardrail systems on such levels. The Issue raised the question of whether crossbraces are as effective as guardrail-type systems in preventing falls, and asked for comments on two sets of provisions that had been developed by the SIA and other interested industry groups.

Issue 13 presented the first three alternatives as a group (hereafter Items 1(a)–(c)). Item 1(a) would have allowed crossbracing in lieu of a midrail if the crossing point was at or between 20 and

32 inches above the work surface. Item 1(b) provided that crossbracing would be allowed in lieu of both midrail and toprail if the crossing point was at or between 30 and 48 inches above the work surface and the end points of the uprights were 54 inches, or less, apart. Item 1(c) would have prohibited the use of crossbracing in lieu of a toprail or midrail on the top level of a scaffold (Issue 13 repeated this suggested provision as Item 2(c)).

Issue 13 also presented a second set of alternatives for crossbracing (hereafter Items 2(a)–(d)). Item 2(a) provided that crossbracing would be allowed in lieu of a toprail if the crossing point was at or between 39 and 49 inches above the work surface and the endpoints of the uprights were 54 inches, or less, apart. Item 2(b) provided that crossbracing would be allowed in lieu of a midrail if the crossing point was at or between 20 inches and 30 inches above the working surface. Item 2(d) would prohibit the use of crossbracing in lieu of both the toprail and midrail on the same scaffold level at the same time.

Commenters to Issue 13 were split into two groups: those supporting (Exs. 2–14, 2–20, 2–22, 2–26, 2–30, 2–53, 2–55, 2–367, 2–368, 2–390, and 2–476) and those rejecting (Exs. 2–13, 2–29, 2–37, 2–43, 2–54, 2–128, and ACCSH) the use of crossbracing in lieu of guardrails.

The ACCSH (Tr. 6/9/87, pp. 121–129) and six commenters (Exs. 2–13, 2–29, 2–37, 2–43, 2–54 and 2–128) opposed OSHA recognizing crossbracing as a substitute for a standard guardrail. One commenter (Ex.2–13) stated ''that there is no substitute for the protection afforded by a constant-height guardrail''. The same commenter added that ''there is no industry standard to allow a substitution in that the OSHA standards have required guardrail systems since 1971''.

On the other hand, those commenters favoring crossbracing argued that crossbracing should be allowed in lieu of the *entire* guardrail system (Exs. 2–14, 2–20, 2–26, 2–30, 2–55, 2–367, 2–368, 2–390, and 2–476), or that crossbracing should be permitted on intermediate levels (Ex. 2–53), or that it should be permitted as a midrail only if the midpoint of the ''X'' was 20 to 32 inches from the platform (Ex. 2–22).

Specifically, commenters in the group favoring crossbracing argued that requiring guardrails in all situations could result in structural instability (Ex. 2–14), was impractical, increased the likelihood of accidents, could cause problems when attempting to attach guardrails to the scaffold frame, and might raise issues of economic feasibility (Ex. 2–368). Some of these commenters also argued that available statistics did not support retention of the existing rule's prohibition against the use of crossbracing in lieu of guardrails (Exs. 2–20, 2–55, 2–367, 2–368, and 2–390).

For example, one commenter (Ex. 2–14) stated:

> If cross braces and guardrail cannot be placed on the same studs, and only toprails and midrails are used to connect a run of scaffold frames other than the top run, a very hazardous structural situation is created. This is due to the lack of triangulation which crossbraces provide.

The SIA (Ex. 2–368) argued that:

> Each time workers completed one level they would have to remove the guardrail posts and rails, install frames and cross braces, plank the next level, install guardrail posts and rails and repeat the procedure at each level.
>
> The increased work would create a greater possibility of accident than that which it proposes to prevent.

The SIA also commented, argued that:

> It is impractical and economically unfeasible to require manufacturers to call in all their scaffolds for refurbishing. There is no way the owners of scaffolds would comply nor any way the manufacturer could force them to do so. The result would be a far greater hazard due to alteration of the scaffold frames by persons not qualified to perform the delicate welding required on steel scaffold. It is further impossible when you consider the fact that there are hundreds of thousands of separate owners of scaffold frames manufactured by numerous manufacturers, many of which are no longer in business.

The AGC (Exs. 2–20, 2–55, and 2–390) stated that crossbracing can be used as an effective guardrail, because ''studies do not reflect actual field conditions and accident statistics do not reflect the need for the existing standard.'' OSHA notes, however, that inadequate accident statistics and that lack of detailed annotation about the details of accidents that are reported should not be taken as evidence that no relationship exists.

Based on its review of the above-discussed comments, OSHA decided that more information was needed in order to determine if the Agency should allow the use of crossbracing in lieu of guardrail top rails or midrails. Accordingly, on March 29, 1993, OSHA reopened the public record on subpart L (58 FR 16509) for additional input. In particular, the Agency requested comments regarding the extent to which supplemental rail systems could be used with crossbraces to meet the guardrail requirements of subpart L.

The commenters to the Reopening of the record either agreed with or opposed the use of crossbracing in lieu of a guardrail in about the same proportions as the earlier commenters. Their comments, which are closely related to those addressed by the earlier commenters on this issue, are only briefly summarized below:

—Those opposed to the use of crossbracing (Exs. 34–1, 34–11, 34–19, 34–22, 34–29, 34–34, and 34–35) argued that crossbraces would not provide protection equivalent to that provided by standard guardrails, because crossbracing lacks the uniform height and consistent spacing between toprails and midrails that are found in guardrail systems and are necessary for adequate protection (Ex. 34–11); because there are variations in attachment heights, distances between crossmembers, and the strength of the attachment points where crossbracing is used (Ex. 34–34); and because the use of crossbraces may promote shortcuts in scaffold erection since employers might fail to measure the points of the crossbracing or to add toeboards (Ex. 34–19). In addition, one commenter stated that crossbraces should be supplemented by midrails and toprails because employees may fall through the triangular void on either side of the intersection of the braces, and added that crossbraces may give a false sense of security (Ex. 34–35), and another (Ex. 34–22) stated that commercial scaffolds are all capable of being fitted with conventional guardrails, and that crossbraces can, at best, only be used to replace either the toprail or midrail, not both.

—Those supporting the use of crossbracing in lieu of guardrails (midrail or toprail) urged OSHA to adopt certain height requirements for the crossing points of the crossbracing. For example, five commenters (Exs. 34–9, 34–10, 34–12, 34–17, 34–37) stated that crossbracing could be substituted for a midrail as the crossing point of the brace is between 20 and 31 inches above the work surface, while others argued that crossbracing could be used in lieu of a toprail or midrail if the crossing point fell in the range of 30 to 48 inches above the working surface. Another group of participants (Exs. 34–9, 34–10, 34–12, and 34–17) were of the opinion that crossbracing substituting for a midrail should have a crossing point in the 20- to 30-inch range. A large number of commenters (Exs. 34–9, 34–10, 34- 12, 34–17, 34–32, 34–37, and 34–39) stated that end points of the crossbraces must be no more than 54 inches apart.

Another group of commenters (Exs. 34–5, 34–9, 34–10, 34–12, 34–17, 34–22, and 34–29) provided information on supplemental rail systems, such as those produced by Waco, Safway or Nail. These commenters stated that such systems are feasible and would provide protection equivalent to guardrails that comply with proposed subpart L in certain situations.

Donald Nail (Ex. 34–15) commented as follows:

* * * I have devised a way to enhance scaffold safety. The safety rail which I invented can be conveniently attached to scaffold crossbraces, thus eliminating the excuses of those employers and employees who simply do not want to put them up.

This invention is not currently on the market due to resistance from the scaffold and construction industries. If OSHA regulations were changed to require a guardrail with scaffolding, employer compliance would follow without undue economic hardship. The average cost would be about $5 (plus the rail) per frame as opposed to current systems averaging $30.

The basic concept for my automatic guard rail is that you cannot erect a welded-frame scaffold without crossbraces. The automatic guardrail would be permanently attached to the crossbraces with a slide ring on each end of the rail . . . The guard rail will fold up with the crossbraces when they are taken down for shipping or storage. The crossbraces are easier and quicker to install with the guard rail attached than without, not to mention safer. If the guard rail is permanently attached to the crossbraces the workmen will have installed the guard rails automatically, thereby helping to reduce numerous fatalities and thousands of scaffold injuries each year.

However, commenters opposed to the use of supplemental rail systems (Exs. 34–32, 34–37, and 34–39) argued that the Safway panel can only be installed on walk-through frames that have attachment members on both sides. They added that these systems were designed to be used in cases where crossbracing is not required in every bay.

SIA (Ex. 34–37) commented that the Waco system has not been accepted by industry because: (a) It can only be used on a specific type scaffold frame; (b) It increases the number of pieces three-fold because it also requires two additional rails; (c) It significantly increases the dead load on the scaffold; (d) It has not proved to be economically feasible. The commenter added that Patent Scaffolding Co. has had a similar device consisting of four pieces for 10 years, but that it has not been widely used for the same reasons.

In addition, the SIA contended that the Nails Safety Rails system is not feasible because:

(a) It is a proprietary system which cannot be used universally.

(b) It cannot be used with angle braces which account for 60% of most inventory.

(c) When attached to the crossbrace it becomes permanent (since it is riveted on) and therefore, by its very nature must be used (with the crossbrace) where it would not be required—thus adding considerable more dead load to the scaffold.

(d) It requires another inventory item not usually included in stock.

(e) It requires extra attachments to the scaffold frame.

(f) It creates costly maintenance problems when plaster and cement hinder sliding the rail.

(g) It is not cost effective.

The Agency finds that the supplemental railings discussed above can be used as guardrails in some situations. However, these supplemental systems are not compatible with all scaffolds, and will thus not address the guardrail vs. crossbracing issue. In addition, based on the determination, discussed above, that crossbracing can be used safely in lieu of either a midrail *or* a toprail, but not both, the Agency finds no reason to mandate the use of these supplemental railings. Employers may still use these railing in situations where they are appropriate to protect employees working on scaffolds from fall hazards.

After carefully reviewing the extensive record on this issue, the Agency has determined that it is appropriate to allow crossbracing in lieu of a midrail *or* a toprail (but not both). The crossing point heights and crossbrace endpoint distance spelled out in the final rule are based on a combination of those raised in Issue 13 of the NPRM and those specified in the California code and reflect OSHA's evaluation of the record as a whole.

OSHA disagrees that crossbracing can be used in lieu of both the midrail and the toprail of a standard guardrail system. The principal reasons for this determination are that the voids on each side of the intersection of the crossbraces present a serious fall hazard to employees working on scaffolds, and that the uneven height and spacing of crossbraces also contribute to the fall hazard. For example, if OSHA permitted crossbracing in lieu of both a toprail and a midrail, the voids below the crossing point of the crossbrace could be as high as 48 inches. This would be inconsistent with good safety practice and with subpart M of this part (Fall protection), which requires that openings in walls or other vertical surfaces not exceed 30 inches in height unless a guardrail is installed. In addition, Review Commission decisions (see, for example, 10 OSHRC 1937 and 7 OSHRC 1951) have consistently upheld OSHA's position that crossbracing is not equivalent to a guardrail in the degree of protection provided. Support for the position taken in the final rule also comes from California, where the State Code initially allowed the use of crossbracing in lieu of a guardrail system but was changed in 1976 to limit the use of crossbracing as only a midrail or a toprail, but not both. A review of California's experience shows that permitting the use of crossbracing in lieu of either a midrail or a toprail has not compromised employee safety. Washington State and Arizona both allow such use of crossbracing; OSHA notes that these three states together account for well over 10 percent of all U.S. construction work. In addition, specifics of the California code agree with those in the final rule. For example, California accepts crossbracing as a toprail if the intersection of the ''X'' occurs at 45 inches (+/−3 inches). Issue 13 suggested a range of 39 to 49 inches for the height of the crossing point, and the final rule accepts a range of 38 to 48 inches to reflect the lower limit of guardrail height permitted by this final subpart L, and the upper limit permitted by the California code.

In addition, the final rule specifies that the end points of each upright be no more than 48 inches apart, not 54 inches as suggested by many commenters and raised in NPRM Issue 13. This spacing (48 inches) is consistent with the California code and will reduce the slope of the crossbracing and result in a flatter surface that is more consistent with that of a standard guardrail, and will provide equivalent protection.

The Agency has concluded that crossbracing where the crossing point is between 20 and 30 inches can serve safely as a midrail since the use of a standard top rail will provide the uniform height that the Agency has determined is necessary, while the use of a toe board will limit the size of any openings (voids) on either side of the crossing point.

Similarly, OSHA believes that where the crossing point occurs in the 38- to 48-inch range the crossbracing must be supplemented by a midrail. Otherwise, an opening as high as 48 inches could occur, allowing an employee to fall. These conditions would also occur if crossbracing were permitted to be used in lieu of a complete standard guardrail. Accordingly, the final rule contains provisions allowing use of crossbraces as a substitute for either the midrail or toprail, but not both, providing that the crossing point and end point distances specified in the final rule are observed.

Paragraph 1926.451(h). Falling object protection.

This paragraph addresses the protection of employees from scaffold-related falling object hazards. Paragraph (h)(1) of the final rule provides that employees working on scaffolds wear hardhats and be protected from falling hand tools, debris, and other small objects through the installation of toeboards, screens, or guardrail systems or through the erection of debris nets, catch platforms, or canopy structures that deflect falling objects. In addition, when the falling objects to which employees on scaffolds may be exposed are too large, heavy or massive to be contained or deflected by any of the above-listed measures, the employer must protect affected employees by placing any such potential falling objects away from the edge of a surface from which they might fall and must secure those materials as necessary to prevent their falling.

This provision is similar to proposed paragraph (f)(1), which was based on existing §§ 1926.451(a)(16) and (h)(13). OSHA has added the phrase ''hand tools, debris, and other small'' to describe the type and size of objects that OSHA expects would be handled by toeboards, screens, guardrails, canopies, debris nets and catch platforms. In addition, the Agency has added language which requires that employers place materials away from an edge over which they might fall and secure those objects as necessary to prevent their falling, if those materials are so large, heavy or massive that the above-listed measures would not contain or deflect them. The changes that have been made to this requirement since the proposal are based on comments received from the SSFI and the SIA (Exs. 2–367 and 2–368) indicating that ''compressors, marble, pipe, large bolts, etc. could be potentially falling objects'' and that it is unreasonable to require guarding against such large objects.

OSHA agrees that the protective measures required by the proposed paragraph would not be adequate to withstand large objects. For example, a slab of marble facing would smash through screens or guardrails if it had not been properly stored and retained. In fact, an object of this mass would probably crash through a debris net or even a catch platform or protective canopy. As provided by the final rule, the appropriate way to protect affected employees from such large items is to locate those items away from the edge and to secure them to keep them from falling.

Because objects falling from scaffolds may injure employees working below, final rule paragraph (h)(2) requires employers to protect affected employees from that hazard and sets forth several alternative means by which employers can provide the required protection. The provisions of proposed paragraph (f)(2) were identical, except that debris nets and catch platforms have been added to the final rule, because, based on review of the rulemaking record, OSHA considers such measures to be acceptable alternatives.

Paragraph (h)(2)(i) provides for the use of barricades on lower levels to exclude employees from areas where falling objects might land. Compliance with this new provision will enable employers to eliminate employee exposure to the hazard.

Under paragraph (h)(2)(ii), employers would be required to provide toeboards along the edge of platforms more than ten feet above lower levels for a distance sufficient to protect workers below, except that on float (ship) scaffolds, an edging of ¾ inch × 1½ inch wood, or a material with equivalent strength, may be used in lieu of a toeboard. This provision differs from existing § 1926.451(a)(4), which requires toeboards to be erected along the entire length of all open sides and ends of all scaffolds more than 10 feet high. The final rule, like proposed paragraph (f)(2)(ii), requires toeboards only where needed to protect employees below from falling object hazards.

For example, on a long scaffold where employees are working on the ground near one end of the scaffold, compliance with this provision would require the scaffold to have a toeboard at the end over the employees below, but not at the other end. This would be the case regardless of the height of the scaffold work platform. This change recognizes that toeboards and equivalent members are for the protection of employees below. Accordingly, if no employees are exposed, no protective measures are necessary.

Paragraph (h)(2)(iii) of the final rule provides, as an alternative, for erection of paneling or screening in cases where tools or other materials are piled to a height higher than the top edge of a toeboard. The panel or screen must extend from the toeboard (or platform) to the top of the guardrail and be erected for a distance sufficient to protect employees below. In addition, the panel or screen would need to be capable of withstanding, without failure, a force of at least 150 pounds, applied in any downward or outward direction at any point along the screen (to comply with paragraph (g)(4)(ix)). This provision is effectively identical to proposed paragraph (f)(2)(iii). The proposed rule referenced the proposed § 1926.502 criteria for screens, while the final rule directly incorporates the applicable strength requirement from § 1926.502(b)(5), Fall protection (subpart M). OSHA believes that this revision will facilitate compliance by eliminating the need for employers to look up a cross reference.

Paragraph (h)(2)(iv) of the final rule allows employers to protect employees from falling objects through the installation of a guardrail system which complies with § 1926.451(g)(4) and which has openings small enough to reject passage of potential falling objects. This provision is identical to proposed paragraph (f)(2)(iv).

Paragraph (h)(2)(v) of the final rule provides that employers can protect employees working below scaffolds from falling objects through the installation of debris nets, catch platforms, or canopies that have sufficient strength to withstand the impact forces of potential falling objects.

In contrast to final rule paragraph (h)(2)(v), proposed paragraph (f)(2)(v) provided only for the use of a canopy structure. OSHA has added debris nets and catch platforms to this provision in response to the statement by Bristol Steel (Ex. 5a–3) that debris nets or catch platforms immediately below a scaffold could be more protective than a canopy many feet below. The Agency agrees that properly installed debris nets and catch platforms in place immediately below a scaffold will stop objects from falling closer to the source, and will lessen the possibility that these falling objects will pick up momentum and bounce off the canopy, injuring workers some distance from the area below the scaffold.

Hearing Notice Issue L–13 sought testimony and comments on a suggestion by the ACCSH (Tr. 6/9/87, 214–15) that proposed § 1926.451(f)(2)(v) specify nine feet as the proper height for the placement of a canopy. The ACCSH noted that the proposed requirement did not specify a height for canopy placement. According to the ACCSH, a canopy set at 15 or 20 feet would not protect employees below. However, the Advisory Committee did not provide a supporting rationale for its position.

Both the SIA (Exs. 10 and 5a–16, and Tr. 3/22/88, pp. 162–163) and SSFI (Ex. 5a–19) supported the placement of the canopy at a height of 10 feet. The SIA pointed out that standard scaffold frames are six-feet high and adding a three-foot frame would raise the canopy top, including the plank, to a height of

almost 10 feet. The SIA suggested that OSHA specify a ''maximum'' distance of 10 feet, noting that the proposed standard would not have allowed for any variation to accommodate these standard frames. The SSFI's comment stated that canopies ''should be erected no greater than 10 feet above the work surface'' and that because the intent of this requirement was to provide employee protection from small falling objects and/or light debris, ''the term 'reasonable' should be included within the definition.'' In addition, the SSFI asked what anticipated impact forces such canopies would be required to withstand.

The National Chimney & Cooling Tower Association (Ex. 2–593) indicated that no height restriction was appropriate for canopies. The commenter stated that restricting the height would severely hamper equipment access. Bristol Steel (Ex. 5a–3) supported allowing maximum flexibility for designing various types of falling object protection for varying situations. This commenter stated that there should be no limitation on canopy height as long as the canopy functions as intended.

After carefully considering the comments and testimony received in response to this issue, OSHA believes that specifying a maximum height for canopy placement could unnecessarily restrict the use of equipment. In addition, the Agency believes that the use of performance-oriented language, requiring that canopies be strong enough to withstand the impact forces of potential falling objects, will ensure employee safety and at the same time provide the flexibility necessary to respond adequately to advances in technology as well as unusual or changing work-site conditions. The employer is responsible for determining the maximum size of potential falling objects and providing the appropriate protection.

Final rule paragraph (h)(3) sets criteria for the use of canopies. Paragraph (h)(3)(i) of the final rule, which is identical to proposed paragraph (f)(1)(i), requires that canopies be installed between the falling object hazard and the employees. Paragraph (h)(3)(ii) of the final rule, which is identical to proposed paragraph (f)(1)(ii), requires the use of additional independent support lines to support the scaffold in the event of suspension support rope failure, in cases where canopies are used for falling object protection on suspended scaffolds. The reason for this requirement, as stated in the discussion of final rule paragraph (g)(3), is that in the event of a suspension rope failure, the additional lines would keep the scaffold from falling.

Paragraph (h)(3)(iii) of the final rule, which is identical to proposed paragraph (f)(1)(iii), requires that independent support lines and suspension ropes not be attached to the same point of anchorage. This new provision will prevent the loss of the backup safety systems in the event of suspension rope anchorage failure.

Final rule paragraph (h)(4) sets strength criteria for toeboards. Paragraph (h)(4)(i), which is a new requirement, requires that toeboards be capable of withstanding, without failure, a force of at least 50 pounds applied in any downward or horizontal direction at any point along the toeboard. This provision contains a note which indicates that toeboards built in accordance with Appendix A of subpart L will be deemed to comply with the standard. This provision, which is consistent with the corresponding requirement in OSHA's Fall Protection standard, § 1926.502(j)(2) (subpart M), is identical to proposed paragraph (f)(3)(i).

Final rule paragraph (h)(4)(ii) sets forth the construction requirements for toeboards. This provision requires that toeboards be at least three and one-half inches high, fastened securely in place, and have not more than ¼-inch clearance above the walking/working surface. In addition, toeboards must be solid or have openings no greater than one inch in the greatest dimension. This provision, which is consistent with the corresponding requirement of the Fall Protection standard, § 1926.502(j)(3) (subpart M), is identical to proposed paragraph (f)(3)(ii), except as discussed below.

OSHA received one comment on proposed paragraph (f)(3)(ii). That commenter (Ex. 2–29) recommended a maximum space of ¼-inch between the lower edge of the toeboard and the platform instead of the proposed ½-inch on the grounds that ''many small tools and fastener materials can pass through a ½-inch opening.'' OSHA agrees that reducing this opening will enhance employee protection and has changed the language of the final rule accordingly.

Other Issues Related to § 1926.451

Issue L–7 of the hearing notice solicited testimony and related information on the extent to which proposed § 1926.451 (''General requirements'') adequately covers smokestack hoist scaffolds. The Agency also requested testimony and information on stack hoist hazards not addressed by the general requirements, and explained that the issue was being raised in light of ongoing efforts to update ANSI standard A10.22, Safety Requirements for Rope Guided and Non-Guided Workmen's Hoists. OSHA noted that the final rule might need to include provisions to address the hazards unique to stack hoist scaffolds. However, because stack hoist scaffolds are included in the definitions of ''scaffold'' and ''suspension scaffold'' used in the scaffold rules, OSHA concludes that the final rule does not need to include specific coverage for stack hoist scaffolds. OSHA notes that, since the proposal, the ANSI A10.22–1977 standard for stack hoist scaffolds has been rescinded and has not been replaced.

§ 1926.452 Additional Requirements Applicable to Specific Types of Scaffolds

Section 1926.452 of the final rule contains requirements that supplement the requirements of § 1926.451 with regard to particular types of scaffolds. The identified scaffolds have unique features which require specific attention. This approach is consistent with that taken in existing §§ 1926.451 (b) through (y), which set out additional provisions for specific types of scaffolds.

OSHA received comments (Exs. 2–13 and 2–23) which suggested that specific scaffold design criteria and fall protection requirements be added to proposed § 1926.452 (particularly to proposed paragraphs (i), (l), (m), (q), (r), (s), (t), (u) and (v)). OSHA has determined that compliance with the performance-oriented provisions of final rule §§ 1926.451 and 1926.452, taken together, will provide adequate protection for employees working on scaffolds. Further, the Agency believes that the specification language suggested by the commenters would limit innovation and impose unreasonable burdens on employers.

As discussed in the preamble to the proposed rule (51 FR 42691–6), many existing § 1926.451 requirements are not being carried forward in final rule § 1925.452 because the topics they address (capacity, construction, access, fall protection and falling object protection) are covered by provisions in final rule § 1926.451. The provisions being reordered are presented in Table 1, which shows the requirement in OSHA's existing rule and the corresponding provision in the final rule being published today.

TABLE 1.—PROVISIONS BEING REORDERED IN THE FINAL RULE

Existing paragraph	Final rule paragraph
§ 1926.451(b)(1)	§ 1926.451(c)(3), (d)(1)
§ 1926.451(b)(3)	§ 1926.451(b)(3)
§ 1926.451(b)(4)	§ 1926.451(c)(2)
§ 1926.451(b)(6)	§ 1926.451(a)(1)
§ 1926.451(b)(8)	§ 1926.451(d)(1)
§ 1926.451(b)(11)	§ 1926.451(b)(1)
§ 1926.451(b)(12)	§ 1926.451(b)(4), (6) and § 1926.451(a)(1)
§ 1926.451(b)(13)	§ 1926.451(b)(7)
§ 1926.451(b)(15)	§ 1926.451(g)
Tables L–4 through L–9	§ 1926.451(a)(1) and (g)
§ 1926.451(c)(1)	§ 1926.451(a)(1) and (c)(1)
§ 1926.451(c)(2)	§ 1926.451(a)(1) and (c)(1)
§ 1926.451(c)(3)	§ 1926.451(a)(1) and (c)(1)
§ 1926.451(c)(5)	§ 1926.451(a)(1)
§ 1926.451(c)(6)	§ 1926.451(d)(1)
§ 1926.451(c)(7) [last sentence]	§ 1926.451(a)(1)
§ 1926.451(c)(12)	§ 1926.451(c)(2)
§ 1926.451(c)(13)	§ 1926.451(g)
Tables L–10 through L–12	§ 1926.451(a)(1)
§ 1926.451(d)(1)	§ 1926.451(a)(1)
§ 1926.451(d)(4)	§ 1926.451(b)(15)
§ 1926.451(d)(7)	§ 1926.451(b)(14)
§ 1926.451(d)(8)	§ 1926.451(a)(1) and Appendix A
§ 1926.451(d)(10)	§ 1926.451(g)
§ 1926.451(q)(2)	§ 1926.451(b)(1)
§ 1926.451(q)(3)	§ 1926.451(e)
§ 1926.451(q)(4)	§ 1926.451(g)
§ 1926.451(n)(1)	§ 1926.451(a)(1)
§ 1926.451(n)(2)	§ 1926.451(a)(1)
§ 1926.451(n)(5)	§ 1926.451(a)(1)
§ 1926.451(n)(7)	§ 1926.451(c)(3)
Table 15	§ 1926.451(a)(1)
§ 1926.451(o)(2)	§ 1926.451(a)(1)
§ 1926.451(o)(3)	§ 1926.451(a)(1)
§ 1926.451(o)(6)	§ 1926.451(f)(5)
§ 1926.451(o)(7)	§ 1926.451(g)
Table 16	§ 1926.451(a)(1)
§ 1926.451(m)(1)	§ 1926.451(a)(1)
§ 1926.451(m)(3)	§ 1926.451(a)(1)
§ 1926.451(m)(4)	§ 1926.451(a)(1)
§ 1926.451(m)(5)	§ 1926.451(a)(1) § 1926.451(b)(4) § 1926.451(b)(5)
§ 1926.451(m)(6)	§ 1926.451(g)
§ 1926.451(x)(1)	§ 1926.451(a)(1)
§ 1926.451(x)(2)	§ 1926.451(a)(1) § 1926.451(b)(4) § 1926.451(b)(5)
§ 1926.451(x)(3)	§ 1926.451(f)(2)
§ 1926.451(x)(4)	§ 1926.451(a)(1) § 1926.451(b)(1) § 1926.451(b)(4) § 1926.451(b)(5)
§ 1926.451(x)(5)	§ 1926.451(a)(1) § 1926.451(b)(4) § 1926.451(b)(5) § 1926.451(g)
§ 1926.451(x)(6)	§ 1926.451(a)(1) § 1926.451(b)(4) § 1926.451(b)(5) § 1926.451(g)
Tables L–17, 18 and 19	§ 1926.451(a)(1) § 1926.451(g)
§ 1926.451(g)(1) (in part)	§ 1926.451(a)(1)
§ 1926.451(g)(4)	§ 1926.451(b)(3) § 1926.452(i)(8)
§ 1926.451(g)(5)	§ 1926.451(g)
Table L–13	§ 1926.451(a)(1)
§ 1926.451(y)(1)	§ 1926.451(a)(1) § 1926.451(f)(2)
§ 1926.451(y)(3)	§ 1926.451(b)(1)
§ 1926.451(y)(4) (i) and (ii) (also (iii) in part)	§ 1926.451(a)(1)

TABLE 1.—PROVISIONS BEING REORDERED IN THE FINAL RULE—Continued

Existing paragraph	Final rule paragraph
§ 1926.451(y)(5) (also (y)(6) and (y)(7) in part)	§ 1926.451(c)(3)
§ 1926.451(y)(9)	§ 1926.451(e)
§ 1926.451(y)(10)	§ 1926.451(a)
§ 1926.451(y)(11)	§ 1926.451(g)
§ 1926.451(s)(5)	§ 1926.451(a)(1)
	§ 1926.451(b)(5)
§ 1926.451(s)(6)	§ 1926.451(a)(1)
	§ 1926.451(f)(2)
§ 1926.451(t)(3)	§ 1926.451(g)
§ 1926.451(t)(4)	§ 1926.451(a)(1)
	§ 1926.451(f)(2)
§ 1926.451(k)(1)	§ 1926.451(d)(13)
§ 1926.451(k)(2)	§ 1926.451(d)(14)
§ 1926.451(k)(3)	§ 1926.451(d)(15)
§ 1926.451(k)(4)	§ 1926.451(d)(16)
§ 1926.451(k)(5)	§ 1926.451(f)(3)
§ 1926.451(k)(8)	§ 1926.451(d)(2) through (d)(16)
§ 1926.451(k)(9)	§ 1926.451(g)
§ 1926.451(k)(10)	§ 1926.451
§ 1926.451(l)(4)	§ 1926.451(g)
§ 1926.451(l)(6)	§ 1926.451(d)(5)
§ 1926.451(h)(1)	§ 1926.451(a)(1)
	§ 1926.451(f)(2)
§ 1926.451(h)(2)	§ 1926.451(d)(13)
§ 1926.451(h)(3)	§ 1926.451(a)(2)
§ 1926.451(h)(4)	§ 1926.451(d)(4)
§ 1926.451(h)(5)	§ 1926.451(a)(1)
§ 1926.451(h)(6)	§ 1926.451(a)(1)
	§ 1926.451(d)(3)(i)
§ 1926.451(h)(7)	§ 1926.451(d)(4)(iii)
§ 1926.451(h)(8)	§ 1926.451(d)(4)(i)
§ 1926.451(h)(9)	§ 1926.451(d)(2)
§ 1926.451(h)(10)	§ 1926.451(d)(9)
	§ 1926.451(d)(7)
§ 1926.451(h)(11)	§ 1926.451(d)(4)(iv)
§ 1926.451(h)(12)	§ 1926.451(a)(1)
§ 1926.451(i)(2)	§ 1926.451(g)
§ 1926.451(i)(9)	§ 1926.451(d)(18)
§ 1926.451(j)(1)	§ 1926.451(a)(1)
	§ 1926.451(f)(2)
§ 1926.451(j)(2)	§ 1926.451(d)(13)
§ 1926.451(j)(3)	§ 1926.451(b)(4)
	§ 1926.451(b)(5)
§ 1926.451(j)(4)	§ 1926.451(d)(4)
	§ 1926.451(d)(5)
§ 1926.451(j)(5)	§ 1926.451(d)(4)(iii)
	§ 1926.451(d)(3)
	§ 1926.451(d)(4)(i)
§ 1926.451(j)(6)	§ 1926.451(a)(1)
	§ 1926.451(a)(2)
§ 1926.451(j)(7)	§ 1926.451(d)(9)
	§ 1926.451(d)(7)
§ 1926.451(j)(8)	§ 1926.452(q)(1)
	§ 1926.452(q)(2)
§ 1926.451(j)(9)	§ 1926.451(g)
§ 1926.451(w)(1)	§ 1926.451(a)(1)
	§ 1926.451(f)(2)
§ 1926.451(w)(2)	§ 1926.451(a)(1)
§ 1926.451(w)(4)	§ 1926.451(g)
§ 1926.451(w)(5)	§ 1926.451(a)(2)
	§ 1926.451(f)(4)
§ 1926.451(w)(6)	§ 1926.451(g)
§ 1926.451(r)(2)	§ 1926.451(a)(2)
	§ 1926.452(t)(3)
§ 1926.451(r)(3)	§ 1926.451(a)(1)
§ 1926.451(r)(4)	§ 1926.451(a)(1)
§ 1926.451(r)(5)	§ 1926.451(g)
§ 1926.451(e)(1)	§ 1926.451(c)(2)
§ 1926.451(e)(2)	§ 1926.451(a)(1)
	§ 1926.452(w)(2)
§ 1926.451(e)(4)	§ 1926.451(b)(1)

TABLE 1.—PROVISIONS BEING REORDERED IN THE FINAL RULE—Continued

Existing paragraph	Final rule paragraph
§ 1926.451(e)(5)	§ 1926.451(e)(1) § 1926.451(e)(2) § 1926.451(e)(3)
§ 1926.451(e)(8)	§ 1926.451(c)(3) § 1926.451(d)(1) § 1926.452(w)(2)
§ 1926.451(e)(10)	§ 1926.451(g)

Paragraph (a) Pole Scaffolds

Final rule paragraph (a) sets requirements for the proper use of bearers, braces and runners on pole scaffolds. The corresponding provision in existing § 1926.451(b) is titled ''Wood pole scaffolds.'' The final rule has deleted the word ''wood'' from the title of the paragraph, since pole scaffolds can be constructed of other materials. In addition, the final rule provides that pole scaffolds over 60 feet in height be designed by a registered professional engineer, and must be constructed and loaded in accordance with that design. The provision also notes that non-mandatory Appendix A contains examples of criteria that will enable an employer to comply with design and loading requirements for pole scaffolds under 60 feet in height. These provisions are virtually identical to those in the proposal, except for minor editorial revisions for the sake of clarity, as discussed below. In addition, as illustrated by Table 2, many existing § 1926.451(b) requirements are being carried forward in paragraph (a) of § 1926.452 of the final rule.

TABLE 2.—PROVISIONS BEING RENUMBERED IN THE FINAL RULE

Existing paragraph	Final rule paragraph
§ 1926.451(b)(14)	§ 1926.452(a)(1)
§ 1926.451(b)(9)	§ 1926.452(a)(2)
§ 1926.451(b)(10)	§ 1926.452(a)(3)
§ 1926.451(b)(10)	§ 1926.452(a)(4)
§ 1926.451(b)(5)	§ 1926.452(a)(5)
§ 1926.451(b)(5)	§ 1926.452(a)(6)
§ 1926.451(b)(6)	§ 1926.451(a)
§ 1926.451(b)(7)	§ 1926.452(a)(7)
§ 1926.451(b)(7), (10)	§ 1926.452(a)(8)
§ 1926.451(b)(2)	§ 1926.452(a)(9)
§ 1926.451(b)(16)	§ 1926.452(a)(10)

OSHA received three comments (Exs. 2–13, 2–367 and 2–368) on proposed § 1926.452(a). The SSFI (Ex. 2–367) recommended that OSHA change the term ''Ledger'' to ''Runners'' because ''Runners'' is the correct terminology. OSHA agrees and has incorporated that change into paragraph (a) of the final rule.

The other commenters (Exs. 2–13 and 2–368) objected to the proposed deletion of the word ''wood'' from the title of this paragraph, stating that this section refers only to wood pole scaffolds. OSHA believes that all pole scaffolds, whatever their composition, need to be covered by the criteria of proposed paragraph (a) and, accordingly, has not made the suggested change.

Finally, the Agency has editorially revised the text of final rule § 1296.452(a)(10) to clarify that non-mandatory Appendix A contains examples of criteria that will enable an employer to comply with design and loading requirements for pole scaffolds under 60 feet in height, and that pole scaffolds over 60 feet in height must be designed by a registered professional engineer. This revision highlights the fact that the proposed criteria and now the final rule criteria in non-mandatory Appendix A are limited to heights of less than 60 feet.

Paragraph (b) Tube and Coupler Scaffolds

Paragraph (b) sets requirements for the use of bearers, bracing, runners and couplers on tube and coupler scaffolds. In addition, the final rule provides that tube and coupler scaffolds over 125 feet in height be designed by a registered professional engineer, and be constructed and loaded in accordance with such design. The provision also notes that non-mandatory Appendix A contains examples of criteria that will enable an employer to comply with design and loading requirements for tube and coupler scaffolds under 125 feet in height. These provisions are virtually identical to the proposed provisions, except as discussed below.

Final rule paragraph (b)(1), which is identical to the corresponding provision of the proposed rule, is a new requirement for tube and coupler scaffolds. This provision requires that platforms not be moved until the next location has been properly prepared to support the platform being moved. This is the same requirement as existing § 1926.451(b)(14) (final rule § 1926.452(a)(1)) for wood pole (pole) scaffolds. This rule was added to this section because it addressed the problem of platform stability during construction, a problem which exists for tube and coupler scaffolds as well as pole scaffolds.

Paragraph (b)(2) of the final rule requires the installation of transverse bracing at the scaffold ends and, at least, at every third set of posts horizontally and every fourth post vertically. This paragraph provides for diagonal bracing from the outer or inner posts or runners upward to the next outer or inner posts or runners. In addition, building ties must be installed at the bearer levels between the diagonal braces in conformance with § 1926.451(c)(1). This provision is consistent with existing § 1926.451(c)(10).

This requirement differs from the proposed paragraph (b)(2), which required transverse bracing to be installed for each section of six levels between the fourth and sixth level.

The SSFI and the SIA (Exs. 2–367 and 2–368) recommended that transverse bracing be installed at the base and be repeated every third and fourth level vertically, and that building ties be installed ''at bearer levels adjacent to the bracing'' (Ex. 2–367), or at ''the bearer levels between the diagonal brace[s]'' (Ex. 2–368). In support of the suggested change, the SIA (Ex. 2–368) stated ''[t]his revision would correct the inaccuracy which has existed for years in the current standard and will conform to proper engineering criteria.'' Another commenter (Ex. 2–15) pointed out that the proposal did not require transverse bracing at the base of the scaffold. In addition, a commenter (Ex. 2–42) recommended that transverse bracing be installed at the scaffold ends and at least at every third set of posts, that such bracing be installed on every level and that it extend diagonally from the inner or outer posts or runners.

OSHA has determined that the proposed bracing specifications would not provide adequate structural stability for tube and coupler scaffolds. In

particular, OSHA has concluded that bracing at the third and fourth levels, as suggested by the SSFI and the SIA and as provided in ANSI A10.8–1988, paragraph 8.11, will provide appropriate stability. On the other hand, the Agency believes that bracing at every level would be unnecessarily burdensome, perhaps even affecting the capacity of the scaffold. Therefore, OSHA is returning to the approach taken by existing § 1926.451(c)(10). The Agency has concluded that compliance with the suggested provisions will increase scaffold stability appropriately and has revised the final rule to reflect this finding. In addition, OSHA has drafted the final provision to indicate clearly that the placement of building ties must comply with final rule § 1926.451(c)(1) (proposed as § 1926.451(b)(13)).

Paragraph (b)(3) of the final rule, which is basically the same as the proposed paragraph, is based on existing § 1926.451(c)(11). This provision sets requirements for the installation of longitudinal bracing across the inner and outer rows of posts for straight run scaffolds. In particular, such bracing must be installed diagonally in both directions and shall extend from the base of the end posts upward to the top of the scaffold at a 45 degree angle. Where scaffold length is greater than height, bracing shall be repeated at least at every fifth post. Where scaffold length is less than height, such bracing shall be installed from the base of the end posts upward to the opposite end posts and then in alternating directions until reaching the top of the scaffold. In addition, bracing shall be installed as close as possible to the intersection of the bearer and post or of the runner and post. The proposed provision was identical, except that it did not specify that only straight run scaffolds were covered or that the bracing had to be installed as close as possible to a post's intersection with bearers or runners.

The SSFI and the SIA (Exs. 2–367 and 2–368) suggested that OSHA limit application of the proposed provision to straight run scaffolds and that the Agency specify the proximity of bracing to the intersection of posts with bearers or runners. The Agency believes that limiting the provision to straight run scaffolds is appropriate, since when a tube and coupler scaffold is installed around circular structures or at corners, the inside leg is braced in the direction perpendicular to the walkway (platform) because the runners come in at less than 180 degrees. In addition, OSHA agrees that it is appropriate to include requirements regarding where to position bracing, and the final provision has been written accordingly. (Bracing requirements for those tube and coupler scaffolds that are not straight run scaffolds are found in final rule § 1926.451(c).)

Paragraph (b)(4) of the final rule requires that bracing be attached to the runners as close to the post as possible, where conditions preclude attachment of bracing to posts. This provision is basically the same as the proposed provision, which was based on existing § 1926.451(c)(11). OSHA has modified this provision based on comments from the SSFI and the SIA (Exs. 2–367 and 2–368) which suggested that ''as close to the post as possible'' be added to the end of this paragraph. The Agency recognizes that attachment to the post, while the most desirable option, is not always possible. In circumstances where such attachment is not possible, OSHA has determined that attachment to the runner, as close as possible to the post, will still maximize directional stability and provide the strength necessary to properly brace the scaffold.

Paragraphs (b)(5) through (b)(10) of the final rule are identical to corresponding provisions of the proposed rule, except for some minor editorial revision to paragraph (b)(10). As explained in the preamble to the proposed rule (51 FR 42691), these provisions are based on existing §§ 1926.451 (b) and (c).

Paragraph (c) Fabricated Frame Scaffolds

Paragraph (c) of the final rule provides additional requirements for fabricated frame scaffolds (tubular welded frame scaffolds). Two commenters (Exs. 2–13 and 2–320) recommended that OSHA retain the title, ''Tubular Welded Frame Scaffolds'' used in the existing rule. As discussed above in reference to the definitions in § 1926.450(b), however, OSHA has not followed this suggestion but has retained the existing title in parentheses after the new title. Paragraph (c) of the final rule is virtually identical to the corresponding provision in the proposal except as discussed below.

Paragraph (c)(1) of the final rule is a new requirement for fabricated frame scaffolds. It requires that platforms not be moved until the next location is properly prepared and ready to support the platform being moved. This provision is necessary to ensure that the scaffold is positioned on a level and stable surface, as discussed for final rule § 1926.451(b)(1), above.

Final rule paragraphs (c)(2), (c)(3) and (c)(6), which are identical to the corresponding proposed paragraphs, are effectively identical to existing § 1926.451(d) (3), (5) and (9), respectively.

Final rule paragraph (c)(4), which is identical to the parallel provision of the proposed rule, requires the locking together of end frames, and is essentially the same as existing § 1926.451(d)(6). This requirement only applies where uplift forces are strong enough to displace the end frames or panels, such as when a hoist is being used that could snag the scaffold during a hoist operation.

Final rule paragraph (c)(5) specifies the proper placement of platform support brackets. Improper placement of such cantilever supports can significantly reduce their support capacity and thus endanger employees working on top of the platform. Proposed paragraph (c)(5) set seating requirements for brackets and required that brackets not be bent or twisted from those positions. This provision of the final rule is identical except that it also allows the use of bracket systems to support loads other than employees only where the system has been designed and built to withstand the tipping forces imposed by those other loads.

OSHA received comments from the SSFI and the SIA (Exs. 2–367 and 2–368) suggesting that such brackets be allowed for the support of personnel but not for the storage or support of materials. Based on those comments, Issue L–8 of the hearing notice solicited testimony and supporting information regarding the revision of proposed § 1926.452(c)(5) to require that side brackets on fabricated frame scaffolds ''* * * be used to support personnel only and shall not be used for storage or support of materials.'' OSHA also indicated that, in the Agency's opinion, this area would be adequately covered by proposed § 1926.451(a)(1), which sets capacity requirements, and proposed § 1926.451(d)(1), which prohibits overloading.

The SIA (Exs. 5a–16 and 10) stated that, since users may not know the load capacities of their side brackets without consulting a loading table, they may unintentionally overload the units. The SIA explained that ''employees tend not to respect the dangers involved'' with side bracket loads, which ''induce an eccentric load and overturning propensity on the scaffold system.'' They further noted that the ''aisle'' provided by a series of side brackets is typically 20 inches wide, which provides insufficient room for employees to step around stored material. The SIA testimony (Tr. 3/22/88, p. 160) repeated these concerns but added that bracket systems properly

designed to take loads other than workers should not be prohibited by the final rule.

Bristol Steel (Exs. 5a–3 and 13) stated that proposed § 1926.451(a)(1) and (d)(1) would adequately address the SIA and SSFI concerns, and therefore did not support the suggested additional language.

After carefully considering the above-described comments, OSHA has determined that fabricated frame scaffolds which utilize bracket systems must be used only to support personnel, unless the scaffold has been designed for other loads by a qualified engineer and been built to withstand the tipping forces caused by the loads being placed on the bracket supported section of the scaffold. The final rule reflects this determination (paragraph (c)(5)(iii)). OSHA believes that compliance with this requirement will provide employees working on fabricated frame scaffolds with the protection they need while working on this type of scaffold.

Paragraph (d) Plasterers', Decorators' and Large Area Scaffolds

(d) of the final rule requires that plasterers', decorators' and large area scaffolds be constructed in accordance with § 1926.452(a), (b), or (c) of this section. This requirement is identical to that in the proposed rule. Paragraph (d) references the provisions of paragraphs (a), (b), and (c) because plasters', decorators' and large area scaffolds are almost always constructed using pole scaffolds, tube and coupler scaffolds, or fabricated frame scaffolds. The existing rule, § 1926.451(q)(1), required that the scaffolds in question be built only according to the existing rules for pole scaffolds. OSHA believes that compliance with the provisions of §§ 1926.452(a), (b) or (c) will provide appropriate protection for employees covered by paragraph (d).

Paragraph (e) Bricklayers' Square Scaffolds (Squares)

Paragraph (e) provides additional requirements for bricklayers' square scaffolds (squares). This paragraph requires that scaffolds made of wood be reinforced with gussets on both sides of each corner (paragraph (e)(1)); that diagonal braces be installed on all sides of each square (paragraph (e)(2)); that diagonal braces be installed between squares on the rear and front sides of the scaffold, and extend from the bottom of each square to the top of the next square (paragraph (e)(3)); and that scaffolds of this type not exceed three tiers in height, that they be constructed and arranged so that one square rests directly above the other, and that the upper tiers stand on a continuous row of planks laid across the next lower tier and be nailed down or otherwise secured to prevent displacement (paragraph (e)(4)). These requirements are identical to those in the proposed rule.

Final rule paragraphs (e)(1), (2), and (3) contain essentially the same requirements as existing §§ 1926.451(n)(3) and (4), except that the specific requirements for the size of the member are being replaced by the capacity requirements of § 1926.451(a)(1). OSHA notes that non-mandatory Appendix A of this final rule provides examples of component dimensions for bricklayers' square scaffolds that would be deemed to comply with § 1926.451(a)(1). Final rule paragraph (e)(4) contains the same requirement as existing § 1926.451(n)(6).

Paragraph (f) Horse Scaffolds

Paragraph (f) provides additional requirements for horse scaffolds. This paragraph requires that horse scaffolds not be constructed or arranged more than two tiers or 10 feet (3.0 m) in height, whichever is less (paragraph (f)(1)); when arranged in tiers, that each horse be placed directly over the horse in the tier below (paragraph (f)(2)); when arranged in tiers, the legs of each horse shall be nailed down or otherwise secured to prevent displacement (paragraph (f)(3)); and that, when arranged in tiers, each tier shall be crossbraced (paragraph (f)(4)). These requirements, which are identical to the parallel provisions of the proposed rule, correspond to existing § 1926.451(o)(1), (o)(4) and (o)(5), respectively.

Paragraph (g) Form Scaffolds and Carpenters' Bracket Scaffolds

Paragraph (g) of the final rule, which is effectively unchanged since the proposal, provides additional rules for form scaffolds and carpenters' bracket scaffolds. Under the existing standard, carpenters' bracket scaffolds and form scaffolds are addressed separately (existing §§ 1926.451(m) and (x), respectively). However, OSHA has determined that the two types are so similar that it is appropriate to address them in a single paragraph.

Final rule paragraph (g)(1) carries forward the requirements for attachment of a scaffold to a supporting framework or structure set by existing § 1926.451(m)(2), (x)(4)(ii), and (x)(5).

Paragraph (g)(2), in turn, maintains the existing § 1926.451(x)(6)(i) requirement that wooden bracket form scaffolds be an integral part of the form panel. Paragraph (g)(3), like existing § 1926.451(x)(5)(i), requires that folding type metal brackets, when extended for use, shall be either bolted or secured with a locking-type pin.

Paragraph (h) Roof Bracket Scaffolds

Paragraph (h) of the final rule provides additional requirements for roof bracket scaffolds. This paragraph requires that scaffold brackets be constructed to fit the pitch of the roof and provide a level support for the platform (paragraph (h)(1)); and that brackets be anchored in place by nails unless it is impractical to use nails (paragraph (h)(2)). Paragraph (h)(2) further provides that brackets shall be held in place with first-grade manila rope of at least three-fourth inch diameter, or a rope with equivalent strength, when nails are not used. These provisions are essentially identical to the corresponding proposed provisions and to existing §§ 1926.451(u)(1) and (u)(2), respectively.

Existing § 1926.451(u)(3) requires the installation of catch platforms below the working area of roofs more than 16 feet from the ground and having a slope greater than 4 inches in 12 inches without a parapet. This provision also requires that the platform extend at least 2 feet from the eaves and that employees be protected from falls by a guardrail system unless employees are using personal fall arrest systems. The existing provision is being replaced by the general fall protection requirements of § 1926.451(g). The final rule, like the proposal, allows guardrails on roof bracket scaffolds to be mounted on a catch platform or be attached to the eaves. Therefore, the Agency has concluded that there is no need to mention catch platforms in this provision. OSHA has determined that it is appropriate to allow employers flexibility in choosing where to attach guardrails. The Agency notes that a catch platform is an elevated work platform that meets the definition of a scaffold and therefore must comply with the pertinent provisions of this final rule.

Paragraph (i) Outrigger Scaffolds

Paragraph § 1926.452(i) of the final rule provides additional requirements for outrigger scaffolds. Except for editorial changes, as noted below, the requirements of the final rule are identical to those of the proposed rule. Paragraphs (i)(1) through (i)(4), which set requirements for the proper positioning and securing of outrigger beams, are consistent with existing § 1926.451(g)(1). Some editorial changes have been made to proposed paragraph (i)(2), as suggested by a commenter (Ex. 2–64), in order to clarify OSHA's

regulatory intent that the supporting beam be used in its strongest orientation. Paragraphs (i)(5) and (i)(6), which require that the inboard ends of outrigger beams be securely anchored and that the entire supporting structure be securely braced, respectively, are effectively identical to existing § 1926.451(g)(2). Proposed paragraph (i)(5) has undergone minor editorial changes since the proposal: the existing provisions have been broken down into their component parts to facilitate compliance.

Final rule paragraph (i)(7), which is identical to the corresponding requirement in the proposed rule, requires that platform units be nailed, bolted or otherwise secured to outriggers, to prevent displacement. The corresponding language in existing § 1926.451(g)(4) required simply that planking be secured to the beams. OSHA believes that the revised language better expresses the Agency's intention that employers use effective means when securing platform units to outrigger beams.

Paragraph (i)(8) requires that scaffolds and scaffold components be designed by a registered professional engineer and constructed and loaded in accordance with such design. This provision has been revised to reflect OSHA's determination that the design of this type of scaffold involves calculations that required the skills of a registered professional engineer, and that the criteria in the proposed rule had such limited applicability as to be of virtually no help to employers in almost all situations. The proposed rule was based on existing § 1926.451(g)(3).

Paragraph (j) Pump Jack Scaffolds

Paragraph 1926.452(j) of the final rule provides additional rules for pump jack scaffolds. Paragraph (j)(1) requires that pump jack brackets, braces, and accessories be fabricated from metal plates and angles. In addition, each pump jack bracket shall have two positive gripping mechanisms to prevent any failure or slippage. This provision is identical to the proposed paragraph and to existing § 1926.451(y)(2).

Paragraph (j)(2) requires that poles be secured to the structure by rigid triangular bracing or equivalent, at the bottom, top, and other points as necessary. In addition, that provision further requires that when the pump jack has to pass bracing that is already installed, an additional brace must be installed approximately four feet (1.2 m) above the brace to be passed. That additional brace must be left in place until the pump jack has been moved and the original brace reinstalled. These requirements, which are identical to the proposed paragraph except for an editorial revision, are essentially the same as existing §§ 1926.451(y)(4) (iii) and (iv).

NPRM Issues 9 and 22 asked for comments about whether OSHA should remove the requirement for bottom braces on pump jack scaffolds. One commenter (Ex. 2–13) stated that from his experience, * * * ''no one uses any but the top pole brace.'' Another commenter (Ex. 2–31) agreed with this assessment, saying, in part, ''[i]n terms of common practice, the bottom brace is virtually nonexistent. In terms of practicality, homeowners do not permit holes made in their foundation.'' This same commenter continued that ''[i]n terms of functions, the bottom brace does not relieve the pole from breaking,'' and added as follows:

> There exists the misconception that a pumpjack pole will shoot out when a load is applied to it. Fact is, the greater the load, the greater the anchorage. Our in plant testing is done with no brace securement. This, along with my 10 years plus of field inspections, substantiates the unreality of a bottom brace. More accidents would be experienced from tripping over bottom braces; and eye accidents from securement to concrete. Overwhelmingly, the bottom brace simply does not belong. When a wooden pumpjack pole is used, § 1926.451(a)(1) can better be achieved with mid-bracing. The location of a pumpjack on a pole is not a true fulcrum point. That is an erroneous assumption that precedes the pole pulling away from the wall at the bottom assumption.

NIOSH recommended (Ex. 2–40) bracing or securing the bottom of pump scaffold columns ''in some manner at all times.'' NIOSH stated that if ''the employer chooses to brace in a different manner than suggested by the [existing] regulations, then the method used must be shown to be equivalent to that required by the regulations.''

Another commenter (Ex. 2–54) stated the ''bottom brace should remain for poles, [because that part of the scaffold] is the one part that is easiest to hit and move.'' The commenter added that the ''bottom brace seems like the one that is needed the most * * *'' After reviewing this issue, the ACCSH also recommended that the requirement for a bottom brace be retained (Tr. 6/9/87, pp. 95–96).

Based on its review of the comments, OSHA has determined that employers do need to brace the bottom of the support pole to keep it in place, but that it is not necessary to specify the use of a rigid triangular bottom brace. Other methods, such as anchoring the pole to the ground, would provide equivalent support. Therefore, the final rule requires, as did the proposal, that pumpjack poles be braced at the bottom by triangular bracing or equivalent means.

A commenter (Ex. 2–52) stated that ''[a] requirement for braces every ten vertical feet has been eliminated. Insofar as the same applies to wooden poles, we believe this requirement should be maintained in the Regulations.'' OSHA is aware that existing § 1926.451(y)(4)(i) provides for 10 foot spacing of poles (center to center) when wood scaffold planks are used as platforms for pump jack scaffolds. That paragraph further provides that pole spacing may exceed 10 feet center to center when fabricated platforms are used that fully comply with all other provisions of existing paragraph (y). The Agency proposed to delete existing paragraph (y)(4)(i) because OSHA believed that compliance with the capacity requirements of proposed § 1926.451 (a)(1) would provide adequate assurance that a pump jack scaffold was structurally sound and able to hold the anticipated loads. As indicated above, the Agency believes that it is appropriate to focus on the capacity of the scaffold, not on the exact spacing of the braces, when evaluating the adequacy of a particular pump jack scaffold. Accordingly, OSHA has not made the suggested change.

That commenter also stated ''The explanation for additional bracing is confusing. We believe the phrase 'on the side opposite the brace from the pump jack' should read: 'above the brace to be passed'.'' OSHA agrees that the suggested language, which appears in existing § 1926.451(y)(4)(iv), more clearly expresses the Agency's intent, and this is reflected in the final rule at paragraph (j)(2).

Paragraph (j)(3) provides, when guardrails are used for fall protection, that a workbench may be used as the toprail only if the workbench complies with the requirements of §§ 1926.451(g)(4) (ii), (vii), (viii) and (xiii). This provision is effectively identical both to the proposed provision and to existing § 1926.451(y)(12).

Paragraph (j)(4) provides that work benches shall not be used as scaffold platforms. This provision, which is identical to the corresponding provision of the proposed rule, is effectively identical to existing § 1926.451(y)(13).

Paragraph (j)(5) provides, when poles are made of wood, that the pole lumber shall be straight-grained, free of shakes, large loose or dead knots, and other defects which might impair strength. This provision, which is unchanged from that in the proposed rule, is based on existing § 1926.451(y)(6). OSHA has deleted existing specification language

which addressed the dimensions and type of wood to be used, because OSHA believes that wood poles which comply with the performance requirements of final rule § 1926.451(a)(1) will provide adequate protection for affected employees.

Paragraph (j)(6) provides, when wood poles are constructed of two continuous lengths, that the lengths shall be joined together with the seam parallel to the bracket. This provision, which is unchanged from the corresponding provision of the proposed rule, is based on existing § 1926.451(y)(7). The Agency has deleted the existing specification language, which addressed the dimensions of the wood to be used and the means of joining, because OSHA believes, again, that compliance with § 1926.451(a)(1) will provide adequate protection for affected employees. The Agency notes that the language in question has been included in non-mandatory Appendix A to provide an example of how an employer could comply with § 1926.451(a).

Final rule paragraph (j)(7) requires, when two by fours are spliced to make a pole, that mending plates be installed at all splices to develop the full strength of the member. This provision differs from the proposed requirement because it requires mending plates at splices. Proposed paragraph (j)(7) required that splices be constructed to develop the full strength of the member, but did not require mending plates.

NPRM Issue 9 asked whether proposed paragraph (j)(7) should require mending plates on all spliced wooden poles. One commenter (Ex. 2–13) wanted the Agency to prohibit the splicing of wood poles used for pump jack scaffolds. His explanation was that:

> [t]here is no splice that can equal the strength of the total pole cross section. Wood pole lengths should be limited to commercially available lengths.
>
> From my experience, at work sites across this nation, no one uses any but the top pole brace. All the more reason to eliminate splicing to gain added pole lengths.

The same commenter added ''[t]he vast majority of the accidents involving pump jack scaffolds are caused by pole failure at a splice''.

Another commenter (Ex. 2–31) said that a mending plate addresses the typical way a wooden pole breaks, i.e., laterally. He added that in-house tests conducted by his firm showed that poles with the plates are three times stronger than those without them, and went on to say that the cost factor for plate use is negligible. The ACCSH also recommended that mending plates be used on all splices (Tr. 6/9/87, pp. 95–96).

Based on its review of the comments and its knowledge of pumpjack scaffolds, OSHA has determined that mending plates provide an appropriate increase in the strength of spliced poles, and final rule paragraph (j)(7) reflects this determination. OSHA also believes that requiring wood poles to be made entirely of one piece of wood (i.e., no splices) would not be realistic because many contractors use this type of scaffold and splices with mending plates are at least as strong as unspliced wood. Although OSHA is aware that splices are potential weak points in a pole, the Agency finds that mending plates provide assurance that the spliced pole has adequate strength.

Several commenters (Exs. 2–23, 2–31 and 2–52) suggested that the final rule include the general requirements applicable to pump jack scaffolds found in this section of OSHA's existing scaffold standard. However, the final rule sets out general requirements for all scaffolds, including pump jack scaffolds, in § 1926.451, and OSHA has therefore not made the suggested change.

Paragraph (k) Ladder Jack Scaffolds

Paragraph 1926.452(k) of the final rule provides additional requirements for ladder jack scaffolds. Paragraph (k)(1) provides that platforms shall not exceed a height of 20 feet (6.1 m). This provision, which is identical to that in the proposed rule, is based on existing § 1926.451(s)(1) and current safe industry practice.

Paragraph (k)(2) requires that all ladders used to support ladder jack scaffolds meet the requirements of subpart X of 29 CFR part 1926—Stairways and Ladders, except that job-made ladders, which are permitted by subpart X, are not permitted to be used to support ladder jack scaffolds. This provision, which is identical to the parallel requirement in the proposed rule, is consistent with existing § 1926.451(s)(2). The existing standard referenced two national consensus standards which, as subsequently updated, have been incorporated into the pertinent provisions of subpart X. In particular, existing § 1926.451(s)(2) implicitly prohibited the use of job-built ladders.

Two commenters (Exs. 2–20 and 2–55) opposed the proposed prohibition on the use of job-made ladders as ladder jack scaffold support, and stated that job-made ladders constructed according to proposed § 1926.1053 (subpart X) could serve as adequate supports for ladder jack scaffolds. However, OSHA concludes, based on the record and the Agency's experience in the construction industry, that job-made ladders that comply with the requirements of § 1926.1053 may not be able to support the heavy point loading imposed by ladder jack scaffold brackets. OSHA has therefore determined that the use of a job-made ladder to support a ladder jack scaffold could lead to scaffold collapse, and the final rule reflects this finding. OSHA's final rule is thus consistent on this point with the position taken by the corresponding ANSI standard, A10.8–1988, paragraph 17.2.2, which provides that only manufactured ladders may be used to support ladder-type scaffolds or platforms.

Paragraph (k)(3) provides that the ladder jack be so designed and constructed that it will bear either on the side rails and ladder rungs or on the ladder rungs alone. This paragraph further requires that the bearing area for a ladder jack that bears only on the rungs shall be at least 10 inches (25.4 cm) on each rung to ensure adequate support. This provision, which is identical to that in the proposed rule, is effectively identical to existing § 1926.451(s)(3).

Paragraph (k)(4) requires that ladders used to support ladder jacks be placed, fastened, or equipped with devices to prevent slipping. This provision, which is identical to that in the proposed rule, is effectively identical to existing § 1926.451(s)(4) and is intended to prevent employee falls caused by displacement of the ladder.

Paragraph (k)(5) provides that scaffold platforms shall not be bridged one to another. This paragraph, which is identical to the proposed requirement, is a new requirement that is intended to ensure the stability of the system and to prevent accidental overloading. The provision would prohibit situations where, for example, four ladders are used to support three platforms. OSHA is prohibiting bridging because this practice often leads to overloading of the two ladders in the middle. This provision does not prohibit passage from one scaffold to another if the scaffolds are close enough for employees to walk (but not to jump or swing) from one scaffold to the other.

Three commenters [Exs. 2–23, 2–367, and 2–368] urged OSHA to include specific language in the final rule addressing acceptable dimensions and loading of ladder jack scaffolds. OSHA has not made the suggested revisions because the Agency believes that the capacity requirements found in final rule § 1926.451(a) adequately address these matters.

Another commenter (Ex. 2–308) recommended that ladder jack scaffolds be prohibited because they ''cannot be

secured at the top,'' safe access is not possible, and an anchorage for attaching a lifeline or lanyard is not available. Although the Agency agrees that the conditions described by this commenter may occur in some construction situations, they are not characteristic of ladder jack scaffolds per se. Employers using ladder jack scaffolds must still comply with the applicable general requirements of § 1926.451, such as those addressing capacity, access and fall protection, i.e., the three situations mentioned by the commenter. In particular, employees working on ladder jack scaffolds must be protected from fall hazards by personal fall arrest systems which comply with the criteria set in subpart M, § 1926.502(d) (Fall protection) (final rule § 1926.451(g)(1)(ii)). Ladder jack scaffolds which do not comply with those requirements must not be used.

Based on the rulemaking record and the Agency's own experience, OSHA has determined that ladder jack scaffolds used in compliance with the requirements of the final rule provide acceptable and safe working surfaces for employees. Accordingly, the final rule does not prohibit the use of ladder jack scaffolds.

Paragraph (l) Window Jack Scaffolds

Paragraph (l) of the final rule provides additional requirements for window jack scaffolds. This paragraph provides that window jack scaffolds shall be securely attached to the window opening (paragraph (l)(1)), shall be used only for the purpose of working at the window opening through which the jack is placed (paragraph (l)(2)) and shall not be used to support planks placed between one window jack and another, or to support other elements of scaffolding. These requirements are necessary to ensure the safety of employees working from these platforms.

These provisions of the final rule are identical to the corresponding proposed provisions. Paragraph (l)(1) is a new requirement, and is intended to ensure that the scaffold is not accidentally displaced. Final rule paragraphs (l)(2) and (l)(3) are identical to existing §§ 1926.451(t)(1) and (t)(2), respectively.

Paragraph (m) Crawling Boards

Paragraph (m) of the final rule provides additional requirements for crawling boards (chicken ladders). The final rule requires that crawling boards extend from the roof peak to the eaves when used in connection with roof construction, repair, or maintenance (paragraph (m)(1)), and that crawling boards be secured to the roof by ridge hooks or by means which satisfy equivalent criteria (e.g., strength and durability) (paragraph (m)(2)). These requirements are designed to ensure that crawling boards used by employees performing roof work are as secure as possible.

The provisions of the final rule, which are effectively identical to those of the proposed paragraph, are based on requirements in existing §§ 1926.451(v)(1) and (3), respectively. The other provisions of existing § 1926.451(v)(1) are being relocated to non-mandatory Appendix A since they have been replaced by the capacity requirements of revised § 1926.451(a)(1). The existing rule's requirement to clinch nails has been deleted because the inaccessibility of many nail points makes clinching impossible. Existing § 1926.451(v)(2) is being replaced by the fall protection requirements of revised § 1926.451(e)(1).

Paragraph (n) Step, Platform, and Trestle Ladder Scaffolds

Paragraph (n) of the final rule provides additional requirements for step, platform, and trestle ladder scaffolds. The provisions of final rule paragraph (n) are virtually identical to the provisions of the proposed paragraph.

Paragraph (n)(1) provides that scaffold platforms not be placed any higher than the second highest rung or step of the ladder supporting the platform. This provision is consistent with paragraphs 17.4 and 17.5 of ANSI A10.8–1988, and is intended to ensure the stability of this type of scaffold.

Paragraph (n)(2) requires that all ladders used in conjunction with step, platform and trestle ladder scaffolds meet the requirements of subpart X of 29 CFR part 1926—Stairways and Ladders, except that job-made ladders must not be used to support such scaffolds. A commenter (Ex. 2–23) suggested that ladders used in conjunction with step, platform and trestle ladder scaffolds be required to comply with subpart X or with the pertinent ANSI standards. The commenter also suggested that OSHA prohibit the use of job-made ladders to support such scaffolds. Final rule paragraph (n)(2), which is identical to the proposed paragraph, addresses both of these concerns.

Paragraph (n)(3) provides that ladders used to support step, platform, and trestle ladder scaffolds shall be placed, fastened, or equipped with devices to prevent slipping. Paragraph (n)(4) requires that scaffolds not be bridged one to another. Bridging, as discussed above under paragraph (k)(5), occurs when four ladders are used to support three platforms. OSHA is prohibiting bridging because this practice often leads to overloading of the two ladders in the middle. Although step, platform and trestle ladder scaffolds were not specifically addressed in OSHA's existing scaffold rule, they are covered by the general requirements in existing rule § 1926.451(a).

Final rule paragraphs (n) (2), (3), and (4) correspond to the ladder jack scaffold provisions in final rule § 1926.451(k) (2), (4) and (5), respectively. The ''ladder-type'' scaffolds covered by paragraph (n) differ from ladder jack scaffolds in that the platform rests directly on the ladder step or rung, whereas ladder jack scaffold platforms rest on brackets.

Paragraph (o) Single-point Adjustable Scaffolds

Paragraph (o) provides additional requirements for single-point adjustable scaffolds. This paragraph combines existing § 1926.451(k), single-point adjustable suspension scaffolds, and § 1926.451(l), boatswains' chairs, because boatswains' chairs are a form of single-point adjustable suspension scaffold. One commenter (Ex. 2–23) opposed the combining of these paragraphs from the existing rule because they [boatswains' chairs and other single-point adjustable scaffolds] ''have different requirements because of the different positions in which the rider rides.'' OSHA has determined, however, that the characteristics of single-point adjustable suspension scaffolds and boatswains' chairs are sufficiently similar so that the requirements of final rule paragraph (o), along with the general requirements in § 1926.451, appropriately address both types of scaffolds.

Paragraph (o)(1) provides, when two single-point adjustable suspension scaffolds are combined to form a two-point adjustable suspension scaffold, that the resulting scaffold meet the requirements for two-point adjustable suspension scaffolds in final rule paragraph (p). This provision, which is identical to the proposed paragraph, is based on existing § 1926.451(k)(6).

Paragraph (o)(2) addresses the circumstances under which the supporting rope between a scaffold and a suspension device is permitted to deviate from a vertical position (i.e., at a 90 degree angle from level grade). This paragraph requires that the supporting rope between the scaffold and the suspension device be kept vertical unless the following four conditions are met: the rigging must have been designed by a qualified person; the scaffold must be accessible to rescuers;

the supporting rope must be protected to ensure that it will not chafe at any point where a change in direction occurs; and the scaffold must not be able to sway into another surface. Whenever swaying of the scaffold could bring the scaffold into contact with another surface, the supporting rope must be vertical, with no exceptions.

Proposed paragraph 1926.452(o)(2) required that supporting ropes be vertical and be kept from swaying, except where the scaffold is on the outside of a dome-like or slanted structure and the appropriate supports have been designed and installed. NPRM Issue 10 noted that existing § 1926.451(k)(7) requires the support rope for single-point adjustable suspension scaffolds to be vertical. OSHA asked if the exception provided by proposed paragraph (o)(2) was appropriate. The Agency further requested suggestions regarding a maximum permissible angle and any other conditions that needed to be specified.

The AGC (Exs. 2–20, 2–55, and 2–390) stated that ''[a]ngles that are too severe would impair work operation and thus preclude the use of suspensions.'' Another commenter (Ex. 2–69) echoed that view, and added that ''[f]lexibility is needed for certain operations when using suspended scaffolds.'' A manufacturer (Ex. 2–43) mentioned skylight and barrel-vault work as examples of situations which preclude the use of vertical lines. The commenter also stated ''* * * when suspended, the worker must be accessible to rescuers. One can envision a worker dangling in space below a dome with no way to get to him.''

Another commenter (Ex. 2–64) stated ''[t]he supporting rope for single-point adjustable suspension scaffolds *should* be allowed to deviate from vertical without defining any maximum limits. Each situation under these conditions is a special case and has its own limiting circumstances. It would not be feasible to establish standard limits for all possible special situations.'' (emphasis in original)

Another commenter (Ex. 2–22) stated that deviation from vertical should be permitted. The commenter further stated ''[t]he same practical field problems arise in the case of a curved surface of any type as does in the case of the dome-type or slanted structure. There is no safety difference in the three special situations and they require an exception because of their unique character.''

One commenter (Ex. 2–13) stated as follows:

> There never was a reason for the suspension rope for a single point suspension scaffold to be vertical. In fact, most are used with the rope other than vertical. The same applies for two point suspension scaffolds. There is no maximum or minimum angle of deviation from the vertical. The load reaction to the rope does not change; but the rope(s) must be protected from sharp edges at the change in direction.

In addition, the SSFI and the SIA (Exs. 2–367 and 2–368) addressed this issue in their comments on proposed 1926.452(o)(2). They recommended that, when a scaffold is on the outside of a dome-type, slanted or set-in structure, the use of intermediate supports to change the direction of the rope from the vertical be allowed provided that such supports have been designed by a competent person and have been installed in a manner that prevents chafing of the rope.

The SIA (Ex. 2–368) commented that ''[m]any work operations require non-vertical lines due to set-backs, curved surfaces, areas under soffits, following a bowser line, spherical water tanks, etc.'' In addition, the SSFI responded to Issue 10 as follows ''[t]he SSFI agrees that some deviation from vertical support should be allowed. Cases in which this would occur are special in nature and should only be allowed when designed by a competent person.''

The ACCSH (Tr. 96–97, 6–9–87) recommended that deviation from vertical should be allowed only under the supervision of a ''qualified person.'' A member of the ACCSH stated that the qualified person would be ''a competent design engineer that has experience in this discipline.''

OSHA agrees that there are circumstances where the support lines of single-point adjustable suspension scaffolds need to deviate from vertical, and that under controlled circumstances, the swaying of support lines should be allowed. The Agency concludes that the requirements for design by a qualified person, accessibility to rescuers, protection of supporting rope from chafing, and prohibition of swaying where the scaffold could contact another surface are appropriate measures, and final rule paragraph (o)(2) reflects this determination.

Paragraph (o)(3) requires that the tackle used with boatswains' chairs be ball bearing or bushed blocks containing safety hooks and properly ''eye'' spliced minimum five-eight (5/8) inch (1.6 cm) diameter first grade manila rope, or other rope that meets the performance criteria of the above-specified manila rope. The proposed provision, based on existing § 1926.451(l)(5), was effectively identical, except that it did not specifically address the hook used to suspend the boatswains' chair. OSHA recognizes that the use of an open hook could allow a chair to be dislodged if the rigging hung up on an obstruction. The corresponding ANSI standard, A10.8–1988, paragraph 6.14.5, provides for the use of a hook with a safety latch over the opening (safety hook) to prevent dislodging of the chair. The Agency agrees that it is appropriate to explicitly require that employers who have their employees use boatswains' chair rig their scaffolds with safety hooks and has revised the proposed rule accordingly. In addition, OSHA believes that locking safety hooks, such as are required for use with crane and derrick suspended personnel platforms (§ 1926.550(g)(4)(iv)(B)), would provide the most effective protection for affected employees. A minor editorial revision to the proposed paragraph replaces the phrase ''or equivalent'' with language which states clearly that any rope used in lieu of 5/8 inch diameter first grade manila rope must, at least, satisfy the final rule's criteria (e.g., strength and durability) for manila rope.

Paragraph (o)(4) provides that boatswains' chair seat slings be reeved through four corner holes in the seat; shall cross each other on the underside of the seat; and shall be rigged so as to prevent slippage which could cause an out-of-level condition. This paragraph, which is identical to the proposed provision and is based on existing § 1926.451(l)(2), is intended to prevent tipping of the chair.

Paragraph (o)(5) requires, except as provided in paragraph (o)(6), that boatswains' chair seat slings be a minimum of five-eight (5/8) inch (1.6 cm) diameter fiber or synthetic rope or other rope which satisfies equivalent performance criteria. This provision, which is substantively identical to the proposed provision, is based on existing § 1926.451(l)(2). A minor editorial revision to the proposed paragraph replaces the phrase ''or equivalent'' with language which states clearly that any rope used in lieu of 5/8 inch diameter fiber or synthetic rope must, at least, satisfy the final rule's criteria (e.g., strength, slip resistance, and durability) for fiber or synthetic rope. In addition, the final rule has deleted the proposed language ''when employees are not using a heat-producing process such as gas or arc welding'' as being unnecessary since final rule paragraph (o)(6) specifically addresses the issue of rope use when heat producing processes are in operation.

Paragraph (o)(6) requires that boatswains' chair seat slings be a

minimum of three-eight (3/8) inch (1.0 cm) wire rope, when a heat-producing process such as gas or arc welding is being conducted. This provision, which is substantively identical to the proposed provision and is based on existing § 1926.451(l)(3), is necessary to ensure that the chair's sling is made of fire-resistant materials.

Paragraph (o)(7) requires that non-cross-laminated wood boatswains's chairs be reinforced on their underside by cleats securely fastened to prevent the board from splitting. This provision is identical to the proposed provision. Existing § 1926.451(l)(1) requires all boatswains' chairs to be cleated. As noted in the preamble to the proposed rule (51 FR 42694), this paragraph recognizes that plywood-type wood seats which comply with § 1926.451(a)(1) are strong enough to use as boatswains' chairs without being reinforced with cleats.

Paragraph (p) Two-point Adjustable Suspension Scaffolds (Swing Stages)

Paragraph (p) provides additional requirements for two-point adjustable suspension scaffolds (swing stages). The introduction to this paragraph states that paragraph (q) addresses stonesetters' multi-point adjustable suspension scaffolds, masons' multi-point adjustable suspension scaffolds or other multi-point suspension scaffolds.

Paragraph (p)(1) provides that platforms not be more than 36 inches (0.9 m) wide unless designed by a qualified person to prevent unstable conditions. This provision, which is identical to proposed paragraph (p)(1), is essentially the same as existing § 1926.451(i)(1), which limits platform width to 36 inches.

A commenter (Ex. 2–23) recommended that such platforms ''* * * not be less than 20 inches nor more than 36 (0.9 m) inches wide unless designed by a registered civil or mechanical engineer to prevent unstable conditions.'' OSHA has not adopted the commenter's recommendation for a 20-inch minimum width, because the Agency considers the 18-inch minimum platform width set in final rule § 1926.451(b)(2) to be adequate. In addition, OSHA has not adopted a requirement for a platform wider than 36 inches to be designed by a registered engineer, because the Agency believes that a person who is ''qualified'' as defined in both § 1926.450(b) and § 1926.32(m) will have the skills and expertise needed to design such a platform.

Paragraph (p)(2) requires that the platform be securely fastened to hangers (stirrups) by U-bolts or other means which satisfy § 1926.451(a). This provision is based on existing § 1926.451(i)(1). Proposed paragraph (p)(2) has been editorially revised to replace the term ''equivalent means'' with language which indicates clearly that ''other'' means of fastening the platform to hangers must satisfy the criteria of § 1926.451(a).

Paragraph (p)(3) provides that the blocks for fiber or synthetic ropes consist of at least one double and one single block, and that the sheaves of all blocks fit the size of the rope used. This provision, which is identical to the proposed provision and is based on existing § 1926.451(i)(6), is intended to ensure that these types of rope are maintained under proper tension and do not slip out of their sheaves.

Paragraph (p)(4) requires that platforms be of the ladder-type, plank-type, beam-type, or light-metal type. Light metal-type platforms having a rated capacity of 750 pounds or less and platforms 40 feet (12.2 m) or less in length shall be tested and listed by a nationally-recognized testing laboratory. This provision is based on existing § 1926.451(i)(10). Proposed paragraph (p)(4) was similar to this provision of the final rule, except that the final rule excludes platforms rated over 750 pounds or platforms longer than 40 feet. This revision has been made based on a comment (Ex. 2–539) which stated:

> Underwriters' Laboratories has issued a standard for safety called UL 1322 covering fabricated scaffold stages. This standard covers stage platforms with loads up to 750 pounds and lengths up to 40 feet. They do not have standards covering heavier loads or longer lengths. It is not practical to have a requirement for UL testing and approval on products that UL arbitrarily refuses to test or approve.

The Agency notes that the 1994 edition of UL 1322 has the same limits cited by the commenter, and agrees with the commenter that it is not realistic to require testing and approval of a product that nationally-recognized testing laboratories do not test or approve.

Proposed paragraph (p)(5) provided that two-point suspension scaffolds be securely lashed to the building or structure to prevent them from swaying. The paragraph further required that window cleaners' anchors not be used for this purpose. The requirement now appears in final rule § 1926.451(d)(18) and is applicable to all multi-point suspended scaffolds. The provision is based on existing § 1926.451(i)(9).

Final paragraph (p)(5), proposed as paragraph (p)(6), requires that two-point scaffolds not be bridged or otherwise connected one to another during raising and lowering operations unless the bridge connections are articulated and the hoists properly sized. This paragraph is similar to the proposed paragraph, except for editorial revisions made for clarity. No comments were received on this provision.

OSHA notes that paragraph (p)(5) is not intended to prohibit passage from one scaffold to another, but to prevent significant overloading of the hoist nearest the bridging device during operation of the hoist, or displacement of the bridge if the hoist is used to raise or lower one of the scaffolds. Many hoists are only sized to support one end of a two-point system. If one of two bridged scaffolds were to be raised by a hoist, a bridge laid between the scaffolds could be displaced unless the bridge is articulated (connected). This could also significantly increase the load on the hoist if it is not properly sized. The final rule addresses these two hazards by requiring bridge connections to be articulated and requiring that hoists be properly sized. These requirements thus allow for properly engineered solutions.

Final rule paragraph (p)(6), identical to proposed paragraph (p)(7), is a new requirement. It allows passage from one platform to another only when the platforms are at the same height, when the platforms abut each other, and when walk-through stirrups specifically designed for this purpose are used.

Paragraph (q) Multi-point Suspension Scaffolds, Stonesetters' Multi-point Adjustable Suspension Scaffolds, and Masons' Multi-point Adjustable Suspension Scaffolds

Paragraph 1926.452(q) of the final rule provides additional requirements for multi-point suspension scaffolds, stonesetters' multi-point adjustable suspension scaffolds, and masons' multi-point adjustable suspension scaffolds. This paragraph combines and clarifies the provisions of existing § 1926.451(h), stonesetters' adjustable multi-point suspension scaffolds, and existing § 1926.451(j), masons' adjustable multi-point suspension scaffolds, and indicates clearly that paragraph (q) applies to other multi-point adjustable suspension scaffolds as well.

Paragraph (q)(1) provides that, when two or more scaffolds are used, they shall not be bridged one to another unless they are designed to be bridged, the bridge connections are articulated (connected), and the hoists are properly sized. This paragraph of the final rule, which is identical to proposed paragraph (q)(1), is based on the same concerns about displacement of the

bridge and hoist overloading that resulted in final rule § 1926.452(p)(5).

Paragraph (q)(2) provides that, if bridges are not used, passage may be made from one platform to another only when the platforms are at the same height and are abutting. This provision, which is essentially identical to that in the proposed rule, is based on the same concerns that resulted in final rule § 1926.452(p)(6). OSHA has editorially revised proposed paragraph (q)(2) to delete the word ''closely'' because that word is redundant with the word ''abutting.''

Paragraph (q)(3) requires that scaffolds be suspended from metal outriggers, brackets, wire rope slings, hooks, or equivalent means. This provision, which is essentially identical to the corresponding requirement in the proposed rule, is virtually the same as existing § 1926.451(j)(4), which addresses stonesetters' adjustable multi-point suspension scaffolds. OSHA has deleted the word ''iron'' from the proposed language, based on comments from the SSFI and the SIA (Exs. 2–367 and 2–368) stating that it is appropriate to have brackets or hooks fabricated from material other than iron. OSHA agrees with this point and concludes that employees on these scaffolds will be adequately protected by brackets or hooks made of other materials, as long as those components satisfy the strength criteria set in final rule § 1926.451(a)(1). The final rule reflects this conclusion.

Paragraph (r) Catenary Scaffolds

Paragraph 1926.452(r) of the final rule provides additional requirements for catenary scaffolds. In OSHA's existing scaffold standard, catenary scaffolds were addressed only by the general provisions applicable to all scaffolds. The new provisions in paragraph (r) thus address specific concerns not directly addressed by the existing standard. These provisions are identical to proposed § 1926.452(r).

Paragraph (r)(1) allows no more than one platform to be placed between consecutive vertical pickups, and no more than two platforms to be used on a catenary scaffold. These requirements are intended to prevent overloading of this type of scaffold. This paragraph is consistent with the corresponding provision of ANSI A10.8–1988, paragraph 20.4.

Paragraph (r)(2) requires that platforms supported by wire ropes have hook-shaped stops on each end of the platforms to prevent the platforms from slipping off the wire ropes. These hooks shall be so placed that they will prevent the platforms from falling if one of the horizontal wire ropes breaks. This language is consistent with the corresponding provision of ANSI A10.8–1988, paragraph 20.1.

Paragraph (r)(3) of the final rule provides that wire ropes shall not be tightened to the extent that the application of a scaffold load will overstress them. This provision is consistent with the corresponding language of ANSI A10.8–1988, paragraph 20.2.

Paragraph (r)(4) requires that wire ropes be continuous and without splices between anchors. This language is consistent with the corresponding language in ANSI A10.8–1988, paragraph 20.2, and is necessary to ensure that the rope has sufficient integrity to handle the load.

Paragraph (s) Float (Ship) Scaffolds

Paragraph (s) provides additional requirements for float (ship) scaffolds. These provisions are identical to those in proposed § 1926.452(s), which were based on existing § 1926.451(w) (3) and (5).

Paragraph (s)(1) requires that the platform be supported by a minimum of two bearers, each of which shall project a minimum of six inches (15.2 cm) beyond the platform on both sides. This will ensure that the platform will be fully supported. In addition, each bearer shall be securely fastened to the platform to prevent slippage.

Paragraph (s)(2) provides that rope connections shall be such that the platform cannot shift or slip. Platform slippage is a significant factor in scaffold accidents.

Paragraph (s)(3) provides that, when only two ropes are used with each float, those ropes shall be arranged so as to provide four ends which are securely fastened to overhead supports, and each supporting rope shall be hitched around one end of the bearer and pass under the platform to the other end of the bearer where it is hitched again, leaving sufficient rope at each end for the supporting ties. This requirement is necessary to ensure that the supporting ropes are properly attached to both the platform and to the overhead support to prevent the scaffold from falling. These requirements are designed to ensure safe use of these commonly used job-built scaffolds.

Paragraph (t) Interior Hung Scaffolds

Paragraph (t) provides additional requirements for interior hung scaffolds. These provisions are identical to those of the proposed paragraph. Paragraph (t)(1) requires that scaffolds be suspended only from the roof structure or other structural members such as ceiling beams. This requirement is necessary to ensure that these suspended scaffolds are supported by structural members with adequate capacity for safe use. This is the same requirement as existing § 1926.451(r)(1).

Paragraph (t)(2), which is a new provision, requires that the supporting members be inspected and checked for strength before the scaffold is erected. This requirement is necessary because such points of support cannot be assumed to be strong enough to support a scaffold since they may already be loaded to their capacity or they may have deteriorated over time. This provision is consistent with ANSI A10.8–1988, paragraph 16.7.

Paragraph (t)(3) provides that suspension ropes and cables be connected to the overhead supporting members by shackles, clips, thimbles, or by other means which provide equivalent strength, security and durability. This paragraph of the final rule (identical to the proposed paragraph) deletes the specific connection requirements of existing § 1926.451(r)(2), which OSHA determined were obsolete, and specifies criteria that OSHA has found to be current safe practice. The strength requirement of existing § 1926.451(r)(2) is now covered by final rule paragraph § 1926.451(a)(3), which specifies strength criteria for suspension ropes on all types of scaffolds.

Paragraph (u) Needle Beam Scaffolds

Paragraph (u) of the final rule provides additional requirements for needle beam scaffolds. These provisions are identical to proposed paragraph 1926.452(u) except for minor editorial revisions. Paragraph (u)(1) requires that scaffold support beams be installed on edge. This provision is based on existing § 1926.451(p)(1), and is necessary to ensure that support beams are installed in a way that maximizes their strength.

Paragraph (u)(2) provides that ropes or hangers be used for supports, except that one end of a needle beam scaffold may be supported by a permanent structural member. This provision is based on existing §§ 1926.451(p)(2) and (8), and is necessary to ensure that these scaffolds are properly supported by rope or hangers that meet the strength criteria of § 1926.451(a).

Paragraph (u)(3) requires that the ropes be securely attached to the needle beams. This is a change from existing § 1926.451(p)(3), which specified that all rope attachments must be either a scaffold hitch or properly made eye splices. OSHA determined that the existing rule is too restrictive, because other knots and means of attachment, such as wire rope clips, can adequately

support the scaffold without decreasing employee safety.

Paragraph (u)(4) provides that the support connection be arranged so as to prevent the needle beam from rolling or becoming displaced, which could result in tipping of the platform. This provision is based on existing § 1926.451(p)(4).

Paragraph (u)(5) provides that platform units shall be securely attached to the needle beams by bolts or equivalent means. In addition, cleats and overhang are not considered to be adequate means of attachment. Final rule paragraph (u)(5) clarifies the requirements of existing § 1926.451(p)(6), which only required that planks be secured against slipping. Also, under the existing rule, cleats and overhang could be used to secure the units. As stated in the preamble to the NPRM (51 FR 42695), OSHA has concluded that cleats or overhang do not adequately secure platform units to needle beam scaffolds, because needle beam scaffolds have a tendency to twist, and cleats and overhangs used to secure platforms will not provide sufficient means of holding the platforms. This could result in platforms coming loose and falling.

Paragraph (v) Multi-level Suspended Scaffolds

Paragraph 1926.452(v) of the final rule provides additional requirements for multi-level suspended scaffolds. These scaffolds are suspended scaffolds with more than one working level. The provisions of paragraph (v) are identical to those in the proposed paragraph, except for minor editorial changes. Although these types of scaffolds are not specifically addressed in the existing standard, they are covered by the general requirements in existing § 1926.451. The new provisions address concerns not covered by the existing standard or by final rule § 1926.451.

Paragraph (v)(1) requires that multi-level suspended platform scaffolds be equipped with additional independent support lines, equal in number to the number of points supported and of equivalent strength to the suspension ropes, and be rigged to support the scaffold in the event the suspension rope(s) fail. These additional lines would support the scaffold, and prevent collapse in the event of primary support line failure.

Paragraph (v)(2) provides that the independent support lines and suspension ropes shall not be attached to the same points of anchorage. This provision reflects OSHA concern that the independent support lines would not protect workers from scaffold collapse if the independent lines and the suspension ropes were attached to the same anchorage point when the anchorage failed.

Paragraph (v)(3) requires that supports for platforms be attached directly to the support stirrup and not to any other platform. This provision is intended to protect against platform overloading.

Paragraph (w) Mobile Scaffolds

Paragraph (w) provides additional rules for mobile scaffolds. This paragraph consolidates and clarifies the provisions of existing § 1926.451(e) and existing § 1926.453. This paragraph applies to all mobile scaffolds, not just to those which are manually propelled. This paragraph of the final rule is effectively identical to that in the proposed rule, except as discussed below.

Paragraph (w)(1) provides that scaffolds shall be braced by cross, horizontal, or diagonal braces, or combination thereof, to prevent racking or collapse of the scaffold and to secure vertical members together laterally so as to automatically square and align the vertical members. In addition, scaffolds shall be plumb, level, and squared. All brace connections shall be secured. This paragraph also provides that scaffolds constructed of tube and coupler components shall conform to the requirements of § 1926.452(b) (paragraph (w)(1)(i)), and that scaffolds constructed of fabricated frame components shall conform to the requirements of § 1926.452(c) (paragraph (w)(1)(ii)). The provisions of paragraph (w)(1) are substantively identical to the corresponding provisions in existing §§ 1926.451(e)(3) and (e)(9).

Paragraph (w)(2) requires that scaffold casters and wheels be locked with positive wheel and/or wheel and swivel locks, or equivalent means, to prevent movement of the scaffold while the scaffold is used in a stationary manner. This provision is effectively identical to existing § 1926.451(e)(8).

Paragraph (w)(3) provides that manual force used to move the scaffold shall be applied as close to the base as practicable, but not more than five feet (1.5 m) above the supporting surface. This paragraph is essentially the same as existing § 1926.451(e)(6), which required that propelling forces be applied as close to the base as possible. However, the final rule limits the height at which the force can be applied to 5 feet above the supporting surface, to minimize overturning forces. One commenter (Ex. 2–23) recommended that scaffolds not be moved manually unless the propelling force is applied to the wheels only. Although such a requirement may be appropriate for powered scaffolds, the Agency sees no rationale for applying this provision to scaffolds being moved manually. OSHA has not adopted the suggested change because compliance would be unwieldy and would expose employees to hazards from the rolling wheels.

The proposed language has been modified in the final rule to indicate clearly that final paragraph (w)(3) applies only when mobile scaffolds are being moved manually. This provision is consistent with ANSI A10.8–1988, paragraph 11.3.1.

Paragraph (w)(4), which is a new provision, requires that power systems used to propel mobile scaffolds be designed for such use. In addition, forklifts, trucks, similar motor vehicles, or add-on motors shall not be used to propel scaffolds unless the scaffold is designed for such propulsion systems.

Paragraph (w)(5) requires that scaffolds be stabilized to prevent tipping during movement. This provision is effectively identical to the corresponding provision in existing § 1926.451(e)(6).

Paragraph (w)(6) provides that employees shall not be allowed to ride on scaffolds unless the following conditions exist:

1. The surface on which the scaffold is being moved shall be within three degrees of level, and free of pits, holes, and obstructions (paragraph (w)(6)(i));
2. The height-to-base width ratio of the scaffold during movement shall be two to one or less, unless the scaffold is designed and constructed to meet or exceed nationally-recognized stability test requirements (paragraph (w)(6)(ii));
3. Outrigger frames, when used, shall be installed on both sides of the scaffold (paragraph (w)(6)(iii));
4. When power systems are used, the propelling force shall be applied directly to the wheels, and shall not produce a speed in excess of one foot per second (0.3 mps) (paragraph (w)(6)(iv)); and
5. No employee is on any part of the scaffold which extends outward beyond the wheels, casters, or other supports (paragraph (w)(6)(v)).

These provisions are based in part on the provisions of existing § 1926.451(e)(7).

Proposed paragraph (w)(6)(ii) set the maximum height-to-base width ratio at two to one or less. OSHA has revised the proposed provision to allow a higher ratio when the scaffold is designed and constructed in accordance with nationally-recognized stability test requirements. This change is discussed in relation to Issue 4, below.

Proposed paragraph (x)(6)(iv) required that the propelling force be applied

directly to the wheels (not to the frame) when power systems are used to propel scaffolds, and limited the speed of the scaffold to 2 feet per second. The proposed provision was intended to protect against a scaffold toppling over should it strike an object.

One commenter (Ex. 2–423) stated as follows:

> In our initial testing we tested several speeds including 2′/Sec and found these to be far too fast for an operator to drive through narrow areas and through debris that would be encountered on a construction site. With all the units sold by our company, I have never had anyone say the Motorized Scaffold (r) was too slow. I cannot speak for other means of propelling scaffold but we would not allow our Motorized Scaffold (r) to drive faster than one foot per second.

OSHA agrees that allowing motor-propelled scaffolds to drive faster than one foot per second could create problems for operators and has revised the rule accordingly.

Issue 4 raised a question regarding existing § 1926.451(e)(7)(ii), which required manually propelled mobile scaffolds to be not more than twice as high as they are wide when employees ride on them. The proposed rule, § 1926.452(w), extended this requirement to cover both manually propelled and motor-propelled mobile scaffolds. OSHA asked whether the final rule should raise the current ratio, 2:1, to 3:1 or higher on those systems which are built with a lower center of gravity, and, if so, what would be appropriate limitations.

The ACCSH discussed Issue 4 at length (Tr. 48–61, June 9, 1987). Several members expressed concern about employees riding mobile scaffolds while the scaffolds were being moved, regardless of the height-to-base ratio mandated. As OSHA explained to the Committee, scaffold equipment manufacturers had informed the Agency that a motor propelled mobile scaffold which exceeded the existing and proposed 2:1 ratio would be safe for use because the attachment of motor units would lower the center of gravity, thereby increasing the scaffold's stability (Tr. 52–53). Members of the Advisory Committee questioned the extent to which the weight of the motor unit would provide sufficient stability, citing concerns about the manner in which employers would calculate the height-to-base ratio using the weight of the motor unit and the extent to which wind or overhead power lines would pose hazards. Ultimately, the ACCSH voted to recommend simply that OSHA prohibit riding on mobile scaffolds (Tr. 61).

One commenter (Ex. 2–53) stated that the ''existing rule on manually propelled mobile scaffolds'' should not be extended to motor-propelled mobile scaffolds but did not explain why. The AGC commented (Exs. 2–20, 2–55, and 2–390) that ''[i]n maintaining a performance-oriented standard, OSHA should provide for manufacturer's recommendations when movement of a rolling scaffold is required.'' These three comments further stated that OSHA should allow the use of those mobile scaffolds that have a lower center of gravity and thus have the capability ''of being moved at a higher ratio.'' Another participant (Ex. 2–69) commented that ''[W]hen movement of a rolling scaffold is required, OSHA should provide for use of manufacturers' recommendations in keeping with a performance-oriented approach.''

One commenter (Ex. 2–70) stated that 3:1 ratio would be acceptable if the scaffold had a low center of gravity. Another commenter (Ex. 2–516) added a number of details and factors involved in calculating or arriving at a safe ''gross ratio'' for mobile scaffolds, and indicated that ''higher ratios may be permitted in specific instances when operated under constant and continuous supervision, and when designed by qualified engineers.'' In particular, the commenter explained that the 2:1 ratio ''is a minimum standard, established for *uniformity, simplicity, and safety.* Higher ratios can easily be achieved in given instances, but allowing those ratios to be in general use is unwise'' (emphasis in the original). To illustrate the rationale behind this assertion, the commenter stated, in part, that:

> There is a moment in each vertical rolling scaffold *leg* due to caster offset. This moment is increased when the wheel is stopped by a stone or curb, because the tower inertia then acts on the caster support as a force acting from the center of gravity of the tower, to the wheel.
>
> The force from the 'pushing' and the inertia change depends on the weight of the scaffold, its velocity, how fast it stops, and how hard it is being pushed or driven. The moment felt at the scaffold leg depends on the force, the height of the center of gravity, the flatness of the rolling surface, whether only one wheel carries the load, and where on the scaffold it is being pushed.
>
> The height of the center of gravity depends on how much load is put on top of the scaffold, and the height of the scaffold. [emphasis in original]

Another commenter (Ex. 2–50) stated that an extension of the ratio for some scaffolds should not be limited to 3:1. As an example, the commenter explained that ''some motorized scaffolding, and batteries, hydraulics, and motors mounted low on the frame are capable of reaching 20–30 feet high with their bases only 6 feet wide.'' The commenter, a representative from a building contractor's association, added that ''the manufacturers test the machines extensively for upset.''

One commenter (Ex. 2–15) stated ''[e]ven the 2:1 is too permissive for small, light towers which are usually the most top[-]heavy, especially with a man on top. This provision is not enforceable. [It would be] better to forbid riding at all.'' Another commenter (Ex. 2–29) commented that ''[i]ncreasing the height-to-base ratio of mobile scaffolds ridden by employees would expose employees to an unacceptable fall hazard.'' In addition, a commenter (Ex. 2–54) stated that ''2 to 1 is a good ratio, as there is less chance of tipping over and a better chance for worker[s] to jump off [the] scaffold, and not get hurt, if [the] scaffold began to tip.'' The SSFI (Ex. 2–367) recommended that ''under no circumstances should the 2:1 height-to-width ratio be raised to 3:1 for systems built with a 'lower center of gravity.' Tipping of rolling towers is one of the primary causes of accidents and no changes should be made.''

The SSFI further stated that they have ''always and will continue to recommend prohibiting riding rolling scaffolds.'' The commenter noted that ''riding of motor[-]propelled scaffolds is especially hazardous as the scaffold is normally not designed for such loads. Motors should not be added to scaffold towers unless the towers are specially designed to accommodate those forces.'' Another commenter (Ex. 2–476), also holding the view that riding rolling scaffolds should not be allowed, recommended that:

> Motorized means should not be attached to frame scaffold towers to promote riding. The 2 to 1 base-to-height ratio, which allows riding, is not being used by workers riding rolling towers, and workers are riding rolling towers with any base-to-height ratio. The scaffold frame rolling towers were not designed to be ridden, and were not designed for special add-on motors for propulsion.

Another commenter (Ex. 2–13) stated ''[m]obile scaffolds should never be moved when occupied. The only time they are involved in accidents is when they are moved while occupied. To allow any but specifically designed scaffolds to be moved while occupied is totally unacceptable.''

The SIA (Ex. 2–368) indicated that:

> [M]any of our members advocate prohibiting riding of mobile scaffolds at any time. Others oppose such drastic action, since this would place undue hardship on those trades which perform a high percentage of their work on mobile scaffolds. The

alternative is to develop provisions for their safe use* * * Motors should not be added to scaffold towers unless the towers are specifically designed to accommodate the increased forces exerted on the legs of the scaffold frames.

The SIA (Ex. 2–368) also stated that statistics they had developed over the past 10 years ''indicate a high incidence of accidents on rolling scaffolds,'' and that ''[i]t is our position that any raising of the 2:1 ratio would result in increased accidents.''

A commenter (Ex. 2–476) stated that scaffold frames are not designed for the forces imposed on them by motors that are added on for propulsion. OSHA agrees with the commenters who raised concerns about the ability of scaffold frames to accommodate motors and has modified proposed § 1926.452(x)(6) accordingly.

OSHA agrees with the commenters who indicated that the riding of some mobile scaffolds can be hazardous. However, OSHA believes that the rulemaking record supports modification of the current regulations to allow greater use of mobile scaffolds for this purpose, provided additional appropriate precautions are taken.

The key concern in specifying the existing 2:1 ratio is stability of the scaffold. OSHA believes, based on the evidence submitted, that the existing 2:1 ratio is still the appropriate limit for all manually-propelled mobile scaffolds and has promulgated final rule paragraph (w)(6)(ii) accordingly.

OSHA also believes that, given appropriate engineering design, there are higher ratios which can be used safely on some power-propelled mobile scaffolds. As recommended by one commenter (Ex. 2–423), such designs must be proven to be safe, however, by subjecting the scaffold to stability tests such as the nationally recognized ANSI A92 tests used by the manufacturers of elevating and rotating work platforms. Where such tests have not been made, employees are not allowed to ride the scaffold. This, OSHA notes, does not preclude manufacturers or others from conducting or establishing such tests to demonstrate that a product meets appropriate stability criteria. The Agency believes that equipment meeting such tests and criteria should be permissible and has promulgated final rule paragraph (w)(6)(iii) accordingly.

OSHA also believes that compliance with the requirements of § 1926.451 and final rule paragraph (w)(6)(iv) (that the power be applied directly to the wheels and that the speed be limited to no more than 1 foot per second, as recommended by a commenter (Ex. 2–423)) adequately addresses cases where a mobile scaffold is equipped with a motor.

Paragraph (w)(7), which is identical to the proposed paragraph, requires that platforms not extend outward beyond the base supports of the scaffold unless outrigger frames or equivalent devices are used to ensure stability. Compliance with this provision will prevent eccentric loading of the scaffold frame that could cause the scaffold to tip over.

Paragraph (w)(8) provides that, where leveling of the scaffold is necessary, screw jacks or equivalent means be used. This is a specific way of complying with § 1926.451(c)(2) of the final rule, which requires firm, level foundations. This provision is consistent with the corresponding provision in ANSI A10.8–1988, paragraph 11.1.4.

Paragraph (w)(9) requires that caster stems and wheel stems be pinned or otherwise secured to scaffold legs or adjustment screws. Proposed paragraph (w)(9) was identical, except that it did not specifically provide for the securing of stems to adjustment screws. This revision is based on input received on this provision from the SSFI and SIA (Exs. 2–367 and 2–368). OSHA agrees that adjustment screws provide appropriate attachment points for caster stems and wheel stems, so that specifically mentioning them in the final rule will clearly express the Agency's intent and facilitate compliance.

Paragraph (w)(10) provides that, before a scaffold is moved, employees on the scaffold shall be made aware of the move. This requirement, which was not part of the proposal, is based on input received from a commenter (Ex. 2–23) on this section. OSHA agrees with this input, and has revised the proposed paragraph accordingly. In addition, OSHA notes that this requirement is consistent with ANSI A10.8–1988, paragraph 11.2.3.5.

Issue 14 asked whether OSHA should allow mobile scaffolds to move only along their longitudinal axes while employees are riding on them. OSHA noted that compliance with this provision, which was suggested by ACCSH (Ex. 4), would maximize scaffold stability during movement, because tipping is more likely to occur when a scaffold is moved along its transverse axis.

Two commenters (Exs. 2–50 and 2–368) stated that such a provision would be difficult to enforce. Three commenters (Exs. 2–22, 2–53, and2–368) also stated that this provision would be impractical. The SIA (Ex.2–368) went on to explain that:

[S]uch a provision would make it difficult for workers to perform their duties without violating standards. Sometimes it is necessary to make even slight adjusting movement of the scaffold in order to reach the area of work. If workers were prohibited from moving the scaffold even the slightest amount along the narrow axis, they would tend to extend their reach over the side of the scaffold, thus creating an even greater hazard.

Some mobile scaffolds are almost square, which would require a tape measure to determine when there would be a violation. The fatigue created by the worker climbing up and down each time he wished to move the scaffold would tend to increase the likelihood of an accident.

Another commenter (Ex. 2–50) reasoned that it had never had a scaffold accident under the existing standards, so it expected that the proposed requirement would be unreasonably restrictive and difficult to monitor. Another commenter (Ex. 2–22) foresaw no increase in employee safety to balance against possible problems encountered by those required to implement the provisions.

On the other hand, one commenter (Ex. 2–29) simply favored adopting the suggested provision. Another commenter (Ex. 2–43) agreed that ''rolling scaffolds should be moved in a safe manner'' but added that ''[e]nforcing this requirement will continue to provide special challenges.''

Five commenters (Exs. 2–13, 2–15,2–37, 2–54, and 2–367) found the provision unacceptable, because they felt employees should not be permitted to ride mobile scaffolds at all. Another commenter (Ex. 2–308), responding to proposed 1926.452(w), also said that employees should never be allowed to ride scaffolds. One other commenter (Ex. 2–13) agreed but added an exception for scaffolds ''that have been specifically designed for such movement.''

OSHA agrees with the SIA (Ex.2–368), which indicated that such a requirement would make it difficult for workers to perform their duties without violating the standard because it would sometimes be necessary to make slight adjustments of a scaffold to safely reach the work area. OSHA is concerned that if workers were prohibited from moving the scaffold along its transverse axis, even slightly, they would find themselves in circumstances where they would extend their bodies over the side of the scaffold to reach a place where they need to perform work, instead of climbing down the scaffold to reposition it. This would create a greater hazard because the employee would be at risk of falling or of tipping the scaffold.

Accordingly, the Agency has not adopted the suggested language in the

final rule. OSHA believes the proposed provisions set forth in § 1926.452(w), Mobile Scaffolds, appropriately address the concerns of employees riding scaffolds.

(x) Repair Bracket Scaffolds

The March 29, 1993, Federal Register notice reopening the rulemaking record (58 FR 16509) sought information regarding ''chimney bracket scaffolds.'' The Agency described such scaffolds as consisting of platforms supported by brackets which are secured in place by one or more wire ropes placed in an approximately horizontal plane around the circumference of the structure and tensioned by a turnbuckle. The Agency noted that it had recently received information (Exs. 31 and 32) which suggested that proposed § 1926.451 might not adequately protect employees on these scaffolds from falls and other hazards.

OSHA noted that it was considering whether specific fall protection requirements were needed in subpart L for protection of employees on chimney bracket scaffolds. The Agency also noted that it was considering the appropriateness of promulgating technical requirements for chimney bracket scaffolds that are more detailed than those proposed for scaffolds in general. Accordingly, the March 29, 1993, Federal Register notice presented a series of questions aimed at developing criteria for safe use of chimney bracket scaffolds. One commenter (Ex. 34–35) stated ''[u]nless it can be determined by a competent person beforehand that the chimney can support a bracket and an independent safety line and fall protection is used, other means such as balling, explosives or remote crane suspended hydraulic attachments should be used.'' OSHA also received substantive input on chimney bracket scaffolds [repair bracket scaffolds] from one commenter, the National Advisory Committee for Health & Safety in the Chimney, Stack, Silo and Natural Draft Cooling Tower Industry (NACHS) (Ex. 34–33). Those comments are discussed below in relation to the pertinent provisions of the final rule. The NACHS, a trade association presenting the experience and views of companies which use the scaffolds in question, referred to these scaffolds as ''repair bracket work platforms'' in its comment. Based on that input, the Agency has determined that the term ''repair bracket scaffold'' should be used in place of the term ''chimney bracket scaffold.''

The NACHS (Ex. 34–33) indicated that a ''repair bracket scaffold'' is a type of supported scaffold that has been used safely for over 80 years for tuckpointing on brick chimneys; crack repairs; the installation of bands on brick or concrete chimneys; painting; access to caps, hoods, and lightning protection systems; installation of permanent platforms; piece-meal demolition of brick, concrete, and steel chimneys; waterproofing brick and concrete chimneys; 360 degree access at any given elevation for any activity; and steeple access. According to the commenter, these scaffolds are installed by encircling a structure with a minimum one-half-inch diameter wire, tensioned by a minimum one-inch turnbuckle. Brackets are then placed over the wire rope, and scaffold planking (12-inch minimum width), guardrail posts and handrails are installed on the brackets.

Based on the information received, OSHA again reopened the rulemaking record (59 FR 4615, February 1, 1994) to solicit comment on draft regulatory text that the Agency was considering for inclusion in the final rule. In addition, the Agency noted that it was considering whether employees working on chimney bracket scaffolds needed to be protected from fall hazards by both a ''Type I'' guardrail, as would have been required by proposed § 1926.451(e)(4), and a personal fall arrest system. Also, OSHA noted that it was considering what provisions must be made for rescue of employees from chimney bracket scaffolds in the event of scaffold collapse or a medical emergency. The Agency indicated that it was developing criteria for employers who would need to comply with these provisions. As is discussed below in relation to the provisions of final rule paragraph (x), the Agency also raised Items (a) through (l) for consideration as prospective provisions of the final rule. (All references to Items and Issues in this paragraph of the preamble relate to the February 1, 1994 reopening notice.) The one commenter, Monsanto, (Ex. 43–45) who responded to those Items stated that they should be adopted in the final rule.

Based on the rulemaking record, OSHA has determined that it is appropriate to add a new paragraph (x) to § 1926.452 to address the use of 'repair bracket scaffolds'. In addition, a definition of that term, based on the NACHS comment, is being added to § 1926.450(b), Definitions.

Paragraph (x)(1) requires employers to secure brackets in place with ½ inch diameter wire rope that extends around the circumference of the chimney. This provision, which incorporates the language from Items (a) and (b) of the February 1, 1994 notice (59 FR 4617), codifies established good industry practice as described by the NACHS (Ex. 34–33).

Final rule paragraph (x)(2) requires that each bracket be attached to the securing wire rope (or ropes) by a positive locking device capable of preventing the unintentional detachment of the bracket from the rope, or by some other means which prevents unintentional detachment. The NACHS (Ex. 34–33) indicated that brackets are positioned on the cable in the course of erecting the scaffold. Issue 6 asked if OSHA should require a positive locking device on the bracket hook that is placed over the wire rope to prevent unintentional separation of the bracket from the wire rope. Continental Chimney Inc. (CCI) and NACHS (Exs. 43–1 and 43–21) supported such a requirement.

Final rule paragraph (x)(3) requires that each bracket, at the contact point between the supporting structure and the bottom of the bracket, be provided with a ''shoe'' (heel block or foot) capable of preventing the lateral movement of the bracket. Issue 7 asked if OSHA should incorporate such a requirement in the final rule. CCI and NACHS (Exs. 43–1 and 43–21) commented that a ''shoe'' was needed to prevent lateral movement. In addition, CCI stated ''The bottom of our [bracket] feet have an angle cut into them to prevent them from getting caught up on obstructions on the chimney and becoming disconnected if the scaffold system should slip.''

Final rule paragraph (x)(4) requires that platform units be secured to brackets in a manner that prevents the separation of platform units from brackets and prevents movement of platform units or brackets on a completed scaffold. This provision is based on Item (e), which provided that platform units shall be secured to the brackets. Issue 4 asked how employers should fasten platform units to brackets so that they do not inadvertently detach. CCI (Ex. 43–1) stated ''We have used ⅛″ cable with ¼″ rope. ¼″ rope is enough most of the time. The ⅛″ cable provides added security and can be secured adequately be tying it in right along side the ¼″ rope. Using clamps here would never work.'' The NACHS (Ex. 43–21) responded that employers should secure platform units to brackets ''[b]y any positive system available, i.e., wire, rope, etc.'' OSHA has determined that it is appropriate to allow employers flexibility in choosing the means of securing platform units and has added final rule paragraph (x)(4) accordingly.

Final rule paragraph (x)(5) provides that, when a wire rope is placed around

a structure to provide safe anchorage for personal fall arrest systems that are used by employees erecting or dismantling repair bracket scaffolds, the wire rope shall be at least 5/16 inches in diameter and shall, in all other respects, satisfy the requirements of subpart M, OSHA's Fall Protection Standard. This paragraph, which is effectively identical to Item (l) of the February Notice, codifies established good practices as described by the NACHS (Ex. 34–33).

Final rule paragraph (x)(6) requires that each wire rope used for securing brackets in place or as an anchorage for personal fall arrest systems be protected from damage due to contact with edges, corners, protrusions, or other discontinuities of the supporting structure or scaffold components. Issue 10 of the Reopening Notice asked how employers protected wire ropes from abrasion. CCI (Ex. 43–1) stated ''Our brackets hold the cable 3″ below our decking.'' The NACHS (Ex. 43–21) responded ''[t]he bracket scaffold support cable is static, and abrasion experienced from * * * installation does not affect its integrity. The hardwood cable block spacers (@ [+ or −] 36″ centers) minimize and often prevent the cable from making contact with the structure's surface.'' OSHA has determined, based on the comments, that adequate means of protecting wire rope from abrasion are readily available to affected employers.

Final rule paragraph (x)(7) provides that tensioning of each wire rope used for securing brackets in place or as an anchorage for personal fall arrest systems shall be by means of a turnbuckle at least 1 inch in diameter, or by some other equivalent means. This paragraph, which is very similar to Item (b) of the Reopening Notice, codifies established good practice as described by the NACHS (Ex. 34–33). OSHA has allowed employers the flexibility to use means other than a single turnbuckle for tensioning wire ropes, where the alternative means provide equivalent tension, because the Agency wants to encourage innovation and provide flexibility. In addition, OSHA anticipates, based on information from NACHS (Ex. 34–33), that there may be circumstances where more than one turnbuckle will be needed to tension the wire rope, depending on the diameter of the chimney.

Final rule paragraph (x)(8) requires that each turnbuckle be connected to the other end of its rope by use of a proper-size eyesplice thimble. Issue 8 of the February Notice asked if OSHA should add such a requirement to the final rule. CCI (Ex. 43–1) stated ''Thimbles are very helpful in keeping the cable in good condition. These can be fit over the turn buckle eye and then closed back up.'' Also, the NACHS (Ex. 43–21) commented that OSHA should add a requirement for the use of a proper size thimble.

Final rule paragraph (x)(9) provides that U-bolt wire rope clips shall not be used on any wire rope used to secure brackets or to serve as an anchor for personal fall arrest systems. OSHA expressed concern in the February 1, 1994 reopening notice that the use of U-bolt wire rope clips as wire rope fasteners on the horizontal support ropes could result in damage to the dead end of the rope. Further, if a segment of damaged dead end later were to become part of the live end due to an increase in the circumference of the structure, the Agency was concerned that the wire rope would be unable to support the loads imposed on it.

CCI responded (Ex. 43–1) ''The use of U wire rope clips does not damage the wire rope significantly when they are not over-tightened. Double-saddle clips are not as strong as U wire rope clips and are difficult to put on the cable.'' Also, Charles Greene (Ex. 43–47), a safety consultant, stated he ''[w]ould recommend that fist or saddle clips be used to fasten the horizontal support ropes that support the bracket scaffolds.''

OSHA disagrees with CCI regarding the safety of using U-bolt wire rope clips, based on the Agency's review of *Rosnagles Handbook of Rigging* and the *Wire Rope User's Handbook*. The information in those publications clearly indicates that the use of U-bolt wire rope clips could significantly damage wire ropes. Where wire rope is used to secure brackets, U-bolt clips shall not be used because a segment of damaged dead end could later become part of the live end due to an increase in the circumference of the structure. By contrast, the standard allows U-bolts in other applications, such as where the U-bolt is used at the end (dead end) of the wire rope and that part of the wire rope is never moved into the live section. Accordingly, because of the risk of damaging the wire rope, OSHA is prohibiting the use of U-bolt wire rope clips on repair bracket scaffold support cables.

Final rule paragraph (x)(10) requires employers to ensure that materials are not dropped to the outside of the supporting structure. This paragraph is based on Item (j) of the February Notice. In addition, Issue 2 of the Reopening Notice asked if requirements other than those in proposed § 1926.451(f) (§ 1926.451(h) of the final rule) were needed to address the hazards of materials falling to the outside of the structure. The NACHS (Ex. 34–33) indicated that chunks of material generated during demolition operations are ''dropped piecemeal down the inside of the chimney and kept off the scaffold.'' There was no response to Issue 2. OSHA believes that this requirement simply codifies existing good industry practice and provides an appropriate supplement to the provisions of final rule § 1926.451(h).

Final rule paragraph (x)(11) requires that erection of a repair bracket scaffold be performed in only one direction around the structure. This provision is based on item (k); as with the other ''items'' from the February 1, 1994 notice, the Agency believes that this paragraph simply codifies established good industry practice.

In addition, the February 1, 1994 reopening notice raised several Issues and Items which did not result in the addition of requirements to the final rule. For example, Reopening Issue 1 asked how employers would provide a safe anchorage point for personal fall arrest systems and whether compliance with the General Industry standard for powered platforms, § 1910.66, Appendix C would be appropriate. The NACHS (Ex. 43–21) stated that a wire rope anchorage point could be attached to a structure ''by means of tensioning devices i.e., turnbuckles and hardwood cable spacer (stand off) blocks.'' The commenter also stated that conformance with § 1910.66, Appendix C, should not be required ''because the chimney bracket scaffold erector is secured to an independent anchor (ladder) during the installation process.'' Based on this information, OSHA has not added the cross-reference to the General Industry standard to the final rule.

In addition, Item (i) provided for a competent person to inspect the supporting structure before scaffold erection begins, and Issue 3 asked what criteria a competent person should apply when inspecting the supporting structure. The NACHS (Ex. 43–21) stated that the criteria should be determined by the ''competent person'' (as defined in existing § 1926.32(f)) and ''should be the responsibility of each contractor on a project by project basis.'' Charles Greene (Ex. 43–47) stated that OSHA should require inspection of wire rope before each use. The Agency believes that compliance with the general requirements in final rule § 1926.451(f)(3), which provides that a competent person shall inspect scaffolds (including supporting structures and anchorage points) for visible defects prior to each work shift and after any occurrence that could affect the

scaffolds' structural integrity, will provide adequate assurance that unsafe scaffolds are not used. Accordingly, the Agency has not added additional specific criteria for inspection of repair bracket scaffolds to the final rule.

Reopening Issue 3 sought comment on the use of a wire rope placed at the platform level in lieu of an inner guardrail system on tank builders' scaffolds. The Steel Tank Institute (STI) (Ex. 43–5) stated:

> One STI member uses a fabricated hook with an eyelet for attaching a safety lanyard and harness. The hook is hooked over the top plate of steel on the tank being erected. This system allows a high degree of mobility for workers since the hook can slide horizontally along the steel plate, and results in 100% fall protection. If such a system is used, the space between the scaffold planks and the tank shell should not be an issue.

OSHA believes that, in general, the use of guardrail systems or personal fall arrest systems would provide more effective protection than the system described by the STI. The Agency also believes, however, that the method described by this commenter to use personal fall arrest systems could be used in many cases to provide protection equivalent to the wire rope guardrail described in Issue 3.

Reopening Issue 5 asked what criteria, if any, should be set for brackets used with repair bracket scaffolds. CCI (Ex. 43–1) stated that there was ''no need'' to set such criteria. In addition, the NACHS (Ex. 43–21) responded ''[n]o criteria should be set by OSHA that may restrict material and system improvements that are in constant change due to modern technology.'' The Agency agrees that it is important to encourage development of improved systems and materials. Furthermore, OSHA believes that compliance with the requirements in final rule §§ 1926.451 (a), (b) and (c), will ensure that brackets used on repair bracket scaffolds provide adequate protection for employees. Accordingly, the Agency has not added specific criteria for brackets to the final rule.

Reopening Issue 9 asked whether the safety factor for wire rope used with repair bracket scaffolds should be 4:1, as recommended by the NACHS (Ex. 34–33), or 6:1, as provided in proposed § 1926.451(a) and in Item (d). OSHA noted that a 4:1 safety factor might be inadequate because the use of wire rope clips reduces the strength of the rope. The NACHS (Ex. 43–21) stated ''[t]he Committee unanimously recommends a safety factor of 4:1 be satisfied.'' OSHA believes that the strength of wire ropes used with repair bracket scaffolds is just as important as the strength of ropes used with other scaffolds. Therefore, the Agency has determined that the 6:1 safety factor which OSHA has set as a general requirement for wire ropes (final rule § 1926.451(a)) is also appropriate for wire ropes used with repair brackets.

Reopening Issue 11 asked if OSHA should specify that each platform unit on a chimney bracket scaffold shall extend at least 12 inches over its supports, as recommended by NACHS (Ex. 34–33) and provided by Item (f), or extend at least 6 inches (unless cleated or otherwise restrained) as provided by proposed § 1926.451(b). CCI (Ex. 43–1) stated that platform units should extend out at least 12 inches. The NACHS (Ex. 43–21) stated that OSHA should require minimum extension of 6 inches unless cleated or otherwise restrained as provided by proposed § 1926.451(b), but did not explain why it had changed its position. OSHA believes that compliance with the 6-inch requirement as set forth in final rule § 1926.451(b)(4) will adequately protect employees working on repair bracket scaffolds.

Items (c) and (h) would have incorporated strength and guardrail requirements into paragraph (x). These provisions are not needed because the general requirements in final rule § 1926.451 (a) and (g) adequately address scaffold capacity and fall protection.

Item (g) provided that the span of platform units from bracket to bracket shall not exceed 5 feet on the outside of the brackets. As noted above, Monsanto (Ex. 43–45) supported the inclusion of this provision in the final rule. The Agency notes that while span is a factor, the issue is already addressed by the general requirements for minimum and maximum overhang (final rule § 1926.451(b)(4) and (5)), and the capacity requirements of § 1926.451(a). There is thus no need to add this requirement to the final rule.

Paragraph (y) Stilts

Final rule paragraph (y) provides requirements for the use of stilts. Neither OSHA's existing scaffold standard (subpart L) nor the proposed rule directly addressed the use of stilts. NPRM Issue 20 asked if OSHA should prohibit or regulate the use of stilts. In particular, the Agency requested suggestions as to the appropriate construction and use of stilts, fall protection for employees wearing stilts, floor conditions in areas where stilts are being used, and other necessary considerations.

The SSFI (Ex. 2–367) stated that they ''would support OSHA's prohibition on using stilts while undertaking work on scaffolds'' as this ''would be considered unsafe.'' Another commenter (Ex. 2–29) stated, ''stilts are not recommended for construction conditions. Unlevel working surfaces, debris, etc. are particular problems when using stilts.''

On the other hand, a commenter (Ex. 2–13) stated, ''OSHA should not prohibit the use of stilts. They have been used safely for many years. They should never be used near any unprotected opening.'' The SIA (Exs. 2–368, 5a-16) agreed that the Agency should promulgate a rule permitting the use of stilts but should spell out ''some safety rules, particularly when their use places the worker at heights above the standard guardrail protection.'' Many commenters on Issue 20 used a specific height (length) of no more than 40 inches as a cut off point above which they considered the use of stilts to be unsafe (Exs. 2–47, 2–61, 2–63, 2–67, 2–78, 2–156, and 2–304).

Over 460 other commenters expressed the view that Issue 20 was the first step towards a prohibition on the use of stilts. Those comments stated that prohibiting the use of stilts would cause employees to sustain injuries from over-reaching and falling from ladders, stools, platforms, homemade benches, boards, inverted buckets and other devices they would otherwise use to elevate themselves when doing painting, finishing or ceiling work. In particular, one commenter (Ex. 2–99) stated

> Based on our experiences over these many years, we have found stilts to be a very safe and effective means to perform work in a timely and efficient and safe manner. Whenever stilts are used on a project, we have found that general housekeeping improves. There is much less debris found even on a short term basis than there would be with conventional scaffolding. We are able to use stilts to reach areas where conventional scaffolding and even ladders would be unsafe due to jobsite conditions. We do not let just any employee work on stilts. Our safety record attests to that. During the twenty (20) years we have used stilts, we have only had two (2) accidents involving the stilts—and both of these accidents were by the same employee.

Most of the commenters stressed the need for proper training for employees who use stilts (Exs. 2–6, 2–301, 2–379, and 2–406B). Most of the comments also indicated that some safety provisions, such as debris control, are needed if stilts are to be used.

Based on the concerns expressed by commenters, Issue L–4 of the hearing notice (53 FR 2048, January 26, 1988) set out four provisions that OSHA was considering for inclusion in the final rule for subpart L and solicited public input. Final rule §§ 1926.452(y)(1) and (2) address the use of stilts on large area

scaffolds, and §§ 1926.452 (y)(3) and (4) provide criteria for the use of stilts in general. These are based on the first through fourth provisions, respectively, raised in Hearing Notice Issue L–4.

The Association of the Wall and Ceiling Industries International testified (Tr. 3/22/88, p. 86, Ex. 5a–14) in favor of the proposed provisions. The SIA testified that stilt use was widespread and that stilts were considered a useful tool by the ceiling and wall industries (Tr. 3/22/88, pp. 157–158). The SIA testimony supported three provisions that OSHA is adopting, but did not express an opinion on the fourth provision (final paragraph (y)(2)).

Paragraph (y)(1) requires that employees not wear stilts on scaffolds except when the employees are on large area scaffolds. This paragraph is effectively identical to the language in the first provision raised for consideration in Issue L–4.

Paragraph (y)(2) provides, when employees wearing stilts are on large area scaffolds where guardrail systems are being used, that the dimensions of the guardrail system shall be increased to offset the height of the stilts. This paragraph corresponds to the language in the second provision raised for consideration in Issue L–4.

The SIA (Ex. 2–368) commented that a standard providing for the use of stilts on scaffolds should address guardrail height on scaffolds where stilts are being used.

Paragraph (y)(3) of the final rule provides that all surfaces on which stilts are used shall be flat and free of pits, holes and obstructions, such as debris, as well as all other tripping and falling hazards. This paragraph is identical to the language in the third provision raised for consideration in Issue L–4.

Many commenters noted the importance of removing potential tripping hazards where stilts are used (Exs. 2–54, 2–71, 2–99, 2–149, 2–166, 2–205, 2–219, 2–256, 2–272, 2–283, 2–295, 2–307, and 2–324). For example, a commenter (Ex. 2–54) stated:

> It would seem those that would have the opportunity to use stilts the most would be stepping into a lot of loose debris that has fallen and quite vulnerable to injury from slipping and falling.

Paragraph (y)(4) of the final rule provides that stilts shall be properly maintained and that any alterations of the original equipment must be approved by the manufacturer. This paragraph is identical to the language in the fourth provision raised for consideration in Issue L–4.

Several commenters who responded to Issue 20 addressed the condition of stilts. Those commenters (Exs. 2–59, 2–62, 2–71, 2–72, 2–108, 2–211, 2–219, 2–237, 2–243, 2–301, 2–304, 2–304, 2–313, 2–324, 2–379, 2–406B, and 2–409), generally, indicated that requirements for proper maintenance and inspection of stilt equipment, including straps and fittings, were needed. A number of manufacturers, contractors, and workers who use stilts also expressed strong approval for the use of manufactured stilts (as opposed to the use of job-made stilts) (Exs. 2–47, 2–127, 2–154, 2–257, 2–304–25, and 2–411A). The Agency has no information which indicates that job-made stilts pose a greater hazard than manufactured stilts, and therefore is not covering them differently under this paragraph. OSHA will monitor work experience under this provision to determine if it is appropriate to treat manufactured and job-built stilts differently.

Section 1926.453 Aerial Lifts

OSHA proposed to delete existing § 1926.451(f), *Elevating and rotating work platforms*, because the Agency believed that the existing provision was redundant with existing § 1926.556, *Aerial lifts*, which is in subpart N, Cranes, Derricks, Hoists, Elevators and Conveyors, of the Construction Standards. Existing § 1926.451(f) provides only that employers comply with ANSI A92.2–1969, Vehicle Mounted Elevating and Rotating Work Platforms. This requirement is also found in § 1926.556. Section 1926.556, in turn, sets some specific requirements for specified lift operations, but primarily references ANSI A92.2–1969.

The SIA (Ex. 2–368) objected to the proposed deletion, stating that equipment which falls under the definition of ''scaffold'' should be addressed by subpart L. ANSI A92.2–1969 classifies elevating and rotating work platforms as ''scaffolds.''

Based on consideration of the comment, OSHA believes that the retention of existing § 1926.451(f) would not be appropriate. However, the Agency agrees with the commenter that this type of equipment is a scaffold and that it should be addressed by subpart L. In order to facilitate the efforts of construction employers to safeguard employees who use elevating and rotating work platforms, the Agency has decided to move the requirements of § 1926.556 to a new § 1926.453, Aerial lifts, in subpart L. The introductory text to this section indicates that § 1926.453 applies only to ANSI A92.2 type equipment (vehicle mounted elevating and rotating work platforms), and further notes that the requirements of § 1926.451 and § 1926.452 do not apply to this type of equipment.

In addition, OSHA recognizes that the A92 Committee has updated A92.2–1969 and has adopted other A92 standards which address technological advances and evolving safe industry practices regarding elevating and rotating work platforms. The Agency has determined that compliance with the pertinent A92 standards adopted by ANSI since 1969 will provide employee safety at least equivalent to that attained through compliance with ANSI A92.2–1969. Accordingly, OSHA is providing a list of post-1969 ANSI A92 standards which are presently available, and is placing this list in a new non-mandatory Appendix C to this standard (subpart L). This non-mandatory appendix can be updated as necessary to include future revisions of the A92 standards or other relevant information.

Paragraph (a) addresses general requirements for aerial lifts, while paragraph (b) contains specific requirements for this equipment. Paragraph (b)(1) through (b)(5) specify requirements for ladder trucks and tower trucks, extensible and articulating boom platforms, electrical tests, bursting safety factors, and welding standards for aerial lifts, respectively

Section 1926.454 Training Requirements

Section 1926.454 addresses training for employees working with scaffolds. The introductory text indicates clearly that this section both supplements and clarifies the training provisions in existing § 1926.21(b)(2). That standard, which applies to all construction work, requires employers to ''instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury.'' While that language clearly articulates the employer's general duty to provide training, OSHA believes it is appropriate to provide more specific direction regarding the training necessary for employees who work on scaffolds. Accordingly, § 1926.454 sets certain criteria allowing employers to tailor training to fit their workplace circumstances.

The introductory text of proposed § 1926.460 indicated that OSHA would cite employers for violations of the added training requirements in this section only when a citation was issued concurrently under the provisions of proposed §§ 1926.450, 1926.451 or 1926.452. However, it is clear to OSHA that this approach is not appropriate and does not provide adequate

employee protection, because the training of an employee does not necessarily ensure that an employee will follow the substantive safety provisions of the standard in every case.

OSHA's enforcement of the standard's training requirement does not depend on the extent to which an employer is fulfilling other compliance obligations under subpart L. In this regard, the scaffold standard is like any other OSHA standard that provides for both hazard prevention and employee training. The employer has separate duties to provide protection and to train employees, and may be cited for violating either or both types of requirements.

Paragraph (a) of the final rule sets training requirements for employers who have employees working on scaffolds. The introductory text requires employers to ensure that each employee whose employment involves being on a scaffold is trained to recognize the hazards associated with the type of scaffold being used and to understand the procedures which must be followed to control or minimize those hazards.

Proposed paragraph (a) required that all employees using scaffolds to perform a job task be instructed in the proper construction, use, placement and care of the scaffolds they are using, and in the applicable provisions of this subpart. OSHA has determined that the proposed provision should be revised to provide more specific direction regarding how employees working on scaffolds are to be trained. In addition, the Agency recognizes that it is appropriate to distinguish between the training needed by employees erecting and dismantling scaffolds and the training needed by employees who are on scaffolds in the course of their work. Accordingly, final rule paragraph (a) addresses employees who are working on scaffolds and final rule paragraph (b) addresses employees who are erecting and dismantling scaffolds. OSHA anticipates that some employees, such as those who use adjustable suspension scaffolds, will need training that complies with both paragraph (a) and paragraph (b).

The SIA and the Duke Power Company (Exs. 2–368 and 2–465) commented that employees who use scaffolds do not need to know how to construct, place, and care for these scaffolds. The SIA (Ex. 2–368) stated ''Does every single worker on the job need to know how the scaffold is constructed, or how it was placed, or how it is to be cared for? This should be the responsibility of some ''competent'' person, but not everyone on the scaffold.'' In addition, Duke Power (Ex. 2–465) noted ''the majority of scaffolds used are not constructed by the employees using them.'' As noted above, OSHA agrees with these concerns and final rule § 1926.454 reflects this thinking.

The introductory language of final rule paragraph (a) also requires employers to ensure that each affected employee has been trained by a person who is qualified in the pertinent subject matters. The requirement for training by a qualified person has been added to the final rule to ensure that the training is adequate. The ACCSH (Tr. 6/9/87, p. 266) recommended that OSHA require the involvement of a competent person in the program to provide appropriate assurance that employees will be adequately trained. However, the Agency has decided that a qualified person would be more appropriate because it is the knowledge, skill or experience of the trainer, not the trainers authority, which determines the adequacy of the training provided. Limiting the delivery of the required training only to a competant person would prevent employers from taking advantage of outside sources of training, such as scaffold manufacturers and suppliers, that regularly provide these types of services to clients.

Paragraphs (a)(1) through (a)(5) address five areas in which training must be provided, as applicable. Final rule paragraph (a)(1) requires that affected employees be trained in the nature of any electrical hazards, fall hazards and falling object hazards in the work area. Many employees have been killed or seriously injured because they were unaware of workplace hazards or did not understand the consequences of exposure to those hazards. This provision clearly indicates the hazards (i.e., electrocution, falls and falling objects) regarding which training must be provided. This paragraph elaborates on the requirements of existing § 1926.21(b)(2), which addresses training in the general recognition and avoidance of hazards.

Final rule paragraph (a)(2) requires that affected employees be trained in the correct procedures for protection from electrical hazards and for erecting, maintaining, and disassembling the required fall protection systems and falling object protection systems. Employees who are on scaffolds while working need to know how protective systems function, so that they know how to install, maintain or remove these systems, as necessary. For example, where a scaffold has been erected without the protective measures necessary for work to be performed on or from the scaffold, the employees subsequently coming onto the scaffold would need to install them. Even where the scaffold erectors have installed the required protection for affected employees, the employees working on the scaffold need to know when and how to maintain that protection, so that a hazardous situation does not develop during scaffold use. Proposed paragraph (a) addressed this subject only in general terms.

The ANSI Z359 Committee stated (Ex. 2–57)

> ''[P]ersons who work on scaffolds should be required to undergo *fall protection* training. This is not specified in sufficient detail in 1926.460. The content, specificity and training environment for a fall protection training program should perhaps be considered as the subject of a national standard.'' OSHA agrees with this comment and has revised the proposed training provision accordingly.

Paragraph (a)(3) requires that employees be trained in the proper use of the scaffold and in the proper handling of materials on the scaffold. This paragraph is effectively identical to the corresponding provision of proposed paragraph (a). The language regarding the proper handling of materials has been added to facilitate compliance with the requirements for falling object protection.

Paragraph (a)(4) requires that employees be trained in the maximum intended load and the load-carrying capacities of the scaffolds used. This language is effectively identical with the corresponding language of proposed paragraph (a).

Paragraph (a)(5) requires that employees be trained in the pertinent requirements of subpart L. This provision is effectively identical to the corresponding language in proposed paragraph (a).

Paragraph (b) of the final rule addresses training for employees assembling, maintaining or dismantling scaffolds. The introductory language of paragraph (b) requires that the employer have each employee who erects, disassembles, moves, operates, repairs, maintains, or inspects a scaffold trained by a competent person so that the employee can recognize any hazards related to such work duties. This provision is effectively identical to the language in proposed paragraph (a). As noted above, final rule paragraph (b) is designed to differentiate clearly between the training needed by employees erecting and dismantling scaffolds and the training needed by employees who are on scaffolds in the course of their work. In addition, this provision corresponds, in part, to the language in proposed paragraph (b), which required that employees repairing scaffolds be

competent individuals ''trained and familiar with the design criteria, intended use, and the proper procedures for repairing the defective component(s).''

The introductory language of final paragraph (b) requires the employer to ensure that each affected employee has been trained by a competent person in four areas, as applicable. As discussed above in relation to final rule § 1926.454(a), OSHA has added this requirement in response to a recommendation from the ACCSH (Tr. 266, 2/9/87).

Paragraph (b)(1) requires that affected employees be trained in the nature of scaffold hazards. This provision effectively restates the existing § 1926.21(b)(2) requirement that employees be instructed in the recognition and avoidance of unsafe conditions.

Paragraph (b)(2) requires that affected employees be trained in the correct procedures for erecting, disassembling, moving, operating, repairing, inspecting, and maintaining the type of scaffold in question. This language, which is consistent with the corresponding language in proposed paragraphs (a) and (b), indicates clearly that training must address the particular type(s) of scaffold with which each affected employee will be working. Training provided to an employee to construct, repair or dismantle one type of scaffold will not necessarily enable that employee to repair another type.

Paragraph (b)(3) requires that affected employees be trained in the design criteria, maximum load-carrying capacity, and intended use of the scaffold. This provision is consistent with the corresponding language in final rule paragraph (a)(4).

Final rule paragraph (b)(4) requires that affected employees be trained in the pertinent requirements of subpart L. This provision, like final rule paragraph (a)(5), is effectively identical to the corresponding language in proposed paragraph (a).

Non-mandatory Appendix D lists various training topics that may be important for the employers and employees erecting or dismantling scaffolds. The list is not all-inclusive, and OSHA is providing it solely as informational guidance. The employer may need to address topics or situations not mentioned in the Appendix which are specific to the employer's particular circumstances.

Proposed paragraph (c), which addressed training specifically for employees who operate suspended scaffolds, has been deleted from the final rule, because the Agency has determined that training for these employees is adequately covered by the requirements in paragraphs (a), (b) and (c) of the final rule.

Final paragraph (c) requires the employer to retrain any employee when the employer has reason to believe that the employee does not have the understanding and skill required by paragraph (a) or (b) of this section. Employees must be retrained, as necessary, to restore the requisite scaffold-related proficiency. Circumstances where the provision requires retraining include, but are not limited to, the following situations: first, whenever there is a change at the worksite that presents a hazard about which the employee has not been trained (paragraph (c)(1)(i)); second, where changes in the types of scaffolds, fall protection, falling object protection, or other equipment present a hazard about which the employee has not been trained (paragraph (c)(1)(ii)); and, third, where inadequacies in an affected employee's work practices involving scaffolds indicate that the employee has not retained the requisite proficiency (paragraph (c)(1)(iii)). This provision simply clarifies the language of proposed § 1926.460(d), which stated that employees would receive training and retraining as necessary. OSHA notes that this provision is essentially identical to the corresponding retraining requirements in the Construction Industry fall protection standard (§ 1926.503(d)) and the General Industry standards for permit-required confined spaces (§ 1910.146(g)(2)) and personal protective equipment (§ 1910.132(f)(3)).

NPRM Issue 15 solicited comments regarding employee training and retraining on scaffold use. In particular, OSHA asked for data on the costs and effectiveness of training requirements in reducing the risk of injuries or fatalities, and whether more or less specific requirements were appropriate. Commenters were also asked to provide the Agency with information about currently available safety programs and their adequacy; the safety records of employees who have been trained; the scope and necessary elements of training programs; the relationship of the additional specific provisions in proposed § 1926.460 to the more general § 1926.21 requirements; the costs and benefits of these provisions; and possible recordkeeping burdens these provisions might involve.

The SIA (Ex. 2–368) stated: ''[T]he SIA devotes a considerable portion of its budget to promotion of safety and training through audio-visual programs and training courses for the safe use of scaffolds. We believe that training will reduce accidents and would like to see some additional requirements in the scaffold standards.'' However, the SIA expressed concern that employers would have to ''establish and maintain extensive records on each employee'' because the rule would expose them to ''increased liability from an insurance standpoint'' and to OSHA citations. The SIA also indicated that training would not be able to cover all foreseeable equipment use, and that an employer who assumed that training was all-encompassing would be compromising the safety of its employees. Furthermore, the SIA stated that the proposed training requirements would pose practical problems for employers because of employee mobility and related staffing concerns.

Based on the above-discussed concerns, the SIA made the following recommendations regarding 'additional' training requirements:

> As a minimum, employers should be required to furnish to employees working on scaffolds printed safety rules (Codes of Safe Practice) for the particular type scaffold they are using. The employee should be required to read the rules in the presence of the employer or his agent (a competent person) and be questioned as to whether the employee understands the rules.
>
> Due to the extreme hazard associated with the use of suspended scaffolds, a written training program should be required. The program should include formal certification by the employer upon completion of the program by the employee. Persons without such training should not be allowed to work on suspended scaffolds.

OSHA notes that the training requirements in both the final rule and the proposed rule have been framed in performance-oriented language. This approach allows employers the flexibility to establish programs which reconcile the need for training with the circumstances at particular workplaces.

The AGC (Exs. 2–20, 2–55, and 2–390) contended that any additional training requirements would be redundant and economically infeasible, given the construction industry's high employee turnover. The GLFEA and ABC (Exs. 2–22 and 2–69) commented that training requirements would ''impose practical problems'' due to workforce mobility. In addition, the GLFEA, ABC and the Builders' Association of Missouri (Ex. 2–50) stated that the requirements of § 1926.21 already adequately address training. The GLFEA added that ''other constraints * * * such as insurance costs and workers compensation rates, impose a requirement on * * * employers to train their employees and * * * follow safety requirements.''

OSHA recognizes that employee turnover can increase an employer's training responsibilities. The Agency notes, however, that the existing standard already requires construction employers to provide training for their employees, notwithstanding employee turnover or other day-to-day changes in the employer's workforce. Furthermore, the Agency believes that § 1926.454, insofar as it elaborates on the training requirements of existing § 1926.21(b)(2), simply codifies good industry practice and provides useful direction for how training programs can ''do it right.'' Accordingly, OSHA has determined, based on the rulemaking record, that any additional responsibilities imposed by final rule § 1926.454 are reasonable and necessary to protect employees from serious hazards.

Furthermore, employers need not retrain employees who are trained by a previous employer or were trained prior to the effective date of the standard, as long as the employee demonstrates the proficiency required by the pertinent provisions of this section. This approach is consistent with that taken in part 1910, subpart I (Personal protective equipment) and part 1926, subpart M (Fall protection).

A manufacturer of suspended scaffolds, Sky Climber, recommended (Ex. 2–64) requiring that all riggers and operators of suspension scaffold equipment be formally trained and certified and carry a certificate or license to evidence their completion of training. That commenter provided the following to explain their position:

> Improper rigging and operator error were the second and third major cause and cost of our product incidents. We believe that training of operators and riggers will substantially reduce the frequency and cost of incidents. In fact, of the over 1500 persons who complete our Training Program in operation, maintenance and rigging since 1980, to our knowledge, not one has been involved in a suspension scaffold incident.

Sky Climber added that this training should be mandatory, and since ''[t]he primary responsibility for training rests with the employer * * * he or some other qualified party should provide the required training.''

Seedorff Masonry Inc.(Ex. 2–407) commented

> We have always used our foreman as the instructor and this has worked out very well. We can agree that there could be an additional rule on this point, however additional paperwork would not be feasible. We could find our superintendents only doing paperwork without enough time to oversee job sites and develop good safety on the job sites.

The SSFI (Ex. 2–367) commented in favor of proposed § 1926.460, stating as follows:

> Members of the SSFI are in full support of the training requirements for the contractor provided within the OSHA revision. If followed, the training requirements would reduce the number of accidents on construction projects. There currently exist many Institute Safety Rules and Recommendations as well as many recommendations developed by the manufacturers of the equipment. As a minimum, those requirements can be used and, if followed, should dramatically reduce the accidents of construction employees. These construction employees should be trained by the contractor at the construction site prior to their actual start of work, and should not be trained on-the-job as they are working.

Alum-A-Pole Corporation, a manufacturer of pumpjack scaffolds, stated (Ex. 2–31) ''[o]n-the-job training is the mode in which pumpjack users gain proficiency in proper installation. On that basis, sequential pictorial instructions with minimal verbiage * * * if adhered to, would virtually eliminate accidents.''

Two commenters (Exs. 2–2 and 2–13) expressed the view that cost should not be an issue in matters of safety. In addition, one of these commenters (Ex. 2–13) found from his own experience that both employers and employees should be trained and retrained.

Another commenter (Ex. 2–54) supported training and retraining and provided details of the commenter's training program. The comment touched on the value of discussions, involving both workers and apprentices, regarding the proper way to use equipment. In particular, the commenter indicated that employees are more productive when they are confident that they have the right equipment and know how to use it.

In addition, discussion by the ACCSH on Issue 15 noted that training is cost-effective and beneficial for both employees and employers (Tr. 6/9/87, pp. 130–136). One member stated: ''I've heard several employers state that these training programs save 4 to 5 percent of the gross cost of the project, which oftentimes is more than double the amount that they got the bid by in the first place.

They might have gotten the bid by less than 2 percent, but they save 5 percent with the proper training program.''

Issue L–1 of the hearing notice (53 FR 2049) requested testimony and related information on any current training programs which issue certificates or licenses to indicate that employees have been adequately trained to erect, use or dismantle specific types of scaffolds. The Agency indicated that it was considering adding a requirement for verification of compliance through a written certification. In particular, OSHA sought comment on the following language:

> § 1926.461 Certification. (a) The employer shall certify that all employees who are erecting, maintaining and dismantling scaffolds, have been adequately trained in the appropriate precautions and safe practices before they are allowed to perform any such scaffold work.
>
> (b) The employer shall certify that the employee has been trained by preparing a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training or retraining was completed. The certification record shall be prepared at the completion of training and shall be maintained on file for the duration of the employee's employment. The certification record shall be made available upon request to the Assistant Secretary for Occupational Safety and Health or designee.

Issue L–1 stated that the above language would not require the ''collection of information,'' and would not, therefore, impose a paperwork burden on the employer under the terms of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the implementing regulations (5 CFR 1320.7(j)).

The Association of Wall and Ceiling Industries (AWCI) (Ex. 9; Tr. 3/22/88, p. 83–84) testified that certifying somebody as adequately trained ''opens up a potential of increased liability so what I'm asking OSHA to do for us is to provide some definition of 'adequately trained.' Whether this is a model training program or perhaps a listing of the subjects to be covered under this adequacy of training and also some indication of who's going to do the training.'' AWCI also asked whether any employee who works on a scaffold must be trained in its proper construction, placement, and care.

The AWCI (Ex. 9; Tr. 3/22/88, p. 84–85) also noted that, given the constant exchange of employees in the construction industry, ''portability'' of training was a point of concern. They questioned, for example, whether a contractor who has trained employees on a project and rehires them a month and half later would have to retrain them. Similarly, in response to a question regarding the type of training scaffold erectors typically receive, AWCI stated that:

> * * * most of it is on-the-job training that's handed down to new employees as they come aboard the company or is brought by the employees from the previous

company. The training programs could have been derived from the manufacturer of the scaffolding equipment, could be derived from the in-house training program that the contractor has and some of these contractors have extensive programs in place on-site. It could also be derived from the scaffold industry association * * * programs that they have in place * * * '' (Ex. 9; Tr. 3/22/88, pp. 91–92.)

The AWCI further testified (Ex. 9; Tr. 3/22/88, p. 90) that EPA's asbestos abatement certification program provided ''[t]he ground floor of employee protection.'' They pointed out that the program requires 3 days of classroom training, including some ''hands-on,'' and includes a listing of all points the program is to cover. In addition, the AWCI testified that ''[the program] gives employees an added margin of safety by making them aware of the hostile environment they're going to be in, and added that a foreman, contractor, or supervisor must go for an additional day of training and that they receive instruction regarding insurance programs and legal ramifications.'' When asked to comment on EPA's certification program versus that which might be required for scaffold erection, the AWCI replied (Tr. 3/22/88, p. 91) that OSHA should specify the points ''to be covered in the training program and the credentials of the trainer'' if OSHA is going to require a certification program.

In addition, Bristol Steel (Ex. 13; Tr. 3/23/88, pp. 2–147 and 2–148) stated that certification is a weighty responsibility with significant legal implications. Bristol Steel also contended that any legal liability arising from a certification program should be the burden of a trade organization (Tr. 3/23/88, pp. 2–181–182).

Bristol Steel also stated (Ex. 13) that the proposed certification requirement would add a paperwork burden to employers. The commenter added that before requiring certification, OSHA should show that such a requirement could be ''implemented and universally enforced and will cause a material reduction in scaffold accidents.''

The SIA testified (Ex. 10; Tr. 3/22/88 p. 151) that a certification requirement would expose employers to ''tremendous liability to civil and even criminal negligence suits in addition to those penalties prescribed under OSHA.'' The SIA added that they ''worked closely with Cal-OSHA in developing a certification program in 1981, which had to be abandoned because the SIA and its members could not assume the liability created by Cal-OSHA's insistence that we 'certify the competency of the worker'.''

The Montague-Betts Company, Inc. and SEAVAC testified that training and certification of workers using scaffolds were appropriate and useful, but that ''a lot of definition of scope and what certification consists of is necessary before * * * people can take a final position as to the complete merits and workings of such a proposal'' (Tr. 3/23/88, pp. 2–198). Montague-Betts (Ex. 5a–5) stated that certification of employees using scaffolds is appropriate. On the other hand, SEAVAC (Ex. 5a–17) stated that certification is appropriate for employees who erect or dismantle scaffolds but not for other employees.

The SSFI (Ex. 5a–19) stated that training for individuals who use and erect scaffolds had been a subject of great debate within the institute and stated that their members were ''very supportive of a [s]tandard that would require training for the use, erection, and dismantling of scaffolds.'' They recommended the following elements for training:

—Two categories of training: one for scaffold users and one for scaffold erectors and dismantlers;
—Issuing employee ''qualification cards'' that could be presented to employers, and which would certify completion of a sanctioned training program;
—Nationally uniform training programs;
—A national program requiring certification to balance economic consideration among contractors;
—A gradual transition for the implementation of such a training program;
—Permitting vocational trades, technical, or other qualified teaching organizations or contractors to provide this type of training service;
—Not allowing training and certification to be substituted for existing safety requirements, such as those provided by the equipment manufacturer.

Some commenters opposed the certification language in Issue L–1. One (Ex. 2–593) indicated that the training requirements in § 1926.21 and proposed § 1926.460 were sufficient. Another (Ex. 2–594) called the section regarding certification ''too restrictive.'' Monsanto (Ex. 2–595) disagreed with certification of training and retention of the certification in a file. Monsanto indicated that it had not had problems with scaffold erection, maintenance, and dismantling that would warrant certification of training. They added that the proposed retention requirement for certification information documents would ''present an unwarranted paperwork burden on the employer.''

The Edison Electric Institute (Ex. 5a–6) responded that a written certification was unnecessary and would add a significant paperwork burden for employers. EEI added that regular training would assure that employees know how to safely ''handle scaffolds.'' EEI also stated that the work involved in these operations is not so sophisticated that routine training should be considered inadequate.

OSHA has determined, based on its review of the record, that a written certification would impose an additional burden on employers without a demonstrable increase in worker safety. OSHA can determine if workers have been adequately trained by talking with the employees and observing their work habits. In addition, the Paperwork Reduction Act, as recently revised, classifies certification as a type of information burden for which OSHA must present a justification. Given the Agency's conclusion that the necessary information can be obtained without referring to documents, such a burden would not be justified. Therefore, the final rule will not contain a requirement for training certification.

Non-Mandatory Appendix A to Subpart L—Scaffold Specifications

This appendix is provided as a guide to assist employers in complying with the requirements of § 1926.451. This appendix is non-mandatory. As stated above in the discussion of paragraph 1926.451(a), scaffolds built in accordance with this Appendix A will be considered to meet the intent of this revised subpart L. A full discussion of the contents of this Appendix A, and any comments on the proposed Appendix A, is found above, in the discussion of § 1926.451(a).

Non-Mandatory Appendix B to Subpart L—Criteria for Determining the Feasibility and Safety of Providing Safe Access and Fall Protection for Scaffold Erectors and Dismantlers

This space is being reserved for publication of informational guidance at a later date.

Non-Mandatory Appendix C to Subpart L—List of National Consensus Standards

This Appendix is provided to serve as a guide to employers required to provide appropriate employee protection under § 1926.453, Aerial Lifts. This Appendix reflects the proliferation of equipment-specific ANSI A92 standards since the adoption of ANSI A92.2–1969.

Non-Mandatory Appendix D to Subpart L—List of Training Topics for Scaffold Erectors and Dismantlers

OSHA has developed this Appendix to assist employers in identifying appropriate topics for training scaffold erectors and dismantlers.

Non-Mandatory Appendix E to Subpart L—Drawings and Illustrations

This Appendix provides drawings of particular types of scaffolds and scaffold components, and graphic illustrations of bracing patterns and tie spacing patterns. It is intended to provide visual guidance to assist the user in complying with the requirements of this standard.

IV. Economic Assessment and Regulatory Flexibility Analysis

Introduction

Executive Order (EO) 12866 requires regulatory agencies to conduct an economic analysis for rules that meet certain criteria. The most frequently used criterion under EO 12866 is that the rule will impose annual costs on the economy of $100 million or more. OSHA's final standard for scaffolds in construction does not meet this criterion, or any of the other criteria specified by EO 12866, and therefore does not require an economic analysis. Nevertheless, OSHA has decided to conduct such an analysis to provide the regulated community with as much information about the rule as possible. The Regulatory Flexibility Act of 1980, as amended in 1996, requires OSHA to determine whether the Agency's regulatory actions will have a significant impact on a substantial number of small entities. Making this determination requires OSHA to perform a screening analysis to identify any such impacts. Consistent with these requirements, OSHA has prepared this economic analysis and regulatory flexibility screening analysis of the final rule for scaffolds in construction. The final rule being published today will replace the outdated consensus standard addressing scaffolds in construction that was adopted by OSHA in 1971 and has remained largely unchanged since then.

This analysis includes a description of the industries affected by the regulation, an evaluation of the risks addressed, an assessment of the benefits attributable to the final standard, a determination of the technological feasibility of the new requirements, an estimate of the costs of compliance with the standard, a determination of the economic feasibility of compliance with the standard, and an analysis of the economic and other impacts associated with this rulemaking, including those on small businesses. The following is a summary of this analysis, which is available from OSHA's docket office.

The Final Standard for Scaffolds in Construction

This final standard for scaffolds in the construction industry makes many changes to the consensus standard adopted by OSHA in 1971 and codified at 29 CFR 1926.450 to 1926.453 (Subpart L of OSHA's construction industry standards). Appendix A of the Final Economic Analysis compares, on a provision-by-provision basis, the final standard with the standard that has been on the books since 1971. In this economic analysis, the standard being published today is referred to as the final standard, while the standard it replaces is termed the ''existing'' standard.

One of the important distinctions between the two standards is the clarity and simplicity of the final standard, which is written in language that people in the construction industry use to describe scaffolds and their components. Technical terms required to convey information accurately and unambiguously are defined clearly in paragraph (b) of final rule § 1926.450. The final rule also updates the regulatory text to reflect changes in technology that have occurred in the quarter century since the existing standard was written. These changes will permit scaffold manufacturers and users to benefit from technological change and give them additional flexibility in using up-to-date equipment. The final standard also clarifies and resolves issues of terminology or areas of confusion that have been identified by scaffold users over the years. In the past, OSHA has addressed implementation problems of this sort in letters of interpretation or compliance memoranda or directives; the final standard corrects and revises the provisions that gave rise to these interpretations. Finally, the final standard adds protection for employees using scaffolds. The principal areas in the new standard that have been strengthened are employee training, protection from electrical hazards, and procedures for employees engaged in the erection and dismantling of scaffolds. These requirements reflect OSHA's long experience in accident investigation in the construction industry, as well as an extensive analysis of the leading causes of scaffold-related fatalities and injuries.

Affected Industries

The requirements of the final standard apply to all establishments in the construction industry. As classified by the 1987 Standard Industrial Classification (SIC) manual, the industry can be divided into three broad types of activities: building construction general contractors (SIC 15), heavy construction general and special trade contractors (SIC 16), and construction by other special trade contractors (SIC 17).

There are 572,850 establishments in the construction sector employing approximately 4.7 million employees. Small establishments with one to nine employees, which represent 82 percent (or 469,349) of establishments, collectively employ only 1.4 million employees (30 percent). The number of construction workers is estimated to be approximately 3.6 million. OSHA estimates that there are approximately 2.34 million construction workers (65 percent of all construction workers) who frequently work on scaffolds and who would be affected by the final standard for scaffolds.

Evaluation of Risk and Potential Benefits

Of the 510,500 injuries and illnesses reportedly occurring in the construction industry annually, an estimated 9,750 are related to scaffolds. Similarly, of the estimated 924 occupational fatalities occurring annually among construction employees, at least 79 fatalities are associated with work on scaffolds. OSHA estimates that the new requirements in the final rule will prevent 47 of these fatalities and 4,455 of these injuries annually; these numbers are above and beyond the fatalities and injuries that would be prevented if construction employers complied with OSHA's existing scaffold standard. OSHA estimates that the total value of the cost savings associated with this revised standard is $90 million per year. This estimate of cost savings considers only those scaffold related injuries that involve lost workdays.

Costs and Technological Feasibility

The total estimated costs associated with the final standard amount to about $12.62 million annually. The largest single cost ($5.85 million) is associated with inspections of non-suspended scaffolds before use. The remaining costs are attributable to requirements for additional training for employees exposed to potential hazards involving work on scaffolds ($5.30 million) and for fall protection for employees erecting and dismantling scaffolds[1] ($1.47 million). Table ES–1 shows the annual costs of compliance associated with the final rule.

TABLE ES–1.—ANNUAL COSTS OF COMPLIANCE WITH THE FINAL RULE FOR SCAFFOLDS IN CONSTRUCTION

Provision	Annual cost
Training:	$5,298,708
Training for Workers Who Use Scaffolds	3,014,949
Training for Scaffold Erectors, Dismantlers, Inspectors and Repairers	2,283,759
Fall Protection for Erectors and Dismantlers of Scaffolds[1]	1,466,431
Scaffold Inspection	5,851,823
Total	12,616,962

Source: US Department of Labor, OSHA, Office of Regulatory Analysis, 1996.

(1) This requirement has a one year delayed implementation date.

Because the requirements of the final standard can be met with existing equipment and methods, the standard is technologically feasible.

Economic Impacts

Compliance with the requirements of the final standard has been determined to be economically feasible and is not expected to produce significant adverse economic impacts on firms in the construction industry. The estimated compliance costs represent less than 0.002 percent of construction revenues. Given the minimal price increase necessary to cover the costs of the final standard, employers should be able to pass these compliance costs on their customers. However, even if all costs were absorbed by the affected firms (a highly unlikely scenario), the average reduction in profits would be only 0.04 percent.

Regulatory Flexibility Screening Analysis

Pursuant to the Regulatory Flexibility Act of 1980 as amended (5 U.S.C. 601 et seq.), OSHA has assessed the small-business impact of the final standard for scaffolds used in construction, and has certified based on that assessment and the underlying data, that the standard will not have a significant impact on a substantial number of small entities. The controlling consideration for a regulatory flexibility analysis is whether the standard would impose significant economic impacts on a substantial number of small entities. The significance of any economic impact is measured by the effect on profits, market share, and an entity's financial viability.

The small establishment size standards established by the U.S. Small Business Administration (SBA) for the construction industry, which are based on establishment receipts, are $17 million for establishments in SICs 15 and 16, and $7 million for establishments in SIC 17. Of the 572,850 establishments affected by the revised standard, 493,637[1] establishments, or about 86 percent of all construction establishments, are considered small establishments as defined by the SBA.

OSHA assessed the potential economic impacts of the rule on all affected establishments and has concluded that the rule is economically feasible and will not impose a substantial burden on construction employers. As indicated above, firms would only have to increase the price charged for their services by, at most, 0.002 percent of the value of their sales in order to recover the money they expended on compliance. In the unlikely event that firms could not pass any of these costs to their customers and had to absorb all of the costs themselves (a highly unlikely scenario), the average reduction in profits caused by these costs would be only 0.04 percent. On average, the value of receipts for establishments in the construction industry is estimated to be $1.12 million. Firms with sales in this range clearly fall within the SBA size standard.

To ensure that even the smallest firms in this industry would not be significantly impacted by the costs of compliance associated with the final standard, OSHA also examined the financial profile for small construction establishments with 9 or fewer employees at the four-digit SIC code level, which constitutes the overwhelming majority of firms in this industry. To examine the impact of the standard on the smallest and potentially most affected firms, OSHA made a series of extreme-case assumptions: that all employees in these establishments use scaffolds in the course of their work and that these establishments have not implemented any of the new work practices or procedures required by the final rule. In addition, OSHA assumed that two employees at each firm would require fall protection systems and training in the erection and dismantling of supported-scaffolds. Assuming a baseline turnover rate of 15 percent, and using the formulas presented in Chapter V of the Economic Analysis, such a small establishment, which represents an extreme-case impact situation, would incur compliance costs of $603[2] annually.

Table ES–2 presents the results of this extreme-case analysis. It shows estimated compliance costs and economic impacts relative to revenues and pre-tax income for small businesses by four-digit SIC code level. OSHA compared the baseline financial data for these firms with OSHA's estimate of the standard's annual compliance cost by computing compliance costs as a percentage of revenue. This approach (Table ES–2) reflects extreme case impacts because it assumes that employers have to recover the costs of achieving compliance by increasing their prices. Under this full cost pass-through scenario, the maximum average expected price increase required to recover the full costs of compliance with this standard would be extremely small, approximately 0.1 percent. The four-digit industry estimated to experience the highest potential price increase would be Painting and Paper Hanging (SIC 1721), where firms could have to increase prices by 0.18 percent. Again, since these impacts are based on extreme-case costs, they are likely to be overestimating.

Under the second scenario used to test the impacts of actions on markets—the no cost pass-through scenario—firms are assumed not to be able to pass any of their costs through to their customers in the form of price increases. If no costs can be passed on, firms would have to absorb these costs entirely from their profits (a highly unlikely scenario). Using this assumption, the average expected decline in profits for these very small firms would be only 1.44 percent. The largest potential impact of the standard would be anticipated in the Plastering, Drywall and Acoustical industry (SIC 1742), where firms could experience a decline in profits of 2.71 percent. Such impacts are not large enough to be significant because they mean, for example, that the profit rate for such a company would decline only from 5.0 percent to 4.9[3] percent. As noted, these figures are based on highly conservative assumptions and are therefore likely to overestimate standard's impact.

Because fixed costs, such as those for preparing training materials, are larger as a percentage of revenues the smaller the firm, the smallest firms will experience the greatest economic

[1] 144,671 establishments in SIC 15, 28,206 establishments in SIC 16 and 320,637 establishments in SIC 17.

[2] Annual 15 minute-training for workers who use scaffolds = $11, annual training cost for erectors and dismantlers = $130, annual cost of fall protection = $106, and annual scaffold inspection cost = $356.

[3] $22,265/$445,303 = 5.0%, $22,265 × (100 − 2.71%) /$445,303 = 4.9%.

impacts. If the smallest firms, with extreme-case costs, will experience no significant impact, it is reasonable to conclude that larger firms will not experience significant economic impacts. Thus, because this standard will not have a significant impact either on the smallest establishments (those with 9 or fewer employees) or on the typical establishment in this industry, OSHA certifies that this final standard will not have a significant economic impact on a substantial number of small entities, as defined by the SBA.

TABLE ES–2.—ECONOMIC IMPACTS OF THE FINAL SCAFFOLD STANDARD ON CONSTRUCTION BUSINESSES WITH 5 EMPLOYEES. BY 4-DIGIT SIC, USING WORST-CASE COMPLIANCE ASSUMPTIONS

SIC industry	Value of industry receipts per establishment [a]	Pre-tax income per establishment [b]	Compliance costs as a percent of revenues	Compliance costs as a percent of pre-tax income
15 Building Construction-General Contractors	$1,039,353	$56,692	0.06	1.06
1521 General Contractors-Single-Family Houses	824,664	61,225	.07	0.98
1522 General Contractors-Residential Buildings	989,058	73,430	.06	0.82
1531 Operative Builders	2,459,972	81,999	.02	0.73
1541 General Contractors-Industrial Buildings & Warehouses	1,159,689	52,713	.05	1.14
1542 General Contractors-Non-residential Buildings	1,278,174	61,972	.05	0.97
16 Heavy Construction Other than Building Construction	934,365	59,460	.06	1.01
1622 Bridge, Tunnel and Elevated Highway Construction	1,312,204	47,717	.05	1.26
1623 Water, Sewer, Pipeline and Communications	832,093	50,430	.07	1.19
1629 Heavy Construction, nec.	717,664	50,019	.08	1.20
17 Special Trade Contractors	471,876	32,888	.13	1.83
1711 Plumbing, Heating & Air Conditioning	520,496	31,545	.12	1.91
1721 Painting and Paper Hanging	331,775	30,664	.18	1.96
1731 Electrical Work	463,498	34,411	.13	1.75
1741 Masonry, Stone Setting	357,551	25,462	.17	2.37
1742 Plastering, Drywall, Acoustical	445,303	22,265	.14	2.71
1743 Terrazzo, Tile, Marble and Mosaic Work	404,702	28,820	.15	2.09
1751 Carpentry Work	414,681	32,672	.15	1.84
1752 Floor Laying and Other Floor Work, nec.	573,175	39,949	.11	1.51
1761 Roofing, Siding and Sheet Metal Work	470,902	30,680	.13	1.96
1771 Concrete Work	510,955	36,386	.12	1.66
1791 Structural Steel Erection	541,947	36,130	.11	1.67
1793 Glass and Glazing Work	555,960	32,852	.11	1.83
1796 Installation or Erection of Building Equipment, nec.	581,564	30,841	.10	1.95
1799 Special Trade Contractors, nec.	504,453	40,509	.12	1.49
Average	.....	.....	.10	1.44

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, 1996.

[a] Based on Small Business Administration, Office of Advocacy, Table 3: The Number of Firms, Establishments, Employment, Annual Payroll, and Estimated Receipts by Industry and Firm Size, 1993.

[b] Average revenue per establishment x mean profit rate for SIC (derived from Dun and Bradstreet Information Services, Industry Norms and Key Business Ratios 1994–95) x conversion formula based on the federal corporate tax schedule.

[c] Annual cost of compliance of 603 per establishment assumes that all workers (5) would require training in the initial year and that all new workers in subsequent years would require training. Two workers will be trained in dismantling and erecting procedures. Estimates also assume that fall protection will be required for erectors and dismantlers and that inspections of non-suspended scaffolds will be required.

nec=Not elsewhere classified.

In addition, OSHA has drafted the final standard for scaffolds in the construction industry to achieve adequate protection for affected employees while imposing minimal impacts on small employers. For example, the final rule maintains the performance-oriented approach of the proposed standard, allowing employers the flexibility to take workplace conditions into account when framing their compliance strategies. In addition, OSHA considered and adopted several alternatives designed to minimize small business impacts. For example, revisions reflected in the final standard's requirements for fall protection (grandfathering existing guardrail systems and allowing some use of crossbracing in lieu of guardrails) will enable small entities to minimize their compliance burdens. Accordingly, OSHA has determined that the final rule effectively addresses small employer concerns.

V. Environmental Assessment

Finding of No Significant Impact

This final rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR part 1500), and OSHA's DOL NEPA Procedures (29 CFR part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the final rule will have no significant environmental impact.

The revisions to Subpart L—Scaffolds focus on the reduction of accidents or injuries by means of work practices and procedures, proper use and handling of equipment, and training, as well as on changes in language, definition, and format of the standard. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspect of the environment. As such, these revisions are, therefore, categorized as excluded actions according to subpart B, § 11.10, of the DOL NEPA regulation.

VI. Pertinent Legal Authority

The purpose of the Occupational Safety and Health Act, 29 U.S.C. §§ 651

et seq. (''the Act''), is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.'' 29 U.S.C. § 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. §§ 655(a) (authorizing summary adoption of existing consensus and federal standards within two years of Act's enactment), 655(b) (authorizing promulgation of standards pursuant to notice and comment), 654(b) (requiring employers to comply with OSHA standards).

A safety or health standard is a standard ''which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment.'' 29 U.S.C. § 652(8).

A standard is reasonably necessary or appropriate within the meaning of Section 652(8) if it substantially reduces or eliminates significant risk, and is economically feasible, technologically feasible, cost effective, consistent with prior Agency action or a justified departure, supported by substantial evidence, and is better able to effectuate the Act's purposes than any national consensus standard it supersedes. See 58 Fed. Reg. 16612–16616 (March 30, 1993).

OSHA has generally considered, at minimum, a fatality risk of 1/1000 over a 45-year working lifetime to be a significant health risk. See the Benzene standard, *Industrial Union Dep't* v. *American Petroleum Institute,* 448 U.S. 607, 646 (1980); the Asbestos standard, *Building and Constr. Trades Dep't, AFL–CIO* v. *Brock,* 838 F.2d 1258, 1265 (D.C. Cir 1988); the Formaldehyde standard, *International Union, UAW* v. *Pendergrass,* 878 F.2d 389, 392 (D.C. Cir 1989).

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. *American Textile Mfrs. Institute* v. *OSHA,* 452 U.S. 490, 513 (1981) (''*ATMI*''); *AISI* v. *OSHA,* 939 F.2d 975, 980 (D.C. Cir. 1991).

A standard is economically feasible if industry can absorb or pass on the costs of compliance without threatening its long term profitability or competitive structure. See *ATMI,* 452 U.S. at 530 n. 55; *AISI,* 939 F.2d at 980.

A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. *ATMI,* 453 U.S. at 514 n. 32; *International Union, UAW* v. *OSHA,* 37 F.3d 665, 668 (D.C. Cir. 1994) (''*LOTO III*'').

Section 6(b)(7) authorizes OSHA to include among a standard's requirements labeling, monitoring, medical testing and other information gathering and transmittal provisions. 29 U.S.C. § 655(b)(7).

All standards must be highly protective. See 58 Fed. Reg. at 16614–16615; *LOTO III,* 37 F.3d at 669. Finally, whenever practical, standards shall ''be expressed in terms of objective criteria and of the performance desired.'' *Id.*

VII. Recordkeeping

The Agency has estimated the paperwork burden of the final rule entitled ''Scaffolds Used in the Construction Industry'' under the guidelines of the Paperwork Reduction Act of 1995. Under that Act, burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. The Agency has concluded that there is only one collection of information in the final rule on ''Scaffolds Used in the Construction Industry'' that potentially could create a burden [as defined above] for the construction industry. The collection of information in located in § 1926.453(a)(2). This provision requires the employer to obtain a written certification from the manufacture of aerial lifts under certain specified conditions. In particular, the requirement reads as follows:

> Aerial lifts may be ''field modified'' for uses other than those intended by the manufacturer provided the modification has been certified in writing by the manufacturer or by any other equivalent entity, such as a nationally recognized testing laboratory, to be in conformity with all the applicable provisions of the ANSI A92.2–1969 and this section and to be at least as safe as the equipment was before modification.

This provision was adopted by OSHA in May 1971 as an established Federal standard which had been promulgated by the Bureau of Labor Standards for the Construction Industry in April 1971. OSHA failed to identify this provision as subject to the Paperwork Reduction Act of 1995 (PRA–95) and did not obtain approval from OMB for this collection as required by PRA–95. This error was discovered in the course of preparing the final rule for Scaffolds Used in the Construction Industry. This provision, currently located in § 1926.556(a)(2) is redesignated as § 1926.453(a)(2) and removed unchanged from its present location in Subpart N to Subpart L (Scaffolds Used in the Construction Industry). Through this final rule, OSHA is soliciting comments on the burden associated with the collection. It is OSHA intent to review and analyze all comments received on the collection of information and then to seek proper approvals from OMB under PRA–95. Once approval is received, OSHA will publish a notice in the Federal Register to indicate the OMB Approval Number and the effective date of the provision.

Collections of Information: Request for Comments

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on the respondents can be properly assessed. Currently, OSHA is soliciting comments concerning the proposed approval for the paperwork requirements of 29 CFR part 1926, subpart L, Scaffolds used in the Construction Industry. Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have a practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background

OSHA in its final rule for Scaffolds Used in the Construction Industry is

redesignating existing § 1926.556 (subpart N), Aerial Lifts to § 1926.453 (subpart L), Aerial Lifts because these type of equipment are, in fact, scaffolds. The existing regulation, § 1926.556(a)(2), contained a requirement for manufacturer certification of ''field modified'' aerial lifts. This provision, along with the rest of § 1296.556, is being redesignated § 1926.453(a)(2) in this final rule.

OSHA believes that manufacturer certification of ''field modified'' aerial lifts is necessary to ensure that modifications to these types of scaffolds will not adversely affect the strength, stability, or other characteristics necessary for their safe use.

Current Actions

This notice requests OMB approval of the paperwork requirements in Scaffolds Used in the Construction Industry (29 CFR 1926, subpart L).

Type of Review: New.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Scaffolds Used in the Construction Industry (29 CFR 1926, subpart L).

OMB Number: 1218–AA40.

Agency Docket No.: S–205.

Frequency: On occasion.

Affected Public: Business or other for-profit, Federal government, State and local governments.

Number of respondents: 10,000.

Estimated Time per Respondent: 2 hours.

Total Estimated Cost: $513,200.

Total Burden Hours: 20,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

VIII. State Plan Standards

The 25 states and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within 6 months of the publication date of the final rule. These states and territories are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, New York (for State and local government employees only), Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a comparable standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states and territories.

IX. Federalism

The final rule has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987) regarding Federalism. The Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with states prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws relating to issues with respect to which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption only if it submits, and obtains Federal approval of a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions, see section 18(c)(2).

The Federal standard on construction operations involving scaffolds addresses hazards that are not unique to any one state or region of the country. Nonetheless, States with occupational safety and health plans approved under section 18 of the OSH Act will be able to develop their own State standards to deal with any special problems which might be encountered in a particular State. Moreover, because this standard is written in general, performance-oriented terms, there is considerable flexibility to State plans to require, and for affected employers to use, methods of compliance which are appropriate to the working conditions covered by the standard.

In brief, this final rule addresses a clear national problem related to occupational safety and health in the construction industry. Those states which have elected to participate under section 18 of the OSH Act are not preempted by this standard, and will be able to address any special conditions within the framework of the Federal Act while ensuring that the state standards are at least as effective as that standard.

List of Subjects in 29 CFR Part 1926

Construction industry, Construction safety, Occupational safety and health, Protective equipment, Safety, Scaffolds.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR part 1911, 29 CFR part 1926 is amended as set forth below.

Signed at Washington, D.C., this 16th day of August 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1926—[AMENDED]

1. Subpart L of Part 1926 is revised to read as follows:

Subpart L—Scaffolds

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1–90 (55 FR 9033); and 29 CFR Part 1911.

Subpart L—Scaffolds

§ 1926.450 Scope, application and definitions applicable to this subpart.

(a) *Scope and application.* This subpart applies to all scaffolds used in workplaces covered by this part. It does not apply to crane or derrick suspended personnel platforms, which are covered by § 1926.550(g). The criteria for aerial lifts are set out exclusively in § 1926.453.

(b) *Definitions. Adjustable suspension scaffold* means a suspension scaffold equipped with a hoist(s) that can be operated by an employee(s) on the scaffold.

Bearer (putlog) means a horizontal transverse scaffold member (which may be supported by ledgers or runners) upon which the scaffold platform rests and which joins scaffold uprights, posts, poles, and similar members.

Boatswains' chair means a single-point adjustable suspension scaffold consisting of a seat or sling designed to support one employee in a sitting position.

Body belt (safety belt) means a strap with means both for securing it about the waist and for attaching it to a lanyard, lifeline, or deceleration device.

Body harness means a design of straps which may be secured about the employee in a manner to distribute the fall arrest forces over at least the thighs, pelvis, waist, chest and shoulders, with means for attaching it to other components of a personal fall arrest system.

Brace means a rigid connection that holds one scaffold member in a fixed position with respect to another member, or to a building or structure.

Bricklayers' square scaffold means a supported scaffold composed of framed squares which support a platform.

Carpenters' bracket scaffold means a supported scaffold consisting of a platform supported by brackets attached to building or structural walls.

Catenary scaffold means a suspension scaffold consisting of a platform supported by two essentially horizontal and parallel ropes attached to structural members of a building or other structure. Additional support may be provided by vertical pickups.

Chimney hoist means a multi-point adjustable suspension scaffold used to provide access to work inside chimneys. (See ''Multi-point adjustable suspension scaffold''.)

Cleat means a structural block used at the end of a platform to prevent the platform from slipping off its supports. Cleats are also used to provide footing on sloped surfaces such as crawling boards.

Competent person means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

Continuous run scaffold (Run scaffold) means a two- point or multi-point adjustable suspension scaffold constructed using a series of interconnected braced scaffold members or supporting structures erected to form a continuous scaffold.

Coupler means a device for locking together the tubes of a tube and coupler scaffold.

Crawling board (chicken ladder) means a supported scaffold consisting of a plank with cleats spaced and secured to provide footing, for use on sloped surfaces such as roofs.

Deceleration device means any mechanism, such as a rope grab, rip-stitch lanyard, specially-woven lanyard, tearing or deforming lanyard, or automatic self-retracting lifeline lanyard, which dissipates a substantial amount of energy during a fall arrest or limits the energy imposed on an employee during fall arrest.

Double pole (independent pole) scaffold means a supported scaffold consisting of a platform(s) resting on cross beams (bearers) supported by ledgers and a double row of uprights independent of support (except ties, guys, braces) from any structure.

Equivalent means alternative designs, materials or methods to protect against a hazard which the employer can demonstrate will provide an equal or greater degree of safety for employees than the methods, materials or designs specified in the standard.

Exposed power lines means electrical power lines which are accessible to employees and which are not shielded from contact. Such lines do not include extension cords or power tool cords.

Eye or *Eye splice* means a loop with or without a thimble at the end of a wire rope.

Fabricated decking and planking means manufactured platforms made of wood (including laminated wood, and solid sawn wood planks), metal or other materials.

Fabricated frame scaffold (tubular welded frame scaffold) means a scaffold consisting of a platform(s) supported on fabricated end frames with integral posts, horizontal bearers, and intermediate members.

Failure means load refusal, breakage, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

Float (ship) scaffold means a suspension scaffold consisting of a braced platform resting on two parallel bearers and hung from overhead supports by ropes of fixed length.

Form scaffold means a supported scaffold consisting of a platform supported by brackets attached to formwork.

Guardrail system means a vertical barrier, consisting of, but not limited to, toprails, midrails, and posts, erected to prevent employees from falling off a scaffold platform or walkway to lower levels.

Hoist means a manual or power-operated mechanical device to raise or lower a suspended scaffold.

Horse scaffold means a supported scaffold consisting of a platform supported by construction horses (saw horses). Horse scaffolds constructed of metal are sometimes known as trestle scaffolds.

Independent pole scaffold (see ''Double pole scaffold'').

Interior hung scaffold means a suspension scaffold consisting of a platform suspended from the ceiling or roof structure by fixed length supports.

Ladder jack scaffold means a supported scaffold consisting of a platform resting on brackets attached to ladders.

Ladder stand means a mobile, fixed-size, self-supporting ladder consisting of a wide flat tread ladder in the form of stairs.

Landing means a platform at the end of a flight of stairs.

Large area scaffold means a pole scaffold, tube and coupler scaffold, systems scaffold, or fabricated frame scaffold erected over substantially the entire work area. For example: a scaffold erected over the entire floor area of a room.

Lean-to scaffold means a supported scaffold which is kept erect by tilting it toward and resting it against a building or structure.

Lifeline means a component consisting of a flexible line that connects to an anchorage at one end to hang vertically (vertical lifeline), or that connects to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage.

Lower levels means areas below the level where the employee is located and to which an employee can fall. Such areas include, but are not limited to, ground levels, floors, roofs, ramps, runways, excavations, pits, tanks, materials, water, and equipment.

Masons' adjustable supported scaffold (see ''Self-contained adjustable scaffold'').

Masons' multi-point adjustable suspension scaffold means a continuous run suspension scaffold designed and used for masonry operations.

Maximum intended load means the total load of all persons, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to be applied to a scaffold or scaffold component at any one time.

Mobile scaffold means a powered or unpowered, portable, caster or wheel-mounted supported scaffold.

Multi-level suspended scaffold means a two-point or multi-point adjustable suspension scaffold with a series of platforms at various levels resting on common stirrups.

Multi-point adjustable suspension scaffold means a suspension scaffold consisting of a platform(s) which is suspended by more than two ropes from overhead supports and equipped with means to raise and lower the platform to desired work levels. Such scaffolds include chimney hoists.

Needle beam scaffold means a platform suspended from needle beams.

Open sides and ends means the edges of a platform that are more than 14 inches (36 cm) away horizontally from a sturdy, continuous, vertical surface (such as a building wall) or a sturdy, continuous horizontal surface (such as a floor), or a point of access. Exception: For plastering and lathing operations the horizontal threshold distance is 18 inches (46 cm).

Outrigger means the structural member of a supported scaffold used to increase the base width of a scaffold in order to provide support for and increased stability of the scaffold.

Outrigger beam (Thrustout) means the structural member of a suspension scaffold or outrigger scaffold which provides support for the scaffold by extending the scaffold point of attachment to a point out and away from the structure or building.

Outrigger scaffold means a supported scaffold consisting of a platform resting on outrigger beams (thrustouts) projecting beyond the wall or face of the building or structure, the inboard ends of which are secured inside the building or structure.

Overhand bricklaying means the process of laying bricks and masonry units such that the surface of the wall to be jointed is on the opposite side of the wall from the mason, requiring the mason to lean over the wall to complete the work. It includes mason tending and electrical installation incorporated into the brick wall during the overhand bricklaying process.

Personal fall arrest system means a system used to arrest an employee's fall. It consists of an anchorage, connectors, a body belt or body harness and may include a lanyard, deceleration device, lifeline, or combinations of these.

Platform means a work surface elevated above lower levels. Platforms can be constructed using individual wood planks, fabricated planks, fabricated decks, and fabricated platforms.

Pole scaffold (see definitions for ''Single-pole scaffold'' and ''Double (independent) pole scaffold'').

Power operated hoist means a hoist which is powered by other than human energy.

Pump jack scaffold means a supported scaffold consisting of a platform supported by vertical poles and movable support brackets.

Qualified means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems related to the subject matter, the work, or the project.

Rated load means the manufacturer's specified maximum load to be lifted by a hoist or to be applied to a scaffold or scaffold component.

Repair bracket scaffold means a supported scaffold consisting of a platform supported by brackets which are secured in place around the circumference or perimeter of a chimney, stack, tank or other supporting structure by one or more wire ropes placed around the supporting structure.

Roof bracket scaffold means a rooftop supported scaffold consisting of a platform resting on angular-shaped supports.

Runner (ledger or ribbon) means the lengthwise horizontal spacing or bracing member which may support the bearers.

Scaffold means any temporary elevated platform (supported or suspended) and its supporting structure (including points of anchorage), used for supporting employees or materials or both.

Self-contained adjustable scaffold means a combination supported and suspension scaffold consisting of an adjustable platform(s) mounted on an independent supporting frame(s) not a part of the object being worked on, and which is equipped with a means to permit the raising and lowering of the platform(s). Such systems include rolling roof rigs, rolling outrigger systems, and some masons' adjustable supported scaffolds.

Shore scaffold means a supported scaffold which is placed against a building or structure and held in place with props.

Single-point adjustable suspension scaffold means a suspension scaffold consisting of a platform suspended by one rope from an overhead support and equipped with means to permit the movement of the platform to desired work levels.

Single-pole scaffold means a supported scaffold consisting of a platform(s) resting on bearers, the outside ends of which are supported on runners secured to a single row of posts or uprights, and the inner ends of which are supported on or in a structure or building wall.

Stair tower (Scaffold stairway/tower) means a tower comprised of scaffold components and which contains internal stairway units and rest platforms. These towers are used to provide access to scaffold platforms and other elevated points such as floors and roofs.

Stall load means the load at which the prime-mover of a power-operated hoist stalls or the power to the prime-mover is automatically disconnected.

Step, platform, and trestle ladder scaffold means a platform resting directly on the rungs of step ladders or trestle ladders.

Stilts means a pair of poles or similar supports with raised footrests, used to permit walking above the ground or working surface.

Stonesetters' multi-point adjustable suspension scaffold means a continuous run suspension scaffold designed and used for stonesetters' operations.

Supported scaffold means one or more platforms supported by outrigger beams, brackets, poles, legs, uprights, posts, frames, or similar rigid support.

Suspension scaffold means one or more platforms suspended by ropes or other non-rigid means from an overhead structure(s).

System scaffold means a scaffold consisting of posts with fixed connection points that accept runners, bearers, and diagonals that can be interconnected at predetermined levels.

Tank builders' scaffold means a supported scaffold consisting of a platform resting on brackets that are either directly attached to a cylindrical tank or attached to devices that are attached to such a tank.

Top plate bracket scaffold means a scaffold supported by brackets that hook over or are attached to the top of a wall. This type of scaffold is similar to carpenters' bracket scaffolds and form scaffolds and is used in residential construction for setting trusses.

Tube and coupler scaffold means a supported or suspended scaffold consisting of a platform(s) supported by tubing, erected with coupling devices connecting uprights, braces, bearers, and runners.

Tubular welded frame scaffold (see ''Fabricated frame scaffold'').

Two-point suspension scaffold (swing stage) means a suspension scaffold consisting of a platform supported by hangers (stirrups) suspended by two ropes from overhead supports and equipped with means to permit the

raising and lowering of the platform to desired work levels.

Unstable objects means items whose strength, configuration, or lack of stability may allow them to become dislocated and shift and therefore may not properly support the loads imposed on them. Unstable objects do not constitute a safe base support for scaffolds, platforms, or employees. Examples include, but are not limited to, barrels, boxes, loose brick, and concrete blocks.

Vertical pickup means a rope used to support the horizontal rope in catenary scaffolds.

Walkway means a portion of a scaffold platform used only for access and not as a work level.

Window jack scaffold means a platform resting on a bracket or jack which projects through a window opening.

§ 1926.451 General requirements.

This section does not apply to aerial lifts, the criteria for which are set out exclusively in § 1926.453.

(a) *Capacity* (1) Except as provided in paragraphs (a)(2), (a)(3), (a)(4), (a)(5) and (g) of this section, each scaffold and scaffold component shall be capable of supporting, without failure, its own weight and at least 4 times the maximum intended load applied or transmitted to it.

(2) Direct connections to roofs and floors, and counterweights used to balance adjustable suspension scaffolds, shall be capable of resisting at least 4 times the tipping moment imposed by the scaffold operating at either the rated load of the hoist, or 1.5 (minimum) times the tipping moment imposed by the scaffold operating at the stall load of the hoist, whichever is greater.

(3) Each suspension rope, including connecting hardware, used on non-adjustable suspension scaffolds shall be capable of supporting, without failure, at least 6 times the maximum intended load applied or transmitted to that rope.

(4) Each suspension rope, including connecting hardware, used on adjustable suspension scaffolds shall be capable of supporting, without failure, at least 6 times the maximum intended load applied or transmitted to that rope with the scaffold operating at either the rated load of the hoist, or 2 (minimum) times the stall load of the hoist, whichever is greater.

(5) The stall load of any scaffold hoist shall not exceed 3 times its rated load.

(6) Scaffolds shall be designed by a qualified person and shall be constructed and loaded in accordance with that design. Non-mandatory Appendix A to this subpart contains examples of criteria that will enable an employer to comply with paragraph (a) of this section.

(b) *Scaffold platform construction.* (1) Each platform on all working levels of scaffolds shall be fully planked or decked between the front uprights and the guardrail supports as follows:

(i) Each platform unit (e.g., scaffold plank, fabricated plank, fabricated deck, or fabricated platform) shall be installed so that the space between adjacent units and the space between the platform and the uprights is no more than 1 inch (2.5 cm) wide, except where the employer can demonstrate that a wider space is necessary (for example, to fit around uprights when side brackets are used to extend the width of the platform).

(ii) Where the employer makes the demonstration provided for in paragraph (b)(1)(i) of this section, the platform shall be planked or decked as fully as possible and the remaining open space between the platform and the uprights shall not exceed 9½ inches (24.1 cm).

Exception to paragraph (b)(1): The requirement in paragraph (b)(1) to provide full planking or decking does not apply to platforms used solely as walkways or solely by employees performing scaffold erection or dismantling. In these situations, only the planking that the employer establishes is necessary to provide safe working conditions is required.

(2) Except as provided in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, each scaffold platform and walkway shall be at least 18 inches (46 cm) wide.

(i) Each ladder jack scaffold, top plate bracket scaffold, roof bracket scaffold, and pump jack scaffold shall be at least 12 inches (30 cm) wide. There is no minimum width requirement for boatswains' chairs.

(ii) Where scaffolds must be used in areas that the employer can demonstrate are so narrow that platforms and walkways cannot be at least 18 inches (46 cm) wide, such platforms and walkways shall be as wide as feasible, and employees on those platforms and walkways shall be protected from fall hazards by the use of guardrails and/or personal fall arrest systems.

(3) Except as provided in paragraphs (b)(3) (i) and (ii) of this section, the front edge of all platforms shall not be more than 14 inches (36 cm) from the face of the work, unless guardrail systems are erected along the front edge and/or personal fall arrest systems are used in accordance with paragraph (g) of this section to protect employees from falling.

(i) The maximum distance from the face for outrigger scaffolds shall be 3 inches (8 cm);

(ii) The maximum distance from the face for plastering and lathing operations shall be 18 inches (46 cm).

(4) Each end of a platform, unless cleated or otherwise restrained by hooks or equivalent means, shall extend over the centerline of its support at least 6 inches (15 cm).

(5)(i) Each end of a platform 10 feet or less in length shall not extend over its support more than 12 inches (30 cm) unless the platform is designed and installed so that the cantilevered portion of the platform is able to support employees and/or materials without tipping, or has guardrails which block employee access to the cantilevered end.

(ii) Each platform greater than 10 feet in length shall not extend over its support more than 18 inches (46 cm), unless it is designed and installed so that the cantilevered portion of the platform is able to support employees without tipping, or has guardrails which block employee access to the cantilevered end.

(6) On scaffolds where scaffold planks are abutted to create a long platform, each abutted end shall rest on a separate support surface. This provision does not preclude the use of common support members, such as ''T'' sections, to support abutting planks, or hook on platforms designed to rest on common supports.

(7) On scaffolds where platforms are overlapped to create a long platform, the overlap shall occur only over supports, and shall not be less than 12 inches (30 cm) unless the platforms are nailed together or otherwise restrained to prevent movement.

(8) At all points of a scaffold where the platform changes direction, such as turning a corner, any platform that rests on a bearer at an angle other than a right angle shall be laid first, and platforms which rest at right angles over the same bearer shall be laid second, on top of the first platform.

(9) Wood platforms shall not be covered with opaque finishes, except that platform edges may be covered or marked for identification. Platforms may be coated periodically with wood preservatives, fire-retardant finishes, and slip-resistant finishes; however, the coating may not obscure the top or bottom wood surfaces.

(10) Scaffold components manufactured by different manufacturers shall not be intermixed unless the components fit together without force and the scaffold's structural integrity is maintained by the

user. Scaffold components manufactured by different manufacturers shall not be modified in order to intermix them unless a competent person determines the resulting scaffold is structurally sound.

(11) Scaffold components made of dissimilar metals shall not be used together unless a competent person has determined that galvanic action will not reduce the strength of any component to a level below that required by paragraph (a)(1) of this section.

(c) *Criteria for supported scaffolds.* (1) Supported scaffolds with a height to base width (including outrigger supports, if used) ratio of more than four to one (4:1) shall be restrained from tipping by guying, tying, bracing, or equivalent means, as follows:

(i) Guys, ties, and braces shall be installed at locations where horizontal members support both inner and outer legs.

(ii) Guys, ties, and braces shall be installed according to the scaffold manufacturer's recommendations or at the closest horizontal member to the 4:1 height and be repeated vertically at locations of horizontal members every 20 feet (6.1 m) or less thereafter for scaffolds 3 feet (0.91 m) wide or less, and every 26 feet (7.9 m) or less thereafter for scaffolds greater than 3 feet (0.91 m) wide. The top guy, tie or brace of completed scaffolds shall be placed no further than the 4:1 height from the top. Such guys, ties and braces shall be installed at each end of the scaffold and at horizontal intervals not to exceed 30 feet (9.1 m) (measured from one end [not both] towards the other).

(iii) Ties, guys, braces, or outriggers shall be used to prevent the tipping of supported scaffolds in all circumstances where an eccentric load, such as a cantilevered work platform, is applied or is transmitted to the scaffold.

(2) Supported scaffold poles, legs, posts, frames, and uprights shall bear on base plates, mud sills or other adequate firm foundation.

(i) Footings shall be level, sound, rigid, and capable of supporting the loaded scaffold without settling or displacement.

(ii) Unstable objects shall not be used to support scaffolds or platform units.

(iii) Unstable objects shall not be used as working platforms.

(iv) Front-end loaders and similar pieces of equipment shall not be used to support scaffold platforms unless they have been specifically designed by the manufacturer for such use.

(v) Fork-lifts shall not be used to support scaffold platforms unless the entire platform is attached to the fork and the fork-lift is not moved horizontally while the platform is occupied.

(3) Supported scaffold poles, legs, posts, frames, and uprights shall be plumb and braced to prevent swaying and displacement.

(d) *Criteria for suspension scaffolds.* (1) All suspension scaffold support devices, such as outrigger beams, cornice hooks, parapet clamps, and similar devices, shall rest on surfaces capable of supporting at least 4 times the load imposed on them by the scaffold operating at the rated load of the hoist (or at least 1.5 times the load imposed on them by the scaffold at the stall capacity of the hoist, whichever is greater).

(2) Suspension scaffold outrigger beams, when used, shall be made of structural metal or equivalent strength material, and shall be restrained to prevent movement.

(3) The inboard ends of suspension scaffold outrigger beams shall be stabilized by bolts or other direct connections to the floor or roof deck, or they shall have their inboard ends stabilized by counterweights, except masons' multi-point adjustable suspension scaffold outrigger beams shall not be stabilized by counterweights.

(i) Before the scaffold is used, direct connections shall be evaluated by a competent person who shall confirm, based on the evaluation, that the supporting surfaces are capable of supporting the loads to be imposed. In addition, masons' multi-point adjustable suspension scaffold connections shall be designed by an engineer experienced in such scaffold design.

(ii) Counterweights shall be made of non-flowable material. Sand, gravel and similar materials that can be easily dislocated shall not be used as counterweights.

(iii) Only those items specifically designed as counterweights shall be used to counterweight scaffold systems. Construction materials such as, but not limited to, masonry units and rolls of roofing felt, shall not be used as counterweights.

(iv) Counterweights shall be secured by mechanical means to the outrigger beams to prevent accidental displacement.

(v) Counterweights shall not be removed from an outrigger beam until the scaffold is disassembled.

(vi) Outrigger beams which are not stabilized by bolts or other direct connections to the floor or roof deck shall be secured by tiebacks.

(vii) Tiebacks shall be equivalent in strength to the suspension ropes.

(viii) Outrigger beams shall be placed perpendicular to its bearing support (usually the face of the building or structure). However, where the employer can demonstrate that it is not possible to place an outrigger beam perpendicular to the face of the building or structure because of obstructions that cannot be moved, the outrigger beam may be placed at some other angle, provided opposing angle tiebacks are used.

(ix) Tiebacks shall be secured to a structurally sound anchorage on the building or structure. Sound anchorages include structural members, but do not include standpipes, vents, other piping systems, or electrical conduit.

(x) Tiebacks shall be installed perpendicular to the face of the building or structure, or opposing angle tiebacks shall be installed. Single tiebacks installed at an angle are prohibited.

(4) Suspension scaffold outrigger beams shall be:

(i) Provided with stop bolts or shackles at both ends;

(ii) Securely fastened together with the flanges turned out when channel iron beams are used in place of I-beams;

(iii) Installed with all bearing supports perpendicular to the beam center line;

(iv) Set and maintained with the web in a vertical position; and

(v) When an outrigger beam is used, the shackle or clevis with which the rope is attached to the outrigger beam shall be placed directly over the center line of the stirrup.

(5) Suspension scaffold support devices such as cornice hooks, roof hooks, roof irons, parapet clamps, or similar devices shall be:

(i) Made of steel, wrought iron, or materials of equivalent strength;

(ii) Supported by bearing blocks; and

(iii) Secured against movement by tiebacks installed at right angles to the face of the building or structure, or opposing angle tiebacks shall be installed and secured to a structurally sound point of anchorage on the building or structure. Sound points of anchorage include structural members, but do not include standpipes, vents, other piping systems, or electrical conduit.

(iv) Tiebacks shall be equivalent in strength to the hoisting rope.

(6) When winding drum hoists are used on a suspension scaffold, they shall contain not less than four wraps of the suspension rope at the lowest point of scaffold travel. When other types of hoists are used, the suspension ropes shall be long enough to allow the scaffold to be lowered to the level below without the rope end passing through

the hoist, or the rope end shall be configured or provided with means to prevent the end from passing through the hoist.

(7) The use of repaired wire rope as suspension rope is prohibited.

(8) Wire suspension ropes shall not be joined together except through the use of eye splice thimbles connected with shackles or coverplates and bolts.

(9) The load end of wire suspension ropes shall be equipped with proper size thimbles and secured by eyesplicing or equivalent means.

(10) Ropes shall be inspected for defects by a competent person prior to each workshift and after every occurrence which could affect a rope's integrity. Ropes shall be replaced if any of the following conditions exist:

(i) Any physical damage which impairs the function and strength of the rope.

(ii) Kinks that might impair the tracking or wrapping of rope around the drum(s) or sheave(s).

(iii) Six randomly distributed broken wires in one rope lay or three broken wires in one strand in one rope lay.

(iv) Abrasion, corrosion, scrubbing, flattening or peening causing loss of more than one-third of the original diameter of the outside wires.

(v) Heat damage caused by a torch or any damage caused by contact with electrical wires.

(vi) Evidence that the secondary brake has been activated during an overspeed condition and has engaged the suspension rope.

(11) Swaged attachments or spliced eyes on wire suspension ropes shall not be used unless they are made by the wire rope manufacturer or a qualified person.

(12) When wire rope clips are used on suspension scaffolds:

(i) There shall be a minimum of 3 wire rope clips installed, with the clips a minimum of 6 rope diameters apart;

(ii) Clips shall be installed according to the manufacturer's recommendations;

(iii) Clips shall be retightened to the manufacturer's recommendations after the initial loading;

(iv) Clips shall be inspected and retightened to the manufacturer's recommendations at the start of each workshift thereafter;

(v) U-bolt clips shall not be used at the point of suspension for any scaffold hoist;

(vi) When U-bolt clips are used, the U-bolt shall be placed over the dead end of the rope, and the saddle shall be placed over the live end of the rope.

(13) Suspension scaffold power-operated hoists and manual hoists shall be tested and listed by a qualified testing laboratory.

(14) Gasoline-powered equipment and hoists shall not be used on suspension scaffolds.

(15) Gears and brakes of power-operated hoists used on suspension scaffolds shall be enclosed.

(16) In addition to the normal operating brake, suspension scaffold power-operated hoists and manually operated hoists shall have a braking device or locking pawl which engages automatically when a hoist makes either of the following uncontrolled movements: an instantaneous change in momentum or an accelerated overspeed.

(17) Manually operated hoists shall require a positive crank force to descend.

(18) Two-point and multi-point suspension scaffolds shall be tied or otherwise secured to prevent them from swaying, as determined to be necessary based on an evaluation by a competent person. Window cleaners' anchors shall not be used for this purpose.

(19) Devices whose sole function is to provide emergency escape and rescue shall not be used as working platforms. This provision does not preclude the use of systems which are designed to function both as suspension scaffolds and emergency systems.

(e) *Access.* This paragraph applies to scaffold access for all employees. Access requirements for employees erecting or dismantling supported scaffolds are specifically addressed in paragraph (e)(9) of this section.

(1) When scaffold platforms are more than 2 feet (0.6 m) above or below a point of access, portable ladders, hook-on ladders, attachable ladders, stair towers (scaffold stairways/towers), stairway-type ladders (such as ladder stands), ramps, walkways, integral prefabricated scaffold access, or direct access from another scaffold, structure, personnel hoist, or similar surface shall be used. Crossbraces shall not be used as a means of access.

(2) Portable, hook-on, and attachable ladders (Additional requirements for the proper construction and use of portable ladders are contained in subpart X of this part—Stairways and Ladders):

(i) Portable, hook-on, and attachable ladders shall be positioned so as not to tip the scaffold;

(ii) Hook-on and attachable ladders shall be positioned so that their bottom rung is not more than 24 inches (61 cm) above the scaffold supporting level;

(iii) When hook-on and attachable ladders are used on a supported scaffold more than 35 feet (10.7 m) high, they shall have rest platforms at 35-foot (10.7 m) maximum vertical intervals.

(iv) Hook-on and attachable ladders shall be specifically designed for use with the type of scaffold used;

(v) Hook-on and attachable ladders shall have a minimum rung length of 11½ inches (29 cm); and

(vi) Hook-on and attachable ladders shall have uniformly spaced rungs with a maximum spacing between rungs of 16¾ inches.

(3) Stairway-type ladders shall:

(i) Be positioned such that their bottom step is not more than 24 inches (61 cm) above the scaffold supporting level;

(ii) Be provided with rest platforms at 12 foot (3.7 m) maximum vertical intervals;

(iii) Have a minimum step width of 16 inches (41 cm), except that mobile scaffold stairway-type ladders shall have a minimum step width of 11½ inches (30 cm); and

(iv) Have slip-resistant treads on all steps and landings.

(4) Stairtowers (scaffold stairway/towers) shall be positioned such that their bottom step is not more than 24 inches (61 cm.) above the scaffold supporting level.

(i) A stairrail consisting of a toprail and a midrail shall be provided on each side of each scaffold stairway.

(ii) The toprail of each stairrail system shall also be capable of serving as a handrail, unless a separate handrail is provided.

(iii) Handrails, and toprails that serve as handrails, shall provide an adequate handhold for employees grasping them to avoid falling.

(iv) Stairrail systems and handrails shall be surfaced to prevent injury to employees from punctures or lacerations, and to prevent snagging of clothing.

(v) The ends of stairrail systems and handrails shall be constructed so that they do not constitute a projection hazard.

(vi) Handrails, and toprails that are used as handrails, shall be at least 3 inches (7.6 cm) from other objects.

(vii) Stairrails shall be not less than 28 inches (71 cm) nor more than 37 inches (94 cm) from the upper surface of the stairrail to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(viii) A landing platform at least 18 inches (45.7 cm) wide by at least 18 inches (45.7 cm) long shall be provided at each level.

(ix) Each scaffold stairway shall be at least 18 inches (45.7 cm) wide between stairrails.

(x) Treads and landings shall have slip-resistant surfaces.

(xi) Stairways shall be installed between 40 degrees and 60 degrees from the horizontal.

(xii) Guardrails meeting the requirements of paragraph (g)(4) of this section shall be provided on the open sides and ends of each landing.

(xiii) Riser height shall be uniform, within ¼ inch, (0.6 cm) for each flight of stairs. Greater variations in riser height are allowed for the top and bottom steps of the entire system, not for each flight of stairs.

(xiv) Tread depth shall be uniform, within ¼ inch, for each flight of stairs.

(5) Ramps and walkways. (i) Ramps and walkways 6 feet (1.8 m) or more above lower levels shall have guardrail systems which comply with subpart M of this part—Fall Protection;

(ii) No ramp or walkway shall be inclined more than a slope of one (1) vertical to three (3) horizontal (20 degrees above the horizontal).

(iii) If the slope of a ramp or a walkway is steeper than one (1) vertical in eight (8) horizontal, the ramp or walkway shall have cleats not more than fourteen (14) inches (35 cm) apart which are securely fastened to the planks to provide footing.

(6) Integral prefabricated scaffold access frames shall:

(i) Be specifically designed and constructed for use as ladder rungs;

(ii) Have a rung length of at least 8 inches (20 cm);

(iii) Not be used as work platforms when rungs are less than 11½ inches in length, unless each affected employee uses fall protection, or a positioning device, which complies with § 1926.502;

(iv) Be uniformly spaced within each frame section;

(v) Be provided with rest platforms at 35-foot (10.7 m) maximum vertical intervals on all supported scaffolds more than 35 feet (10.7 m) high; and

(vi) Have a maximum spacing between rungs of 16¾ inches (43 cm). Non-uniform rung spacing caused by joining end frames together is allowed, provided the resulting spacing does not exceed 16¾ inches (43 cm).

(7) Steps and rungs of ladder and stairway type access shall line up vertically with each other between rest platforms.

(8) Direct access to or from another surface shall be used only when the scaffold is not more than 14 inches (36 cm) horizontally and not more than 24 inches (61 cm) vertically from the other surface.

(9) Effective September 2, 1997, access for employees erecting or dismantling supported scaffolds shall be in accordance with the following:

(i) The employer shall provide safe means of access for each employee erecting or dismantling a scaffold where the provision of safe access is feasible and does not create a greater hazard. The employer shall have a competent person determine whether it is feasible or would pose a greater hazard to provide, and have employees use a safe means of access. This determination shall be based on site conditions and the type of scaffold being erected or dismantled.

(ii) Hook-on or attachable ladders shall be installed as soon as scaffold erection has progressed to a point that permits safe installation and use.

(iii) When erecting or dismantling tubular welded frame scaffolds, (end) frames, with horizontal members that are parallel, level and are not more than 22 inches apart vertically may be used as climbing devices for access, provided they are erected in a manner that creates a usable ladder and provides good hand hold and foot space.

(iv) Cross braces on tubular welded frame scaffolds shall not be used as a means of access or egress.

(f) *Use.* (1) Scaffolds and scaffold components shall not be loaded in excess of their maximum intended loads or rated capacities, whichever is less.

(2) The use of shore or lean-to scaffolds is prohibited.

(3) Scaffolds and scaffold components shall be inspected for visible defects by a competent person before each work shift, and after any occurrence which could affect a scaffold's structural integrity.

(4) Any part of a scaffold damaged or weakened such that its strength is less than that required by paragraph (a) of this section shall be immediately repaired or replaced, braced to meet those provisions, or removed from service until repaired.

(5) Scaffolds shall not be moved horizontally while employees are on them, unless they have been designed by a registered professional engineer specifically for such movement or, for mobile scaffolds, where the provisions of § 1926.452(w) are followed.

(6) The clearance between scaffolds and power lines shall be as follows: Scaffolds shall not be erected, used, dismantled, altered, or moved such that they or any conductive material handled on them might come closer to exposed and energized power lines than as follows:

Insulated lines voltage	Minimum distance	Alternatives
Less than 300 volts	3 feet (0.9 M).	
More than 50 kv	10 feet (3.1 M) plus 4.0 inches (10 cm) for each 1 kv over 50 kv.	2 times the length of the line insulator, but never less than 10 feet (3.1 m).

Uninsulated lines voltage	Minimum distance	Alternatives
Less than 50 kv	10 feet (3.1 M).	
More than 50 kv	10 feet (3.1 M) plus 4.0 inches (10 cm) for each 1 kv over 50 kv.	2 times the length of the line insulator, but never less than 10 feet (3.1 m).

Exception to paragraph (b)(6): Scaffolds and materials may be closer to power lines than specified above where such clearance is necessary for performance of work, and only after the utility company, or electrical system operator, has been notified of the need to work closer and the utility company, or electrical system operator, has deenergized the lines, relocated the lines, or installed protective coverings to prevent accidental contact with the lines.

(7) Scaffolds shall be erected, moved, dismantled, or altered only under the supervision and direction of a competent person qualified in scaffold erection, moving, dismantling or alteration. Such activities shall be performed only by experienced and trained employees selected for such work by the competent person.

(8) Employees shall be prohibited from working on scaffolds covered with snow, ice, or other slippery material except as necessary for removal of such materials.

(9) Where swinging loads are being hoisted onto or near scaffolds such that the loads might contact the scaffold, tag lines or equivalent measures to control the loads shall be used.

(10) Suspension ropes supporting adjustable suspension scaffolds shall be of a diameter large enough to provide sufficient surface area for the functioning of brake and hoist mechanisms.

(11) Suspension ropes shall be shielded from heat-producing processes. When acids or other corrosive substances are used on a scaffold, the ropes shall be shielded, treated to protect against the corrosive substances, or shall be of a material that will not be damaged by the substance being used.

(12) Work on or from scaffolds is prohibited during storms or high winds unless a competent person has determined that it is safe for employees to be on the scaffold and those employees are protected by a personal fall arrest system or wind screens. Wind screens shall not be used unless the scaffold is secured against the anticipated wind forces imposed.

(13) Debris shall not be allowed to accumulate on platforms.

(14) Makeshift devices, such as but not limited to boxes and barrels, shall not be used on top of scaffold platforms to increase the working level height of employees.

(15) Ladders shall not be used on scaffolds to increase the working level height of employees, except on large area scaffolds where employers have satisfied the following criteria:

(i) When the ladder is placed against a structure which is not a part of the scaffold, the scaffold shall be secured against the sideways thrust exerted by the ladder;

(ii) The platform units shall be secured to the scaffold to prevent their movement;

(iii) The ladder legs shall be on the same platform or other means shall be provided to stabilize the ladder against unequal platform deflection, and

(iv) The ladder legs shall be secured to prevent them from slipping or being pushed off the platform.

(16) Platforms shall not deflect more than 1/60 of the span when loaded.

(17) To reduce the possibility of welding current arcing through the suspension wire rope when performing welding from suspended scaffolds, the following precautions shall be taken, as applicable:

(i) An insulated thimble shall be used to attach each suspension wire rope to its hanging support (such as cornice hook or outrigger). Excess suspension wire rope and any additional independent lines from grounding shall be insulated;

(ii) The suspension wire rope shall be covered with insulating material extending at least 4 feet (1.2 m) above the hoist. If there is a tail line below the hoist, it shall be insulated to prevent contact with the platform. The portion of the tail line that hangs free below the scaffold shall be guided or retained, or both, so that it does not become grounded;

(iii) Each hoist shall be covered with insulated protective covers;

(iv) In addition to a work lead attachment required by the welding process, a grounding conductor shall be connected from the scaffold to the structure. The size of this conductor shall be at least the size of the welding process work lead, and this conductor shall not be in series with the welding process or the work piece;

(v) If the scaffold grounding lead is disconnected at any time, the welding machine shall be shut off; and

(vi) An active welding rod or uninsulated welding lead shall not be allowed to contact the scaffold or its suspension system.

(g) *Fall protection.* (1) Each employee on a scaffold more than 10 feet (3.1 m) above a lower level shall be protected from falling to that lower level. Paragraphs (g)(1) (i) through (vii) of this section establish the types of fall protection to be provided to the employees on each type of scaffold. Paragraph (g)(2) of this section addresses fall protection for scaffold erectors and dismantlers.

Note to paragraph (g)(1): The fall protection requirements for employees installing suspension scaffold support systems on floors, roofs, and other elevated surfaces are set forth in subpart M of this part.

(i) Each employee on a boatswains' chair, catenary scaffold, float scaffold, needle beam scaffold, or ladder jack scaffold shall be protected by a personal fall arrest system;

(ii) Each employee on a single-point or two-point adjustable suspension scaffold shall be protected by both a personal fall arrest system and guardrail system;

(iii) Each employee on a crawling board (chicken ladder) shall be protected by a personal fall arrest system, a guardrail system (with minimum 200 pound toprail capacity), or by a three-fourth inch (1.9 cm) diameter grabline or equivalent handhold securely fastened beside each crawling board;

(iv) Each employee on a self-contained adjustable scaffold shall be protected by a guardrail system (with minimum 200 pound toprail capacity) when the platform is supported by the frame structure, and by both a personal fall arrest system and a guardrail system (with minimum 200 pound toprail capacity) when the platform is supported by ropes;

(v) Each employee on a walkway located within a scaffold shall be protected by a guardrail system (with minimum 200 pound toprail capacity) installed within 9½ inches (24.1 cm) of and along at least one side of the walkway.

(vi) Each employee performing overhand bricklaying operations from a supported scaffold shall be protected from falling from all open sides and ends of the scaffold (except at the side next to the wall being laid) by the use of a personal fall arrest system or guardrail system (with minimum 200 pound toprail capacity).

(vii) For all scaffolds not otherwise specified in paragraphs (g)(1)(i) through (g)(1)(vi) of this section, each employee shall be protected by the use of personal fall arrest systems or guardrail systems meeting the requirements of paragraph (g)(4) of this section.

(2) Effective September 2, 1997, the employer shall have a competent person determine the feasibility and safety of providing fall protection for employees erecting or dismantling supported scaffolds. Employers are required to provide fall protection for employees erecting or dismantling supported scaffolds where the installation and use of such protection is feasible and does not create a greater hazard.

(3) In addition to meeting the requirements of § 1926.502(d), personal fall arrest systems used on scaffolds shall be attached by lanyard to a vertical lifeline, horizontal lifeline, or scaffold structural member. Vertical lifelines shall not be used when overhead components, such as overhead protection or additional platform levels, are part of a single-point or two-point adjustable suspension scaffold.

(i) When vertical lifelines are used, they shall be fastened to a fixed safe point of anchorage, shall be independent of the scaffold, and shall be protected from sharp edges and abrasion. Safe points of anchorage include structural members of buildings, but do not include standpipes, vents, other piping systems, electrical conduit, outrigger beams, or counterweights.

(ii) When horizontal lifelines are used, they shall be secured to two or more structural members of the scaffold, or they may be looped around both suspension and independent

suspension lines (on scaffolds so equipped) above the hoist and brake attached to the end of the scaffold. Horizontal lifelines shall not be attached only to the suspension ropes.

(iii) When lanyards are connected to horizontal lifelines or structural members on a single-point or two-point adjustable suspension scaffold, the scaffold shall be equipped with additional independent support lines and automatic locking devices capable of stopping the fall of the scaffold in the event one or both of the suspension ropes fail. The independent support lines shall be equal in number and strength to the suspension ropes.

(iv) Vertical lifelines, independent support lines, and suspension ropes shall not be attached to each other, nor shall they be attached to or use the same point of anchorage, nor shall they be attached to the same point on the scaffold or personal fall arrest system.

(4) Guardrail systems installed to meet the requirements of this section shall comply with the following provisions (guardrail systems built in accordance with Appendix A to this subpart will be deemed to meet the requirements of paragraphs (g)(4) (vii), (viii), and (ix) of this section):

(i) Guardrail systems shall be installed along all open sides and ends of platforms. Guardrail systems shall be installed before the scaffold is released for use by employees other than erection/dismantling crews.

(ii) The top edge height of toprails or equivalent member on supported scaffolds manufactured or placed in service after January 1, 2000 shall be installed between 38 inches (0.97 m) and 45 inches (1.2 m) above the platform surface. The top edge height on supported scaffolds manufactured and placed in service before January 1, 2000, and on all suspended scaffolds where both a guardrail and a personal fall arrest system are required shall be between 36 inches (0.9 m) and 45 inches (1.2 m). When conditions warrant, the height of the top edge may exceed the 45-inch height, provided the guardrail system meets all other criteria of paragraph (g)(4).

(iii) When midrails, screens, mesh, intermediate vertical members, solid panels, or equivalent structural members are used, they shall be installed between the top edge of the guardrail system and the scaffold platform.

(iv) When midrails are used, they shall be installed at a height approximately midway between the top edge of the guardrail system and the platform surface.

(v) When screens and mesh are used, they shall extend from the top edge of the guardrail system to the scaffold platform, and along the entire opening between the supports.

(vi) When intermediate members (such as balusters or additional rails) are used, they shall not be more than 19 inches (48 cm) apart.

(vii) Each toprail or equivalent member of a guardrail system shall be capable of withstanding, without failure, a force applied in any downward or horizontal direction at any point along its top edge of at least 100 pounds (445 n) for guardrail systems installed on single-point adjustable suspension scaffolds or two-point adjustable suspension scaffolds, and at least 200 pounds (890 n) for guardrail systems installed on all other scaffolds.

(viii) When the loads specified in paragraph (g)(4)(vii) of this section are applied in a downward direction, the top edge shall not drop below the height above the platform surface that is prescribed in paragraph (g)(4)(ii) of this section.

(ix) Midrails, screens, mesh, intermediate vertical members, solid panels, and equivalent structural members of a guardrail system shall be capable of withstanding, without failure, a force applied in any downward or horizontal direction at any point along the midrail or other member of at least 75 pounds (333 n) for guardrail systems with a minimum 100 pound toprail capacity, and at least 150 pounds (666 n) for guardrail systems with a minimum 200 pound toprail capacity.

(x) Suspension scaffold hoists and non-walk-through stirrups may be used as end guardrails, if the space between the hoist or stirrup and the side guardrail or structure does not allow passage of an employee to the end of the scaffold.

(xi) Guardrails shall be surfaced to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing.

(xii) The ends of all rails shall not overhang the terminal posts except when such overhang does not constitute a projection hazard to employees.

(xiii) Steel or plastic banding shall not be used as a toprail or midrail.

(xiv) Manila or plastic (or other synthetic) rope being used for toprails or midrails shall be inspected by a competent person as frequently as necessary to ensure that it continues to meet the strength requirements of paragraph (g) of this section.

(xv) Crossbracing is acceptable in place of a midrail when the crossing point of two braces is between 20 inches (0.5 m) and 30 inches (0.8 m) above the work platform or as a toprail when the crossing point of two braces is between 38 inches (0.97 m) and 48 inches (1.3 m) above the work platform. The end points at each upright shall be no more than 48 inches (1.3 m) apart.

(h) *Falling object protection.* (1) In addition to wearing hardhats each employee on a scaffold shall be provided with additional protection from falling hand tools, debris, and other small objects through the installation of toeboards, screens, or guardrail systems, or through the erection of debris nets, catch platforms, or canopy structures that contain or deflect the falling objects. When the falling objects are too large, heavy or massive to be contained or deflected by any of the above-listed measures, the employer shall place such potential falling objects away from the edge of the surface from which they could fall and shall secure those materials as necessary to prevent their falling.

(2) Where there is a danger of tools, materials, or equipment falling from a scaffold and striking employees below, the following provisions apply:

(i) The area below the scaffold to which objects can fall shall be barricaded, and employees shall not be permitted to enter the hazard area; or

(ii) A toeboard shall be erected along the edge of platforms more than 10 feet (3.1 m) above lower levels for a distance sufficient to protect employees below, except on float (ship) scaffolds where an edging of ¾ × 1½ inch (2 × 4 cm) wood or equivalent may be used in lieu of toeboards;

(iii) Where tools, materials, or equipment are piled to a height higher than the top edge of the toeboard, paneling or screening extending from the toeboard or platform to the top of the guardrail shall be erected for a distance sufficient to protect employees below; or

(iv) A guardrail system shall be installed with openings small enough to prevent passage of potential falling objects; or

(v) A canopy structure, debris net, or catch platform strong enough to withstand the impact forces of the potential falling objects shall be erected over the employees below.

(3) Canopies, when used for falling object protection, shall comply with the following criteria:

(i) Canopies shall be installed between the falling object hazard and the employees.

(ii) When canopies are used on suspension scaffolds for falling object protection, the scaffold shall be equipped with additional independent

support lines equal in number to the number of points supported, and equivalent in strength to the strength of the suspension ropes.

(iii) Independent support lines and suspension ropes shall not be attached to the same points of anchorage.

(4) Where used, toeboards shall be:

(i) Capable of withstanding, without failure, a force of at least 50 pounds (222 n) applied in any downward or horizontal direction at any point along the toeboard (toeboards built in accordance with Appendix A to this subpart will be deemed to meet this requirement); and

(ii) At least three and one-half inches (9 cm) high from the top edge of the toeboard to the level of the walking/working surface. Toeboards shall be securely fastened in place at the outermost edge of the platform and have not more than ¼ inch (0.7 cm) clearance above the walking/working surface. Toeboards shall be solid or with openings not over one inch (2.5 cm) in the greatest dimension.

§ 1926.452 Additional requirements applicable to specific types of scaffolds.

In addition to the applicable requirements of § 1926.451, the following requirements apply to the specific types of scaffolds indicated. Scaffolds not specifically addressed by § 1926.452, such as but not limited to systems scaffolds, must meet the requirements of § 1926.451.

(a) *Pole scaffolds.* (1) When platforms are being moved to the next level, the existing platform shall be left undisturbed until the new bearers have been set in place and braced, prior to receiving the new platforms.

(2) Crossbracing shall be installed between the inner and outer sets of poles on double pole scaffolds.

(3) Diagonal bracing in both directions shall be installed across the entire inside face of double-pole scaffolds used to support loads equivalent to a uniformly distributed load of 50 pounds (222 kg) or more per square foot (929 square cm).

(4) Diagonal bracing in both directions shall be installed across the entire outside face of all double- and single-pole scaffolds.

(5) Runners and bearers shall be installed on edge.

(6) Bearers shall extend a minimum of 3 inches (7.6 cm) over the outside edges of runners.

(7) Runners shall extend over a minimum of two poles, and shall be supported by bearing blocks securely attached to the poles.

(8) Braces, bearers, and runners shall not be spliced between poles.

(9) Where wooden poles are spliced, the ends shall be squared and the upper section shall rest squarely on the lower section. Wood splice plates shall be provided on at least two adjacent sides, and shall extend at least 2 feet (0.6 m) on either side of the splice, overlap the abutted ends equally, and have at least the same cross-sectional areas as the pole. Splice plates of other materials of equivalent strength may be used.

(10) Pole scaffolds over 60 feet in height shall be designed by a registered professional engineer, and shall be constructed and loaded in accordance with that design. Non-mandatory Appendix A to this subpart contains examples of criteria that will enable an employer to comply with design and loading requirements for pole scaffolds under 60 feet in height.

(b) *Tube and coupler scaffolds.* (1) When platforms are being moved to the next level, the existing platform shall be left undisturbed until the new bearers have been set in place and braced prior to receiving the new platforms.

(2) Transverse bracing forming an ''X'' across the width of the scaffold shall be installed at the scaffold ends and at least at every third set of posts horizontally (measured from only one end) and every fourth runner vertically. Bracing shall extend diagonally from the inner or outer posts or runners upward to the next outer or inner posts or runners. Building ties shall be installed at the bearer levels between the transverse bracing and shall conform to the requirements of § 1926.451(c)(1).

(3) On straight run scaffolds, longitudinal bracing across the inner and outer rows of posts shall be installed diagonally in both directions, and shall extend from the base of the end posts upward to the top of the scaffold at approximately a 45 degree angle. On scaffolds whose length is greater than their height, such bracing shall be repeated beginning at least at every fifth post. On scaffolds whose length is less than their height, such bracing shall be installed from the base of the end posts upward to the opposite end posts, and then in alternating directions until reaching the top of the scaffold. Bracing shall be installed as close as possible to the intersection of the bearer and post or runner and post.

(4) Where conditions preclude the attachment of bracing to posts, bracing shall be attached to the runners as close to the post as possible.

(5) Bearers shall be installed transversely between posts, and when coupled to the posts, shall have the inboard coupler bear directly on the runner coupler. When the bearers are coupled to the runners, the couplers shall be as close to the posts as possible.

(6) Bearers shall extend beyond the posts and runners, and shall provide full contact with the coupler.

(7) Runners shall be installed along the length of the scaffold, located on both the inside and outside posts at level heights (when tube and coupler guardrails and midrails are used on outside posts, they may be used in lieu of outside runners).

(8) Runners shall be interlocked on straight runs to form continuous lengths, and shall be coupled to each post. The bottom runners and bearers shall be located as close to the base as possible.

(9) Couplers shall be of a structural metal, such as drop-forged steel, malleable iron, or structural grade aluminum. The use of gray cast iron is prohibited.

(10) Tube and coupler scaffolds over 125 feet in height shall be designed by a registered professional engineer, and shall be constructed and loaded in accordance with such design. Non-mandatory Appendix A to this subpart contains examples of criteria that will enable an employer to comply with design and loading requirements for tube and coupler scaffolds under 125 feet in height.

(c) *Fabricated frame scaffolds* (tubular welded frame scaffolds). (1) When moving platforms to the next level, the existing platform shall be left undisturbed until the new end frames have been set in place and braced prior to receiving the new platforms.

(2) Frames and panels shall be braced by cross, horizontal, or diagonal braces, or combination thereof, which secure vertical members together laterally. The cross braces shall be of such length as will automatically square and align vertical members so that the erected scaffold is always plumb, level, and square. All brace connections shall be secured.

(3) Frames and panels shall be joined together vertically by coupling or stacking pins or equivalent means.

(4) Where uplift can occur which would displace scaffold end frames or panels, the frames or panels shall be locked together vertically by pins or equivalent means.

(5) Brackets used to support cantilevered loads shall:

(i) Be seated with side-brackets parallel to the frames and end-brackets at 90 degrees to the frames;

(ii) Not be bent or twisted from these positions; and

(iii) Be used only to support personnel, unless the scaffold has been designed for other loads by a qualified

engineer and built to withstand the tipping forces caused by those other loads being placed on the bracket-supported section of the scaffold.

(6) Scaffolds over 125 feet (38.0 m) in height above their base plates shall be designed by a registered professional engineer, and shall be constructed and loaded in accordance with such design.

(d) *Plasterers', decorators', and large area scaffolds.* Scaffolds shall be constructed in accordance with paragraphs (a), (b), or (c) of this section, as appropriate.

(e) *Bricklayers' square scaffolds (squares).* (1) Scaffolds made of wood shall be reinforced with gussets on both sides of each corner.

(2) Diagonal braces shall be installed on all sides of each square.

(3) Diagonal braces shall be installed between squares on the rear and front sides of the scaffold, and shall extend from the bottom of each square to the top of the next square.

(4) Scaffolds shall not exceed three tiers in height, and shall be so constructed and arranged that one square rests directly above the other. The upper tiers shall stand on a continuous row of planks laid across the next lower tier, and shall be nailed down or otherwise secured to prevent displacement.

(f) *Horse scaffolds.* (1) Scaffolds shall not be constructed or arranged more than two tiers or 10 feet (3.0 m) in height, whichever is less.

(2) When horses are arranged in tiers, each horse shall be placed directly over the horse in the tier below.

(3) When horses are arranged in tiers, the legs of each horse shall be nailed down or otherwise secured to prevent displacement.

(4) When horses are arranged in tiers, each tier shall be crossbraced.

(g) *Form scaffolds and carpenters' bracket scaffolds.* (1) Each bracket, except those for wooden bracket-form scaffolds, shall be attached to the supporting formwork or structure by means of one or more of the following: nails; a metal stud attachment device; welding; hooking over a secured structural supporting member, with the form wales either bolted to the form or secured by snap ties or tie bolts extending through the form and securely anchored; or, for carpenters' bracket scaffolds only, by a bolt extending through to the opposite side of the structure's wall.

(2) Wooden bracket-form scaffolds shall be an integral part of the form panel.

(3) Folding type metal brackets, when extended for use, shall be either bolted or secured with a locking-type pin.

(h) *Roof bracket scaffolds.* (1) Scaffold brackets shall be constructed to fit the pitch of the roof and shall provide a level support for the platform.

(2) Brackets (including those provided with pointed metal projections) shall be anchored in place by nails unless it is impractical to use nails. When nails are not used, brackets shall be secured in place with first-grade manila rope of at least three-fourth inch (1.9 cm) diameter, or equivalent.

(i) *Outrigger scaffolds.* (1) The inboard end of outrigger beams, measured from the fulcrum point to the extreme point of anchorage, shall be not less than one and one-half times the outboard end in length.

(2) Outrigger beams fabricated in the shape of an I-beam or channel shall be placed so that the web section is vertical.

(3) The fulcrum point of outrigger beams shall rest on secure bearings at least 6 inches (15.2 cm) in each horizontal dimension.

(4) Outrigger beams shall be secured in place against movement, and shall be securely braced at the fulcrum point against tipping.

(5) The inboard ends of outrigger beams shall be securely anchored either by means of braced struts bearing against sills in contact with the overhead beams or ceiling, or by means of tension members secured to the floor joists underfoot, or by both.

(6) The entire supporting structure shall be securely braced to prevent any horizontal movement.

(7) To prevent their displacement, platform units shall be nailed, bolted, or otherwise secured to outriggers.

(8) Scaffolds and scaffold components shall be designed by a registered professional engineer and shall be constructed and loaded in accordance with such design.

(j) *Pump jack scaffolds.* (1) Pump jack brackets, braces, and accessories shall be fabricated from metal plates and angles. Each pump jack bracket shall have two positive gripping mechanisms to prevent any failure or slippage.

(2) Poles shall be secured to the structure by rigid triangular bracing or equivalent at the bottom, top, and other points as necessary. When the pump jack has to pass bracing already installed, an additional brace shall be installed approximately 4 feet (1.2 m) above the brace to be passed, and shall be left in place until the pump jack has been moved and the original brace reinstalled.

(3) When guardrails are used for fall protection, a workbench may be used as the toprail only if it meets all the requirements in paragraphs (g)(4) (ii), (vii), (viii), and (xiii) of § 1926.451.

(4) Work benches shall not be used as scaffold platforms.

(5) When poles are made of wood, the pole lumber shall be straight-grained, free of shakes, large loose or dead knots, and other defects which might impair strength.

(6) When wood poles are constructed of two continuous lengths, they shall be joined together with the seam parallel to the bracket.

(7) When two by fours are spliced to make a pole, mending plates shall be installed at all splices to develop the full strength of the member.

(k) *Ladder jack scaffolds.* (1) Platforms shall not exceed a height of 20 feet (6.1 m).

(2) All ladders used to support ladder jack scaffolds shall meet the requirements of subpart X of this part—Stairways and Ladders, except that job-made ladders shall not be used to support ladder jack scaffolds.

(3) The ladder jack shall be so designed and constructed that it will bear on the side rails and ladder rungs or on the ladder rungs alone. If bearing on rungs only, the bearing area shall include a length of at least 10 inches (25.4 cm) on each rung.

(4) Ladders used to support ladder jacks shall be placed, fastened, or equipped with devices to prevent slipping.

(5) Scaffold platforms shall not be bridged one to another.

(l) *Window jack scaffolds.* (1) Scaffolds shall be securely attached to the window opening.

(2) Scaffolds shall be used only for the purpose of working at the window opening through which the jack is placed.

(3) Window jacks shall not be used to support planks placed between one window jack and another, or for other elements of scaffolding.

(m) *Crawling boards (chicken ladders).* (1) Crawling boards shall extend from the roof peak to the eaves when used in connection with roof construction, repair, or maintenance.

(2) Crawling boards shall be secured to the roof by ridge hooks or by means that meet equivalent criteria (e.g., strength and durability).

(n) *Step, platform, and trestle ladder scaffolds.* (1) Scaffold platforms shall not be placed any higher than the second highest rung or step of the ladder supporting the platform.

(2) All ladders used in conjunction with step, platform and trestle ladder scaffolds shall meet the pertinent requirements of subpart X of this part—Stairways and Ladders, except that job-

made ladders shall not be used to support such scaffolds.

(3) Ladders used to support step, platform, and trestle ladder scaffolds shall be placed, fastened, or equipped with devices to prevent slipping.

(4) Scaffolds shall not be bridged one to another.

(o) *Single-point adjustable suspension scaffolds.* (1) When two single-point adjustable suspension scaffolds are combined to form a two-point adjustable suspension scaffold, the resulting two-point scaffold shall comply with the requirements for two-point adjustable suspension scaffolds in paragraph (p) of this section.

(2) The supporting rope between the scaffold and the suspension device shall be kept vertical unless all of the following conditions are met:

(i) The rigging has been designed by a qualified person, and

(ii) The scaffold is accessible to rescuers, and

(iii) The supporting rope is protected to ensure that it will not chafe at any point where a change in direction occurs, and

(iv) The scaffold is positioned so that swinging cannot bring the scaffold into contact with another surface.

(3) Boatswains' chair tackle shall consist of correct size ball bearings or bushed blocks containing safety hooks and properly ''eye-spliced'' minimum five-eighth (5/8) inch (1.6 cm) diameter first-grade manila rope, or other rope which will satisfy the criteria (e.g., strength and durability) of manila rope.

(4) Boatswains' chair seat slings shall be reeved through four corner holes in the seat; shall cross each other on the underside of the seat; and shall be rigged so as to prevent slippage which could cause an out-of-level condition.

(5) Boatswains' chair seat slings shall be a minimum of five-eight (5/8) inch (1.6 cm) diameter fiber, synthetic, or other rope which will satisfy the criteria (e.g., strength, slip resistance, durability, etc.) of first grade manila rope.

(6) When a heat-producing process such as gas or arc welding is being conducted, boatswains' chair seat slings shall be a minimum of three-eight (3/8) inch (1.0 cm) wire rope.

(7) Non-cross-laminated wood boatswains' chairs shall be reinforced on their underside by cleats securely fastened to prevent the board from splitting.

(p) *Two-point adjustable suspension scaffolds (swing stages).* The following requirements do not apply to two-point adjustable suspension scaffolds used as masons' or stonesetters' scaffolds. Such scaffolds are covered by paragraph (q) of this section.

(1) Platforms shall not be more than 36 inches (0.9 m) wide unless designed by a qualified person to prevent unstable conditions.

(2) The platform shall be securely fastened to hangers (stirrups) by U-bolts or by other means which satisfy the requirements of § 1926.451(a).

(3) The blocks for fiber or synthetic ropes shall consist of at least one double and one single block. The sheaves of all blocks shall fit the size of the rope used.

(4) Platforms shall be of the ladder-type, plank-type, beam-type, or light-metal type. Light metal-type platforms having a rated capacity of 750 pounds or less and platforms 40 feet (12.2 m) or less in length shall be tested and listed by a nationally recognized testing laboratory.

(5) Two-point scaffolds shall not be bridged or otherwise connected one to another during raising and lowering operations unless the bridge connections are articulated (attached), and the hoists properly sized.

(6) Passage may be made from one platform to another only when the platforms are at the same height, are abutting, and walk-through stirrups specifically designed for this purpose are used.

(q) *Multi-point adjustable suspension scaffolds, stonesetters' multi-point adjustable suspension scaffolds, and masons' multi-point adjustable suspension scaffolds.* (1) When two or more scaffolds are used they shall not be bridged one to another unless they are designed to be bridged, the bridge connections are articulated, and the hoists are properly sized.

(2) If bridges are not used, passage may be made from one platform to another only when the platforms are at the same height and are abutting.

(3) Scaffolds shall be suspended from metal outriggers, brackets, wire rope slings, hooks, or means that meet equivalent criteria (e.g., strength, durability).

(r) *Catenary scaffolds.* (1) No more than one platform shall be placed between consecutive vertical pickups, and no more than two platforms shall be used on a catenary scaffold.

(2) Platforms supported by wire ropes shall have hook-shaped stops on each end of the platforms to prevent them from slipping off the wire ropes. These hooks shall be so placed that they will prevent the platform from falling if one of the horizontal wire ropes breaks.

(3) Wire ropes shall not be tightened to the extent that the application of a scaffold load will overstress them.

(4) Wire ropes shall be continuous and without splices between anchors.

(s) *Float (ship) scaffolds.* (1) The platform shall be supported by a minimum of two bearers, each of which shall project a minimum of 6 inches (15.2 cm) beyond the platform on both sides. Each bearer shall be securely fastened to the platform.

(2) Rope connections shall be such that the platform cannot shift or slip.

(3) When only two ropes are used with each float:

(i) They shall be arranged so as to provide four ends which are securely fastened to overhead supports.

(ii) Each supporting rope shall be hitched around one end of the bearer and pass under the platform to the other end of the bearer where it is hitched again, leaving sufficient rope at each end for the supporting ties.

(t) *Interior hung scaffolds.* (1) Scaffolds shall be suspended only from the roof structure or other structural member such as ceiling beams.

(2) Overhead supporting members (roof structure, ceiling beams, or other structural members) shall be inspected and checked for strength before the scaffold is erected.

(3) Suspension ropes and cables shall be connected to the overhead supporting members by shackles, clips, thimbles, or other means that meet equivalent criteria (e.g., strength, durability).

(u) *Needle beam scaffolds.* (1) Scaffold support beams shall be installed on edge.

(2) Ropes or hangers shall be used for supports, except that one end of a needle beam scaffold may be supported by a permanent structural member.

(3) The ropes shall be securely attached to the needle beams.

(4) The support connection shall be arranged so as to prevent the needle beam from rolling or becoming displaced.

(5) Platform units shall be securely attached to the needle beams by bolts or equivalent means. Cleats and overhang are not considered to be adequate means of attachment.

(v) *Multi-level suspended scaffolds.* (1) Scaffolds shall be equipped with additional independent support lines, equal in number to the number of points supported, and of equivalent strength to the suspension ropes, and rigged to support the scaffold in the event the suspension rope(s) fail.

(2) Independent support lines and suspension ropes shall not be attached to the same points of anchorage.

(3) Supports for platforms shall be attached directly to the support stirrup and not to any other platform.

(w) *Mobile scaffolds.* (1) Scaffolds shall be braced by cross, horizontal, or

diagonal braces, or combination thereof, to prevent racking or collapse of the scaffold and to secure vertical members together laterally so as to automatically square and align the vertical members. Scaffolds shall be plumb, level, and squared. All brace connections shall be secured.

(i) Scaffolds constructed of tube and coupler components shall also comply with the requirements of paragraph (b) of this section;

(ii) Scaffolds constructed of fabricated frame components shall also comply with the requirements of paragraph (c) of this section.

(2) Scaffold casters and wheels shall be locked with positive wheel and/or wheel and swivel locks, or equivalent means, to prevent movement of the scaffold while the scaffold is used in a stationary manner.

(3) Manual force used to move the scaffold shall be applied as close to the base as practicable, but not more than 5 feet (1.5 m) above the supporting surface.

(4) Power systems used to propel mobile scaffolds shall be designed for such use. Forklifts, trucks, similar motor vehicles or add-on motors shall not be used to propel scaffolds unless the scaffold is designed for such propulsion systems.

(5) Scaffolds shall be stabilized to prevent tipping during movement.

(6) Employees shall not be allowed to ride on scaffolds unless the following conditions exist:

(i) The surface on which the scaffold is being moved is within 3 degrees of level, and free of pits, holes, and obstructions;

(ii) The height to base width ratio of the scaffold during movement is two to one or less, unless the scaffold is designed and constructed to meet or exceed nationally recognized stability test requirements such as those listed in paragraph (x) of Appendix A to this subpart (ANSI/SIA A92.5 and A92.6);

(iii) Outrigger frames, when used, are installed on both sides of the scaffold;

(iv) When power systems are used, the propelling force is applied directly to the wheels, and does not produce a speed in excess of 1 foot per second (.3 mps); and

(v) No employee is on any part of the scaffold which extends outward beyond the wheels, casters, or other supports.

(7) Platforms shall not extend outward beyond the base supports of the scaffold unless outrigger frames or equivalent devices are used to ensure stability.

(8) Where leveling of the scaffold is necessary, screw jacks or equivalent means shall be used.

(9) Caster stems and wheel stems shall be pinned or otherwise secured in scaffold legs or adjustment screws.

(10) Before a scaffold is moved, each employee on the scaffold shall be made aware of the move.

(x) *Repair bracket scaffolds.* (1) Brackets shall be secured in place by at least one wire rope at least ½ inch (1.27 cm) in diameter.

(2) Each bracket shall be attached to the securing wire rope (or ropes) by a positive locking device capable of preventing the unintentional detachment of the bracket from the rope, or by equivalent means.

(3) Each bracket, at the contact point between the supporting structure and the bottom of the bracket, shall be provided with a shoe (heel block or foot) capable of preventing the lateral movement of the bracket.

(4) Platforms shall be secured to the brackets in a manner that will prevent the separation of the platforms from the brackets and the movement of the platforms or the brackets on a completed scaffold.

(5) When a wire rope is placed around the structure in order to provide a safe anchorage for personal fall arrest systems used by employees erecting or dismantling scaffolds, the wire rope shall meet the requirements of subpart M of this part, but shall be at least 5/16 inch (0.8 cm) in diameter.

(6) Each wire rope used for securing brackets in place or as an anchorage for personal fall arrest systems shall be protected from damage due to contact with edges, corners, protrusions, or other discontinuities of the supporting structure or scaffold components.

(7) Tensioning of each wire rope used for securing brackets in place or as an anchorage for personal fall arrest systems shall be by means of a turnbuckle at least 1 inch (2.54 cm) in diameter, or by equivalent means.

(8) Each turnbuckle shall be connected to the other end of its rope by use of an eyesplice thimble of a size appropriate to the turnbuckle to which it is attached.

(9) U-bolt wire rope clips shall not be used on any wire rope used to secure brackets or to serve as an anchor for personal fall arrest systems.

(10) The employer shall ensure that materials shall not be dropped to the outside of the supporting structure.

(11) Scaffold erection shall progress in only one direction around any structure.

(y) *Stilts.* Stilts, when used, shall be used in accordance with the following requirements:

(1) An employee may wear stilts on a scaffold only if it is a large area scaffold.

(2) When an employee is using stilts on a large area scaffold where a guardrail system is used to provide fall protection, the guardrail system shall be increased in height by an amount equal to the height of the stilts being used by the employee.

(3) Surfaces on which stilts are used shall be flat and free of pits, holes and obstructions, such as debris, as well as other tripping and falling hazards.

(4) Stilts shall be properly maintained. Any alteration of the original equipment shall be approved by the manufacturer.

§ 1926.453 Aerial lifts.

(a) *General requirements.* (1) Unless otherwise provided in this section, aerial lifts acquired for use on or after January 22, 1973 shall be designed and constructed in conformance with the applicable requirements of the American National Standards for ''Vehicle Mounted Elevating and Rotating Work Platforms,'' ANSI A92.2–1969, including appendix. Aerial lifts acquired before January 22, 1973 which do not meet the requirements of ANSI A92.2–1969, may not be used after January 1, 1976, unless they shall have been modified so as to conform with the applicable design and construction requirements of ANSI A92.2–1969. Aerial lifts include the following types of vehicle-mounted aerial devices used to elevate personnel to job-sites above ground:

(i) Extensible boom platforms;

(ii) Aerial ladders;

(iii) Articulating boom platforms;

(iv) Vertical towers; and

(v) A combination of any such devices. Aerial equipment may be made of metal, wood, fiberglass reinforced plastic (FRP), or other material; may be powered or manually operated; and are deemed to be aerial lifts whether or not they are capable of rotating about a substantially vertical axis.

(2) Aerial lifts may be ''field modified'' for uses other than those intended by the manufacturer provided the modification has been certified in writing by the manufacturer or by any other equivalent entity, such as a nationally recognized testing laboratory, to be in conformity with all applicable provisions of ANSI A92.2–1969 and this section and to be at least as safe as the equipment was before modification.

(b) *Specific requirements.* (1) *Ladder trucks and tower trucks.* Aerial ladders shall be secured in the lower traveling position by the locking device on top of the truck cab, and the manually operated device at the base of the ladder before the truck is moved for highway travel.

(2) *Extensible and articulating boom platforms.* (i) Lift controls shall be tested each day prior to use to determine that such controls are in safe working condition.

(ii) Only authorized persons shall operate an aerial lift.

(iii) Belting off to an adjacent pole, structure, or equipment while working from an aerial lift shall not be permitted.

(iv) Employees shall always stand firmly on the floor of the basket, and shall not sit or climb on the edge of the basket or use planks, ladders, or other devices for a work position.

(v) A body belt shall be worn and a lanyard attached to the boom or basket when working from an aerial lift.

(vi) Boom and basket load limits specified by the manufacturer shall not be exceeded.

(vii) The brakes shall be set and when outriggers are used, they shall be positioned on pads or a solid surface. Wheel chocks shall be installed before using an aerial lift on an incline, provided they can be safely installed.

(viii) An aerial lift truck shall not be moved when the boom is elevated in a working position with men in the basket, except for equipment which is specifically designed for this type of operation in accordance with the provisions of paragraphs (a) (1) and (2) of this section.

(ix) Articulating boom and extensible boom platforms, primarily designed as personnel carriers, shall have both platform (upper) and lower controls. Upper controls shall be in or beside the platform within easy reach of the operator. Lower controls shall provide for overriding the upper controls. Controls shall be plainly marked as to their function. Lower level controls shall not be operated unless permission has been obtained from the employee in the lift, except in case of emergency.

(x) Climbers shall not be worn while performing work from an aerial lift.

(xi) The insulated portion of an aerial lift shall not be altered in any manner that might reduce its insulating value.

(xii) Before moving an aerial lift for travel, the boom(s) shall be inspected to see that it is properly cradled and outriggers are in stowed position except as provided in paragraph (b)(2)(viii) of this section.

(3) *Electrical tests.* All electrical tests shall conform to the requirements of ANSI A92.2–1969 section 5. However equivalent d.c.; voltage tests may be used in lieu of the a.c. voltage specified in A92.2–1969; d.c. voltage tests which are approved by the equipment manufacturer or equivalent entity shall be considered an equivalent test for the purpose of this paragraph (b)(3).

(4) *Bursting safety factor.* The provisions of the American National Standards Institute standard ANSI A92.2–1969, section 4.9 Bursting Safety Factor shall apply to all critical hydraulic and pneumatic components. Critical components are those in which a failure would result in a free fall or free rotation of the boom. All noncritical components shall have a bursting safety factor of at least 2 to 1.

(5) *Welding standards.* All welding shall conform to the following standards as applicable:

(i) Standard Qualification Procedure, AWS B3.0–41.

(ii) Recommended Practices for Automotive Welding Design, AWS D8.4–61.

(iii) Standard Qualification of Welding Procedures and Welders for Piping and Tubing, AWS D10.9–69.

(iv) Specifications for Welding Highway and Railway Bridges, AWS D2.0–69.

Note to § 1926.453: Non-mandatory Appendix C to this subpart lists examples of national consensus standards that are considered to provide employee protection equivalent to that provided through the application of ANSI A92.2–1969, where appropriate. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute. Copies may be inspected at the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room N2634, Washington, DC or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 1926.454 Training requirements.

This section supplements and clarifies the requirements of § 1926.21(b)(2) as these relate to the hazards of work on scaffolds.

(a) The employer shall have each employee who performs work while on a scaffold trained by a person qualified in the subject matter to recognize the hazards associated with the type of scaffold being used and to understand the procedures to control or minimize those hazards. The training shall include the following areas, as applicable:

(1) The nature of any electrical hazards, fall hazards and falling object hazards in the work area;

(2) The correct procedures for dealing with electrical hazards and for erecting, maintaining, and disassembling the fall protection systems and falling object protection systems being used;

(3) The proper use of the scaffold, and the proper handling of materials on the scaffold;

(4) The maximum intended load and the load-carrying capacities of the scaffolds used; and

(5) Any other pertinent requirements of this subpart.

(b) The employer shall have each employee who is involved in erecting, disassembling, moving, operating, repairing, maintaining, or inspecting a scaffold trained by a competent person to recognize any hazards associated with the work in question. The training shall include the following topics, as applicable:

(1) The nature of scaffold hazards;

(2) The correct procedures for erecting, disassembling, moving, operating, repairing, inspecting, and maintaining the type of scaffold in question;

(3) The design criteria, maximum intended load-carrying capacity and intended use of the scaffold;

(4) Any other pertinent requirements of this subpart.

(c) When the employer has reason to believe that an employee lacks the skill or understanding needed for safe work involving the erection, use or dismantling of scaffolds, the employer shall retrain each such employee so that the requisite proficiency is regained. Retraining is required in at least the following situations:

(1) Where changes at the worksite present a hazard about which an employee has not been previously trained; or

(2) Where changes in the types of scaffolds, fall protection, falling object protection, or other equipment present a hazard about which an employee has not been previously trained; or

(3) Where inadequacies in an affected employee's work involving scaffolds indicate that the employee has not retained the requisite proficiency.

Non-Mandatory Appendices

(Non-mandatory) Appendix A to Subpart L—Scaffold Specifications

This Appendix provides non-mandatory guidelines to assist employers in complying with the requirements of subpart L of this part. An employer may use these guidelines and tables as a starting point for designing scaffold systems. However, the guidelines do not provide all the information necessary to build a complete system, and the employer is still responsible for designing and assembling these components in such a way that the completed system will meet the requirements of § 1926.451(a). Scaffold components which are not selected and loaded in accordance with this Appendix, and components for which no specific guidelines or tables are given in this Appendix (e.g., joints, ties, components for wood pole scaffolds more than 60 feet in height, components for heavy-duty horse

scaffolds, components made with other materials, and components with other dimensions, etc.) must be designed and constructed in accordance with the capacity requirements of § 1926.451(a), and loaded in accordance with § 1926.451(d)(1).

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(o) Single-point adjustable suspension scaffolds.
(p) Two-point adjustable suspension scaffolds.
(q)(1) Stonesetters' multi-point adjustable suspension scaffolds.
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(r) Catenary scaffolds.
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(v) Multi-level suspension scaffolds.
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(y) Stilts.
(z) Tank builders' scaffolds.

1. General Guidelines and Tables

(a) The following tables, and the tables in Part 2—Specific guidelines and tables, assume that all load-carrying timber members (except planks) of the scaffold are a minimum of 1,500 lb-f/in^2 (stress grade) construction grade lumber. All dimensions are nominal sizes as provided in the American Softwood Lumber Standards, dated January 1970, except that, where rough sizes are noted, only rough or undressed lumber of the size specified will satisfy minimum requirements.

(b) Solid sawn wood used as scaffold planks shall be selected for such use following the grading rules established by a recognized lumber grading association or by an independent lumber grading inspection agency. Such planks shall be identified by the grade stamp of such association or agency. The association or agency and the grading rules under which the wood is graded shall be certified by the Board of Review, American Lumber Standard Committee, as set forth in the American Softwood Lumber Standard of the U.S. Department of Commerce.

(i) Allowable spans shall be determined in compliance with the National Design Specification for Wood Construction published by the National Forest Products Association; paragraph 5 of ANSI A10.8–1988 Scaffolding-Safety Requirements published by the American National Standards Institute; or for 2 x 10 inch (nominal) or 2 x 9 inch (rough) solid sawn wood planks, as shown in the following table:

Maximum intended nominal load (lb/ft^2)	Maximum permissible span using full thickness undressed lumber (ft)	Maximum permissible span using nominal thickness lumber (ft)
25	10	8
50	8	6
75	6	

(ii) The maximum permissible span for 1¼ × 9-inch or wider wood plank of full thickness with a maximum intended load of 50 lb/ft.^{2} shall be 4 feet.

(c) Fabricated planks and platforms may be used in lieu of solid sawn wood planks. Maximum spans for such units shall be as recommended by the manufacturer based on the maximum intended load being calculated as follows:

Rated load capacity	Intended load
Light-duty	• 25 pounds per square foot applied uniformly over the entire span area.
Medium-duty	• 50 pounds per square foot applied uniformly over the entire span area.
Heavy-duty	• 75 pounds per square foot applied uniformly over the entire span area.
One-person	• 250 pounds placed at the center of the span (total 250 pounds).
Two-person	• 250 pounds placed 18 inches to the left and right of the center of the span (total 500 pounds).
Three-person	• 250 pounds placed at the center of the span and 250 pounds placed 18 inches to the left and right of the center of the span (total 750 pounds).

Note: Platform units used to make scaffold platforms intended for light-duty use shall be capable of supporting at least 25 pounds per square foot applied uniformly over the entire unit-span area, or a 250-pound point load placed on the unit at the center of the span, whichever load produces the greater shear force.

(d) Guardrails shall be as follows:

(i) Toprails shall be equivalent in strength to 2 inch by 4 inch lumber; or
1¼ inch × ⅛ inch structural angle iron; or
1 inch × .070 inch wall steel tubing; or
1.990 inch × .058 inch wall aluminum tubing.

(ii) Midrails shall be equivalent in strength to 1 inch by 6 inch lumber; or
1¼ inch × 1¼ inch × ⅛ inch structural angle iron; or
1 inch × .070 inch wall steel tubing; or
1.990 inch × .058 inch wall aluminum tubing.

(iii) Toeboards shall be equivalent in strength to 1 inch by 4 inch lumber; or
1¼ inch × 1¼ inch structural angle iron; or
1 inch × .070 inch wall steel tubing; or
1.990 inch × .058 inch wall aluminum tubing.

(iv) Posts shall be equivalent in strength to 2 inch by 4 inch lumber; or
1¼ inch × 1¼ inch × ⅛ structural angle iron; or
1 inch × .070 inch wall steel tubing; or
1.990 inch × .058 inch wall aluminum tubing.

(v) Distance between posts shall not exceed 8 feet.

(e) Overhead protection shall consist of 2 inch nominal planking laid tight, or ¾-inch plywood.

(f) Screen installed between toeboards and midrails or toprails shall consist of No. 18 gauge U.S. Standard wire one inch mesh.

2. Specific guidelines and tables.

(a) Pole Scaffolds.

SINGLE POLE WOOD POLE SCAFFOLDS

	Light duty up to 20 feet high	Light duty up to 60 feet high	Medium duty up to 60 feet high	Heavy duty up to 60 feet high
Maximum intended load (lbs/ft^2)	25	25	50	75
Poles or uprights	2×4 in	4×4 in	4×4 in	4×6 in.
Maximum pole spacing (longitudinal)	6 feet	10 feet	8 feet	6 feet
Maximum pole spacing (transverse)	5 feet	5 feet	5 feet	5 feet

SINGLE POLE WOOD POLE SCAFFOLDS—Continued

	Light duty up to 20 feet high	Light duty up to 60 feet high	Medium duty up to 60 feet high	Heavy duty up to 60 feet high
Runners	1×4 in	1¼×9 in	2×10 in	2×10 in.
Bearers and maximum spacing of bearers:				
3 feet	2×4 in	2×4 in	2×10 in. or 3×4 in	2×10 in. or 3×5 in.
5 feet	2×6 in. or 3×4 in	2×6 in. or 3×4 in. (rough).	2×10 in. or 3×4 in	2×10 in. or 3×5 in.
6 feet			2×10 in. or 3×4 in	2×10 in. or 3×5 in.
8 feet			2×10 in. or 3×4 in	
Planking	1¼×9 in	2×10 in	2×10 in	2×10 in.
Maximum vertical spacing of horizontal members.	7 feet	9 feet	7 feet	6 ft. 6 in.
Bracing horizontal	1×4 in	1×4 in	1×6 in. or 1¼×4 in	2×4 in.
Bracing diagonal	1×4 in	1×4 in	1×4 in	2×4 in.
Tie-ins	1×4 in	1×4 in	1×4 in	1×4 in.

Note: All members except planking are used on edge. All wood bearers shall be reinforced with 3/16×2 inch steel strip, or the equivalent, secured to the lower edges for the entire length of the bearer.

INDEPENDENT WOOD POLE SCAFFOLDS

	Light duty up to 20 feet high	Light duty up to 60 feet high	Medium duty up to 60 feet high	Heavy duty up to 60 feet high
Maximum intended load	25 lbs/ft²	25 lbs/ft²	50 lbs/ft²	75 lbs/ft².
Poles or uprights	2×4 in	4×4 in	4×4 in	4×4 in.
Maximum pole spacing (longitudinal)	6 feet	10 feet	8 feet	6 feet.
Maximum (transverse)	6 feet	10 feet	8 feet	8 feet.
Runners	1¼×4 in	1¼×9 in	2×10 in	2×10 in.
Bearers and maximum spacing of bearers:				
3 feet	2×4 in	2×4 in	2×10 in	2×10 in. (rough).
6 feet	2×6 in. or 3×4 in	2×10 in. (rough) or 3×8 in.	2×10 in	2×10 in. (rough).
8 feet	2×6 in. or 3×4 in	2×10 in. (rough) or 3×8 in.	2×10 in	
10 feet	2×6 in. or 3×4 in	2×10 in.— (rough) or 3×3 in.		
Planking	1¼×9 in	2×10 in	2×10 in	2×10 in.
Maximum vertical spacing of horizontal members.	7 feet	7 feet	6 feet	6 feet.
Bracing horizontal	1×4 in	1×4 in	1×6 in. or 1¼×4 in	2×4 in.
Bracing diagonal	1×4 in	1×4 in	1×4 in	2×4 in.
Tie-ins	1×4 in	1×4 in	1×4 in	1×4 in.

Note: All members except planking are used on edge. All wood bearers shall be reinforced with 3/16×2 inch steel strip, or the equivalent, secured to the lower edges for the entire length of the bearer.

(b) Tube and coupler scaffolds.

MINIMUM SIZE OF MEMBERS

	Light duty	Medium duty	Heavy duty
Maximum intended load	25 lbs/ft²	50 lbs/ft²	75 lbs/ft².
Posts, runners and braces	Nominal 2 in. (1.90 inches) OD steel tube or pipe.	Nominal 2 in. (1.90 inches) OD steel tube or pipe.	Nominal 2 in. (1.90 inches) OD steel tube or pipe.
Bearers	Nominal 2 in. (1.90 inches) OD steel tube or pipe and a maximum post spacing of 4 ft.×10 ft..	Nominal 2 in. (1.90 inches) OD steel tube or pipe and a maximum post spacing of 4 ft.×7 ft. or. Nominal 2½ in. (2.375 in.). OD steel tube or pipe and a maximum post spacing of 6 ft.×8 ft.*.	Nominal 2½ in. (2.375 in.). OD steel tube or pipe and a maximum post spacing of 6 ft.×6 ft.
Maximum runner spacing vertically	6 ft. 6 in	6 ft. 6 in	6 ft. 6 in.

*Bearers shall be installed in the direction of the shorter dimension.

Note: Longitudinal diagonal bracing shall be installed at an angle of 45° (±5°).

MAXIMUM NUMBER OF PLANKED LEVELS

	Maximum number of additional planked levels			Maximum height of scaffold (in feet)
	Light duty	Medium duty	Heavy duty	
Number of Working Levels:				
1	16	11	6	125
2	11	1	0	125
3	6	0	0	125
4	1	0	0	125

(c) *Fabricated frame scaffolds.* Because of their prefabricated nature, no additional guidelines or tables for these scaffolds are being adopted in this Appendix.

(d) *Plasterers', decorators', and large area scaffolds.* The guidelines for pole scaffolds or tube and coupler scaffolds (Appendix A (a) and (b)) may be applied.

(e) *Bricklayers' square scaffolds.*

Maximum intended load: 50 lb/ft.²*
Maximum width: 5 ft.
Maximum height: 5 ft.
Gussets: 1 × 6 in.
Braces: 1 × 8 in.
Legs: 2 × 6 in.
Bearers (horizontal members): 2 × 6 in.

(f) Horse scaffolds.

Maximum intended load (light duty): 25 lb/ft.² **
Maximum intended load (medium duty): 50 lb/ft.² **
Horizontal members or bearers:
Light duty: 2 × 4 in.
Medium duty: 3 × 4 in.
Legs: 2 × 4 in.
Longitudinal brace between legs: 1 × 6 in.
Gusset brace at top of legs: 1 × 8 in.
Half diagonal braces: 2 × 4 in.

(g) *Form scaffolds and carpenters' bracket scaffolds.*

(1) Brackets shall consist of a triangular-shaped frame made of wood with a cross-section not less than 2 inches by 3 inches, or of 1¼ inch × 1¼ inch × ⅛ inch structural angle iron.

(2) Bolts used to attach brackets to structures shall not be less than ⅝ inches in diameter.

(3) Maximum bracket spacing shall be 8 feet on centers.

(4) No more than two employees shall occupy any given 8 feet of a bracket or form scaffold at any one time. Tools and materials shall not exceed 75 pounds in addition to the occupancy.

(5) Wooden figure-four scaffolds:

Maximum intended load: 25 lb/ft.²
Uprights: 2 × 4 in. or 2 × 6 in.
Bearers (two): 1 × 6 in.
Braces: 1 × 6 in.
Maximum length of bearers (unsupported): 3 ft. 6 in.

(i) Outrigger bearers shall consist of two pieces of 1 × 6 inch lumber nailed on opposite sides of the vertical support.

(ii) Bearers for wood figure-four brackets shall project not more than 3 feet 6 inches from the outside of the form support, and shall be braced and secured to prevent tipping or turning. The knee or angle brace shall intersect the bearer at least 3 feet from the form at an angle of approximately 45 degrees, and the lower end shall be nailed to a vertical support.

(6) Metal bracket scaffolds:

Maximum intended load: 25 lb/ft.²
Uprights: 2 × 4 inch
Bearers: As designed.
Braces: As designed.

(7) Wood bracket scaffolds:

Maximum intended load: 25 lb/ft.²
Uprights: 2 × 4 in or 2 × 6 in
Bearers: 2 × 6 in
Maximum scaffold width: 3 ft 6 in
Braces: 1 × 6 in

(h) *Roof bracket scaffolds.* No specific guidelines or tables are given.

(i) *Outrigger scaffolds (single level).* No specific guidelines or tables are given.

(j) *Pump jack scaffolds.* Wood poles shall not exceed 30 feet in height. Maximum intended load—500 lbs between poles; applied at the center of the span. Not more than two employees shall be on a pump jack scaffold at one time between any two supports. When 2 × 4's are spliced together to make a 4 × 4 inch wood pole, they shall be spliced with ''10 penny'' common nails no more than 12 inches center to center, staggered uniformly from the opposite outside edges.

(k) *Ladder jack scaffolds.* Maximum intended load—25 lb/ft². However, not more than two employees shall occupy any platform at any one time. Maximum span between supports shall be 8 feet.

(l) *Window jack scaffolds.* Not more than one employee shall occupy a window jack scaffold at any one time.

(m) *Crawling boards (chicken ladders).* Crawling boards shall be not less than 10 inches wide and 1 inch thick, with cleats having a minimum 1 × 1½ inch cross-sectional area. The cleats shall be equal in length to the width of the board and spaced at equal intervals not to exceed 24 inches.

(n) *Step, platform, and trestle ladder scaffolds.* No additional guidelines or tables are given.

(o) *Single-point adjustable suspension scaffolds.* Maximum intended load—250 lbs. Wood seats for boatswains' chairs shall be not less than 1 inch thick if made of non-laminated wood, or ⅝ inches thick if made of marine quality plywood.

(p) *Two-point adjustable suspension scaffolds.* (1) In addition to direct connections to buildings (except window cleaners' anchors) acceptable ways to prevent scaffold sway include angulated roping and static lines. Angulated roping is a system of platform suspension in which the upper wire rope sheaves or suspension points are closer to the plane of the building face than the corresponding attachment points on the platform, thus causing the platform to press against the face of the building. Static lines are separate ropes secured at their top and bottom ends closer to the plane of the building face than the outermost edge of the platform. By drawing the static line taut, the platform is drawn against the face of the building.

(2) On suspension scaffolds designed for a working load of 500 pounds, no more than two employees shall be permitted on the scaffold at one time. On suspension scaffolds with a working load of 750 pounds, no more than three employees shall be permitted on the scaffold at one time.

(3) Ladder-type platforms. The side stringer shall be of clear straight-grained spruce. The rungs shall be of straight-grained oak, ash, or hickory, at least 1⅛ inches in diameter, with ⅞ inch tenons mortised into the side stringers at least ⅞ inch. The stringers shall be tied together with tie rods not less than ¼ inch in diameter, passing through the stringers and riveted up tight against washers on both ends. The flooring strips shall be spaced not more than ⅝ inch apart, except at the side rails where the space may be 1 inch. Ladder-type platforms shall be constructed in accordance with the following table:

* The squares shall be set not more than 8 feet apart for light duty scaffolds and not more than 5 feet apart for medium duty scaffolds.

** Horses shall be spaced not more than 8 feet apart for light duty loads, and not more than 5 feet apart for medium duty loads.

SCHEDULE FOR LADDER-TYPE PLATFORMS

Length of Platform	12 feet	14 & 16 feet	18 & 20 feet.
Side stringers, minimum cross section (finished sizes):			
At ends	1¾ × 2¾ in	1¾ × 2¾ in	1¾ × 3 in.
At middle	1¾ × 3¾ in	1¾ × 3¾ in	1¾ × 4 in.
Reinforcing strip (minimum)	A ⅛ × ⅞ inch steel reinforcing strip shall be attached to the side or underside, full length.		
Rungs	Rungs shall be 1⅛ inch minimum diameter with at least ⅞ inch in diameter tenons, and the maximum spacing shall be 12 inches to center.		
Tie rods:			
Number (minimum)	3	4	4
Diameter (minimum)	¼ inch	¼ inch	¼ inch
Flooring, minimum finished size	½ × 2¾ in	½ × 2¾ in	½ × 2¾ in.

SCHEDULE FOR LADDER-TYPE PLATFORMS

Length of Platform	22 & 24 ft	28 & 30 ft.
Side stringers, minimum cross section (finished sizes):		
At ends	1¾×3 in	1¾ × 3½ in.
At middle	1¾ × 4¼ in	1¾ × 5 in.
Reinforcing strip (minimum)	A ⅛ × ⅞-inch steel reinforcing strip shall be attached to the side or underside, full length.	
Rungs	Rungs shall be 1⅛ inch minimum diameter with at least ⅞ inch in diameter tenons, and the maximum spacing shall be 12 inches to center. Tie rods.	
Number (minimum)	5	6.
Diameter (minimum)	¼ in	¼ in.
Flooring, minimum finished size	½ × 2¾ in	½ × 2¾ in.

(4) Plank-Type Platforms. Plank-type platforms shall be composed of not less than nominal 2 × 8 inch unspliced planks, connected together on the underside with cleats at intervals not exceeding 4 feet, starting 6 inches from each end. A bar or other effective means shall be securely fastened to the platform at each end to prevent the platform from slipping off the hanger. The span between hangers for plank-type platforms shall not exceed 10 feet.

(5) Beam-Type Platforms. Beam platforms shall have side stringers of lumber not less than 2 × 6 inches set on edge. The span between hangers shall not exceed 12 feet when beam platforms are used. The flooring shall be supported on 2 × 6 inch cross beams, laid flat and set into the upper edge of the stringers with a snug fit, at intervals of not more than 4 feet, securely nailed to the cross beams. Floor-boards shall not be spaced more than ½ inch apart.

(q)(1) *Multi-point adjustable suspension scaffolds and stonesetters' multi-point adjustable suspension scaffolds.* No specific guidelines or tables are given for these scaffolds.

(q)(2) *Masons' multi-point adjustable suspension scaffolds.* Maximum intended load—50 lb/ft². Each outrigger beam shall be at least a standard 7 inch, 15.3 pound steel I-beam, at least 15 feet long. Such beams shall not project more than 6 feet 6 inches beyond the bearing point. Where the overhang exceeds 6 feet 6 inches, outrigger beams shall be composed of stronger beams or multiple beams.

(r) *Catenary scaffolds.* (1) Maximum intended load—500 lbs.

(2) Not more than two employees shall be permitted on the scaffold at one time.

(3) Maximum capacity of come-along shall be 2,000 lbs.

(4) Vertical pickups shall be spaced not more than 50 feet apart.

(5) Ropes shall be equivalent in strength to at least ½ inch (1.3 cm) diameter improved plow steel wire rope.

(s) *Float (ship) scaffolds.* (1) Maximum intended load—750 lbs.

(2) Platforms shall be made of ¾ inch plywood, equivalent in rating to American Plywood Association Grade B–B, Group I, Exterior.

(3) Bearers shall be made from 2×4 inch, or 1×10 inch rough lumber. They shall be free of knots and other flaws.

(4) Ropes shall be equivalent in strength to at least 1 inch (2.5 cm) diameter first grade manila rope.

(t) *Interior hung scaffolds.*

Bearers (use on edge): 2×10 in.
Maximum intended load: Maximum span
25 lb/ft.²: 10 ft.
50 lb/ft.²: 10 ft.
75 lb/ft.²: 7 ft.

(u) *Needle beam scaffolds.*

Maximum intended load: 25 lb/ft.²
Beams: 4×6 in.
Maximum platform span: 8 ft.
Maximum beam span: 10 ft.

(1) Ropes shall be attached to the needle beams by a scaffold hitch or an eye splice. The loose end of the rope shall be tied by a bowline knot or by a round turn and a half hitch.

(2) Ropes shall be equivalent in strength to at least 1 inch (2.5 cm) diameter first grade manila rope.

(v) *Multi-level suspension scaffolds.* No additional guidelines or tables are being given for these scaffolds.

(w) *Mobile Scaffolds.* Stability test as described in the ANSI A92 series documents, as appropriate for the type of scaffold, can be used to establish stability for the purpose of § 1926.452(w)(6).

(x) *Repair bracket scaffolds.* No additional guidelines or tables are being given for these scaffolds.

(y) *Stilts.* No specific guidelines or tables are given.

(z) *Tank builder's scaffold.*

(1) The maximum distance between brackets to which scaffolding and guardrail supports are attached shall be no more than 10 feet 6 inches.

(2) Not more than three employees shall occupy a 10 feet 6 inch span of scaffold planking at any time.

(3) A taut wire or synthetic rope supported on the scaffold brackets shall be installed at the scaffold plank level between the innermost edge of the scaffold platform and the curved plate structure of the tank shell to serve as a safety line in lieu of an inner guardrail assembly where the space between the scaffold platform and the tank exceeds 12 inches (30.48 cm). In the event the open space on either side of the rope exceeds 12 inches (30.48 cm), a second wire or synthetic rope appropriately placed, or guardrails in accordance with § 1926.451(e)(4), shall be installed in order to reduce that open space to less than 12 inches (30.48 cm).

(4) Scaffold planks of rough full-dimensioned 2-inch (5.1 cm)×12-inch (30.5 cm) Douglas Fir or Southern Yellow Pine of Select Structural Grade shall be used. Douglas Fir planks shall have a fiber stress of at least 1900 lb/in² (130,929 n/cm²) and a modulus of elasticity of at least 1,900,000 lb/in² (130,929,000 n/cm²), while Yellow Pine planks shall have a fiber stress of at least 2500 lb/in² (172,275 n/cm²) and a modulus of elasticity of at least 2,000,000 lb/in² (137,820,000 n/cm²).

(5) Guardrails shall be constructed of a taut wire or synthetic rope, and shall be supported by angle irons attached to brackets welded to the steel plates. These guardrails shall comply with § 1926.451(e)(4). Guardrail supports shall be located at no greater than 10 feet 6 inch intervals.

Non-Mandatory Appendix B to Subpart L—Criteria for Determining the Feasibility of Providing Safe Access and Fall Protection for Scaffold Erectors and Dismantlers

[Reserved]

Non-Mandatory Appendix C to Subpart L—List of National Consensus Standards

ANSI/SIA A92.2–1990 *Vehicle-Mounted Elevating and Rotating Aerial Devices*
ANSI/SIA A92.3–1990 *Manually Propelled Elevating Aerial Platforms*
ANSI/SIA A92.5–1990 *Boom Supported Elevating Work Platforms*
ANSI/SIA A92.6–1990 *Self-Propelled Elevating Work Platforms*
ANSI/SIA A92.7–1990 *Airline Ground Support Vehicle-Mounted Vertical Lift Devices*
ANSI/SIA A92.8–1993 *Vehicle-Mounted Bridge Inspection and Maintenance Devices*
ANSI/SIA A92.9–1993 *Mast-Climbing Work Platforms*

Non-Mandatory Appendix D to Subpart L—List of Training Topics for Scaffold Erectors and Dismantlers

This Appendix D is provided to serve as a guide to assist employers when evaluating the training needs of employees erecting or dismantling supported scaffolds.

The Agency believes that employees erecting or dismantling scaffolds should be trained in the following topics:

- *General Overview of Scaffolding*
  - regulations and standards
  - erection/dismantling planning
  - PPE and proper procedures
  - fall protection
  - materials handling
  - access
  - working platforms
  - foundations
  - guys, ties and braces
- *Tubular Welded Frame Scaffolds*
  - specific regulations and standards
  - components
  - parts inspection
  - erection/dismantling planning
  - guys, ties and braces
  - fall protection
  - general safety
  - access and platforms
  - erection/dismantling procedures
  - rolling scaffold assembly
  - putlogs
- *Tube and Clamp Scaffolds*
  - specific regulations and standards
  - components
  - parts inspection
  - erection/dismantling planning
  - guys, ties and braces
  - fall protection
  - general safety
  - access and platforms
  - erection/dismantling procedures
  - buttresses, cantilevers, & bridges
- *System Scaffolds*
  - specific regulations and standards
  - components
  - parts inspection
  - erection/dismantling planning
  - guys, ties and braces
  - fall protection
  - general safety
  - access and platforms
  - erection/dismantling procedures
  - buttresses, cantilevers, & bridges

Scaffold erectors and dismantlers should all receive the general overview, and, in addition, specific training for the type of supported scaffold being erected or dismantled.

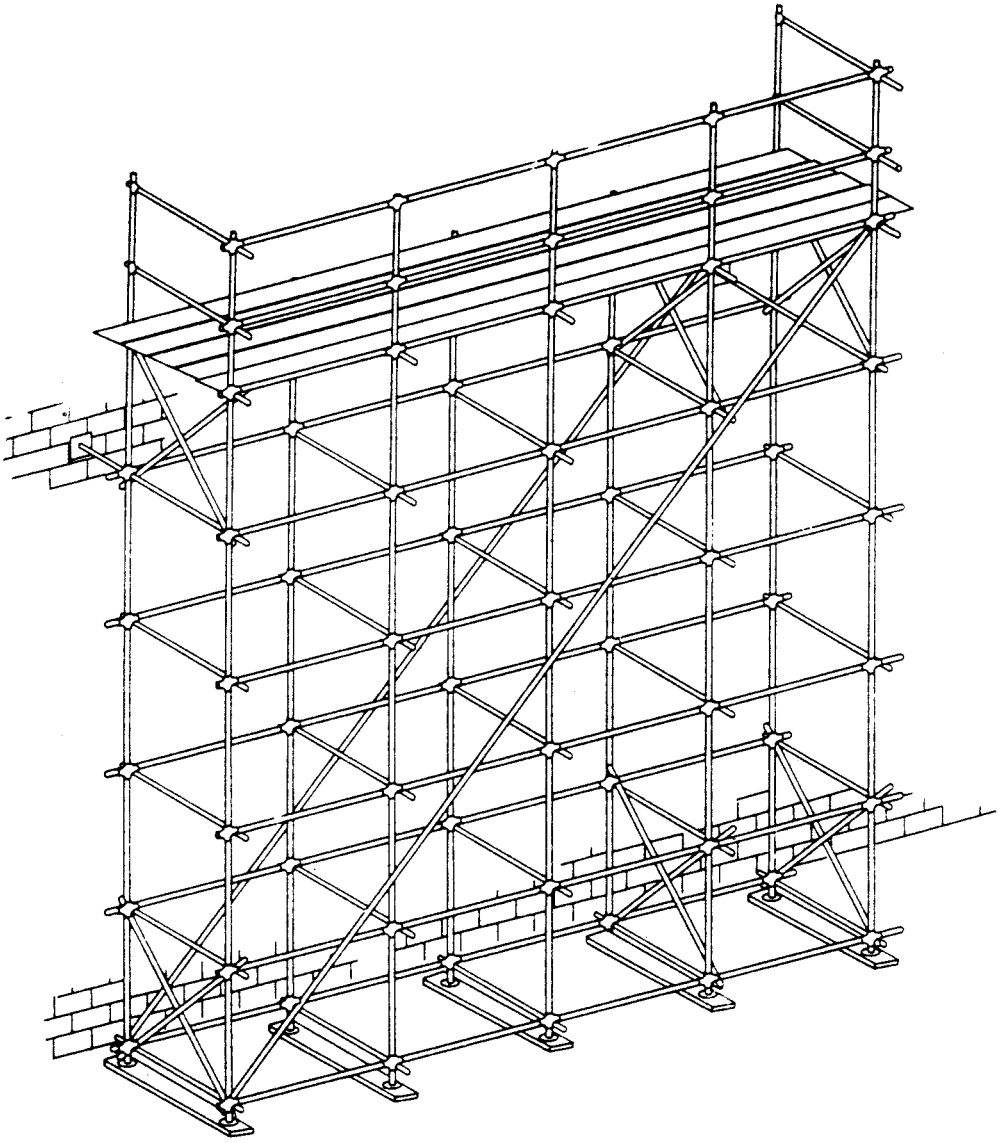
(Non-mandatory) Appendix E to Subpart L—Drawings and Illustrations

This Appendix provides drawings of particular types of scaffolds and scaffold components, and graphic illustrations of bracing patterns and tie spacing patterns.

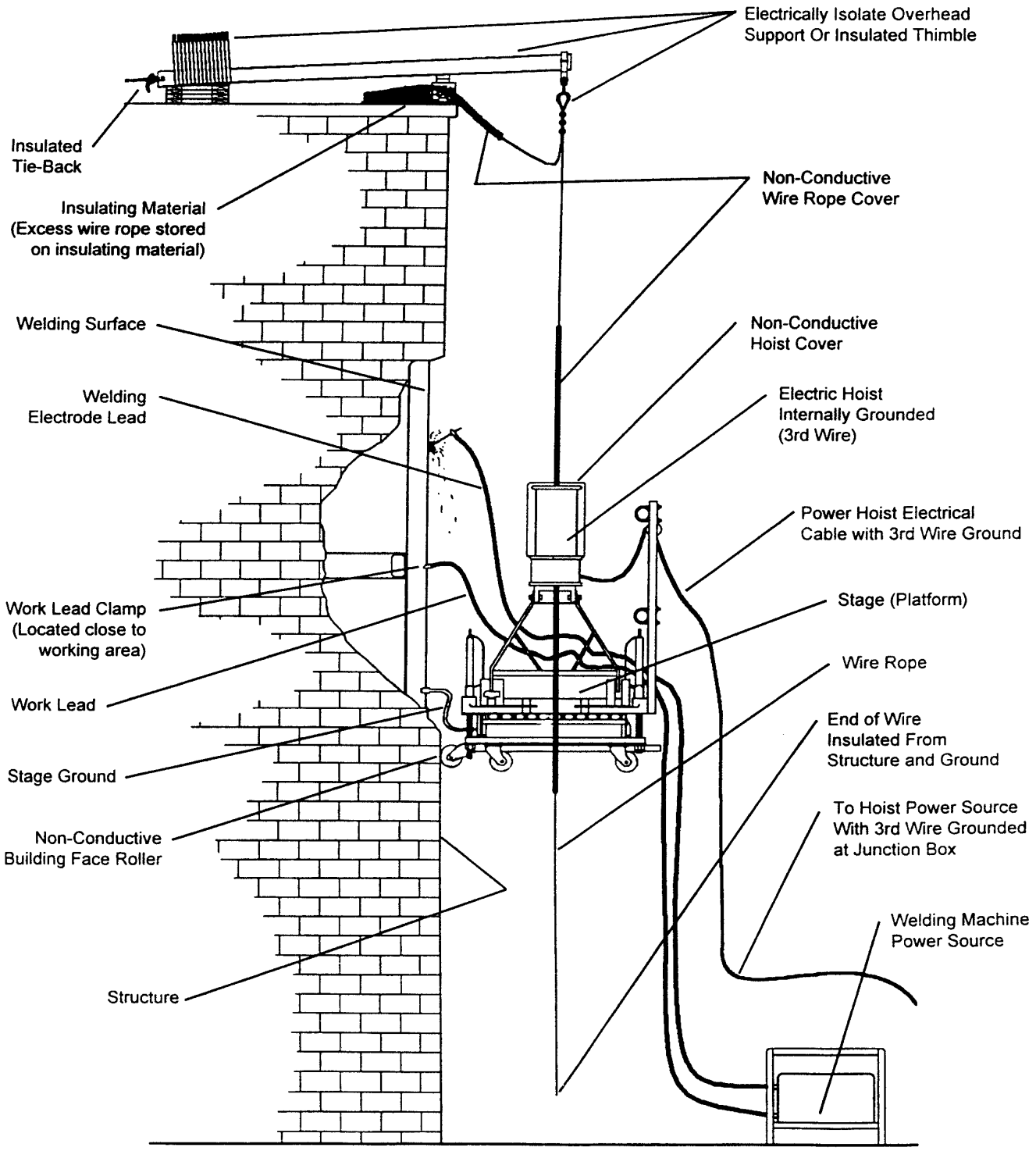
This Appendix is intended to provide visual guidance to assist the user in complying with the requirements of subpart L, part 1926.

BILLING CODE 4510–26–P

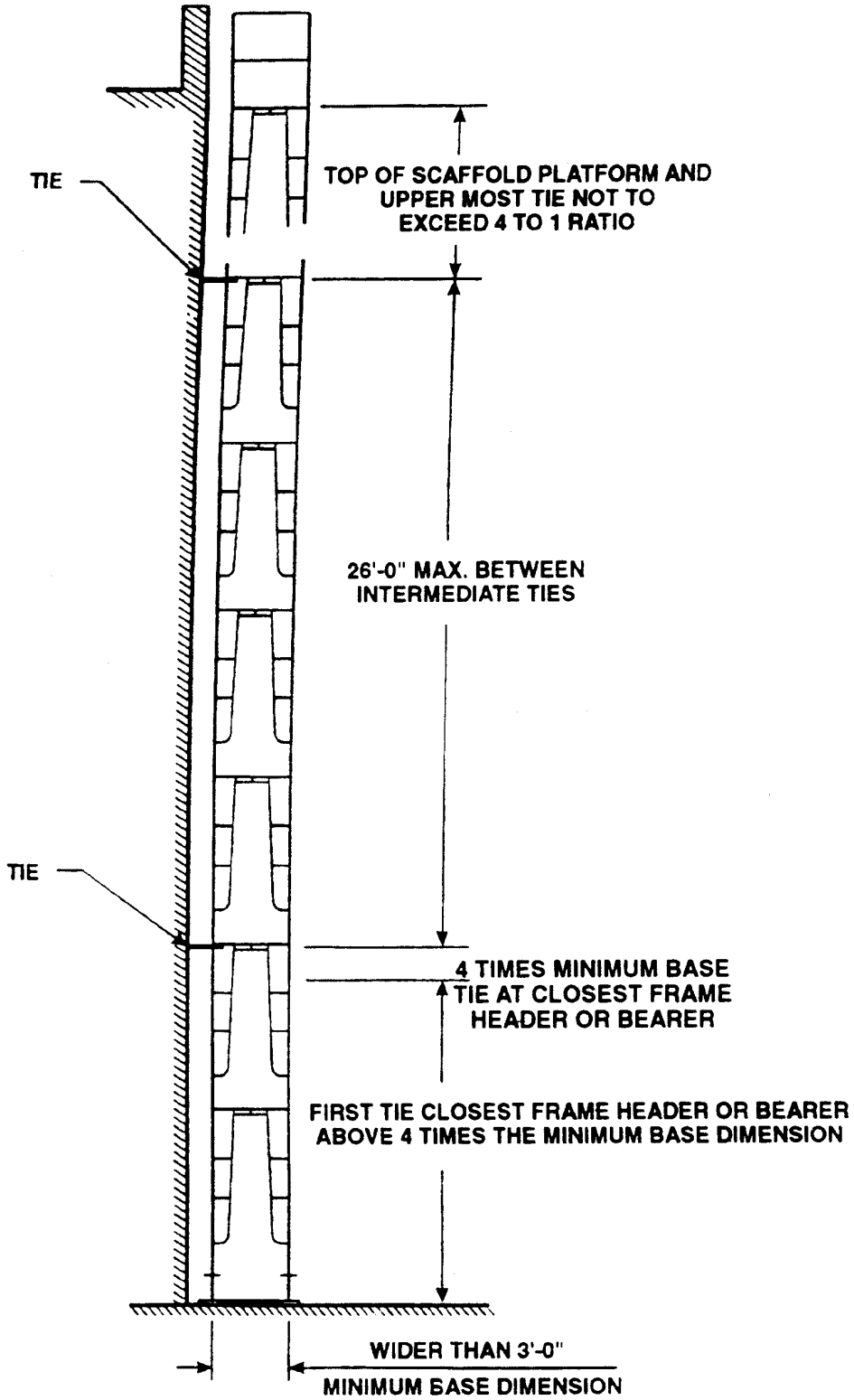
BRACING – TUBE & COUPLER SCAFFOLDS



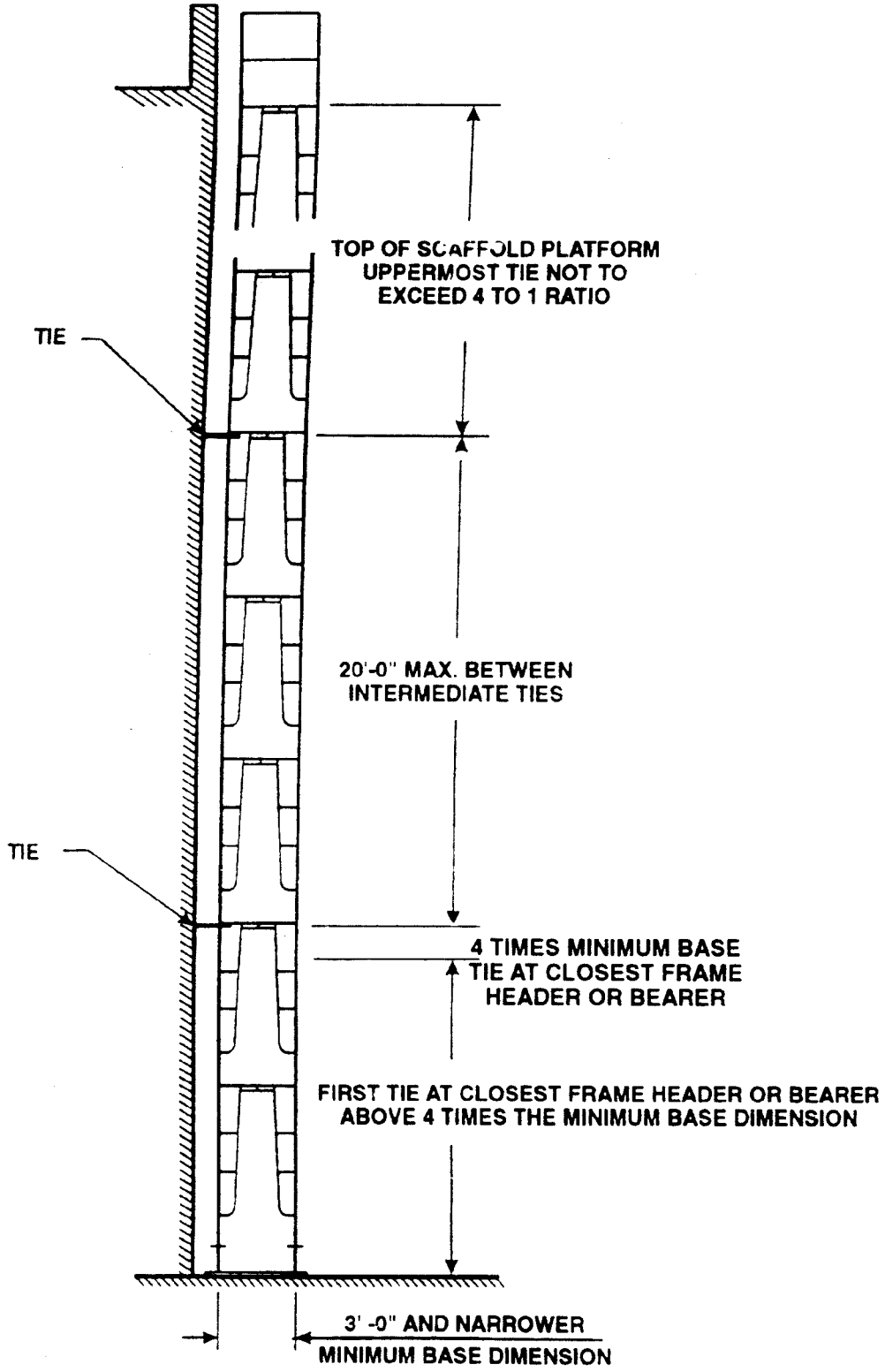
SUSPENDED SCAFFOLD PLATFORM WELDING PRECAUTIONS



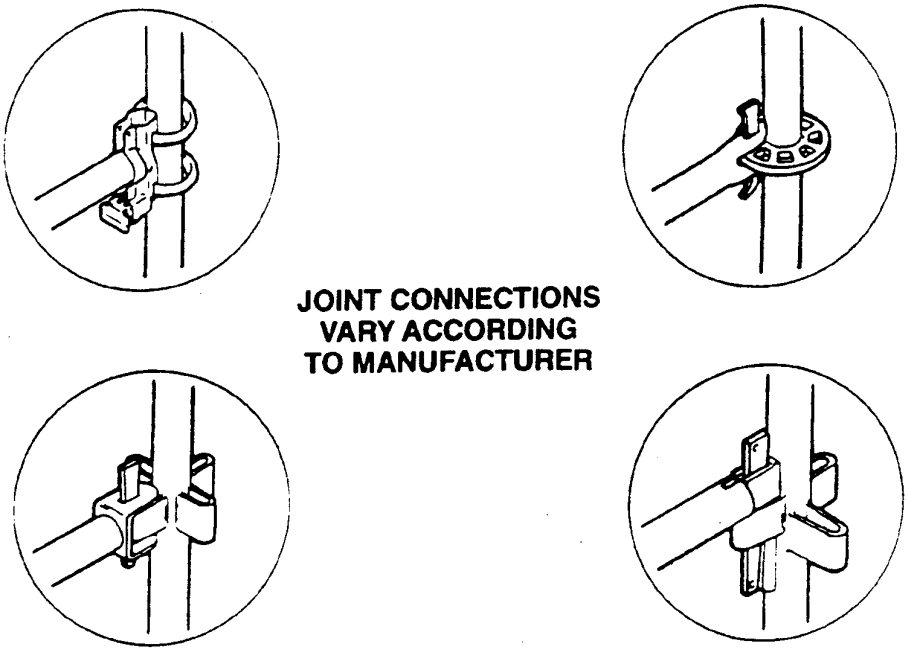
MAXIMUM VERTICAL TIE SPACING
WIDER THAN 3'-0" BASES

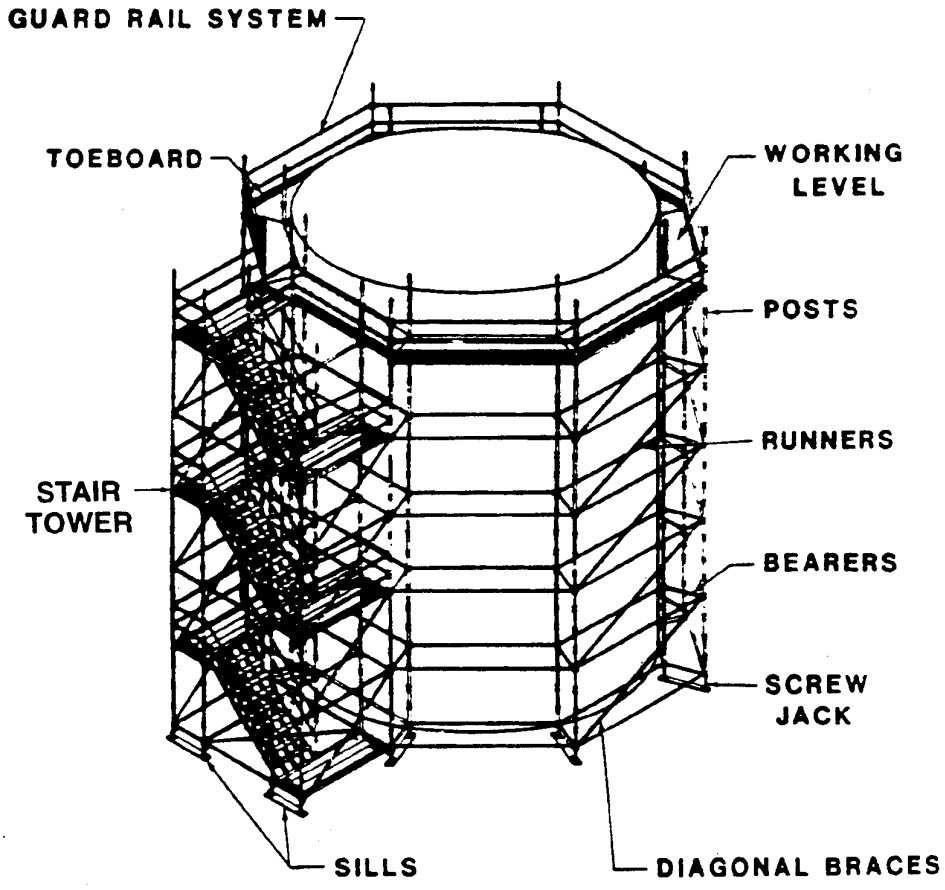


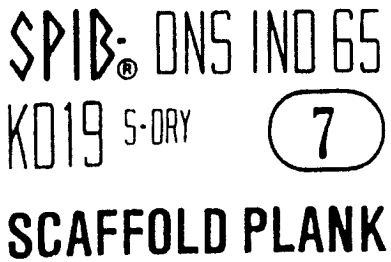
MAXIMUM VERTICAL TIE SPACING
3'- 0" AND NARROWER BASES



SYSTEM SCAFFOLD



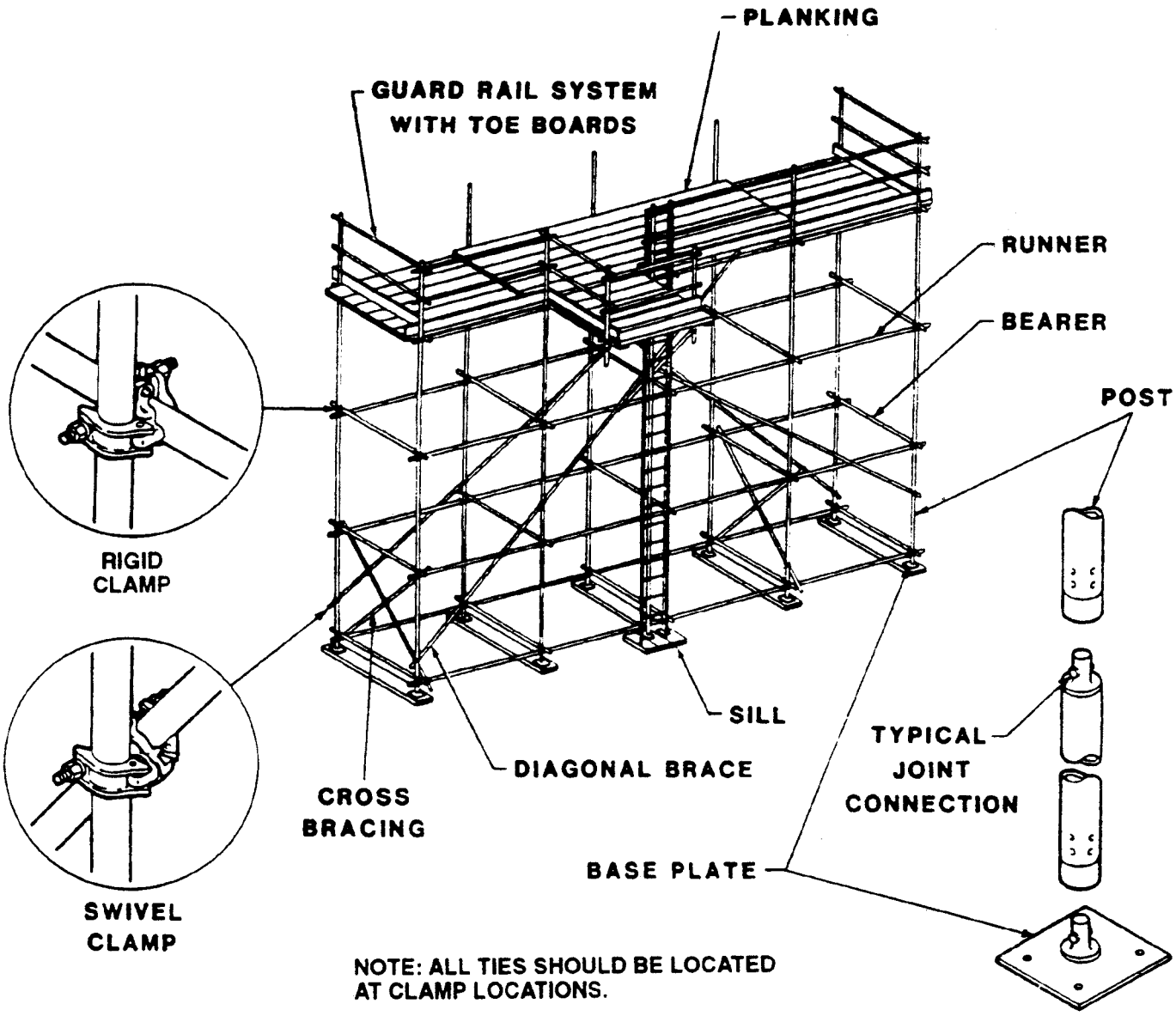




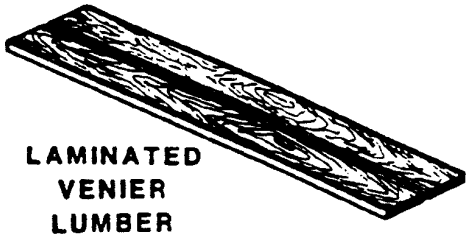
Grade stamp courtesy of Southern Pine Inspection Bureau

Grade stamp courtesy of West Coast Lumber Inspection Bureau

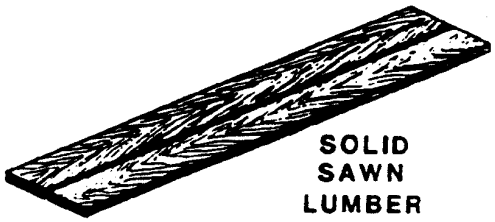
TUBE and COUPLER SCAFFOLD



SCAFFOLDING WORK SURFACES

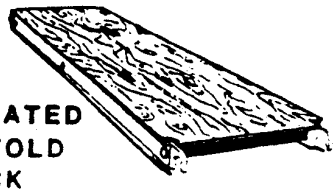


LAMINATED VENIER LUMBER (LVL)

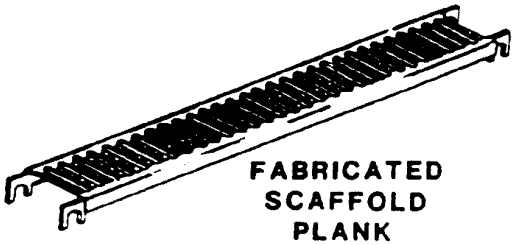


SOLID SAWN LUMBER

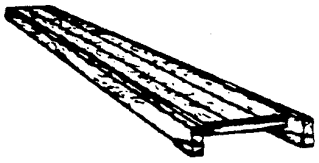
SCAFFOLD PLANKS



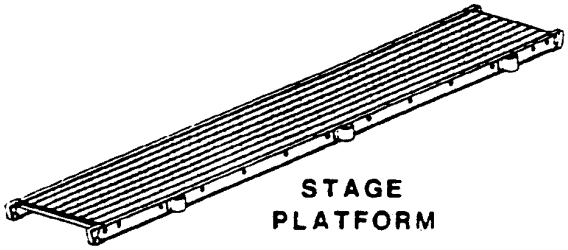
FABRICATED SCAFFOLD DECK



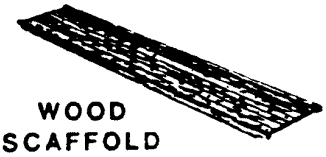
FABRICATED SCAFFOLD PLANK



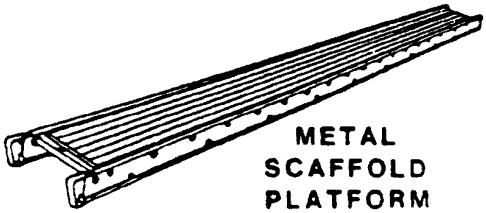
DECORATOR PLANK



STAGE PLATFORM

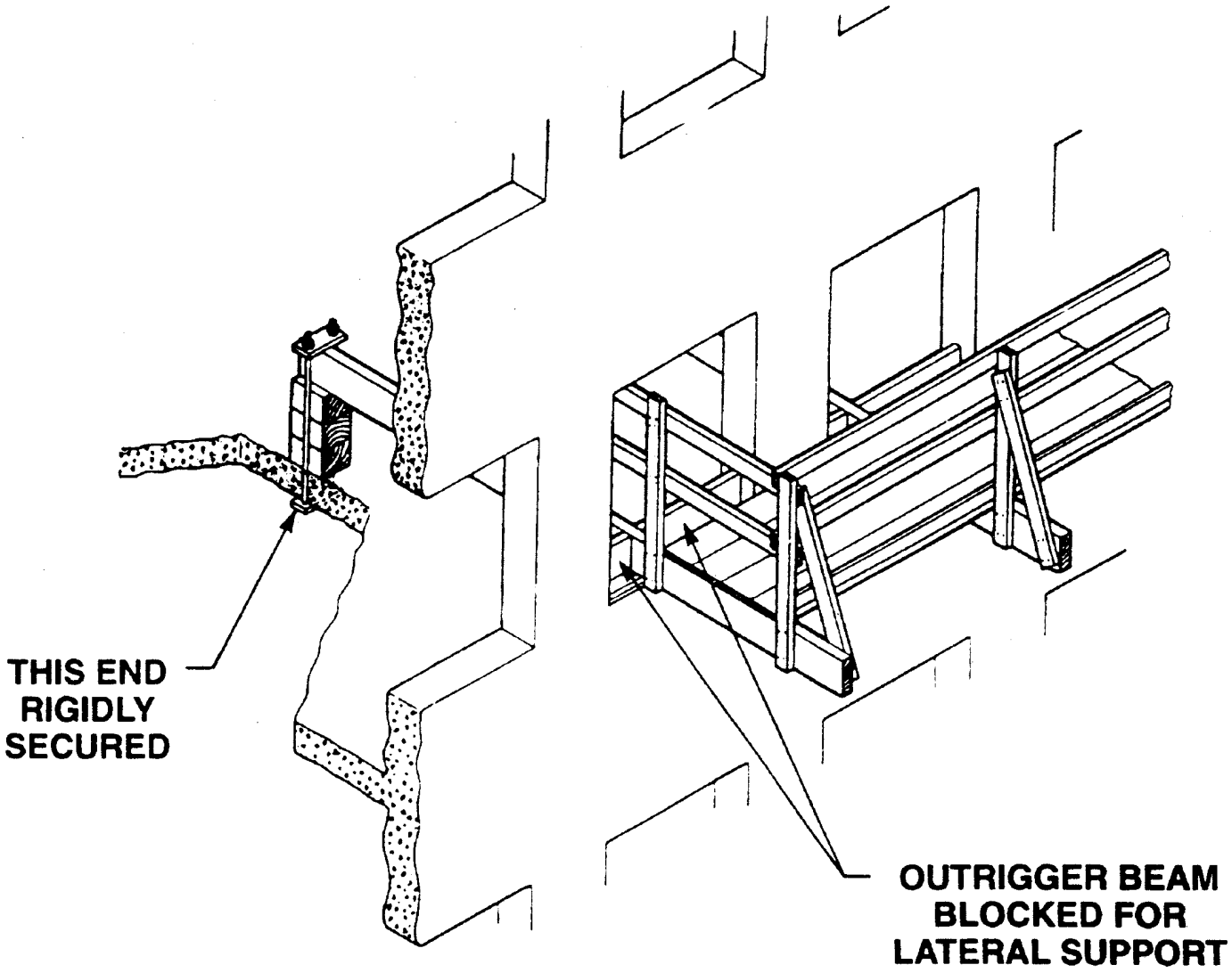


WOOD SCAFFOLD PLATFORM



METAL SCAFFOLD PLATFORM

OUTRIGGER SCAFFOLD



§ 1926.556 [Removed]

2. Section 1926.556 is removed.

[FR Doc. 96–21289 Filed 8–29–96; 8:45 am]
BILLING CODE 4510–26–P

Federal Register

Friday
August 30, 1996

Part III

Library of Congress

Copyright Office

Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; Notice

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96–4]

Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; List Identifying Copyrights Restored Under the Uruguay Round Agreements Act for Which Notices of Intent To Enforce Restored Copyrights Were Filed in the Copyright Office

AGENCY: Copyright Office, Library of Congress.

ACTION: Publication of Second List of Notices of Intent to Enforce Copyrights Restored Under the Uruguay Round Agreements Act.

SUMMARY: The Copyright Office is publishing its second list of restored copyrights for which it has received and processed Notices of Intent to Enforce a copyright restored under the Uruguay Round Agreements Act. Publication of the lists creates a record for the public to identify restored copyright owners and works for which Notices of Intent to Enforce have been filed with the Copyright Office.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or Charlotte Douglass, Principal Legal Advisor to the General Counsel, Copyright GC/I&R, Post Office Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Uruguay Round General Agreement on Tariffs and Trade and the Uruguay Round Agreements Act (URAA) (Pub.L. No. 103–465; 108 Stat. 4809 (1994)) provide for the restoration of copyright in certain works that were in the public domain in the United States. Under section 104A of title 17 [1] of the United States Code as provided by the URAA, copyright protection was restored on January 1, 1996, in certain works by foreign nationals or domiciliaries of World Trade Organization (WTO) or Berne countries that were not protected in the United States for the reasons listed below. 17 U.S.C. 104A (1994). Specifically, to qualify for restoration, a work must be an original work of authorship that:

(1) is not in the public domain in its source country through expiration of term of protection;

(2) is in the public domain in the United States due to:

(i) noncompliance with formalities imposed at any time by United States copyright law, including failure to renew, publishing the work without a proper notice, or failure to comply with any manufacturing requirements;

(ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(iii) lack of national eligibility (e.g., the work is from a country with which the United States did not have copyright relations at the time of the work's publication); and

(3) has at least one author (or in the case of sound recordings, rightholder) who was, at the time the work was created, a national or domiciliary of an eligible country. If the work was published, it must have been first published in an eligible country and not published in the United States within 30-days of first publication.

See 17 U.S.C. 104A(h)(6). A work meeting these requirements is protected ''for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States.'' 17 U.S.C. 104A(a)(1)(B).

Unlike the procedure for restoration under the North American Free Trade Agreement Implementation Act, under the URAA, copyright in restored works vests automatically on the date of restoration. 17 U.S.C. 104A(a)(1)(A). That date is January 1, 1996, if the particular nation was already a member of the World Trade Organization (WTO) or the Berne Convention. Otherwise, the effective date of restoration is the date of a particular nation's adherence to the WTO or the Berne Convention or the date when the President issues a proclamation extending copyright restoration to that nation.

Although the copyright owner may immediately enforce the restored copyright against individuals who infringe his or her rights on or after the effective date of restoration, the copyright owner's right to enforce the restored copyright is delayed against reliance parties. Typically, a reliance party is one who was already using the work before December 8, 1994, the date the URAA was enacted. *See* 17 U.S.C. 104A(h)(4). Before a copyright owner can enforce a restored copyright against a reliance party, the copyright owner must first file or serve a Notice of Intent to Enforce (NIE) on such parties.

A copyright owner may file an NIE in the Copyright Office within two years of the date of restoration of copyright. Alternatively, an owner may serve an NIE on an individual reliance party at any time during the term of copyright; however, such notices are effective only against the party served and those who have actual knowledge of the notice and its contents. NIEs appropriately filed with the Copyright Office and published herein serve as constructive notice to all reliance parties.

Pursuant to the URAA, the Office is publishing its second four month list identifying restored works and the ownership for Notices of Intent to Enforce a restored copyright filed with the Office. 17 U.S.C. 104A(e)(1)(B). The first list was published on May 1, 1996. 61 FR 19372. The NIEs listed herein are those entered into the public records of the Office between April 19, 1996, and August 16, 1996.

We have published only the names of the owners and the titles listed in the NIEs because that is all that is required by law and we do not have the funds to include any additional information. By using this information, one may search the Office's database to obtain additional information about a particular NIE. NIEs are located in what is known as the Copyright Office History Documents (COHD) file which is available from computer terminals located in the Copyright Office itself or from terminals located in other parts of the Library of Congress; it is also available through Internet. This information may be obtained through the Library of Congress Information System (LOCIS). The hours of availability are Monday through Friday 8:30 a.m.–5:00 p.m. U.S. Eastern Time (Copyright Office) or over the Internet Monday–Friday 6:30 a.m.–9:30 p.m. U.S. Eastern Time, Saturday 8:00 a.m.–5:00 p.m., and Sunday 1:00 p.m.–5:00 p.m. Alternative ways to connect through Internet are: (i) use the Copyright Office Home Page on the World Wide Web at: http://lcweb.loc.gov/copyright; (ii) telnet to locis.loc.gov or the numeric address 140.147.254.3 and log in as marvel; (iii) telnet to marvel.loc.gov, or the numeric address 140.147.248.7 and log in as marvel; or (iv) use a Gopher Client to connect to marvel.loc.gov.

Information available online includes: the title or brief description if untitled; an English translation of the title; the alternative titles if any; the name of the copyright owner or owner of one or more exclusive rights, the date of receipt of the NIE in the Copyright Office; the

[1] The URAA's amendment of 17 U.S.C. 104A replaces section 104A under the North American Free Trade Agreement Implementation Act (Pub.L. No. 103–182, 107 Stat. 2057, 2115 (1993)). The Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements, H.R. Doc. No. 316, 103d Cong., 2d Sess. 324 (1994). *See* 60 FR 50414 (Sept. 29, 1995).

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Action Research, Royal National Institute for the Blind & Imperial Cancer Research Fund

The black swan.
Columbus.
The gamester.
King in Prussia.
The Marquis of Carabas.
The romantic prince.
The sword of Islam.
Turbulent tales.

Alexander, David Bradbury

All the flowers came out at once.
A child in the house.
The early harvest.
Finn and the black hag.
A furnished room.
Gospel truth.
If he hollers.
A light dozen.
My friend Specs McCann.
The other side of the wall.
The pattern breakers.
A pinch of salt.
Return journey.
Talk to me.
Tea at four o'clock.
There's a man in that tree.

Ashbee, Richmal

Blind man's bluff.
Just William's luck.
Just William.
More William.
Still William.
Sweet William.
William.
William again.
William and the brain's trust.
William and the evacuees.
William and the moon rocket.
William and the space animal.
William and the tramp.
William carries on.
William does his bit.
William in trouble.
William the bad.
William the bold.
William the conqueror.
William the detective.
William the dictator.
William the fourth.
William the gangster.
William the good.
William the outlaw.
William the pirate.
William the rebel.
William the showman.
William's bad resolution.
William's crowded hours.
William's happy days.
William's treasure trove.

Ashton, Paul. SEE Mommens, Ursula, Lady Darwin & Paul Ashton

Authors' Contingency Fund

The 12.30 from Croydon.
Antidote to venom.
Anything to declare.
The Groote Park murder.
The hog's back mystery.
Many a slip.
Murderers make mistakes.
The mystery of the sleeping car express and other stories.
Mystery on Southampton water.
The pit prop syndicate.
The Ponson case.
Young Robin Brand.

Baring (Maurice) Will Trust, Trustees of

The puppet show of memory.
Robert Peckham.
Unreliable history.

Barstow Brown, Sara Orczy-. SEE Orczy-Barstow Brown, Sara

Bell, Jean

Beware of the trains.
Buried for pleasure.
The case of the gilded fly.
Frequent hearses.
Man overboard.
Merry-go-round.
Swan song.

Berg, Lelia

The adventures of Chunky.
A box for Benny.
Grown-ups don't understand.
Lollipops.
Trust Chunky.

Blair & Associates, Ltd.

Dark eyes of London.
The door with seven locks.
Intimate relations.

Briant, Winfred Lydia

As a thief in the night.
Cat's eye.
Dr. Thorndyke intervenes.
Dr. Thorndyke: his famous cases.
Flighty Phyllis.
Helen Vardon's confession.
Mr. Pottermack's oversight.
The Penrose mystery.
The stoneware monkey.
The surprising experiences of Mr. Shuttlebury Cobb.

British Home Entertainment, Ltd.

An evening with the Royal Ballet.
Uncle Vanya.

Brown, Sara Orczy-Barstow. SEE Orczy-Barstow Brown, Sara

Cinematheque Francaise

Un chapeau de paille d'Italie.

Calderon, SA, Cinematografica

A ritmo de twist.
Los amantes.
Amor a balazo limpio.
El amor abrio los ojos.
Los amores de un torero.
Arma de dos filos.
Aventura en Rio.
Aventurera.
Bellas de noche.
Besos prohibidos.
La bien amada.
Bikinis y rock.
Bolero inmortal.
Cabellera blanca.
Cadetes de la naval.
Camino del deseo.
Carne de gallina.
La casa embrujada.
Casadas en apuros.
Los chiflados del rock and roll.
Con quien andan nuestros locos.
El conde de montecristo.
La conquista del dorado.
Coqueta.
Cuide a su marido.
De hombre a hombre.
De ranchero a empresario.
Del can can al mambo.
Diana la cazadora.
Duelo de pistoleros.
Duelo en el dorado.
Espiritismo.
Ferias de Mexico.
Las ficheras.
Frankestine el vampiro y cia.
La fuerza del deseo.
Una gitana en Jalisco.
El hombre invisible.
La horripilante bestia humana.

Huespedes famosos.
La ilegitima.
La isla de los dinosaurios.
Juventud desnuda.
La ley de las pistolas.
Llevame en tus brazos.
Las lobas del ring.
Locos por la television.
Locura musical.
Las luchadoras vs. el medico asesino.
Las luchadoras vs. la momia.
Las luchadoras vs. robot asesino.
La maldicion de la momia azteca.
Maternidad imposible.
Mi mujer no es mia.
Mis tres padres.
La momia azteca.
La momia azteca vs. robot asesino.
La mujer murcielago.
Mujeres de teatro.
Mujeres en mi vida.
Mujeres encantadoras.
Las mujeres pantera.
Mujeres sacrificadas.
Munecos infernales.
Musica y dinero.
Nido de tiburones.
La nina de mis ojos.
No niego mi pasado.
La noche es nuestra.
Noches de ronda.
Nuestros maridos.
Ocho hombres y una mujer.
Palabras de mujer.
Para toda la vida.
Pecado de ser mujer.
Pecadora.
Peligros de juventud.
Peor que los buitres.
Perdida.
Pervertida.
Pistolas invencibles.
Los pistoleros.
Pokar de reinas.
Pompeyo el conquistador.
Por que peca la mujer.
Por un amor.
Puerto de perdicion.
Recuedos de mi valle.
Revancha.
El revolver sangriento.
Rondalla.
San Francisco de Asis.
San Ignacio de Loyola.
Santa Claus.
Santo en el tesoro de dracula.
Santo en la venganza de la llorona.
Santo en la venganza de la momia.
Santo vs. la hija de Frankestein.
Santo vs. los jinetes del terror.
Santo y Blue Demon vs. Dracula y El Hombre Lobo.
Santo y Blue Demon vs. Frankenstein.
El secreto de Juan Palomo.
El seductor.
Senora Tentacion.
Sensualidad.
Siete ninos de Ecija.
Sindicato de telemirones.
Socios para la aventura.
El sol sale para todos.
Sombra verde.
El tigre negro.
Los tres rohemios.
Tuya en cuerpo y alma.
Un tipo dificil de matar.
Una golfa.
El vestido de novia.
Victimas del divorcio.
Victimas del pecado.
Virgen de Guadalupe.
La virtud desnuda.
Yambao.

Clark, Charles Gordon

An apology for lawyers.
The best detective stories of Cyril Hare.
The Crime of William Graves.
Death among friends.
Death is no sportsman.
The death of Amy Robsart.
An English murder.
Friday's child.
He should have died hereafter.
I never forget a face.
The magic bottle.
Miss Burnside's dilemma.
Monday's child.
The old flame.
The rivals.
Saturday's child.
Sister Bessie.
Suicide excepted.
A surprise for Christmas.
Tenant for death.
That yew tree's shade.
Thursday's child.
Tragedy at law.
Wednesday's child.
Weight and see.
When the wind blows.
With a bare bodkin.

Clasa Films Mundiales, SA de CV

El primer amor.

Comaissance du Cinema

Prix de beaute.

Compagnie Mediterraneenne de Films

Angele.
Le belle menuiere.
Cesar.
Cigalon.
Fanny.
La femme du boulanger.
La fille du puisatier.
Le gendre de Monsieur Poirier.
Jofroi.
Les letters de mon mowlin (I & II).
Manon des sources.
Marius.
Merlusse.
Nais.
Regain.
Le schpountz.
Topaze (1933).
Topaze (1951).
Topaze.
Ugolin.

Connaissance Du Cinema

Les bas fonds.

Cooper, Leo

Fenny.
National Provincial.

Cordon Holding, BV

Acht koppen.
Andere wereld.
Balkon.
Band van Mobius II.
Band.
Belvedere.
Bevryding.
Bolspiralen.
Boven en onder.
Castrovalva.
Cirkellimiet I.
Cirkellimiet III.
Concentrishe schillen.
Dag en nacht.
Daken van Siena.
De brug.
Diepte.
Draaikolken.
Draak.
Drie bollen I.
Drie bollen.
Drie werelden.
Droom (mantis religiosa).
Druppel.
Dubbele planetoide.
Emblemata (colofon).
Emblemata (eerste titelpagina).
Emblemata (I, bloemvaas).
Emblemata (II, aanbeeld).
Emblemata (III, luit).
Emblemata (inhoudsopgave).
Emblemata (IV, vlieger).
Emblemata (IX, stoomwals).
Emblemata (tweede titelpagina).
Emblemata (V, boei).
Emblemata (VI, palmboom).
Emblemata (VII, windvaan).
Emblemata (VIII, zonnewyzer).
Emblemata (X, vuurslag).
Emblemata (XI, kaarsvlam).
Emblemata (XII, handwyzer).
Emblemata (XIII, byenkorf).
Emblemata (XIV, kikvorsch).
Emblemata (XIX, vlinder).
Emblemata (XV, eekhoorn).
Emblemata (XVI, paddestoel).
Emblemata (XVII, weegschall).
Emblemata (XVIII, dobbelsteenen).
Emblemata (XX, cactus).
Emblemata (XXI, waterput).
Emblemata (XXII, schuilnest).
Emblemata (XXIII, gieter).
Emblemata (XXIV, hangslot).
Galery.
Gemummificeerde priesters in Gangi, Sicilie.
Hand met spiegelende bol.
Hol en bol.

Kikker mummie.
Kleiner en kleiner.
Klimmen en dalen.
Knopen.
Kringloop.
Kubus met banden.
Lichtende zee.
Lucht en water I.
Lucht en water II.
Luchtkasteel.
Metamorphose I.
Metamorphose II.
Metamorphose III.
Modderplas.
Nieuwjaarswens 1947 Nederlandsche ex libris-kring, den haag.
Omhulsel.
Ontmoeting.
Ontwikikeling I.
Ontwikkeling II.
Oog.
Orde en chaos (II) kompasroos.
Platwormen.
Predesinatie.
Pretententoon stelling.
Regelmatige vlakverdeling.
Regelmatige vlakvulling met vogels.
Relativiteit.
Reptielen.
Rimpeling.
Ringslagen.
Ruiter.
Scholastica (illustratie, pagina 19).
Scholastica (illustratie, pagina 5).
Scholastica (illustratie, pagina 11).
Scholastica (illustratie, pagina 15).
Scholastica (illustratie, pagina 21).
Scholastica (illustratie, pagina 25).
Scholastica (initaal D, pagina 7).
Scholastica (initaal T, pagina 10).
Scholastica (initiaal A).
Scholastica (initiaal D, pagina 24).
Scholastica (initiaal H, pagina 12).
Scholastica (initiaal H, pagina 13).
Scholastica (initiaal O, pagina 27).
Scholastica (initiaal S, pagina 3).
Scholastica (initiaal S, pagina 4).
Scholastica (initiaal V, pagina 17).
Scholastica (initiaal V, pagina 20).
Scholastica (vignette, pagina 28).
Scholastica (voorkant omslag).
Spiralen.
Sterren.
Stilleven en straat.
Stilleven met spiegel.
Studie voor sterren.
Tekenen.
Toren van Babel.
Toverspiegel.
Trappenhuis.
Twee dorische zuilen.
Twee snydende vlakken.
Valkvullings motief met reptielen.
Verbum.
Vierkantlimiet.
Viervlak-planetoid.
Viseen.
Vissen en schubben.
Vissen ent kikkers.
Vissen.
Vlakvulling I.
Vlakvulling II.
Vlakvullingsmotief met vogels.
Water.
Waterval.
Zelfportret.
Zon en maan.
Zwaartekracht.
Zwanen.

Cummings, Diana

A bullet for Rhino.
The case of the busy bees.
The case of the Michaelmas goose.
Catt out of the bag.
Charles Augustus Milverton.
Dead on time.
Funny peculiar.
The Knights of St. Peerrins.
Let X be the murderer.
Measure for murder.
Midsummer murder.
Mischief in the offing.
The quick one.
Silence after dinner.
Subject: murder.
Villainous saltpetre.

DeAnda (Raul) SA de CV, Producciones

24 horas de vida.
Acapulco a go go.
Alias el Alacran.
Almas rebeldes.
Amanecer ranchero.
Amor a la Mexicana.
Angeles de arrabal.
Apuros de mi ahijada los.
Aqui esta Juan Colorado.
Asi es mi Mexico.
Una aventura en la noche.
Baila mi amor.
Bajo el cielo de sonora.
Banda del Cuervo la.
Bataclan Mexicano.
Buscabullas el.
Caminos de sangre.
Campeon sin corona.
Una cancion a la Virgen.
Carcel de cananea la.
Charro negro el.
Charro negro en el norte el.
Ciel rojo.
Comisario en turno.
Con los dorados de villa.
Con todo el corazon.
Cristeros los.
Cuarto mandamiento el.
Cuatro noches contigo.
Del rancho a la capital.
Diablo a caballo el.
Diablo desaparece el.
Dos caballeros de espada.
Dos gallos de pelea.
Duelo en el desierto.
Duquesa diabolica la.
Enemigos.
Espadachin el.
Espionaje en el golfo.
Estampida.
Fe en Dios la.
Frontera norte.
Fuera de la ley.
Gaviota la.
Genio y figura.
Guadalajara pues.
Guerra de los sexos la.
Hay angeles sin alas.
Hija del ministro la.
Hijo del bandido el.
Hijo del charro negro el.
Hombre de negro el.
Hombre peligroso un.
Hombres de roca.
Konga roja.
Leyenda del bandido la.
Leyenda del bandido la.
Lunar de la familia el.
Manzanas de Dorotea las.
Marcha a zacatecas la.
Mascaara de jade la.
Mascara de carne la.
Matrimonio y mortaja.
Muchacho alegre el.
Muchacho de durango el.
Muerte en bikini la.
Muerte en la feria.
Una mujer decente.
Mula de cullen baker la.
La mula de Cullen Baker.
Negocio del odio el.
Padrino es mi compadre el.
Pozo el.
Prohibido.
Quien mato al abuelo.
Rancho alegre.
Reina del tropico la.
Remolino.
Rio escondido.
Rosalinda.
Sangre en el barrio.
Se la llevo el Remington.
Senoritas.
Si quiero.
Siete evas para adan.
Solitario el.
Sombra de chucho el roto la.
Sota caballo y rey.
Soy puro mexicano.
Su precio unos dolares.
Tierra de violencia.
Tierra del mariachi la.
Tormenta en la cumbre.
Toros amor y gloria.
Tres de presidio.
Tres hombres malos.
Ultimo chinaco el.
Unidos por el eje.
Vagabundo en lalluvia.
Vengador el.
Venganza del chaarro negro la.
Venganza del Diablo la.
Vuelo 701.
Vuelta del chaarro negro la.
Yo mate a Juan Charrasqueado.
Yo mate a Rosita Alvirez.
Zurdo el.

Diana Internacional Films, SA de CV

Aladino y la lampara maravillosa.

Alla en el rancho grande.
Alla en el tropico.
Amor aue malo eres.
Las aventuras de Pito Perez.
Bajo el cielo de Mexico.
Los Beverly de Peralvillo.
Cancion de cuna.
Capullito de alehli.
Una carta de amor.
Cartas marcadas.
Cito con la muerte.
Las colegialas.
Comicos.
Como atrapar a un Don Juan.
Como todas las madres.
Con la musica por dentro.
Corazon de fiera.
La criada bien criada.
El criado malcriado.
Crimen y castigo.
Cuando quiere un mexicano.
Departamento de soltero.
Despedida de soltera.
La devoradora.
Dios los cria.
Dos de la vida airada.
Duro pero seguro.
Educando a papa.
En tiempos de la inquisicion.
Entre abogados te veas.
Escuela der vagabundos.
Escuela para suegras.
Fijate que suave.
Flor de durazno.
Hasta que perdio jalisco.
Hay muertos que no hacen ruido.
El hijo desobediente.
Los hijos de Maria Morales.
Hipolito el de santa.
La instrusa.
Jalisco canta en Sevilla.
El jefe maximo.
Juan sin miedo.
Ley fuga.
Lo que le pasoy a san son.
Lo que va de ayer a hoy.
Las locuras de tin tan.
Los maderos de San Juan.
La madrecita.
Mama Ines.
Las mananitas.
La marca del coyote.
Me he de comer esa tuna.
Medico de guardia.
Muchachas que trabajan.
Una mujer que no miente.
La mujer sin alma.
El nino y el ladron.
El nino y el muro.
No basta ser charro.
No me defiendas compadre.
Nosotros dos.
Paco el elegante.
Padre nuestro.
Papacito lindo.
Pena, penita, pena.
Pina madura.
Playa prohibida.
Pobre pero honrada.
Pobres pero sinverguenzas.
Por la puerta falsa.
Que familia tan cotorrra.
Que me toquen las golondrinas.
El rey se divierte.
Rogaciano el Huapanguero.
La selva de fuego.
Senora Ama.
Si adelita se fuera con otro.
Si me han de matar manana.
Soledad.
Solo veracruz es bello.
La sombra del otoro.
Sonaron cuatro balazos.
El sultan descalzo.
El tigre de jalisco.
Tu y las nubes.
Tonta tonta pero no tanto.
Los tres mosqueteros y medio.
La ultima noche.
Vino el remolino y nos alevanto.

Earl of Oxford and Asquith

Autoboiography of a saint.
Barchester pilgrimage.
The belief of Catholics.
The body in the silo.
Bread of stone.
Bridegroom and bride.
Captive flames.
The creed in slow motion.
Difficulties.
Double cross purposes.
Enthusiasm.
Essays in satire.
The footsteps at the lock.
God and the atom.
The gospel in slow motion.
Heaven and Charing Cross.
The hidden stream.
The imitation of Christ.
In soft garments.
In three tongues.
The layman and his conscience.
Let Dons delight.
Lightning meditations.
The mass in slow motion.
Occasional sermons.
Other eyes than ours.
Pastoral sermons.
A retreat for laymen.
A retreat for priests.
Retreat in slow motion.
Solved by inspection.
Still dead.
Stimuli.
University and Anglican sermons.

Eldin, Madame V

Mediterranean scenes.
The religious interregnum.

Elvira (Gonzalo) SA de CV, Producciones

La ciudad no es para mi.
Dos anos de vacaciones.
Palabras de amor.
La revoltosa.
Rififi en el convento.

Estate of J. R. R. Tolkien. SEE Tolkien (J. R. R.) Estate of

Estate of W. P. Watt. SEE Watt (W. P.) Estate of

Executors of the Estate of David Garnett. SEE Garnett (David) Executors of the Estate of

Executors of the Estate of Fiametta Oliver. SEE Oliver, W. R., & the Executors of the Estate of Fiametta Oliver

Executors of the Estate of Jim Stewart. SEE Stewart (Jim) Executors of the Estate of

Executors of the Estate of K. S. P. McDowell. SEE McDowell (K. S. P.) Executors of the Estate of

Executors of the Estate of Magdalen Perceval Maxwell. SEE Maxwell (Magdalen Perceval) Executors of the Estate of

Fildebroc

Cesar et Rosalie.

Fildebroc, Gueville

Que la fete commence.

Fildebroc, SFP, FR3, UGC

L'a rgent des autres.

Fildebroc, United Artists

Le diable par la queue.
Le roi de coeur.

Fildebroc-Capac

Le complexe du kangourou.

Fildebroc-Capac & Somerville House Production (Montreal)

Au revoir a Lundi.

Films de la Pleiade

La chasse au lion a l'arc.
Fric-Frac.
Jaguar.
Les maitres fous.
Martin Soldat.
Terre sans pain.

Films de la Pleide

L'E au a la bouche.

Films du Jeudi

La chienne.

Fisher, Wyn

Back to ballygullion.
The ballygullion bus.
Dear ducks.
Lobster salad.
An ulster childhog.

Flann O'Brien, Estate of

Two in one.

FR3. SEE Fildebroc, SFP, FR3, UGC

Frazer, Sir James

Aftermath: a supplement to the golden bough.
The belief in immortality and the worship of the dead.
Condorcet on the progress of the human mind.
Creation and evolution in primitive cosomogonies and other pieces.
The fear of the dead in primitive religion.
The gorgon's head and other literary pieces.
Myths of the origin of fire.
Totemism and exogamy.
The worship of nature.

Friedrich Wilhelm-Murnau-Stiftung, Legal Successor of the Majestic Film/ Tobis (Germany)

Tanz auf dem Vulkan.

Friedrich Wilhelm-Murnau-Stiftung, Legal Successor of the Terra-Filmkunst, GmbH (Germany)

Die grosse Freiheit Nr. 7.
Jud Suess.

Friedrich Wilhelm-Murnau-Stiftung, Legal Successor of the Tobis-Filmkunst, GmbH (Germany)

Die Geierwally.
Der grosse Koenig.
Ohm Krueger.
Titanic.

Friedrich Wilhelm-Murnau-Stiftung, Legal Successor of the UFA (Germany)

Amphitryon.
Asphalt.
Bismarck.
Der blaue Engel.
Condottieri.
Die Drei von der Tankstelle.
Die Entlassung.
Es war eine rauschende Ballnacht.
Faust.
Der Feuerteufel.
Das Floetenkonzert von Sanssouci.
Fluechtlinge.
FP1 antwortet nicht.
Friedrich Schiller—Triumph eines Genies.
Geheimzeichen LB 17.
Gold.
Die goldene Stadt.
Der Gouverneur.
Die grosse Liebe.
Der grosse Schatten.
Heimat.
Hitlerjunge Quex.
Immensee.
Der Kaiser von Kalifornien.
Kautschuk.
Kolberg.
Der Kongress tanzt.
Der letzte Mann.
Der Mann, der Sherlock Holmes war.
Metropolis.
Morgenrot.
Muenchhausen.
Nibelungen I (Siegfried's Tod).
Nibelungen II (Kriemhilds Rache).
Nora.
Opfergang.
Quax der Bruchpilot.
Reitet fuer Deutschland.
Ritt in die Freiheit.
Romanze in Moll.
Sensationsprozess Casilla.
Die Strasse.
Stukas.
Trenck der Pandur.
Truxa.
Unter heissem Himmel.
Urlaub auf Ehrenwort.
Variete.
Via Mala.
Victor und Viktoria.
Wasser fuer Canitoga.
Wunschkonzert.
Der zerbrochene Krug.

Galubi, SA, Producciones

El agente viajero.
Al son del mambo.
La alegria de vivir.
Los amores de Juan Chaarrasqueado.
La bandida.
Barridos y regados.
Caballos de acero.
Cafe colon.
Camino del mal.
Cantando nace el amor.
Cementerio del terror.
Cielito lindo.
Como perros y gatos.
El derecho de nacer.
los desalmados.
Los desarraigados.
La doncella de piedra.
La golfa del barrio.
El gran campeon.
Gritenme piedras del campo.
El halcon solitario.
El hijo de los pobres.
El hijo del palenque.
Impaciencia del corazon.
Los invisibles.
Juan Charrasqueado.
Ladron que roba a ladron.
Ladrones de ninos.
El luchador fenomeno.
Magnum 357.
La malaguena.
Manos de seda.
Me quiero casar.
Mi preferida.
La muerte del soplon.
La mugrosita.
La mumer de dos caras.
Nido de fieras.
La nina de la mochila azul.
La noche del Ku Kux Klan.
Nosotras las sirvientas.
Un padre a toda maquina.
Un par a todo dar.
Pecado mortal.
Pegando con tubo.
Pilotos de combate.
Pistoleros bajo el sol.
Pistoleros del diablo.
El plebeyo.
Pobre del pobre.
Que perra vida.
Rescate mortal.
El rey de la selva.
Santo vs. los asesindos de otros mundos.
Serenata en Acapulco.
Sucedio en Acapulco.
Un sueno de amor.
Los tales por cuales.
Vuelven los halcones.
Yo fui novio de Rosita Alvirez.

Garnett (David) Executors of the Estate of

Beany-eye.
The familar faces.
The flowers of the forest.
The grasshoppers come.
Pocahontas, or the nonpareil of Virginia.
A rabbit in the air.
War in the air.

Gaumont and UGC D.A. International

Rendez-vous de Juillet.
Serie noire.

Gaumont, SA

Antoine et Antoinette.
Assassins et voleurs.
Carmen.
Caroline Cherie.
Un condamne a mort s'est echappe.
Cousin cousine.
Les dos au mur.
La passion de Jeanne d'arc.
La poison.
Les tontons flinguers.
Les trois font la paire.

Goebel (W.) Porzellanfabrik, GmbH & Co. KG

's stimmt net (Dose).
's stimmt net.
's stimmt net. Ascher.
53 IV.
Abendlied, Marterl.
Abendlied.
Adventsengel m. Harmonika, candleholder.
Adventsengel m. Laute, candleholder.
Adventsengel m. Mandoline.
Adventsengel m. Trompete, candleholder.
Adventsengel mit Floete, Baumbehang.
Adventsengel mit Floete.
Adventsengel mit Mandoline, Baumbehang.
Adventsleuchter mit 3 Engein.
Das Allerneuste.
Am Wegesrand, bildstockl.
Am Wegesrand, Weihkessel.

Angsthase, Bild.
Angsthase.
Apfeldieb, Junge.
Aschenputtel.
Auf der Alm. Bandoneonspieler.
Auf Wiedersehen.
Baby in Wiege (Wandring).
Bei Mutter Maria, Materl.
Betendes Kind mit Engelein.
Der Blumenfreund.
Blumenmadonna mit Kind.
Bruderlein und Schwesterlein.
Bruederlein und Schwesterlein, table lamp.
Der Buecherwurm.
Der Buecherwurm/Junge.
Der Buecherwurm/Maedchen.
Chef.
Christkind.
Christkindlein kommt, Baumbehang.
Christkindlein kommt, Engel.
Dankgebet, Baumbehang.
Dorfbub.
Dorfheld.
Duett Saengerpaar.
Elibote.
Engel in Wolke, Baumbehang.
Engel mit Trompete, Baumbehang.
Engel rechts, Weihkessel.
Engel, Weihkessel.
Engelgruppchen, Weihkessel.
Entenmuetterchen.
Entenmutterchen.
Der erste Einkauf.
Erster Schultag, Junge.
Erster Schultag, Maedchen.
Esel.
Ferienfreunde, Bild.
Freibiges Lieschen.
Freunde (Buchstutze).
Freunde Tischlampe.
Freunde.
Der fromme Reitersmann.
Fromme Weisen.
Fruehling ist's.
Fruehling, Maedchen im B (Buchstutze).
Fruehling, Maedchen im Baum.
Fruehling, Maedchen in Baum.
Fruehlingsidyll.
Fruehlingslied.
Fruhling Madchen im Baum, table lamp.
Fuer's Vaterle, Rettichbub.
Gaenseliesl (Buchstutze).
Gaenseliesl.
Das Geheimnis.
Geigerlein mit Hund.
Geigerlein, Bild.
Geigerlein.
Gesangsprobe (Dose).
Gesangsprobe, Ascher.
Gesangsprobe.
Glockenturm mit Engeln.
Glueckskauf, Junge mit Schwein.
Gratulant.
Gratulanten.
Die Gratulantin.
Gretel.
Grobreinemachen.
Gute Freunde.
Der gute Hirte, Weihkessel.
Der gute Hirte.
Haendler-Aufstellschild mit Wanderbu.
Haensel und Gretel.
Hans im Glueck.
Hasenvater (Buchstuetze).
Hasenvater (Dose).
Hasenvater.
Hausmusik.
Hausmutterchen.
Heimkehr, Babgeiger.
Heini Bandoneonspieler (Dose).
Heini, Ascher.
Heinl Bandoneonspieler (Dose).
Heldentenor.
Herbst Junge im Baum, table lamp.
Herbst, Junge im Baum (Buchstutze).
Herbst, Junge im Baum.
Der Herr Kapellmeister.
Herr Ober.
Himmlische Klaenge, Baumbehang.
Hinaus in die Ferne.
Hoert lhr Leute. Nachtwaechter.
Hui, die Hummel.
Ich bringe Gluck, Kaminfeger.
Ich gratuliere.
Ich hab's vergessen.
Im Huehnerhof.
Im Huhnerhof (Buchstutze).
In Sicherheit, Madchen.
In tausend Angsten.
Jagerlein.
Jesulein.
Jesuskind, Weihkessel.
Junge mit Holzpferd (Adv. Leuchter).
Junge mit Vogel, ascher.
Kammersanger.
Kehrliesl.
Kind im Bettchen (Wandring).
Kind mit Haengematte (Wandbild).
Die kleine Gaertnerin.
Der Kleine Konditor.
Der kleine Musikant.
Kniender Engel mit Horn.
Kniender Engel mit Kerze.
Kniender Engel mit Laute.
Kuekenmutterchen (Buchstuetze) = Chick girl, book end.
Kuekenmutterchen (Dose).
Kuekenmutterchen.
Lamm.
Lausbub.
Leise Tone, Baumbehang.
Liebt mich, liebt mich nicht, table lamp.
Liebt mich, liebt mich nicht.
Liebt mich, liebt. (Buchsstutze).
Lobgesang, Baumbehang.
Madonna mit Heiligenschein.
Madonna ohne Heiligenschein.
Madonnen—Bild.
Maedchen mit Blumenstraub, Candleholder.
Maedchen mit T'Baum (Adventsl).
Markt-Christel.
Meister Wichtig.
Mutters Liebste (Maedchen) table lamp.
Mutters Liebste.
Mutters Stutze.
O, du froehliche * * * Engel.
O, du froehliche.
Ochse.
Osterueberrashung.
Puppendoktor.
Puppenmutterchen.
Das Quarttet, Bild.
Ritter St. Georg.
Schaeferbub.
Schulschwanzer, Junge.
Schutzengel (Weihkessel).
Schutzengel Weihkessel.
Schutzengel.
Schweinehirt (Buchstutze).
Schweinehirt.
Sing Kind mit Engelein.
Sitz. Engel mit Laute, Baumbehang.
Sitz. Kind m. Schmetterling (Wall ring).
Sitz. Madonna mit Kind.
Sitzender Engel, Weihkessel.
Ski-Heil.
Soldatenspiel.
Spar-Hummelchen.
Staendchen, Junge mit Flote.
Stehender Junge m. Herz (Bild).
Sterngucker.
Stille Nacht Kerzenhalter.
Stille Nacht, Jesuskind.
Stille Nacht.
Der Storenfried.
Strickliesl (Ascher).
Strickliesl (Dose).
Strickliesl.
Trara—die Post ist da (Bild).
Trara—die Post ist da.
Trommler.
Unter einem Dach.
Vater's G'scheitester.
Vater's G'scheitser, table lamp.
Waldandacht.
Wanderbub, Bild.
Wanderbub.
Wanderlied, Maedchen.
Wandschmuck in Herzform.
Weiber Engel, Weihkessel.
Weihkessel.
Wiegenlied, Kerzenhalter.
Wir gratulieren.
Zaungaste.
Ziegenbub (Buchstutze).
Ziegenbub.
Zum Tanz. Babgeiger.

Grands Films Classiques

L' affaire est dans le sac.
Un chien Andalou.
Drole de drame.
Espoir.
La mort en ce jardin.
Voyage surprise.

Graves (Robert) Copyright Trust, Trustees of

Adam's rib.
All the meaning of dreams.
Another future of poetry.
But it still goes on.
Catacrok!
Collected poems (1914–47).
Collected poems 1938–45.

Collected poems 1938.
The common asphodel.
Contemporary techniques of poetry.
English and Scottish ballads.
The English ballad.
The feather bed.
Impenetrability, or the proper habit of English.
The infant with the globe.
Jesus in Rome.
John Kemp's Wager.
John Skelton (Laureate).
King Jesus.
Lars Porsena, or the future of swearing and improper language.
The less familiar nursery rhymes.
Marmosite's miscellany.
The meaning of dreams.
Mock beggar hall.
The more deserving cases.
More poems 1961.
Mrs. Fisher on the future of humour.
No decency left.
No more ghosts.
Oratio creweiana.
Pharsalia.
Poems (1914–27).
Poems 1926–30.
Poems 1929.
Poems 1930–33.
Poems 1938–45.
Poems 1953.
Poems and satires.
Poems selected by himself.
Poetic unreason.
The real David Copperfield.
Robert Graves.
Selected poetry and prose of Robert Graves.
The shout.
Symptoms of love.
Ten poems more.
To Magdalena Mulet, Margita Mora and Lucia Graves.
To whom else?
Welchman's hose.
Whipperginny.
Winter in Majorca.
Work in hand.

Gueville. SEE Fildebroc, Gueville

Hale, Crystal & Jocelyn Herbert

A book of ballads.
Codd's last case.
Derby day.
Full enjoyment and other poems.
Helen.
Holy deadlock.
Independent member.
Look back and laugh.
Misleading cases.
More misleading cases.
Mr. Pewter.
No fine on fun.
Number nine.
Sea shanties.
Silver stream.
Still more misleading cases.
Uncommon law.
The water gypsies.

Hankinson, Mrs. A.S.

The crime at Vanderlynden's.
For some we loved.
No one will ever know.
Sixty-four, ninety-four.
The Spanish farm.
To hell with Crabb Robinson.
Vanities and verities.
Young man's fancies.

Hannay, Althea C. & Susan Harper

Angel's adventure.
Appeasement.
Daphene's fishing.
Golden apple.
Good intentions.
Goodly pearls.
The grand duchess.
The gun runners.
Laura's Bishop.
Lieutenant commander.
The lost lawyer.
Magilligan strand.
Millicent's corner.
Miss Maitland's spy.
Mrs. Miller's aunt.
Murder most foul.
Now you tell one.
Over the border.
Piccadilly lady.
Poor Sir Edward.
A public scandal.
A sea battle.
The search for Susie.
Ships and sealing wax.
The silver gilt standard.
Spillikins.
Two fools.
The two scamps.
Wild justice.

Harper, Susan. SEE Hannay, Althea C. & Susan Harper

Hemisphere Entertainment, Inc.

Tamango.

Herbert, Jocelyn. SEE Hale, Crystal & Jocelyn Herbert

Holroyd, Michael

An artist of life: Havelock Ellis.
Common misquotations.
Conan Doyle: his life and art.
Dizzy.
Doctor Darwin.
Down to earth.
Farewell to argument.
The fool of love.
Forward to nature.
GBS, a postscript.
Gilbert and Sullivan.
The hero of Delhi.
An Irishman's England.
Labby.
The last actor manager.
A life of Shakespeare.
The man whistler.
Marriage and genius.
Modern men and mummers.
The moving waters.
Paths of light.
A Persian critic.
The pilgrim daughters.
Shaw.
The sounding cataract.
The swan of Lichfield.
Talking of Dick Whittington.
Thinking it over.
Tom Paine: friend of mankind.
The triumph of the tree.
While following the plough.

Holtzman (Elizabeth McManus) Irrevocable Trust

Abstract composition.
Along the Amstel (trees along the Gein; Geinrust farmhouse).
Along the Amstel.
Amaryllis.
The Amstel (Cafe 't Vissertje on the Amstel).
The Amstel in the evening.
The Amstel river, evening impression.
The Amstel: haze (Geinrust farm in the mist).
Anemones in a vase.
Apple tree.
Arum lily (calla lily).
At the Lappenbrink, Winterswijk.
At work.
Autumn landscape.
Banks of the Seine.
Barge (study for the Stadhouderskade).
Barn (farmhouse).
Barns at Nistelrode.
Beach at Domburg.
Beech forest.
Birch woods.
Blue chrysanthemum.
Blue facade; composition no. 9; (composition no. VI).
Blue lily.
Blue rose.
Blue roses with yellow background.
Blue tree.
Boat on a river (landscape with a boat).
Brabant farmyard.
Branches [recto] trees [verso] (sketchbook IV, no. 7 a/b).
Breakwaters at Domburg.
Bridge on the Achter Canal.
Bridge on the Achter Canal: (seen from the Kostverlorenvaart).
The Broek house on the Amstelveenseweg.
Bull.
Calla lilies.
Calla lily.
Calves in a field bordered by willow trees.
Canal in the Schinkel area of Amsterdam.
Canal in the Schinkel area, Amsterdam (the Long Bleekers Channel, seen from the Kostverlo.

Canal scene.
Castle ruin: Brederode.
Cat's tail on dark ground (cattail on dark ground). Cattail (cat's-tail).
Cattail.
Chrysanthemum (dying chrysanthemum).
Chrysanthemum.
Chrysanthemums.
Church apse (church seen from the rear).
Church at Domburg (church facade I).
Church at Domburg (sketchbook I).
Church at Domburg (steeple of the church in Domburg).
Church at Domburg.
Church at Winterswijk.
Church at Zoutelande.
Church facade (sketchbook III, no. 9).
Church facade 2 (church facade).
Church facade 6.
Church facade of Notre Dame des Champs (sketchbook III, no. 10).
Church facade.
Church in Domburg.
Church in Zeeland.
Circular composition: church facade.
Color study.
Composition (composition I).
Composition (composition with blue, red, yellow, and black).
Composition (composition with red, blue, yellow, and black).
Composition (composition with blue and red).
Composition 1–A (composition no. 1; lozenge composition with four black lines).
Composition 1916.
Composition 2 (tableau 2; Composition with yellow, black, blue, red, and gray).
Composition 2 with red and blue.
Composition A; (composition A; composition with red and blue).
Composition B with grey and yellow (composition B; composition with double line and yellow and gray).
Composition B with red.
Composition blue-white.
Composition C (composition A; composition with red and blue).
Composition gray-red.
Composition I (composition no. I; composition with yellow).
Composition I with black lines.
Composition I with blue and yellow (tableau no. 1; lozenge composition with three lines and blue, gray, and yellow).
Composition I with red, yellow, and blue (tableau I: composition with red, black, blue, and yellow).
Composition I with red, yellow, and blue.
Composition II with black lines (composition in white and black II).
Composition II with red, blue, and yellow.
Composition II with yellow and blue.
Composition II with yellow and blue (composition no. II; composition with blue and yellow).
Composition III (composition with red, blue, yellow, and black).
Composition III with red, yellow, and blue.
Composition in a square (composition with blue, yellow, black, and red).
Composition in a square.
Composition in black and white.
Composition in blue and yellow.
Composition in color B.
Composition in gray, blue, yellow, and red.
Composition in gray-blue.
Composition in grey and ochre-brown.
Composition in grey and ochre.
Composition in grey and yellow.
Composition in grey, blue, yellow, and red.
Composition in grey.
Composition in line and color (tableau no. 1).
Composition in line [first state-photograph].
Composition in line [second state] (composition in black and white).
Composition in oval (tableau no. 3).
Composition in oval with color planes 1.
Composition in oval with color planes II.
Composition in red and white.
Composition in white and black (tableau I; lozenge composition with four lines and gray).
Composition in white, black, and red.
Composition in white, black, red, and blue.
Composition in white, red, and yellow.
Composition in yellow, blue, and white.
Composition no. 14.
Composition no. 3 (composition with color planes). Composition no. 3 (trees) (tableau no. 4; composition no. VIII).
Composition no. 7.
Composition no. 8.
Composition no. I (trees).
Composition no. I; composition with black, yellow, and blue.
Composition no. I; composition with red.
Composition no. II (composition with blue and red).
Composition no. II; composition in line and color. Composition no. VI (composition no. II: composition with black, blue, red, yellow, and gray).
Composition with black and blue (Schilderij no. 1; lozenge composition with two lines and blue).
Composition with black lines.
Composition with black, white, yellow (composition with yellow square).
Composition with blue (composition of lines and color, III; composition with blue).
Composition with blue and red.
Composition with blue and yellow.
Composition with blue and yellow (composition with yellow, blue, and double line).
Composition with blue, black, yellow, and red.
Composition with blue, red, and yellow (painting no. 11).
Composition with blue, yellow, and white.
Composition with blue.
Composition with color planes 2.
Composition with color planes 5.
Composition with color planes and gray lines 1.
Composition with color planes and gray lines (composition with planes in gray and ochre).
Composition with color planes and gray lines.
Composition with color planes.
Composition with color planes: lozenge (composition with grid 7).
Composition with colors A.
Composition with gray and red.
Composition with gray lines: lozenge (composition with grid 4).
Composition with grey and black (painting no. 2).
Composition with grey lines (composition with grid 1: lozenge) (lozenge with grey lines).
Composition with large blue plane (composition with large blue plane, red, black, yellow, and gray).
Composition with large red plane, gray-blue, yellow, black, and blue).
Composition with light colors and gray lines: lozenge (composition with grid 6).
Composition with pink, blue, yellow, and white (church facade).
Composition with planes in ochre and gray: lozenge (composition with grid 5).
Composition with red and black (composition with blue, grey, red, white).
Composition with red and black (composition with black, red, and gray).
Composition with red and black (composition no. 1; composition with red and black).
Composition with red and black.
Composition with red and blue.
Composition with red and yellow (opposition of lines, of red and yellow, no. I).
Composition with red, black, and white (composition no. I; composition with red, blue, and yellow).
Composition with red, black, blue, yellow, and gray.
Composition with red, black, yellow, blue, and gray.
Composition with red, blue, and greenish yellow.

Composition with red, blue, and yellow (composition II; composition I; composition in red, blue, and yellow).
Composition with red, blue, black, and yellow-green (composition C; composition with yellow, red, blue-gray, blue).
Composition with red, yellow, and blue (composition with yellow, red, black, blue, and gray).
Composition with red, yellow, and blue (composition with yellow, red, black, red, and gray).
Composition with red, yellow, and blue (composition with red plane, black, blue, yellow, and gray).
Composition with red, yellow, and blue (composition with red, blue, black, yellow, and gray).
Composition with red, yellow, and blue.
Composition with red, yellow, and blue (composition with red, blue, yellow, black, and gray).
Composition with red, yellow, and blue (composition with blue, yellow, red, black, and gray).
Composition with red, yellow, and blue (composition no. III; composition with red, yellow, and blue).
Composition with red, yellow, and blue (composition C; composition no. III).
Composition with red, yellow, blue, and black (composition A; composition with black, red, gray, yellow and blue).
Composition with red, yellow, blue, and black.
Composition with red, yellow, and blue (composition with blue, yellow, red, and black).
Composition with red.
Composition with white and red (composition B).
Composition with white, grey, yellow, and blue (composition with yellow, blue and blue-white).
Composition with white, red, and yellow.
Composition with yellow (lozenge composition with four yellow lines).
Composition with yellow and blue (composition no. II; composition with yellow and blue).
Composition with yellow and blue.
Composition with yellow and double line.
Composition with yellow and red.
Composition with yellow, red, and blue.
Composition with yellow, red, and blue (tableau VII). Composition with yellow.
Composition [photograph].
Composition [recto and verso].
Composition [study].
Composition.
Composition: checkerboard with dark colors (composition with grid 8).
Composition: checkerboard with light colors (composition with grid 9).
Composition: trees I.
Composition: trees II.
Cow in the meadow (cow).
Cow in the meadow.
Cows (study of cows).
Cows in a shed.
Cows in the meadow.
The departure of the fishing fleet; Zuiderzee (the Stadhouderskade near the Bewaring house).
Devotion.
Diamond composition and two rectangles.
Diamond composition.
Diamond compositions.
Ditch near the Kalfje (tree on the Kalfje).
Dredge (the Amstel at twilight).
Dredge on the Amstel near the Omval.
Dredge [recto] (on the Amstel near the Omval) Haystack [verso].
Drydock at Durgerdam.
Duivendrecht (farmhouse on the Gein).
Duivendrecht.
Dune.
Dune (variation).
Dune I.
Dune II.
Dune III.
Dune IV.
Dune V.
Dune VI (summer, dune in Zeeland).
Dunes.
Dunes and sea (sketchbook III, no. 2).
Dunes and sea (sketchbook III, no. 3).
Dunes and sea (sketchbook III, no. 1).
Dunes and sea (sketchbook III, no. 5).
Dunes and sea (sketchbook III, no. 4a/b).
Dunes and sea (sketchbook III, no. 11).
Dunes and sea (sketchbook III, no. 13).
Dunes and sea (sketchbook III, no. 14).
Dunes and sea.
Dunes at Domburg.
Dusk.
Dutch village (village view: landscape with mill * * * near the Kostverlorenvaart).
Dying chrysanthemum.
Empty barges and sheds.
Empty barges.
End of day.
Eucalyptus tree in gray and tan.
Eucalyptus tree.
Eucalyptus trees.
Evening on the Gein (evening on the Gein with isolated tree).
Evening on the Weesperside.
Evening sky.
Evolution (triptych).
Facade (sketchbook VI, no. 2).
Facade in tan and gray (composition no. XII).
Facade in tan and gray.
Farm at Duivendrecht.
Farm at Nistelrode (recto and verso).
Farm at Nistelrode.
Farm behind willows.
Farm in the evening.
Farm near Duivendrecht.
Farm on a canal among the trees.
Farm on a canal.
Farm with cattle.
Farm with trees and water (farm behind trees and water).
Farm with trees.
Farmhouse.
Farmhouse at Duivendrecht.
Farmhouse at evening.
Farmhouse (barn).
Farmhouse on the Gein.
Farmhouse sheltered by trees.
Farmhouse with clothesline.
Farmhouse with peasant woman in the snow: Winterswijk.
Farmhouse with peasant.
Farmstead.
Farmyard.
Farmyard at Blaricum.
Farmyard in the moonlight.
Farmyard with cattle and willows.
Farmyard with peasant.
Female portrait.
Field bordered by trees.
Fields with cows.
Flowering apple tree.
Flowering trees.
Flowers.
Forest.
Fox trot A (composition IV; lozenge composition with three black lines).
Fox trot B.
The French mill on the River Gein.
Gein farmhouse behind trees.
The Gein near the Geinrust farmhouse.
The Gein: trees near the water.
Geinrust farm.
Geinrust farm in the mist.
Geinrust farm in watery landscape.
Geinrust farm with high horizon.
Geinrust farm: close view.
Girl peeling apples.
Girl writing.
Gladioli.
Gnarled willow beside a ditch.
Golden lily.
Grain barn interior.
Gray tree.
Hay sheaves in a field.
Hayrick.
Haystack.
Haystacks I.
Haystacks II.
Haystacks III.
House at Abcoude.
House on the Gein.
House on the River Gein.
Houses on the canal.
Houses with poplars.
Interior.
Interior at Nistelrode.
Interior of a stable.
Interior: kitchen.
Irises.
Irrigation ditch near the Kalfje.
Irrigation ditch near the Kalfje (recto no. 85).
Irrigation ditch overhung with trees.
Isolated farm.

Landscape.
Landscape (riverscape).
Landscape (warmte).
Landscape along the Gein.
Landscape at evening.
Landscape by moonlight.
Landscape near Amsterdam.
Landscape near Oele.
Landscape near the Kalfje Cafe (tree on the Kalfje).
Landscape of a river scene.
Landscape with a ditch.
Landscape with boat.
Landscape with bridge and farmer.
Landscape with cloudy sky.
Landscape with cows and stream.
Landscape with cows.
Landscape with dunes.
Landscape with farmhouse.
Landscape with Hayrick.
Landscape with houses and canal.
Landscape with houses.
Landscape with mill near Abcoude.
Landscape with orchard and guinea fowl.
Landscape with stream at evening.
Landscape with stream.
Landscape with trees along water.
Landscape with trees and water.
Landscape with trees.
Landscape: field and sky.
The Lappenbrink.
The Lappenbrink (farmyard at Lappenbrink).
The Lappenbrink with farmer's wife.
Large composition with red, blue and yellow.
Large landscape (riverscape with pink and yellow-green sky).
Lighthouse at Westkapelle.
Lighthouse in Westkapelle.
Lily.
The Long Bleekers Channel seen from the Wester Church.
Lotus (verso no. 84).
Lozenge (lozenge composition with red, black, blue and yellow).
Lozenge composition with two black lines.
Lozenge composition with yellow, black, blue, red and gray.
Lozenge with red, yellow and blue (tableau no. IV; lozenge composition with red, gray, blue, yellow, and black).
Male nude.
Mauve chrysanthemum.
Mill at Blaricum in the moonlight.
Mill at Domburg.
Mill by the river (the French mill).
Mill by the water.
Mill in moonlight (mill on the Winkel near Abcoude).
Mill in moonlight (sketch) (French mill on the Gein). Mill in moonlight.
Mill in sunlight (mill on the Winkel near Abcoude).
Mill in sunlight (Molen [Mill]).
Mill in the evening.
Mill on the Gein (the French mill on the Gein).
Mill on the Gein.
The mill.
Mill.
Moored barges.
Moored steamboat on the Weesperside.
Moored tugboat on the Amstel.
Notebook page.
Nude.
Ocean.
Ocean 1 (the sea).
Ocean 3.
Ocean 4.
Ocean 5.
The old watermill at Oele with moon.
On the Amstel: the Omval at evening.
On the dunes (reclining nude).
On the land (landscape with boat).
On the shore.
Oval composition.
Oval composition (painting III).
Oval composition (scaffold).
Paris buildings (sketchbook VI, no. 1).
Paris courtyard facades (sketchbook VII).
Paris facade (sketchbook III, no. 12).
Partially demolished building in Paris (sketchbook II).
Partially demolished building in Paris (blue facade) (sketchbook II, no. 43).
Partially demolished building (horizontal pier) (sketchbook II, no. 46).
Passion flower.
Pasture with five cows.
Picture no. 111; lozenge composition with eight lines and red (red corner).
Pier and ocean.
Pier and ocean (composition 10 in black and white).
Pier and ocean (sketchbook I, no. 57).
Pier and ocean 1.
Pier and ocean 3.
Pier and ocean 4 (sea; starry sky above the sea).
Pier and ocean 5 (sea and starry sky).
Pier at Scheveningen.
Polder-landscape.
Pollard willows.
Pond near Saasveld.
Portrait of a girl with flowers.
Portrait of a girl.
Portrait of a lady.
Portrait of a praying girl.
Portrait of a woman.
Portrait of a young girl.
Portrait of a Zeeland girl.
Portrait of Agatha Zethraeus.
Portrait of Aunt J.M. Mondriaan-Desiree.
Portrait of D.J. Hulshoff.
Portrait of Nephew Frits.
Portrait of Niece Johanna Mondriaan.
Portrait of old man.
Portrait of Princess Wilhelmina.
Portrait of Uncle Frits.
Puppy.
Red amaryllis with blue.
Red cloud.
Red dahlia.
Red gladioli.
Red mill (red mill at Domburg).
Red tree (evening; red tree).
Rhododendron.
Rhododendrons.
The River Gein.
River scene with trees and windmill.
Roofs in Paris (sketchbook VIII, no. 1).
Roofs in Paris (sketchbook VIII, no. 2).
Rose.
Rose (sketchbook III, no. 6).
The Royal Wax Candle Factory (on the Boerenwetering).
Rustic house (cottage).
Saint Jacob's church at Winterswijk.
Salon de Mme B * * * a Dresden (for Mrs. Ida Bienert).
Scaffolding.
Schinkelbuurt (factory building and hay near the Schinkel).
The sea (sketchbook I).
Sea after sunset.
Sea towards sunset.
The sea.
Seascape.
Seascape (sea-view I).
Seated girl.
Self portrait.
Self portrait [recto] nude [verso].
Self portrait: eyes.
Set design for Michel Seuphor play, ''L'Ephemere est l'Eternel''.
Sheds on the water (Schinkelbuurt).
Sheepfold.
Sheepfold in the evening.
Ships in the moonlight.
Shipworks.
Side facade.
Side view of a house in Winterswijk.
The singel.
Sketch for landscape near Oele.
Solitary tree.
Spring.
Spring idyll.
The Stadhouderskade near the Bewaring house.
Stalk with two Japanese lilies.
Still life with apples and plate.
Still life with dead hare.
Still life with gingerpot I.
Still life with gingerpot II.
Still life with herrings.
Still life with jug and onions.
Still life with Moonwort.
Still life with plaster bust.
Study for ''summernight''.
Study for composition.
Study for gray tree.
Study for gray tree (sketchbook III, no. 7).
Study for gray tree (sketchbook III, no. 8).
Study for tableau I.
Study of a chrysanthemum.
Study of a figure.
Study of a rose.
Study of trees.
Study of trees I.

Study of trees II.
Summer night (landscape in moonlight).
Summer night: oil sketch.
Sunflower.
Sunflower I.
Sunflower II.
Sunflowers.
Tableau I [with indications for yellow/blue/gray]. Tableau I.
Tableau I: composition with black, red, gray, yellow and blue.
Tableau II.
Tableau II; composition with red, black, yellow, blue and light blue.
Tableau no. 2; composition no. VII.
Tableau no. 2; composition no. V.
Tableau no. I; composition no. 1; compositie 7.
Tableau no. III; Composition no. 14; Composition with red, black, yellow, blue and gray.
''Tableau-Poeme'' [text: Seuphor].
Tall trees along the river (The Gein near the Oostgein farmhouse).
Tall trees along the River; (the Gein near the Oostgein farmhouse).
Three cattails.
Three compositions.
Three cows.
Three haystacks.
Three rectangle compositions [study].
Three willow-herbs (sketchbook VI, no. 3).
Tiger lily.
Tiger-lilies.
Trafalgar Square [study].
Trafalgar Square.
Tree.
Tree (recto and verso) (sketchbook III, no. 15a/b).
Tree (recto and verso) (sketchbook IV, no. 3a/b).
Tree (study) (sketchbook IV, no. 4).
Tree (study) (sketchbook V).
The tree A.
Tree I.
Tree II.
Tree on the Kalfje.
Trees.
Trees (sketchbook IV, no. 1 [recto]).
Trees (sketchbook IV, no. 2 [verso]).
Trees (study) (sketchbook IV, no. 5).
Trees along the Gein (Weidenbaume).
Trees along the Gein.
Trees along the Gein; (the Geinrust farmhouse).
Trees along the Gein; Geinrust farmhouse with saplings and cows.
Trees along the river.
Trees bordering a river.
Trees by the River Gein.
Trees I.
Trees near the water.
Trees on the Gein (farmhouse under trees).
Trees on the Gein.
Trees on the Gein: moonrise.
Trees on the water.
Trees reflected in the River Gein.
Trees under blue sky.
Trees with cornfield.
Trees [recto] branches [verso] (sketchbook IV, no. 6 a/b).
Two haystacks.
Two lozenge compositions [study].
Two marigolds.
Two women in the woods.
Untitled (oval composition).
Untitled [verso no. 610].
Upright sunflower.
Vertical composition with blue and white.
View of Winterswijk.
Village.
Village church; Jacobskerk.
Vinken Bridge at Diemen.
''Vrachtboot'' on the Amstel.
Weaver's house in Winterswijk.
The weaver's house, Winterswijk.
The Weltevreden farmhouse at Duivendrecht.
The white calf.
White rose in a tumbler.
White roses.
Willow tree.
Willow trees on the Gein.
Willow trees.
Windmill.
Windmill and trees.
Windmill at evening.
Windmill by the water.
Windmill in the evening.
Windmill near Saasveld.
Windmill on the Gein (the French Mill on the Gein).
Windmill on the water.
Winter landscape.
Winter landscape with farmhouse.
Woman (composition no. 11).
Woman in profile with young boy.
Women washing clothes.
Women with child in front of a farmhouse.
The wooden bridge.
Woods at Oele.
Woods at sunset.
Woods near Oele.
Woods with stream.
Yellow marigold.
Zeeland farmer.

Horsley, Mrs. E. M.

Encyclopaedia of superstitions.

Hubbard, P. M.

Anna Highbury.
Flush as May.

Humphreys, Jill. SEE Humphreys, Robin & Jill

Humphreys. Humphreys, Robin & Jill Humphreys

And Berry came too.
As berry and I were saying.
B-Berry and I look back.
Blood corner.
Blood royal.
An eye for a tooth.
Fire below.
Gale warning.
The house that Berry built.
Ne'er-do-well.
Perishable goods.
She fell among thieves.
She painted her face.
Shoal water.

Hyams, Sylvia & Michael Simone O'Reilly

The aesthetic adventure.
Arrows of desire.
Bandits in a landscape.
The lady in the castle.
The march of the moderns.
The pre-Raphaelite tragedy.
Victorian olympus.

Imperial Cancer Research Fund. SEE Action Research, Royal National Institute for the Blind & Imperial Cancer Research Fund

Internationale Musikverlage Hans Sikorski

Sonato no. 1 for violin and piano (1965).

Jodorowsky, Alejandro

El topo.

Johns (W. E.) (Publications) Ltd.

Adventure unlimited.
The adventures of the Junior Detective Club.
Another job for Biggles.
Biggles air commodore.
Biggles air detective.
Biggles and Co.
Biggles and the black peril.
Biggles and the black raider.
Biggles and the pirate treasure.
Biggles and the rescue flight.
Biggles at the world's end.
The Biggles book of heroes.
Biggles book of treasure hunting.
Biggles breaks the silence.
Biggles buries a hatchet.
Biggles cuts it fine.
Biggles defies the swastika.
Biggles delivers the goods.
Biggles fails to return.
Biggles flies again.
Biggles flies east.
Biggles flies north.
Biggles flies south.
Biggles flies to work.
Biggles flies west.
Biggles follows on.
Biggles forms a syndicate.
Biggles gets his man.
Biggles goes alone.
Biggles goes to school.
Biggles goes to war.
Biggles hits the trail.
Biggles hunts Bigs game.
Biggles in Africa.
Biggles in Australia.
Biggles in Borneo.
Biggles in Mexico.

Biggles in Spain.
Biggles in the Baltic.
Biggles in the blue.
Biggles in the Gobi.
Biggles in the jungle.
Biggles in the Orient.
Biggles in the South Seas.
Biggles learns to fly.
Biggles makes ends meet.
Biggles of 266.
Biggles of the camel squardron.
Biggles of the Interpol.
Biggles of the special air police.
Biggles on mistery island.
Biggles on the home front.
Biggles pioneer air fighter.
Biggles presses on.
Biggles scores a bull.
Biggles sees it through.
Biggles sets a trap.
Biggles sweeps the desert.
Biggles takes charge.
Biggles takes the case.
Biggles works it out.
Biggles' Chinese puzzle.
Biggles' second case.
Biggles, charter pilot.
Biggles, Foreign Legionnaire.
Biggles, secret agent.
Champion of the main.
Comrades in arms.
The cruise of the condor.
Gimlet bores in.
Gimlet comes home.
Gimlet gets the answer.
Gimlet goes again.
Gimlet lends a hand.
Gimlet mops up.
Gimlet off the map.
Gimlet takes a job.
Gimlet's oriental quest.
King of the commandos.
Kings of space.
The man who lost his way.
Mossyface.
No rest for Biggles.
Now to the stars.
Orchids for Biggles.
Return to Mars.
The rustlers of Rattlesnake Valley.
Sergent Bigglesworth Cid.
Spitfire parade.
The spy flyers.
To outer space.
True tales of treasure.
Worlds of wonder.

Lady Darwin. SEE Mommens, Ursula, Lady Darwin & Paul Ashton

Lady Goodwin

The ghost it was.
Invitation to an inquest.
Keep it quiet.
Last first.
The martineau murders.
A matter of nerves.
The murder of my aunt.
My own murderer.

Landale, Rita E.

The cup and the lip.
Morgan's daughter.
Psyche.
The white witch of Rosehall.

Law, Katharine

The anatomy of Puck.
Hobberdy Dick.
Kate Crackernuts.
The personnel of fairyland.

Lessing, Doris

In pursuit of the English.
Martha Quest.
A proper marriage.

Literary Executors of the Estate of H. G. Wells. SEE Wells (H.G.) Literary Executors of the Estate of

Lumley-Smith, Ruth

Mary Stuart in Scotland.

Madrid, Ediciones Musicales

2A. obertura compuesta para guitarra sola por Fernando Carulli P.
A donde va la Nina.
Ay, madre me llevaron.
Ay, que buena jarana.
Ay, que en esta tierra.
Caminando por el monte.
En la boca de un fandanguillo.
Gloria a dios en las alturas.
Melodias de espana, album 5.
La nana del nino.
El nino querido.
No hay tal andar.
Sonata, codice veneciano, libro I number 2.
Sonata, codice veneciano, libro I number 7.
Ven a belen.
La virgen fue lavendera.

Majestic Film/Tobis (Germany). SEE Friedrich Wilhelm-Murnau-Stiftung, legal successor of the Majestic Film/Tobis (Germany)

Maxwell (Magdalen Perceval) Executors of the Estate of

18th century story.
The diary of a young lady of fashion.
The life and death of the wicked lady skelton.

McDowell (K.S.P.) Executors of the Estate of

And no bird sings.
As we are.
As we were.
The corner house.
Expiation.
The face.
The flint knife.
The hanging of Alfred Wadham.
Home sweet home.
The male impersonator.
Monkeys.
More spook stories.
Pirates.
Queen Victoria.
The sanctuary.
Spinach.
Spook stories.
The step.
The wishing well.

McNeile (H. C.) Trustees of the Estate of

Ask for Ronald Standish.
Challenge.
The female of the species.
The finger of fate.
Him Brent.
The Island of terror.
Knock-out.
The return of bulldog Drummond.
Ronald Standish.
The saving clause.
Shorty Bill.
Temple tower.
Tiny carteret.
When carruthers laughed.

Mier (F.) SA.

Aguila o sol.
Amor en la sombra.
Asi es mi tierra.
La calavera negra.
El capitan aventurero.
El ceniciento.
Chucho el remendado.
El ciclon.
Con la musica por dentro.
El correo del norte.
Cuando los padres se quedan solos.
El gavilan pollero.
Hay muertos que no hacen ruido.
La hermana blanca.
El hijo desobediente.
Las interesadas.
Isla para dos.
El jinete sin cabesa.
La marca del zorrillo.
Mientras el cuerpo aguante.
Mujers sin manana.
Musico, poeta y loco.
El nino perdido.
Perjura.
El rey del barrio.
El signo de la muerte.
Sinbad el mareado.
Soy charro de levita.
Tal para cual.
Temporado salvaje.
El tesora de Chucho el Roto.
El tesoro de Pancho Villa.
Las tres alegres comadres.
El ultimo cartucho.
Vagabunda.
El vagabundo.
Vivo o muerto.

Mitsuteru, Yokoyama

Tetsujin niju hachi go.

Mommens, Ursula, Lady Darwin & Paul Ashton

A friendly round.

Green memories.
James Braid.
W. G. Grace.

Morro Music Corporation

Burundanga.
Carino verdad.

Mosfilm International. SEE MosFilm Studios, d.b.a. Mosfilm International

MosFilm Studios d.b.a. Mosfilm International

Ja Kuba.

Neill, Ena & Zoe Readhead

A dominie abroad.
A dominie's five.
The free child.
Hearts not heads in school.
The last man alive.
The problem child.
The problem family.
The problem parent.
The problem teacher.
That dreadful school.

Norway (N.S.) Trustees of the Estate of

Landfall.
Marazan.
An old captivity.
Pilotage.
So disdained.
Stephen Morris.
Vinland the good.

O'Reilly, Michael Simone. SEE Hyams, Sylvia & Michael Simone O'Reilly

Oliver, W.R., & the Executors of the Estate of Fiametta Oliver

Arras of youth.
Bells rung backwards.
Collected ghost stories.
The Italian chest.
Leap year love.
Love and a rich girl.
The pained face.
A penny for the harp.
Poor man's tapestry.
Romantic afterthought.
A smile for the past.
The story of ragged Robyn.
We all have our secrets.
Whom God hath sundered.

Orczy-Barstow Brown, Sara

Mam'zelle Guillotine.
Pimpernel and Rosemary.
Sir Percy leads the band.
The triumph of the Scarlet Pimpernel.
The turbulent duchess.
The way of the Scarlet Pimpernel.

Peliculas y Videos Internacionales, SA de CV.

El abanico de lady windermere.
Abismos de pasion.
Acapulco.
Adan Eva.
Adulterio.
Adventuras de un nuevo rico.
El ahijado de la muerte.
Alma de acero.
Ama a tu projimo.
Amar es vivir.
El ametral ladora.
El amor de los amores.
Amor perdido.
Los amores de marieta.
El angel caido.
Angel del infierno.
El angel del silencio.
Angel o Demonio.
Los anos vacios.
Aqui llego el valenton.
Arriba las manos Texano.
Asesino, S.A.
Ave de paso.
Ave sin rumbo.
Ay amor como me has puesto.
Ay chabela.
Barrio bajo.
Barrio de pasiones.
Baru el hombre de la selve.
El bello durmiente.
Besos de arena.
Las bravuconas.
Buenas noches mi amor.
Cabaret tragico.
Cabo de hornos.
Cafe concordia.
Cain y Abel.
Camino del infierno.
El campeon ciclista.
Cara de angel.
Las carinosas.
Carta brava.
La casa colorada.
La casa de la zorra.
Cautiva del pasado.
Cazadores de cabezas.
El cementerio de las aguilas.
Los chacales.
Charro a la fuerza.
El Charro y la dama.
Chucho el roto.
Cielito lindo.
El cielo y la tierra.
El cielo y tu.
Cien gritos de terror.
Cita con la muerte.
El club de los suicidas.
Comicos de la legua.
Como yo te queria.
La complice.
Con el diablo en el cuerpo.
Con la rabia por dentro.
Contigo a la distancia.
Contra la ley de dios.
Un corazon en el ruedo.
Corazon salvaje.
Cristo 70.
El Cristo de mi cabecera.
Cristobal Colon.
Cuando la tierra temblo.
Cuando me vaya.
Cuando vuelvas a mi.
Cuatro horas antes de morir.
Cuatro vidas.
Cuentan de una mujer.
La dama de las camelias.
Delirio tropical.
Deseada.
Despedida de casada.
Dios sabra juzgarnos.
Un domingo en la tarde.
Dona Clarines.
Donde nacen los pobres.
Dos cadetes.
Dos charros y una gitana.
Dos gallos en palenque.
La dulce enemiga.
La duquesda del tepetate.
El.
Ella la inolvidable.
Ellas tambien son rebeldes.
En carne propia.
En la palma de tu mano.
En los altos de Jalisco.
Entre bala y bala.
Esa mi raza.
Escuadron 201.
Esposa o amante.
Estrategia matrimonio.
El fantasma de la opereta.
La feria de la cancion.
La feria de la flores.
La feria de San Marcos.
Fierecilla.
El final de norma.
Flor de fango.
Los forajidos.
Frente al destino.
Frente al pecado de ayer.
El fuego de mi ahijada.
Fuego en la carne.
La fuerza de la sangre.
La fuerza inutil.
El fugitivo.
El gato sin botas.
Gemma.
Una gitanna en Mexico.
Un grito en la noche.
La herencia de la llorona.
La herencia maldita.
Las hijas de Elena.
El hijo del diablo.
Los hijos de satanas.
Hipocrita.
El hombre propone.
Hombres del mar.
Una horca para el Texano.
Horizontes de sangre.
La India bonita.
Los inocentes.
La insaciable.
Jesusita en chihuahua.
Juan el desalmado.
Juan Polainas.
Kermesse.
Lagrimas de amor.
Las leandras.
Una leccion de amor.
La ley del mas rapido.
Los lios de barba azul.
Lo primero es vivir.
El lobo blanco.
Locura pasional.

Lodo y armino.
La madrina del diablo.
La mal casada.
Mala yerba.
El malvado carabel.
Manuel Saldivar el Texano.
Marathon de baile.
Los margaritos.
Maria la voz.
El mariachi desconocido.
Mariachis.
Marina.
Mas fuerte que el amor.
Mater nostra.
Me gustan todas.
Me importa poco.
El medico de las locas.
El mejor del mundo.
La mentira.
Mexico nunca duerme.
Mi mujer necesita marido.
Mi reino por un torero.
Los milagros de San Martin de porrres.
Miradas que matan.
Mis secretaria privadas.
Mis tres viudas alegres.
Misericordia.
El misterioso senor marquina.
El moderno barba azul.
Monte escondido.
Mujer.
La mujer del otro.
La mujer del puerto.
La mujer legitima.
La mujer marcada.
Un mujer sin destino.
La mujer y la bestia.
Mulata.
Los murcielagos.
No me olvides nunca.
No te ofendas beatriz.
La noche avanza.
Noches de gloria.
La nortena de mis amores.
Ojos tapatios.
Ole Cuba.
Ora Ponciano.
Los orgullosos.
Orlak o el infierno de Frankestein.
Otono en primavera.
Pacto de sangre.
Padre de mas de cuatro.
Para siempre amor mio.
El pecado de una madre.
Piel canela.
Los platillos voladores.
Pobre huerfanita.
Por querer a esa mujer.
Preciosa.
La princesa hippie.
Prisionera del pasado.
Pueblo de odios.
Pueblo fantasma.
El puerto de los siete vicios.
El puma.
Que lindo cha cha cha.
Que me maten en tus brazos.
Lo que solo el hombre puede sufrir.
Quiero morir en carnaval.
El rapto de las Sabinas.
Rateros ultimo modelo.
Rayando el sol.
La razon de la culpa.
Recien casados no molestar.
La red.
Refifi entre las mujeres.
Remolino de pasiones.
Reto a la vida.
Retorno a la juventud.
El revoltoso.
Rincon brujo.
El rio de las animas.
Ritmos del caribe.
El rosario.
El rosario de amozoc.
Las rosas del milagro.
Rumba caliente.
A sablazo limpio.
San Juan de Dios es jalisco.
Sangre en la barranca.
La santa del barrio.
Santo frente a la muerte.
Los santos reyes.
Se acabaron la mujeres.
El secreto de mi mujer.
El secreto del Texano.
Secuestro en Acapulco.
Seda sangre y sol.
Sendas del destino.
Sierra Morena.
El siete de copas.
El siete leguas.
Sinfonia de una vida.
Soltera y con gemelos.
La sombra del tunco.
La sospechosa.
El suavecito.
Sublime melodia.
El supermacho.
Tambien de dolor se canta.
Las tapatias nunca pierden.
El tesoro del rey salomon.
El Texano.
Tierra prohibida o la moneda rota.
Tin tan el hombre mono.
Un tipo a todo dar.
Tirando a matar.
A tiro limpio.
Toda una vida.
Traicion.
El tren de la muerte.
Los tres alegres compadres.
Las tres Elenas.
Tres valientes camaradas.
Los tres vivales.
La trinchera.
Tropicana.
Tu solo tu.
El tunco maclovio.
El ultimo amor de Goya.
El ultimo round.
Ultraje al amor.
La valentina.
Los valientes no mueren.
Variedades de media noche.
La venenosa.
Una vez en la noche.
Viaje a la luna.
La vida de agustin lara.
La vida en broma.
Un viejo amor.
El violetero.
Virgen de media noche.
La virgen desnuda.
La virgen morena.
Vistete Cristina.
La viuda celosa.
Viva chihuahua.
Viva la parranda.
El Vizconde de Montecristo.
Voces de primavera.
Vuelta al paraiso.
Vuelve el Texano.
Yo el gobernador.
Yo no creo en los hombres.
Yo pecador.
Yo quiero ser tonta.
Yo sabia demasiado.
Yo tambien soy de Jalisco.
Las zapatillas verdes.
Zorina.
El zorro de jalisco.

Pierce, David

Contraband.
Dreaming lips.
Pastor Hall.
When knights were bold.

Polland, Madeleine

Beorn the proud.
Children of the red king.
The Queen's blessing.
The town across the water.
The white twilight.

Postgate, J

The ledger is kept.
The life of George Lansbury.
Somebody at the door.
The story of a year: 1848.

Prescott, J. W. SEE Thedinga, Mrs. S.C. & J.W. Prescott

Procinema, SA de CV

Como si fueramos novios.
Los dos carnales.

Raymond, Diana

Back to humanity.
The Berg.
The chalice and the sword.
The chatelaine.
Child of Norman's end.
A chorus ending.
The city and the dream.
Corporal of the guard.
Don John's mountain home.
A family that was.
The five sons of Le Faber.
For them that trespass.
Gentle greaves.
In the steps of St. Francis.
In the steps of the Brontes.
The Jesting army.
The Kilburn tale.
The last to rest.

The Lord of Wensley.
The marsh.
Mary Leith.
The miracle of brean.
Morris in the dance.
The Multabello road.
The nameless places.
Newtimber Lane.
The old tree blossomed.
One of our brethren.
Paris, city of enchantment.
The quiet shore.
Rossenal.
The shout of the King.
A song of the tide.
Through literature to life.
To the wood no more.
Two gentlemen of Rome.
Wanderlight.
Was there love once?
We the accused.
The witness of Canon Welcome.

Readhead, Zoe. SEE Neill, Ena & Zoe Readhead

Reeves, Sheila

The adventure of Tornado Smith.
At a Mayfair luncheon.
The blackmailers.
By proxy.
By underground.
Changing 'ats.
Chemical.
The chocolate cigarettes.
The colonel's ring.
The crossword alien.
Dr. Feldman.
Dudley & Gilderoy: a nonsense.
Eliza among the chimney sweeps.
The fire body.
The fruit stoners.
The fruit stoners: being the adventures of Maria among the fruit stoners.
Genius.
How the circus came to tea.
The Italian conjuror.
King's evidence.
The land of green ginger.
Lost.
The magic mirror.
The man who lived backwards.
The man who was milligan.
The man-eater.
Maria (of England) in the rain.
Mr. Cupboard, or the furniture's holiday.
Nephele.
The olive.
Onanonanon.
The Pikestaffe case.
The reformation of St. Jules.
Revenge.
Roman remains.
Sambo and snitch.
Sergeant Poppett and Policeman James.
Shocks.
The stranger.
The survivors.
That Mrs. Winslow.
A threefold cord.
Toby's birthday presents.
Tongues of fire.
The water performance.
What the black chow saw.
When Nick dressed up.
The wolves of God, and other fey stories.

Riefenstahl, Leni

Das Blaue Licht.
Olympia, 1. Teil: Fest der Voelker.
Olympia, 2. Teil: Fest der Schoenheit.
Tiefland.
Triumph des Willens.

Right Honorable Lord Tweedsmuir of Elsfield, CBE, CD

Canadian occasions.
The clearing house.
Homilies and recreations.
Huntingtower.
Julius Caesar.
The massacre of Glencoe.
The runagate's clue.
Sir Walter Scott.

Royal Literary Fund

All I survey.
All is grist.
As I was saying.
Avowals and denials.
The ballad of St. Barbara and other verses.
Chaucer.
Christendon in Dublin.
The coloured lands.
Come to think of it.
The common man.
The dragon at hide and seek.
The end of the armistice.
Eugenics and other evils.
Four faultless felons.
Generally speaking.
GKC as MC.
The glass walking stick.
A handful of authors.
The judgement of Dr. Johnson.
Lunacy and letters.
The outline of sanity.
The paradoxes of Mr. Pond.
The poet and the lunatic.
The queen of seven swords.
The resurrection of Rome.
The return of Don Quixote.
Sidelights: New London and Newer York.
St. Thomas Aquinas.
The surprise.
Tales of the long bow.
The thing.
The turkey and the turk.
UBI ecclesia.
The way of the cross.
The well and the shallows.

Royal National Institute for the Blind. SEE Action Research, Royal National Institute for the Blind & Imperial Cancer Research Fund

Sayer, Chloe

The technique of the love affair.

Schirmer (G.), Inc.

100 devils and one girl, op. 15 (1963).
1905–1917, symphonic monument for large orchestra and chorus, op. 40 (1925–26).
1918 (part two); incidental music to film.
24 preludes and fugues for piano, op. 87.
24 preludes for piano, op. 34.
25 years of the Red army, overture for wind orchestra, op. 84.
8 Japanese melodies for voice and piano, op. 49A.
About our native country, op. 82; cantata for children's chorus and symphony orchestra.
About our native land, op. 82, cantata for children's chorus and symphony orchestra.
About our young pioneer leader; song for children's chorus and piano.
About Petya, young pioneer ditties; for voice and piano.
About the bear; song of children's chorus and piano.
Academician Ivan Pavlov; scenario by M. Papava, directed and produced by G. Roshal, incidental music to film.
Adventures of Korzinkina, op. 59.
Adygeya, sextet for violin, viola, cello, horn, clarinet and piano, op. 48 (1933).
The aerograd; scenario and production by A. Dovzhenko, Mosfilm, and Ukrainfilm, incidental music to film.
Air for trumpet and orchestra.
Alastor, symphonic poem, op. 14 (1912–13).
Album of children's pieces.
Alexander Nevsky cantata, op. 78.
Allegro rustico.
Alone, op. 26.
Andantino for piano.
Anna Snegina, op. 25 (1966).
Anton Ivanovich is angry, incidental music to film.
Aphorisms, op. 13.
Aria for chamber orchestra (1964).
Aria for violin and string orchestra (1963).
At the circus, suite in 4 parts (1968).
At the festivity from the cantata ''Leninists, op. 63.''.
At the summer camp; young pioneer song for children's chorus and piano.
At the young pioneer summer camp, six pieces, op. 3/86.
Ballad about the Motherland for bass and orchestra.
Ballad for piano, op. 28.

Ballade for piano, op. 7.
Ballet suite no. 1.
Ballet suite no. 2.
Ballet suite no. 3.
Ballet suite no. 4.
Beautiful day, op. 82.
Before the monument to the war hero; song for chorus and piano.
Belinsky, op. 85.
Belinsky, op. 85a for orchestra.
Bleak morning (part three); incidental music to film.
A bonfire at the Dnieper, song for children's chorus and piano.
Boris Gudonov, op. 58.
The boy giant (1969).
Bright lights.
The bronze horseman, ballet in 4 acts, op. 89.
Buffoons (1966).
Bulgarian folk songs.
Bylina about Lenin, op. 58.
The camp of friendship, op. 66; songs of the ''Artek'' young pioneer summer camp, for children's chorus and piano.
Canon.
Cantata-song about Stalin, for soloist, chorus, and orchestra.
Carnival overture (1957).
Cello concertino, in G, op. 132.
Cello concertino, op. 54 (1961).
Cello concerto in A minor by R. Schumann, op. 125.
Cello concerto no. 1 in E flat major, op. 107.
Cello concerto no. 2 in G minor, op. 126.
Cello sonata in D major, op. 40.
Chaconne.
Chamber symphony (1967).
Cheryomushki, op. 105a.
Children's notebook, op. 69.
Children's suite for small orchestra, op. 6 (1957).
Cinderella.
Clarinet quintet (1955).
Club of the famous captains; songs for voice and piano by A. Alexandrov, D. Kabalevsky, K. Molchanov et al.
Concert fantasia on Slovak and Morovian themes for violin and piano (1956).
Concert waltz for orchestra, op. 90.
Concertino for clarinet and piano.
Concertino for french horn and small orchestra, op. 14, no. 2.
Concertino for two pianos, op. 94.
Concertino for violin and small symphony orchestra.
Concerto.
Concerto buffa for chamber orchestra (1966).
Concerto etude for trumpet and orchestra, op. 49.
Concerto for balalaika and orchestra, op. 63.
Concerto for cello and orchestra.
Concerto for cello and orchestra, op. 16 (1964).
Concerto for cello and orchestra (1964).
Concerto for cello and orchestra, op. 87.
Concerto for cello and orchestra, op. 112.
Concerto for cello and orchestra, op. 43 (1948).
Concerto for clarinet and chamber orchestra (1957).
Concerto for clarinet and orchestra, op. 135.
Concerto for coloratura soprano and orchestra, op. 82.
Concerto for flute and orchestra, op. 75 (1961).
Concerto for french horn and orchestra op. 91.
Concerto for french horn and orchestra, op. 136.
Concerto for harp and orchestra, op. 74.
Concerto for harp and orchestra.
Concerto for harp and orchestra, op. 126.
Concerto for horn and orchestra, op. 40.
Concerto for oboe and strings, op. 50 (1959).
Concerto for orchestra after the legends of Till Eulenspiegel, in 4 movements (1967).
Concerto for orchestra with solo trumpet, piano, vibraphone & double bass (1966).
Concerto for organ and string orchestra, op. 35.
Concerto for piano and orchestra (D-flat major).
Concerto for piano and orchestra, op. 128.
Concerto for piano and orchestra, no. 4, op. 53 (1931).
Concerto for piano with orchestra, op. 21.
Concerto for trumpet and orchestra, op. 94 (1967).
Concerto for viola and chamber orchestra (1967).
Concerto for violin and orchestra (1969).
Concerto for violin and orchestra, op. 100.
Concerto for violin and orchestra, op. 67 (1960).
Concerto for violin and string orchestra, op. 21.
Concerto for violin with orchestra no. 1 (195), op. 9/29.
Concerto in E flat major for trumpet and orchestra.
Concerto in E-flat major for trumpet and orchestra (1950).
Concerto in E-flat minor for trumpet and orchestra, op. 41.
Concerto no. 1.
Concerto no. 1 for cello, 17 winds, percussions and harmonium, op. 23.
Concerto no. 1 for piano and orchestra (1946).
Concerto no. 1 for piano and orchestra (1946).
Concerto no. 1 for piano and string orchestra.
Concerto no. 1 for violin and orchestra in A minor, op. 77.
Concerto no. 1, op. 1 for piano and orchestra (1933).
Concerto no. 1, op. 14 for violin and orchestra (1958).
Concerto no. 2.
Concerto no. 2 for piano and orchestra, op. 102.
Concerto no. 2 for piano and orchestra (1965).
Concerto no. 2 for piano and string orchestra.
Concerto-poem for trumpet and orchestra, op. 113.
Concerto-poem for viola and orchestra, op. 13 (1964).
A conversation with the cactus, op. 91; eight children's songs.
Cossack songs.
Counterplam, op. 33.
Dance no. 1 (B-flat major) for violin and piano.
Dance of the Russian sailors from the ballet the red poppy.
Dance suite for harp.
Dances for symphony orchestra from the musical comedy Bridegroom from the embassy.
The Decembrists, opera in 4 acts.
Divertimento, no. 2 for piano.
Divertisement in E-flat major for symphony orchestra, op. 80 (1948).
Don Quixote, symphonic engravings.
Drawn-out song.
Dreams; piano piece.
Duet of Sir Peter and Lady Teazle; from incidental music to Sheridan's ''School for scandal.''
Eastern dance for clarinet and piano, op. 47.
Easy piano pieces on folk themes of the peoples of the Volga region (1948).
Eight British and American folksongs.
Eight concert etudes for piano left-hand, op. 82.
Eight romances to words by Mikhail Leromontov.
Eight songs, op. 17; for children's chorus and piano.
Elegy for string orchestra, op. 21.
Encounter with a miracle; from the opera ''The sisters, op. 83.''.
An encounter; song for children's chorus and piano.
Epic poem on Russian folk themes (1950).
Etude for piano, op. 1, no. 1.
Etude for piano, op. 43.
Etude in E minor for piano (1951).
Events for piano, op. 5.
Excerpts from the opera, ''Colas Breugnon'' for singing and piano, op. 24.
Excerpts from the operetta, ''Spring sings, op. 58.''.
Execution of Stephen Razin, op. 119.
The exile.
Exotic suite, op. 13.

Expression, no. 1 of two pieces for, op. 1.
The fair at Sorchinsk completion and orchestration of the opera by Modest Musorgsky.
Fall of Berlin, for chorus and orchestra, op. 82a.
Fall of Berlin, op. 82.
Fantasia for cello and symphony orchestra, op. 52 (1953).
Far-off youth, songs for soprano and piano, op. 12.
A farewell to a friend.
The fatherland, opera (1945).
Festive overture (1970).
Festive overture for symphony orchestra (1955).
Festive overture, op. 97.
Field march no. 1 in A-flat major for wind orchestra.
Field march no. 2 in F minor F.
Field march of the Red army for wind band, op. 64.
First Chinese suite for orchestra, op. 60.
First concert fantasia for violin and orchestra on Finnish themes (1953).
First echelon, op. 99.
First echelon, op. 99a.
First suite from orchestra, op. 18.
First suite from the ballet Genesis, in 4 movements (1968).
Fisherman on Lake Ladoga.
Five choruses to words by Russian poets.
Five days, five nights, op. 111.
Five days, five nights, op. 111a.
Five lyric poems for a capella chorus.
Five merry songs, for soprano and piano (1961).
Five piano preludes (1966).
Five pieces for cello and piano, op. 25.
Five pieces for flute and piano (1947).
Five pieces for violin and piano, op. 53.
Five preludes for orchestra.
Five preludes for piano.
Five romances for voice and piano on texts of Pushkin, op. 10.
Five romances on text from magazine, ''Krokodil,'' for bass and piano, op. 121.
Five romances on verses of V. Dolmatovsky for voice and piano, op. 98.
Five romances, op. 76 to words by Rasul Gamzatov; for mezzo soprano and piano.
Five songs to Shakespeare's comedy, ''Much ado about nothing'', op. 7.
The flea, comic suite for orchestra, op. 8.
Flute sonata no. 2, op. 94.
The fountain at Bakhchisara ballet-poem after Pushkin.
Four children's songs for piano (1961).
Four easy pieces for violin and piano.
Four girls, song for medium voice and piano.
Four miniatures on Russian folk themes for string quartet (1950).
Four monologues on verses of A. Pushkin for bass and piano, op. 91.
Four pieces for basson and piano.
Four pieces for cello or viola and piano on themes of lutenists of the 14th-16th-centuries, op. 35.
Four pieces for children for soprano and piano, op. 27.
Four pieces for oboe and piano.
Four preludes, op. 5; for piano.
Four romances for voice and piano, op. 44.
Four romances for voice and piano, op. 59.
Four romances on verses of A. Pushkin for bass and piano, op. 46.
Four song-jokes, op. 42; for voice and piano.
Four songs on verses of V. Dolmatovsky for voice and piano, op. 86.
Fourth (Arctic) symphony, op. 82.
Fourth suite from the ballet, ''Spartacus.''
The friendship of the people op. 79.
Friends, op. 51.
Friendship overture (1959).
Frol Skobeyev, op. 12.
From days of youth for piano.
From Jewish folk poetry, op. 79.
From pioneer life, op. 14, pieces.
From Shakespeare.
From the past, 6 improvisations for piano, op. 74 (1946).
From the songs of Ossian, 3 musical pictures for orchestra, op. 56.
Funeral-ode for large orchestra & mixed chorus (in memory of Lenin).
Funeral-triumphal prelude for symphony orchestra, op. 130.
Gadfly, for orchestra.
Gadfly, op. 97.
Gavotte and minuet for orchestra.
Gavotte from the human comedy, op. 37.
The general from the Kremlin; Red Army song for two-part chorus and piano.
German notebook, vocal cycle.
Ghazals and songs for voice and piano, op. 31.
Girl friends, op. 41 (2).
Glory to great October, ode for baritone and orchestra.
Glory to the Soviet army, cantata, op. 93.
Golden mountains, op. 30.
Golden mountains, op. 30a for orchestra in 6 movements.
Good luck!; sowing song, for children's or women's two or three part chorus and piano.
Good-bye, Girlie!; song for medium voice and piano.
Great citizen, op. 52.
Great citizen, op. 55, part two of the film.
Greeting overture (D-flat major).
Gyulsar, music drama.
Gyulsara, opera in 4 acts, op. 96.
Hail Taiga!; song for chorus and piano.
Hamlet, op. 116a.
Hamlet, op. 32a.
Happy march in F major for wind band, op. 53, no. 2 (1941).
Her first year at school (jointly with M. Ziv).
Hero-city, oratorio for soloists, chorus, and orchestra.
Heroic march in F minor for wind band, op. 53, no. 1 (1941).
Heroic march of the Buryat-Mongolian assr, op. 71.
Heroic poem for high bass or baritone, 2 pianos and percussion (1969).
Hikers' song; for children's chorus and piano.
Hindu suite from the ballet-Pantomme noyya for orchestra, op. 42A.
Hiroshima must not occur again, oratorio, op. 63 (1967).
Hitler calls to Ribbenthrop, musical satire for bass and piano.
Holiday at Ferghana, overture for orchestra, op. 75.
Holiday overture for full orchestra, op. 96.
Hostile whirlwinds; incidental music to film.
A house of warm welcome; song for children's chorus and piano.
How long shall the kite soar? op. 20.
Humoresque for chamber orchestra.
The Hungarian album, cycle of piano pieces for children (1966).
Hungarian fantasy for violin and orchestra (1952).
Hungarian tunes for violin and orchesta (1952).
I feel no fear.
Ice and steel, opera, op. 24.
Impromptu for piano op. 99, no. 1.
Improvisation, op. 21; for violin and piano from incidental music to the film ''A night in St. Petersburg.''
In a fairy-tale forest, op. 62; musical pictures for recitalist, singing, and piano.
In autumn.
In flames (at Moscow), op. 37, opera in four acts, six scenes.
In memory of our dear Sergo, song for children's chorus and piano.
In memory of S.Y.A. Marshak, 6 lyric epigrams (1964).
In Mongolia, suite in 5 parts for small symphony orcherstra, op. 10 (1952).
In Nizhny Novgorod.
In Rustaveli's footsteps, oratorio.
In the rhythm of hearts (We want to dance).
In these days, song for voice or chorus and piano.
The intenationale.
Into the storm (1939).
Invention for piano, op. 15.
Inventions, suite for piano.
The iron foundry, op. 19.
Ivan Grozny.

Ivan the Terrible oratorio for chorus, narrator, soloists, and full symphony orchestra.
A jaunty young pioneer song; for children's chorus and piano.
Jeanne d'Arc, ballet in 3 acts (1957).
Jeanne d'Arc, suite from the ballet (1958).
Jewish orchestra at the Governor's ball, suite from the music to Gogol's ''The Inspector General,'' op. 41 (1926).
Jewish songs, op. 37 (1923–26).
Joseph the beautiful, ballet, op. 50.
Katerina Izmailova, op. 114 (op. 29/114).
King Lear, op. 137.
Kirov is with us, poem-cantata, p. 61 (1942–43).
The Komsomol locomotive; song for voice, two-part chorus and piano.
The Kremlin by night, cantata-nocturne, op. 75 (1947).
Kursk songs.
The land of the fathers.
The last hour is striking, song in memory of Patrice Lumumba for chorus and piano.
Laurencia, ballet in 3 acts.
Legend.
Legend of love, ballet (1961).
Lenin in our hearts (1957).
Lenin is with us (1968).
Lenin, dramatic symphony, op. 16.
Leninists, op. 63; cantata for three choruses and full symphony orchestra.
Let's sing, comrades; song for two-part chorus and piano.
Letter, young pioneer song; for voice or chorus and piano.
Leyi and medzhun, opera in 4 acts, op. 94.
Leyla and medshun, poem for symphony orchestra (1947).
Light overture in C major.
Lightnings, symphonic poem for orchestra, op. 39.
Like a rosy apple.
The little house in Colomna musical choreograhic episode-vaudeville.
The loneliness of Lermontov cycle of romances for voice and piano.
Love (a parable).
Love's pangs.
The low-born son-in-law (1966).
Loyalty, op. 136.
Lullaby and dance for 2 pianos (1952).
The lyceum years of A.S. Pushkin, vocal cycle, op. 35.
Major-minor studies, op. 68; for solo cello.
Many times I have put up at hotels.
March for piano, op. 1 no. 2.
March from the film ''Zangezur.''
March of Kirov followers.
March of the Red army for wind orchestra.
March, Gavotte from ''The comedians'' suite: from incidental music to M. Daniel's play ''Inventor and comedian,'' op. 26.
March; for wind band.
Masha is fair, song for women's trio or three-part chorus and piano.
Masquerade opera in 1 act.
May march; song for two-part chorus and piano.
May-day banners; song for two part chorus and piano.
Mazurka for piano.
Mazurka-caprice for piano, op, 41.
Meditations, 7 pieces for piano, op. 3.
The meeting on the Elbe, op. 80.
Melody and dance for violin and piano (1950).
Melody for piano, op. 99, no. 2.
Melody, no. 2 of two pieces for op. 1.
A merry feast; song for children's chorus and piano.
Michurin, op. 78.
Mindia.
Miniature triptych.
Moldavian rhapsody for violin and orchestra, op. 47, no. 2 (1949).
Moldavian suite for orchestra (1950).
A monument all to oneself, satirical opera in 3 acts (1964).
Moscow, cantata, op. 38.
Moscow, oratorio for soloists, chorus and orchestra.
Moscow—Cheryomushki, op. 105.
Mother, op. 13 (1956).
Motherland hears, op. 86.
Mtsyri, symphonic poem.
Mtsyri, symphonic poem after Lermontov, op. 54.
A Muleteer, op. 11.
Music for chamber orchestra.
Mussorgsky; scenario by A. Abramova and G. Roshal, directed and produced by G. Roshal, incidental music to film.
My father is a peasant.
New Babylon, op. 18.
A new sea; song about the Tsimlyanskoye Storage Lake, for voice or chorus and piano.
The New-Year tree, children's suite in 6 parts for small symphony orchestra, op. 11 (1951).
Night from the old market, suite for orchestra, op. 38.
A night in St. Petersburg; scenario by G. Roshal and V. Stroyeva (on the subject).
Nikita Vershinin, op. 53; opera in four acts, eight scenes.
Nocturne for French horn and piano (1955).
Nonette, ensemble for female voice.
O wert thou in the cauld blast.
Octaves.
Octet.
October, op. 131.
Ode in memory of Vladimir Ilich Lenin.
Ode to joy.
Oldtime romance.
On guard for peace oratorio, op. 124 (1950).
On the field of Kulikovo, symphony-cantata, op. 14.
On the road; song for children's chorus and piano.
An optimistic tragedy, opera, op. 24 (1964).
Oratorio pathetique.
An ordinary girl, operetta in 3 acts (1959).
Our construction projects are our common concern; song for children's chorus and piano.
Our great native country, op. 35; cantata for two soloists (mezzo-soprano and chorus and orchestra).
Our native land; song for children's chorus and piano.
Our Soviet country, song for two- or three-part chorus and piano.
Our yard, op. 19 (1966).
Overture in A minor (1961).
Overture on Mari themes for orchestra, op. 25.
Overture on Russian and Kirghiz folksongs, op. 115.
Overture on Slavonic folk themes for orchestra, op. 77.
Overture pathetique in C minor for symphony orchestra, op. 76 (1947).
Overture to music drama Gyulsara.
Overture to the opera ''Taras' Family,'' op. 47.
Overture to the opera Shakh-senem.
The path of thunder, ballet in 3 acts (1956–57).
The path of thunder, suite no. 1 from the ballet (1958).
The path of thunder, suite no. 2 from the ballet (1957).
People's avengers, op. 36; suite for mixed chorus and symphony orchestra.
Peter I, suite for orchestra from the film music.
Piano concerto (1943).
Piano concerto no. 1 in C minor, op. 35.
Piano concerto no. 1 in F-sharp minor (1954).
Piano concerto no. 1 in minor.
Piano pieces for children (1970).
Piano quintet (1961).
Piano quintet (1962).
Piano quintet, op. 18 (1944).
Piano sonata.
Piano sonata no. 2 in B minor.
Piano sonata no. 4, op. 56 (1955).
Piano sonata no. 5, op. 58 (1956).
Piano sonata no. 6, op. 73 (1960).
Piano trio (1953).
Piano trio in four movements.
Piano trio, op. 24 (1945).
Pieces for piano.
Pioneers plant the forests, op. 81.
Pirogov, op. 76.
Pirogov, op. 76A.
Poem for cello and piano, op. 10.
Poem for organ, strings, 4 trumpets, 2 pianos, and percussion (1966).
Poem for piano.

Poem in C-sharp minor for piano.
Poem in memory of Sergei Yesenin.
The poem of struggle, op. 12; for symphony orchestra and chorus.
Polish tunes, suite for symphony orchestra, op. 47, no. 2 (1950).
Polyphonic sketches for piano, op. 78 (1948).
Prelude and scherzo for string octet, op. 11.
Prelude for organ, trumpet, harp, and string orchestra, op. 24.
Preludes and fugues, op. 61.
Prisoner of the Caucasus, ballet-poem after Pushkin.
Quartet for 2 violins, viola and cello, op. 58.
Quartet on American themes for flute, oboe, clarinet, and bassoon, op. 79.
Quasi-sonata for piano.
Quintet for piano, violin, clarinet, horn, and cello, op. 50.
Quintet in G-minor for viola, 2 violins, cello, and piano, op. 57.
Quintet on Turkmen folk themes for flute, oboe, clarinet, bassoon, and small drum, op. 65.
Rachel, opera in 1 act, op. 81.
Rada an Loiko, a symphony poem after the story by M. Gorky (1954).
Rails, for piano, op. 16.
The raised sword oratorio.
A Raven flies towards a raven.
Recitative and rondo for piano, op. 84.
Red army rhapsody for orchestra, op. 77.
The red poppy ballet in 3 acts, op. 70.
Repairs station song.
Requiem in memory of the fallen heroes, op. 20 (1946).
Restless youth; scenario by L. Trauberg (jointly with G. Roshal) after a like-named autobiographical story.
Return of Maxim, op. 45.
The reward vocal-symphonic novella.
Rhapsody on Moldavian themes for orchestra, op. 47, no. 1 (1949).
Rhapsody on the theme of the song school years; for piano and symphony orchestra, op. 75.
Romance of Benvolio; from incidental music to ''Romeo and Juliet, op. 56,'' for medium voice and piano.
Romances to words by Mikhail Lermontov.
Romeo and Juliet.
Romeo and Juliet, op. 56; musical sketches for Shakespeare's tragedy for full symphony orchestra.
Romeo and Juliet, op. 75.
The rose and the cross for orchestra, op. 26.
Rothchild's violin.
Russia the wooden.
Russian fairy tale, symphonic poem for orchestra, op. 50.
Russian fantasy for symphony orchestra.
Russian notebook, vocal cycle.
Russian overture for orchestra, op. 31.
Russian song.
Russian suite for symphony orchestra (1952).
Russian village landscape, 4 romances on verses of S. Esenin, op. 53.
Sailor's song.
Satires (pictures of the past), op. 109.
Scherzo for piano, op. 6.
School song; for two-part chorus and piano.
School years; song for children's chorus and piano.
The Seasons, songs.
Second concert fantasia for violin and orchestra (1965).
Second piano concerto in G minor, op. 23.
Second suite from the ballet Genesis, in 4 movements (1969).
Serenade for cello and piano, op. 31.
Serenade for symphony orchestra, op. 47, no. 4 (1952).
Seven artistic-instructional pieces for violin and piano, op. 54.
The seven beauties, ballet in 4 acts (1952).
The seven beauties, suite for symphony orchestra (1949).
Seven nursery rhymes, op. 41, for voice and piano, from English folk children's songs.
Seven piano pieces (partita in F minor).
Seven pieces for clarinet and piano.
Seven romances on poems of Alexander Blok for soprano, violin, cello, and piano, op. 127.
Seven songs and a march in A, op. 89.
Seven songs for voice and piano, op. 23.
Shakh-senem, opera in 4 acts, op. 69.
Shchors; scenario and production by A. Dovzhenko, incidental music to film.
Siberian song.
Signal opera in 1 act.
Simple folk, op. 71.
Simple songs, a vocal cycle for soprano, bass, and piano (1956).
Sinfonietta for string orchestra.
Sinfonietta in A major, op. 10 (1910).
Sinfonietta in G minor for string orchestra (1953).
Sinfonietta no. 1 for orchestra, op. 41 (1948).
Sinfonietta no. 2 for string quartet and timpani, op. 74 (1960).
Sinfonietta no. 2 in A minor for string quartet, op. 68 (1945–46).
Sinfonietta on Russian themes for orchestra, op. 43.
The sisters (part one); incidental music to film.
The sisters, op. 83; opera in three parts, with prologue and epilogue.
Six Hindu melodies for voice and piano (+violin), op. 51.
Six pieces for string quartet and harp, op. 16 (1966).
Six romances for voice and piano, op. 45.
Six romances on verses by British poets for low male voice and piano, op. 62.
Six romances to lyrics by Alexander Pushkin.
The Smolensk horn.
Snow is falling.
So much to do in the morning; song for children's chorus and piano.
Soldier's marching song, op. 121.
Solemn march for wind orchestra, op. 76.
Solemn march.
Solemn ode (to the 30th anniversary of October).
Solemn overture for orchestra, op. 72.
Some songs of the wise crocodile (from ''The talks of the wise crocodile'' radio program), nos. 1–3.
Some songs of the wise crocodile (from ''The talks of the wise crocodile'' radio program), nos. 4–6.
Son of the sun, opera, op. 62.
Sonata for cello and piano (1966).
Sonata for cello and piano (1957).
Sonata for cello and piano, op. 49 (1961).
Sonata for cello and piano, op. 51, no. 3.
Sonata for cello and piano, op. 21 (1945).
Sonata for clarinet and piano, op. 1 (1952).
Sonata for clarinet and piano, op. 28 (1945).
Sonata for flute and piano, op. 44 (1958).
Sonata for flute and piano.
Sonata for harp and piano, op. 46.
Sonata for oboe and piano.
Sonata for piano (1963).
Sonata for piano and cello, op. 88.
Sonata for piano, no. 1, op. 12.
Sonata for piano, op. 10.
Sonata for piano, op. 34.
Sonata for solo violin (1960).
Sonata for solo violin, op. 115 (1947).
Sonata for trumpet and piano.
Sonata for viola and piano, op. 51, no. 2.
Sonata for viola solo.
Sonata for violin and piano (1959).
Sonata for violin and piano, op. 134.
Sonata for violin and piano, op. 43 (1928).
Sonata for violin and piano, op. 70 (1947).
Sonata for violin and piano, op. 51, no. 1.
Sonata for violin and viola, op. 35.
Sonata in D minor.
Sonata in E-flat major for piano.
Sonata in memory of Sergei Prokofiev for piano, op. 4 (1956).
Sonata in three movements.
Sonata no. 1.
Sonata no. 1 for cello solo, op. 18.
Sonata no. 1 for clarinet and piano (1965).
Sonata no. 1 for clarinet and piano.
Sonata no. 1 for piano.
Sonata no. 1 for piano, op. 1.

Sonata no. 1 for piano, op. 3.
Sonata no. 1 for piano, op. 5.
Sonata no. 1 for cello solo, op. 72 (1960).
Sonata no. 1 for violin and piano, op. 43 (1956).
Sonata no. 1 for violin and piano, op. 12 (1943).
Sonato no. 2.
Sonata no. 2 for cello and piano, op. 81 (1948–49).
Sonata no. 2 for cello and piano, op. 63 (1965).
Sonata no. 2 for clarinet and piano (1965).
Sonata no. 2 for piano, op. 7.
Sonata no. 2 for piano, op. 17.
Sonata no. 2 for violin and piano (1970).
Sonata no. 3 for piano, op. 15.
Sonata no. 4.
Sonata no. 5 for piano, p. 64, no. 1 (1907–08/1917/1944).
Sonata no. 5 for violin and piano, op. 53 (1953).
Sonata no. 6 for piano, op. 64, no. 2 (1908/1917/1944).
Sonata no. 7 for piano, op. 82 (1949).
Sonata no. 8 for piano, op. 83 (1949).
Sonata no. 9 for piano, op. 84 (1949).
Sonata-fantasia, piano quartet, op. 64 (1945).
Sonata-fantasy for piano.
Sonatina.
Sonatina for oboe and piano.
Sonatina for piano (1950).
Sonatina for violin and piano, op. 61 (1966).
Sonatina for violin and piano, op. 46 (1949).
Sonatina in C major for piano.
Sonatina in E minor for piano, op. 57 (1942).
Sonatina no. 1 for harp.
Sonatina no. 1 for violin and piano.
Sonatina no. 2 for harp.
Sonatina no. 2 for piano.
Sonatina no. 2 for violin and piano.
Sonatina no. 2. For piano.
Sonatina no. 3 for harp.
Sonatina no. 3 for piano.
Sonatina no. 4 for piano lyrical.
Song about friendship between Soviet and Chinese children, for voice and piano.
Song about Moscow.
Song about Russia; for voice, men's chorus, and piano.
Song about the brightly clad hiker; for children's chorus and piano.
Song about the locomotive whistle, for voice and piano.
Song about the young pioneer banner; for voice and piano.
Song for violin and piano, op. 6BIS.
Song from the radio production ''Don Quixote''; for voice and piano.
Song of frontier-guards, for voice and piano.
Song of morning, spring, and peace, op. 57, cantata for children's chorus & symphony orchestra.
The song of the great rivers, op. 95.
Song of the old captain; from a stage version of Dicken's ''Dombey and Son.''
Song of the party membership card, for low voice or chorus and orchestra.
Song of the varicoloured ties league; for children's chorus and piano.
Song of the young Muscovite and Song about Moscow; from the opera ''In flames (at Moscow), op. 37.''
Song of true friends, for children's chorus and piano.
Song of young girl.
Song-poem in honor of the Ashugs for violin and piano.
Songs and dances of death.
Songs from the film ''Anton Ivanovich is angry.''
Songs from the film ''Her first year at school,'' scenario by A. Zak.
Songs of freedom.
Songs of freedom.
Songs of the present day, a symphony cycle in 9 movements (1964).
Songs of war and peace.
Songs to words by Alexander Prokofiev.
Songs to words by Robert Burns.
Songs, op. 34; for voice and piano.
The Soviet east, suite for orchestra, op. 75.
Spanish songs for soprano and piano, op. 100.
Spartacus.
Spring came (1958).
Spring sings, op. 58, operetta in three acts.
St. Petersburg song.
Starlet; song for children's chorus and piano.
State anthem of the Armenian SSR for chorus and symphony orchestra.
The stone.
The stone flower.
The storm, suite for orchestra from the film music. The story of a real man.
Story of the battle for the Russian land, op. 17.
String quartet (1969).
String quartet no. 1.
String quartet no. (1947).
String quartet no. 1 (1964).
String quartet no. 1 in C-major, op. 49.
String quartet no. 1, op. 2.
String quartet no. 1, op. 33, no. 1 (1929–30).
String quartet no. 1, op. 33.
String quartet no. 10, op. 118 in A-flat major.
String quartet no. 10, op. 67 no. 1 (1907/rev. 1945).
String quartet no. 11, op. 122 in F-minor.
String quartet no. 11, remembrances, op. 67 no. 2 (1945).
String quartet no. 12 in D flat major in 2 movements, op. 133.
String quartet no. 12, op. 77 (1947).
String quartet no. 13 in B flat minor.
String quartet no. 13, op. 86 (1949).
String quartet no. 2.
String quartet no. 2 (1946).
String quartet no. 2 (1956).
String quartet no. 2 in A-major, op. 68.
String quartet no. 2, op. 33, no. 2 (1930).
String quartet no. 2, op. 19.
String quartet no. 2, op. 75.
String quartet no. 3 in F major, op. 73.
String quartet no. 3, op. 28.
String quartet no. 3, op. 33, no. 3 (1910).
String quartet no. 3, op. 67.
String quartet no. 4 in D-major in four movements, op. 83.
String quartet no. 4, op. 20 (1945).
String quartet no. 4, op. 29.
String quartet no. 4, op. 33, no. 4 (1909–10/rev. 1937).
String quartet no. 4, op. 83.
String quartet no. 5 in B flat major in three movements, op. 92.
String quartet no. 5, op. 33.
String quartet no. 5, op. 47 (1938–39).
String quartet no. 6 in G-major in 4 movements, op. 101.
String quartet no. 6, op. 34.
String quartet no. 6, op. 49 (1939–40).
String quartet no. 7 in F-sharp minor, op. 108.
String quartet no. 7, op. 41.
String quartet no. 7, op. 55 (1941).
String quartet no. 7, op. 59 (1957).
String quartet no. 8 in C-minor, op. 110.
String quartet no. 8, op. 53.
String quartet no. 8, op. 59 (1942).
String quartet no. 8, op. 66 (1959).
String quartet no. 9 in E-flat major, op. 117.
String quartet no. 9, op. 58.
String quartet no. 9, op. 62 (1943).
String quartet no. 9, op. 80 (1963).
String quartet number 2 (1961).
String quartet number 3 (1967).
Stylizations, 9 pieces in the form of ancient dances for piano, op. 73 (1946).
Suburban settlement lyrical songs.
Suite.
Suite for balalaika (or violin) and piano, op. 69.
Suite for full orchestra from the Vyborg side, op. 50A.
Suite for jazz orchestra, no. 1.
Suite for piano.
Suite for small symphony orchestra, op. 26 (1945).
Suite for string quartet (1949).
Suite for string quartet (from film music to Peter I).
Suite for symphony orchestra (1950).
Suite for viola and piano (1959).
Suite for violin and piano, op. 58 (1956).
Suite from incidental music to ''Don Quixote''.
Suite from incidental music to ''Much ado about nothing''.
Suite from music to Lavrenev's play, ''Lermontov.''
Suite from music to the ballet Mirandolina, op. 122A.

Suite from music to the film, ''Battle of Stalingrad.''
Suite from the ballet Tarasbulba, op. 92A.
Suite from the ballet The bronze horseman, op. 89A.
Suite from the ballet The shore of hope in 7 movements (1959).
Suite from the ballet, The gypsies, op. 90A.
Suite no. 1 from the ballet The red poppy, op. 70A.
Suite no. 2. from the ballet The red poppy, op. 70B.
Suite on folk themes for violin and piano, op. 132.
Suite or violin solo.
Summer camp song; for children's chorus and piano.
Sun over the steppe, opera, op. 27.
The Sun shines over our Motherland, op. 90.
Symphonic aria for cello and string orchestra, op. 43.
Symphonic dances on mari themes (1951).
Symphony (1958).
Symphony for mezzo-soprano and chamber orchestra, op. 55 (1962).
Symphony for string orchestra and percussion in 3 movements (1963).
Symphony in C minor, op. 11.
Symphony no. 1.
Symphony no. 1 (1945).
Symphony no. 1 E-flat minor (1959).
Symphony no. 1 for large orchestra, op. 35.
Symphony no. 1 for symphony orchestra, op. 20.
Symphony no. 1 in B minor (1943).
Symphony no. 1 in F minor, op. 6.
Symphony no. 1 in F-minor, op. 10.
Symphony no. 1 in memory of Sergei Kirov.
Symphony no. 1, op. 10 (1942).
Symphony no. 1, op. 12 (1955).
Symphony no. 1, op. 4 (1935).
Symphony no. 1, op. 5.
Symphony no. 10 in E minor, op. 93.
Symphony no. 11 in G minor, op. 103.
Symphony no. 11, op. 34 (1931–32).
Symphony no. 12 in D-minor, op. 112.
Symphony no. 12, op 35 (1931–32).
Symphony no. 13 in B flat minor, op. 113.
Symphony no. 13, op. 36 (1933).
Symphony no. 14, op. 135.
Symphony no. 15 in A major for full orchestra, op. 141.
Symphony no. 17, op. 41 (1936–37).
Symphony no. 18, op. 42 (1937).
Symphony no. 2.
Symphony no. 2 (1946).
Symphony no. 2 (1968).
Symphony no. 2 in a major, ''glory to light'' (1962).
Symphony no. 2 in B major, op. 14 (October, a symphonic dedication).
Symphony no. 2 in C minor.
Symphony no. 2 in E minor.
Symphony no. 2, Motherland, op. 39.
Symphony no. 2, Youth.
Symphony no. 2, Greek Epigrams (1963).
Symphony no. 2, op. 11.
Symphony no. 2, op. 222.
Symphony no. 2, op. 9 (1942/1944).
Symphony no. 20, op. 50 (1940).
Symphony no. 26, op. 79 (1948).
Symphony no. 3.
Symphony no. 3 (1957).
Symphony no. 3 for chamber orchestra, op. 36.
Symphony no. 3 in C major, op. 17.
Symphony no. 3, Little for string orchestra.
Symphony no. 3, ''in memory of my father'' (1964).
Symphony no. 3, op. 20 for full orchestra and chorus.
Symphony no. 3, op. 30.
Symphony no. 3, op. 45 (1949).
Symphony no. 3, romantic.
Symphony no. 4 (1965).
Symphony no. 4 for full orchestra, op. 43.
Symphony no. 4, op. 1 (1957).
Symphony no. 4, op. 17 (1917–18).
Symphony no. 4, op. 24.
Symphony no. 5 (1968).
Symphony no. 5 in D minor, op. 47.
Symphony no. 5, B flat, op. 100 (1944).
Symphony no. 5, op. 56.
Symphony no. 5, op. 72 (1962).
Symphony no. 6 in B minor, op. 54.
Symphony no. 6, op. 79 (1963).
Symphony no. 7.
Symphony no. 7 in C major, op. 60.
Symphony no. 7, in C, op. 131 (1952).
Symphony no. 7, op. 81 (1964).
Symphony no. 8, op. 65.
Symphony no. 8, op. 83 (1964).
Symphony no. 9 in E flat major, op. 70.
Symphony number 2 in D major (1967).
Symphony-overture on two Russian themes by Mikhail Glinka.
Symphony-suite no. 23, op. 56 (1941).
A tale about a woman who would not recognize the Soviet Republic song.
The taming of the shrew comic opera, op. 46.
Tarantella and prelude for two pianos.
A teacher's song; for voice and chorus and piano.
The tear song.
Telescope II for large orchestra.
Tempo; song for two-part chorus and piano.
Ten concerto etudes for piano in two books, book 1.
Ten concerto etudes for piano in two books, book 2.
Ten days at Kastornoye.
Ten poems on texts by revolutionary poets for chorus a capella, op. 88.
Ten Russian folksongs.
Testament, symphonic poem, op. 73.
Theme and variations for cello and piano, op. 67 (1953).
There's a girl waiting for me; song for medium voice or unison chorus and piano.
Third piano concerto in D major, op. 50.
Third symphony for strings and kettledrums (1964).
Those black eyes.
Those poor hamlets.
Thou hast left me ever, Jamie, for voice and piano.
Three concert arias for high voice and orchestra.
Three easy pieces.
Three fantastic dances for piano, op. 5.
Three generations; Komsomol song for voice or two-part chorus and piano.
Three jazz melodies for piano (1969).
Three little pieces and two dances for piano, op. 23.
Three lyrical poems for piano, op. 80.
Three lyrical songs for voice and piano.
Three mari melodies (1947).
Three mari songs (1948).
Three octaves by Rasul Gamzatov; for mezzo-soprano and piano, op. 74.
Three piano pieces, op. 30; transcription of excerpts from the opera ''Colas Breugnon.''.
Three pieces for children for piano (1952).
Three pieces for piano, op. 9.
Three pieces for two pianos.
Three pieces for voice and orchestra, op. 33.
Three pieces for voice and piano on texts of pushkin, op. 31.
Three riddles for piano no. 1, op. 19.
Three Singalese melodies for baritone and piano, op. 55.
Three sonatinas for piano, op. 12.
Three song-dances, op. 70; for voice and piano.
Three songs about Lenin, op. 92 for children, choruses with piano accompaniment.
Three songs to the verses by T. Tsvetayeva for middle voice and piano, op. 48.
Three songs, op. 16; for voice and piano.
Three young pioneer songs, for children's chorus and piano.
To her, 6 romances for voice and piano, op. 40.
To spring, op. 138.
To the heroes of the patriotic war.
To the young ones.
The tobacco captain musical comedy.
Toccata for piano (1951).
Toccata in E-flat minor for piano.
The treasurer's wife opera.
Trio.
Trio for piano, violin and cello (1948).
Trio for piano, violin, and cello ''in memory of our perished children'', op. 63 (1943).
Trio for violin, cello, and piano, op. 39.
Trio for violin, cello, and piano, op. 74.
Trio for violin, viola, and cello, op. 2.
Trio no. 1 for piano, violin, and cello, op. 8.

Trio no. 2 in E minor for piano, violin, and cello, op. 67.
Triptych for violin and piano.
Triumphal poem.
Trombone concerto.
Turkish fragments, suite no. 3, op. 62.
Turkish march, op. 55.
Turkmen portraits, suite for orchestra, op. 68.
Twelve investions for organ, op. 27.
Twelve piano pieces (partita), book 1 (nos. 1–6).
Twelve piano pieces (partita), book 2 (nos. 7–12).
Twelve pieces for organ, op. 84.
Twelve polyphonic pieces for piano (1968).
Twelve preludes.
Two brothers; song for two-part chorus and piano.
Two choruses by A. Davidenko, op. 124.
Two dance pieces for piano (1955).
Two fables by Krylov, op. 4.
Two fairy tales for piano, op. 51.
Two fugues for piano.
Two herbaic songs for voice and piano, op. 29.
Two little fir-trees; song of children's chorus and piano.
Two lyrical verses of A. Pushkin for voice and piano, op. 22.
Two partitas, no. I.
Two partitas, no. II.
Two piano sonatinas (1960).
Two pieces for cello and orchestra, op. 93.
Two pieces on themes of Armenian folk songs.
Two pieces on themes of Uzbek folk songs.
Two Pushkin waltzes for symphony orchestra, op. 120.
Two romances, op. 55 to words by A. Kovalenko; for tenor and piano.
Two Russian folk songs, op. 43; for bass or baritone and piano.
Two Russian folksongs for chorus a capella, op. 104.
Two songs from incidental music to the play Don Cesar De Bazan.
Two songs from incidental music to the play ''Two songs'' by N. Shestakov, op. 25; for children's chorus and piano.
Two songs from the film ''The Aerograd''; for two-part chorus and piano.
Two songs from Victor Hugo's Ruy Blas.
Two songs to words by S. Vilensky.
Two songs, op. 32; for voice and piano.
The undertaker musical-choreographic illustrations.
The unforgettable year 1919, op. 89.
Unity, op. 95.
USSR-the shock brigade of the world proletariat, symphonic dithyramb for speaker, men's chorus collective.
Uzbek suite for orchestra, op. 104.
Variations for cello and orchestra, op. 142.
Variations for piano (1953).
Variations for solo violin (viola), op. 46 (1960).
Variations on a theme by Glinka.
Variations on a theme of Glinka.
Variations on a theme of Mozart for french horn and piano.
Victorious spring, op 72.
Victory, overture, op. 86.
Violin concerto in C major, op. 43.
Violin concerto no. 1 in G minor (1956).
Violin concerto no. 2 in C sharp minor, op. 129.
Violin concerto, op. 12 (1964).
Virinea: the Gallic invasion.
Visitors to the kitchen-garden, op. 67; action-game (roundelay) for children's chorus and piano.
Vocal monologues, op. 33; for voice and orchestra.
Vocalise in A minor for voice and piano (fr. Three vocalises, op. 3).
A voice from the chorus.
The Volga and the Don; song for chorus and piano.
Volochaevsk's days, op. 48.
The Vyborg side, op. 50.
Waltz from ''Pirogov'', op. 76a.
Waltz from the human comedy.
Waltz from the operetta ''Spring sings,'' op. 58.
Waltz, Leamington, from incidental music to the play ''Dombey and son'' after Charles Dickens.
Waltz-caprice in C-sharp minor for piano.
War and peace.
Wash 'em clean, 1-act opera for children (1955).
We can't believe (song about Lenin).
We'll walk the length of our country; song for voice and piano from T. Solodar's play ''Leaving footprints on earth.''
The wedding musical comedy in 4 acts, op. 70.
Wedding suite from ''The tale of the stone flower.''
White night, op. 17 (1967).
Wind quintet, in 2 movements (1964).
Woodland.
YCL members' battle song; for two-part chorus and piano.
The year 1918 dawned over Russia; song for voice and piano.
A year as long as a lifetime, op. 120.
A year as long as a lifetime, op. 120a.
The young girl and death, oratorio after M. Gorky (1963).
The young guards, op. 75.
The young guards, op. 75A.
The young pioneer group; song for children's chorus and piano.
Young pioneer palace, Oktyabryonok (primary schoolchildren); song for voice and piano.
Young pioneer songs, cantata (1972).
The youth of Maxim, op. 41 (1).
Youth overture, op. 8 (1951).
The youth sets off on a journey; song for voice and piano.
The Zaporozhy Cossacks symphonic picture-ballet, op. 64.
Zoya (who is she?), op. 64. Schrimer (G.), Inc.
Fiery ring (a) (1967).
Lyric verses.
Motherland (1957).
Northern landscape.
Sonato for cello and piano (1955).
String quartet (1964).
Virinea (1967).

SFP. See Fildebroc, SFP, FR3, UGC

Shepard, David H

On approval.

Societe du Cinema Pantheon

Une partie de campagne.

Somerville House Production (Montreal). See Fildebroc-Capac & Somerville House Production

Son et Lumiere

Petit theatre de Jean Renoir.

Soyuzmultfilm Studios

Babushkin zontik.
Balerina na korable.
Cheburashka.
Chuzhie sledi.
Ded Moroz i leto.
Ded Moroz i seriy volk.
Diadya Misha.
Falshivaya nota.
Fantik.
Foca-na vse ruki doka.
Gorni master.
Hrabrets-udalets.
Icar i mudretsi.
Kak gribi voevali s gorohom.
Kak livionok i cherepaha pesniu peli.
Kak Masha possorilas s podushkoj.
Kak utionok-muzikant stal futbolistom.
Kapriznaya printsessa.
Kontakt no. 1.
Kuda letish, Vitar?
Legendi Peruanskikh Indeitsev.
Lisa, medved i mototsikl s kaliaskoy.
Masha bolsme ne lentiaika.
Meshok yablok.
Mi s Dshekom.
Mishonok Pik.
Molodilniye yabloki.
Nasledstvo volshebnika Bahrama.
Nu pogodi no. 1.
Nu pogodi no. 12.
Nu pogodi no. 2.
Nu pogodi no. 3.
Nu pogodi no. 4.
Nu pogodi no. 5.
Nu pogodi no. 6.
Nu pogodi no. 7.
Nu pogodi no. 8.
Nu pogodi no. 9.
Nu pogodi! no. 10.
Nu pogodi! no. 11.

O tom kak gnom pokinul dom.
Obeziana s ostrova Suragasima.
Ostrov.
Podarok dlia samogo slabogo.
Poni begaet po krugu.
Poslednaya nevesta zmeya gorinicha.
Pro dudochku i ptichku.
Prometei.
Rasskazi starogo moriaka.
Shakalionok i verbliud.
Shapokliak.
Stoikiy olovianiy soldatik
Talant i poklonniki.
Umka.
Utenok kotoriy ne umel igrat v futbol.
V gostiah u leta.
V tridesiatom veke.
Veselaya karusel no. 1.
Volshebnaya palochka.
Vozvraschenie s Olimpa.
Zaichonok i mooha.
Zhiraf i ochki.

Stewart (Jim) Executors of the Estate of

Appleby on Ararat.
Appleby talking.
Appleby talks again.
Christmas at Candleshoe.
From London far.
The guardians.
Hamlet, revenge!
The journeying boy.
The man from the sea.
The man who wrote detective stories.
Mark Lambert's supper.
The new Sonia Wayward.
Operation Pax.
A private view.
The secret vanguard.
There came both mist and snow.
Three tales of Hamlet.
A use of riches.

Succession Picasso

The absinthe drinker.
Acrobate a la boule (fillette e la boule).
Acrobate et jeune arlequin.
L'acteur.
Les adieux du pecheur.
Les adolescents.
Les amants de la rue.
Angel Fernandez de Soto au cafe.
Angel Fernandez de Soto avec une femme.
Arcadi mas i fontdevilla.
Arlequin a cheval.
Arlequin accoude.
Arlequin assis.
Au lapin agile (arlequin au verre).
L'aubade.
Autoportrait.
Autoportarit en gentilhomme du XVIIIe siecle.
Autoportrait (profil).
Autoportrait (tete de jeune homme).
Autoportrait (Tete).
Autoportrait a l'age de trente-six ans.
Autoportrait a la palette.
Autoportrait aux cheveux courts.
Autoportrait mal coiffe.
Autoportrait yo.
Azul y blanco.
Bacchanalia.
Baraque de foire, montmartre.
Bohemienne devant la musciera.
Bouffon et jeune acrobate.
Le bouquet.
Brasserie a montmartre.
Bullfight.
Bust de femme.
Bust of a young man (academic study).
Buste D'home au chapeau.
Buste de femme.
La buveuse d'absinthe.
Cafe a royan.
Caricatures.
Une carriere.
Celestina.
La chambre blue (le tub).
Le chemineau.
Cheval eventre.
Claude et Paloma dessinant.
La coiffure.
Composition a la tete de mort.
Composition a la tete de mort (etude).
Compotier et guitare.
Contemplation.
Corida.
Cordia et la mort du torero.
Corida la mort de la femme torero.
La coruna.
Le couple.
Course de taureaux.
Course de taureaux (corrida).
Course de taureaux et pigeons.
Les courses.
Dans le laboratoire de l'art.
Les demoiselles torero.
Les deus anmies.
Les deus freres.
Deux buveurs catalans.
Deux enfants.
Deux femmes nues.
Les deux freres.
Deux modeles vetus.
Deux nus et un chat.
Deux personnages.
Les deux saltimbanques (Arlequin et sa compagne).
Deux saltimbanques avec un chien.
Le divan.
Don quixote and Sancho Panza.
Dos soldados a caballo y un torreon.
Double study of a bearded man in profile.
Double study of the left eye.
The dream.
The dwarf.
L'enfant au pigeon.
L'enfant de choeur.
L'entree de la plaza a barcelone.
L'entrevue (les deux soeurs).
L'etreinte.
Etude acdemique.
Etude d'un platre (d'apres l'antique).
Etude pour femme se coiffant.
Etude pour L'entrevue.
Etude pour la vie.
Etude pour Les Demoiselles d'Avignon (1).
Etude pour Les Demoiselles d'Avignon (2).
Etude pour Les Demoiselles d'Avignon.
Etudes dans un livre d'ecole.
Etudes des bateaux a voiles.
Etudes pour autoportrait a la palette.
Evocation (L'enterrement de casagemas).
Famile d'acrobates avec singe.
Famille d'arlequin.
Famille de bateleurs.
La famille de saltimbanques (les bateleurs).
Famille de saltimbanques.
Le famille soler.
The family.
Faune devoilant une femme.
Female nude from behind (after arcadi mas i fontdevilla).
Femme.
Femme a l'eventail.
Femme a la chemise.
Femme a la corneille.
Femme accroupie et enfant.
Femme au casque de cheveus (la femme de l'acrobate).
Femme au chapeau a plumes.
Femme au collier de gemmes.
Femme au mouchoir.
Femme aux bijoux.
Femme couchee sur la plage.
Femme dans la loge.
Femme ecrivant.
Femme en bleu.
Femme lisant.
Femme nu cochee au colier.
Femme nue assise et femme nue debout.
Femme nue assise.
Femme nue aux jambes croisees.
Femme nue couchee.
Femme nue debout de profil.
Femme nue sur fond rouge.
Femme s'appuyant sur une table e trois visages de profil.
Femme se coiffant.
Femmes a leur toilette.
Femmes algeriennes.
La fenetre fermee.
Feuilles d'acanthe.
Feuilles d'etudes a la Greco.
La fillette aux pieds nus.
Fillette nue au panier de fleurs.
Fleurs exotiques.
Fleurs sur une table.
Le fou.
French cancan.
Garcon a la pipe.
Garcon au chien.
Garcon nu.
Girl before a mirror.
Le gourment (Le gourmand).
Grande nature morte.
Le gueridon.
Guitare, partition, verre.
Gurenica.
Le harem.
Head of a boy (academic study).
Hercule avec sa massue.

L'hetaire.
Les hirondelles.
Hollandaise a la coiffe.
L'homme a la casquette.
L'homme au mouton (d'apres l'antique).
Homme en bleue (portrait d'homme).
Homme et femme.
Interieur des quatre gats.
L'Italienne.
Jacqueline aux mains croisees.
Jaqueline aux fleures.
Jeanne (nu couche).
Jeune espagnol.
Jeune fille nue debout.
Joie de vivre.
Joueur d'orgue de barbarie et petit arlequin.
The kiss.
Landscape.
La lecture.
Le livre ouvert.
La madrilene (tete de jeune femme).
La maison bleue.
Maison de campagane.
Mansion dans un champ de ble.
Le maquereau (composition allegorique).
The matador.
Maya et la poupee.
Menage des pauvres.
Meneur de cheval nu.
Menu des quatre gats.
La mere (mere tenant deus enfants).
Mere et enfant (baladins).
Mere et enfant au bord de la mer.
Mere et enfant au fichu.
Mere et enfant aux fleurs.
Mere et enfant et etudes de mains.
Mere et enfant.
Minotaure et sa proie.
The mirror.
Misereuse accroupie.
La mort d'arelquin.
La mort de Casagemas (Casagemas dans son cercueil).
La mort de casagemas.
Le moulin de la galette.
Le moulin de la Galette.
Nature morte (le dessert).
Nature morte a la tete de toro noire.
Nature morte devant une feinetre.
Nature morte sur la commode.
Neuf tetes.
Les noces de Pierrette.
Nu coche.
Le palais des beaux-arts a Barcelone.
Paul en arlequin.
Paul en Pierrot.
Les pauvres au bord de la mer.
Paysage de Juan-Les-Pins.
Pierreuse, la main sur l'epaule.
Pierreuses au bar.
Pierrot et danseuse.
Pigeons et lapins.
Pigeons.
Portrait d'Allan Stein.
Portrait de bibi la puree.
Portrait de Fernande Olivier au foulard.
Portrait de Gertrude Stein.
Portrait de Gustave Coquoit.
Portrait de Jaime Sabartes.
Portrait de Jime Sabartes (Le bock).
Portrait de Josep Cardona (Homme a la lampe).
Portrait de Juan Vidal i Ventosa.
Portrait de la mere de l'artiste.
Portrait de la tante pepa.
Portrait de madame bendetta canals.
Portrait de Madame Soler.
Portrait de Mateu Fernandex de Soto.
Portrait de Nusch Eluard.
Portrait de Philippe IV (d'apres Velazquez).
Portrait de Sebastian Junyent.
Portrait de Sebastian Junyer-Vidal.
Portrait de Sebastian Junyer-vidal.
Portrait de Suzanne Bloch.
Portrait de sylvette.
Portrait de tailleur Soler.
Portrait du pere de l'artiste.
Portrait of Dora Maar.
Portrait of Marie Therese.
Portrait of Pedro Manach.
La premiere communion.
Reclining nude.
Reclining nude with Picasso at her feet.
Le repas d'aveugle.
Le repas frugal.
La repasseuse.
Rone des enfants.
Salome.
Les saltimbanques.
Science et chrite.
Sculpteur et modele agenouille.
Le sculpteur.
Seated old man.
Seated woman in front of window.
La sieste.
Spanish woman from Majorca (study for the acrobats).
Studio with plaster head.
Study of the left arm (after a plaster cast).
Tete.
Tete d'homme.
Tete d'homme a la Greco.
Tete de femme.
Tete de femme (fernande).
Tete de femme en profil.
La toilette.
La toilette de la mere.
Les toits bleus.
Toro en valauris.
Les trois hollandaises.
Les trois musiciens.
Le verre bleu.
La vie.
Le vieux guitariste aveugle.
Le vieux juif (le viellard).
Vive la France.
Vollard suite no. 85.
Woman with a flower.
Woman with blue hat.
Yo Picasso-self portrait.

Teledis Company, SA

De Mayerling a Sarajevo.
Madame De.
Le plaisir.
Yoshiwara.

Teledis

Montparnasse 19.
Pattes blanches.
Yeux sans visage.

Thedinga, Mrs. S.C. & J.W. Prescott

Dead and not buried.
Jerusalem journey.
The lost fight.
The man on a donkey.
Son of dust.
The unhurrying chase.

Toei Animation Company, Ltd.

Ararara! tama ga nai!
Ayaushi! Kuririn.
Bulma to son goku.
Derukai!? shugyo no iryoku.
Deta! Kyoteki Gillan.
Dragon ball ubawareru.
Dragon ball—makafushigi dai bouken.
Dragon ball—Mashinjo no nemurihime.
Dragon ball—Shenron no densetsun.
Flying pan yama no gyumao.
Fushigina onnanoko lunch.
Gekitotsu! pawa tai pawa.
Goku no dai henshin.
Goku no ribal sanjo!
Goku saidai no pinchi.
Hitosarai youkai Oolong.
Inochigake! gyunyu haitatsu.
Kame sennin no kinto un.
Kamesenryu kitsui shugyo.
Kamke sennin no kamehameha.
Kesshosen da! kamehameha.
Kuririn Hisshi no daikobosen.
Mayonaka no houmonsha tachi.
Shenron eno negai.
Shugyou ishi sagashi.
Tate Goku! osorubeki tenku pekejiken.
Tenkaichi budokai hajimaru.
Tsuini dragon arawaru!
Tsuyokute warui sabaku no Yamucha.
Usagi oyabun no tokuiwaza.
Yamucha vs. Jacky Chun.

Tolkien (J.R.R.) Estate of

Farmer Giles of Ham.
The fellowship of the ring.
The hobbit.
Homecoming of Beorhthelm's son.
Leaf by Niggle.
On fairy stories.
The return of the king.
The two towers.

Trinity College, Oxford

The drum.
Inspector Hanaud investigates.

Trustees of the Maurice Baring Will Trust. SEE Baring (Maurice) Will Trust, Trustees of

Trustees of the Robert Graves Copyright Trust. SEE Graves (Robert) Copyright Trust, Trustees of

Ucelli Production

Interdit aux moins de 13 ans.

Remparts d'argile.

UGC DA International

Le caporal epingle.
Le corbeau.
Le crime de Monsieur Lange.
Le dejeuner sur l'herbe.
Le journal d'un cure de campagne.
La Marseillaise.
Le testament du Dr. Cordelier.

UGC. SEE Fildebroc, SFP, FR3, UGC

United Artists. SEE Fildebroc, United Artists

Viscount Montgomery of Alamein CBE

An approach to sanity: a study in East/West relations.
Command in battle.
El Alamein to the River Sangro.
Normandy to the Baltic.

Warne (Frederick) & Company, Ltd.

The fairy necklaces.
Flower fairies of the autumn.
Flower fairies of the garden.
Flower fairies of the spring.
Flower fairies of the summer.
Flower fairies of the trees.
Flower fairies of the wayside.
A flower fairy alphabet.
Old rhymes for all times.

Watt (A.P.), Ltd.

The altar of honour.
The black knight.
By request.
Charles Rex.
Dona Celestis.
The electric torch.
The gate marked private.
Honeyball farm.
The house of happiness and other stories.
The juice of the pomegranate.
The live bait and other stories.
A man under authority.
The obstacle race.
The odds and other stories.
The passer-by and other stories.
The prison wall.
Rosa Mundi and other stories.
The serpent in the garden.
The silver wedding.
Sown among thorns.
Storm drift.
Tetherstones.
The unkown quantity.
Verses.
Where three roads meet.

Watt (W.P.) Estate of

The bravo of London.
The celestial ominbus.
The eyes of Max Carradox.
Kai Lung beneath the mulberry tree.
Kai Lung unrolls his M at.
Kai Lung's golden hours.
A little flutter.
Max Carrados mysteries.
The moon of much gladness.
The specimen case.

Wells (H.G.) Literary Executors of the Estate of

After democracy.
Anatomy of frustration.
The Camford visitation.
The common sense of war and peace.
The conquest of time.
Crux Ansata.
The dream.
The fate of homo sapiens.
The idea of a world encyclopaedia.
Men like Gods.
Mind at the end of tether.
The outlook for homo sapiens.
Phoenix.
The rights of man.
The secret places of the heart.
A short history of the world.
The story of a great schoolmaster.
Travels of a republican radical in search of hot water.
A year of prophesying.

Westside International

El dedo en el gatillo.
El halcon de Castilla.
Las siete magnificas.

Yeats, Anne

The speckled bird.

Dated: August 26, 1996.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 96–22138 Filed 8–29–96; 8:45 am]

BILLING CODE 1410–30–P

Federal Register

Friday
August 30, 1996

Part IV

Department of Education

Intent To Repay to the Maine Department of Education Funds Recovered as a Result of Final Audit Determinations; Notice

DEPARTMENT OF EDUCATION

Intent To Repay to the Maine Department of Education Funds Recovered as a Result of Final Audit Determinations

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Notice is hereby given that under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h, the U.S. Secretary of Education (Secretary) intends to repay to the Maine Department of Education (Maine), under a grantback arrangement, an amount equal to 75 percent of the $36,924 recovered by the U.S. Department of Education (Department) as a result of audit findings in 3 audits covering fiscal years (FYs) 1987, 1988, and 1989 (ACNs: 01–93025, 01–93245, and 01–13035G) and arising from Maine's administration of the Perkins Vocational Education Program; the Adult Education Program; the State Education Agency (SEA) Desegregation Program; and Title II of the Education for Economic Security Act of 1984 (EESA, Title II) program. The $36,924 at issue in this notice of proposed grantback was recovered by the Department under the terms of two settlement agreements between Maine and the Department that related to findings resulting from audits of Maine's administration of these four programs. In these audits, the auditors reviewed the financial and program operations of the Maine Department of Education, including an evaluation of Maine's internal administrative control systems for a variety of Maine's education programs for FYs 1987, 1988, and 1989. This notice describes Maine's plan for the use of grantback funds repaid in the specific program areas herein described and the terms and conditions under which the Secretary intends to make those funds available. This notice invites comments on the proposed grantback.

DATES: All comments must be received on or before September 29, 1996.

ADDRESSES: All written comments should be addressed to Dr. Marcel R. DuVall, Chief, Finance Branch, Division of Vocational-Technical Education, Office of Vocational and Adult Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Mary E. Switzer Building, Room 4320, MS–7324), Washington, D.C. 20202–7324.

FOR FURTHER INFORMATION CONTACT: Dr. Marcel R. DuVall. Telephone: (202) 205–9502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

A. Background

Under two settlement agreements entered into by the Department and Maine, the Department recovered $97,935 (ACNs: 01–93025, 01–93245, 01–13035G) and $125,635 (ACNs: 01–93245 and 01–13035G) from Maine in full resolution of all claims arising from audits of the Maine Department of Education, covering FYs 1987, 1988, and 1989. On April 2, 1996, the Department's Office of Special Education and Rehabilitative Services published a notice of intent to award grantback funds in response to a grantback request submitted by Maine relative to the settlement repayments resolving the findings arising from Maine's administration of Part B of the then Education of the Handicapped Act, Chapter 1 of Title I of the Elementary and Secondary Act, and the Chapter 1 Migrant Education Program. The grantback request that is the subject of this notice is separate and apart from the grantback request that was the subject of the Department's April 2, 1996 notice. This grantback notice pertains only to the $36,924 that was repaid by Maine as a result of findings arising from Maine's administration of the Adult Education Program, the Perkins Vocational Education Program, the SEA Desegregation Program, and the EESA Title II Program, for the years in question.

The Department's original claims arising from the audits conducted for FYs 1987, 1988, and 1989 were contained in program determination letters (PDLs) issued by various Department officials on March 27, 1991 (ACN: 01–93025), October 24, 1991, and June 29, 1992 (ACN: 01–93245), and March 31, 1992, and August 25, 1992 (ACN: 01–13035G). These claims arose, in part, from findings related to Maine's administration of funds awarded to Maine under the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2301 *et seq.* (1988) (Perkins I); the Adult Education Act, as amended by the National Literacy Act of 1991; SEA Desegregation Program, Title IV of the Civil Rights Act of 1964 (42 U.S.C. 2000(c)–2000(c–5)); and EESA, Title II.

In the March 27, 1991, October 24, 1991, and March 31, 1992 PDLs, the Assistant Secretaries for the program areas for which the auditors issued findings determined that Maine had violated a variety of Federal regulations by improperly charging legal fees incurred by Maine's Attorney General's Office and other miscellaneous attorneys to certain Federal programs. The Assistant Secretaries further determined that the charges incurred were not based upon actual benefits received or provided to those programs or upon any cost allocation plan that equitably distributed costs to programs benefiting from the services rendered.

In the June 29, 1992 and August 25, 1992 PDLs, the Assistant Secretaries for the program areas involved determined, in part, that Maine had failed to maintain accurate time distribution records for employees who worked on more than one cost objective.

The settlement negotiations resulting from Maine's appeals of the aforementioned PDLs culminated in two settlement agreements. The settlement agreement resolving the findings contained in the March 27, 1991, October 24, 1991, and March 31, 1992 PDLs was executed on December 2, 1992. On January 8, 1993, the Department received payment of $97,935 in full settlement of the findings contained in those PDLs. The settlement agreement resolving the findings contained in the June 29, 1992 and August 25, 1992 PDLs was executed on November 8, 1994. On November 4, 1994, the Department received a payment of $125,635 in full settlement of the findings contained in those PDLs.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), the authority applicable to this grantback request, provides that whenever the Secretary has recovered funds paid under an applicable program because the recipient made an expenditure of funds that was not allowable, or otherwise failed to discharge its responsibility to account properly for funds, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the recipient affected by that action an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that the—

(1) Practices or procedures of the recipient that resulted in the violation of law have been corrected, and the recipient is, in all other respects, in compliance with the requirements of that program, provided that the recipient was notified of any noncompliance with those requirements and given a reasonable period of time to remedy the noncompliance;

(2) Recipient has submitted to the Secretary a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misuse of funds that resulted in the recovery; and

(3) Use of the funds to be awarded under the grantback arrangement in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally paid.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459 of GEPA, Maine has applied for a grantback of $27,577, or 75 percent of the $36,924 repaid to the Department in resolution of the findings related to the Adult Education Program, the Perkins Vocational Education Program, the SEA Desegregation program, and the EESA, Title II Program, in relevant portions of the two settlement agreements discussed in section B of this notice. Maine has submitted a plan for use of the $27,577 in proposed grantback funds, consistent with the Adult Education Act, as amended by the National Literacy Act of 1991; the Carl D. Perkins Vocational and Applied Technology Education Act of 1990 (Perkins II), 20 U.S.C. 2301, *et seq.*, which is currently in effect; Title IV of the Civil Rights Act of 1964; and Title II of the Elementary and Secondary Education Act of 1965, as amended (Professional Development Program), which is the successor program to the EESA, Title II Program. Maine has stated that it plans to use the grantback funds to provide monitoring and technical assistance for its adult education programs; host regional meetings and workshops for adult education programs at the local educational agency (LEA) level; provide funds for vocational education staff development activities; upgrade computer equipment used by State vocational education administrators; host a conference related to the SEA Desegregation programs; and sponsor regional meetings for educators under the Professional Development Program. Specifically, Maine plans to use the requested grantback funds totaling $27,577, to—

(1) Pay travel expenses for three consultants who will monitor Adult Basic Education (ABE) programs. The consultants will base the monitoring upon the performance objectives contained in the FY 1996 ABE application. The consultants will also provide technical assistance for adult education program development and improvement ($500);

(2) Provide at least two regional meetings and workshops for adult basic education administrators and staff who work in local adult education programs. The topics covered will include one or more of the following: Interagency Collaboration, Welfare Reform and Adult Education, FY 1996 ABE Standards, and an FY 1997 ABE Proposal Writing Workshop ($996);

(3) Purchase computer equipment using vocational education funds for personnel in the Division of Applied Technology (DAT). This equipment includes one color Apple Laser Writer 12/600 PS, one high resolution flatbed color scanner, one CD-Rom drive/recorder, and one network server. The equipment will be used to provide more effective technical assistance to Maine's Regional Workforce Education Center. It will also allow DAT to provide better State leadership in the areas of professional development, curriculum development, program improvement, and accountability by giving it an enhanced ability to collect and to disseminate information ($11,476);

(4) Facilitate vocational education staff development by allowing participation in a series of national conferences, meetings, workshops, and seminars sponsored by the National School-To-Work Opportunities Office, the Office of Vocational and Adult Education, the National Governors Association, the Council of Chief State School Officers, the High Skills State Consortium, Job for the Future and others. The topics to be covered include consolidation of performance measures and standards and occupational and industrial skill standards under the Perkins and the School-To-Work Opportunities Acts; integration of occupational skill development and related academic skill training; new formats for work-based learning; articulation of secondary and post-secondary occupational and technical education; organization of connecting activities; and information system development. The director of DAT will serve as the primary participant; however, other DAT professional staff will attend activities related to their specific areas of responsibility and expertise ($10,000);

(5) Provide a two-day conference, co-sponsored by the Maine Leadership Consortium, that is designed to encourage women to move into the field of public school administration using SEA Desegregation funds. The conference would explore the specific barriers and difficulties experienced by female superintendents in the State and seek to recommend actions that will allow professional organizations to more effectively attract and retain women in the superintendency ($3,705); and

(6) Sponsor a series of six regional meetings under the Professional Development Program that are designed to bring educators from elementary, secondary, and post-secondary institutions together to discuss methods of alternative assessment, including portfolios and task development ($900).

D. The Secretary's Determination

The Secretary has carefully reviewed the plan submitted by Maine and related relevant documentation. Based upon that review, the Secretary has determined that the conditions under section 459 of GEPA have been met. This determination is based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action at a later date. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent to Enter into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary publish in the Federal Register a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Maine Department of Education under a grantback arrangement. The grantback award will be in the amount of $27,577, which is 75 percent—the maximum percentage authorized by the statute—of the relevant portion of funds recovered by the Department as a result of the three final audit determinations and two settlements in this matter.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will Be Made

Maine agrees to comply with the following terms and conditions under which payment under a grantback arrangement will be made:

(1) Maine will expend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that was submitted and any amendments in that plan that are approved in advance of the grantback by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance of the grantback by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1996, in accordance with section 459(c) of GEPA and Maine's plan.

(3) Maine will, no later than December 30, 1996, submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained to document the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Numbers 84.002 Basic State Grants for Adult Education; 84.004 Title IV of the Civil Rights Act; 84.048 Basic State Grants for Vocational Education; and 84.164 Title II of the Education for Economic Security Act)

Dated: August 26, 1996.

Patricia W. McNeil,

Assistant Secretary, Office of Vocational and Adult Education.

Gerald N. Tirozzi,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 96–22173 Filed 8–29–96; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Friday
August 30, 1996

Part V

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 412, et al.

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1997 Rates; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412, 413, and 489

[BPD–847–F]

RIN 0938–AH34

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1997 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are revising the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the systems. In addition, in the addendum to this final rule, we are describing changes in the amounts and factors necessary to determine prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes are applicable to discharges occurring on or after October 1, 1996. We are also setting forth rate-of-increase limits as well as policy changes for hospitals and hospital units excluded from the prospective payment systems.

EFFECTIVE DATE: This rule is a major rule as defined in Title 5, United States Code, section 804(2). Pursuant to 5 U.S.C. section 801(a)(3), this rule may not take effect until 60 days after the report required by that section is submitted to the Congress, which is October 29, 1996. However, for purposes of the policy discussions in this document, we have assumed that the effective date of this final rule will be October 1, 1996, the earliest date by which this rule could take effect under 5 U.S.C. section 801 and the Medicare statute.

ADDRESSES: *Copies:* To order copies of the Federal Register containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the Federal Register document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Nancy Edwards (410) 786–4531: Operating Prospective Payment, DRG, Wage Index Issues.

Tzvi Hefter (410) 786–4529: Capital Prospective Payment, Direct Graduate Medical Education, Excluded Hospitals.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Under section 1886(d) of the Social Security Act (the Act), a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively-set rates was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment for hospital inpatient operating costs is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). The regulations governing the hospital inpatient prospective payment system are located in 42 CFR part 412.

For cost reporting periods beginning before October 1, 1991, hospital inpatient operating costs were the only costs covered under the prospective payment system. Payment for capital-related costs had been made on a reasonable cost basis because, under sections 1886(a)(4) and (d)(1)(A) of the Act, those costs had been specifically excluded from the definition of inpatient operating costs. However, section 4006(b) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) revised section 1886(g)(1) of the Act to require that, for hospitals paid under the prospective payment system for operating costs, capital-related costs would also be paid under a prospective payment system effective with cost reporting periods beginning on or after October 1, 1991. As required by section 1886(g) of the Act, we replaced the reasonable cost-based payment methodology with a prospective payment methodology for hospital inpatient capital-related costs. Under the new methodology, effective for cost reporting periods beginning on or after October 1, 1991, a predetermined payment amount per discharge is made for Medicare inpatient capital-related costs. (See subpart M of 42 CFR part 412, and the August 30, 1991 final rule (56 FR 43358) for a complete discussion of the prospective payment system for hospital inpatient capital-related costs.)

B. Major Contents of the Provisions of the May 31, 1996 Proposed Rule

On May 31, 1996, we published a proposed rule in the Federal Register (61 FR 27444) setting forth proposed changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs which would be effective for discharges occurring on or after October 1, 1996. The following is a summary of the major issues addressed and changes that we proposed to make:

- We proposed changes for FY 1997 DRG classifications and relative weighting factors as required by section 1886(d)(4)(c) of the Act.
- We proposed to update the wage index for FY 1997. We also solicited comments on the possible expansion of the types of contract labor costs included in the wage index and on possible revisions in Puerto Rico labor market areas.
- We proposed revisions to the regulations governing the composition of the Medicare Geographic Classification Review Board (MGCRB).
- We proposed to use a rebased and revised hospital market basket in developing the FY 1997 update factor for the operating prospective payment rates, the capital prospective payment rates, and the excluded hospital rate-of-increase limits.
- We discussed several provisions of the regulations in 42 CFR parts 412, 413, and 489 and set forth proposed changes concerning the following:

—Sole community hospitals.
—Rural referral centers.
—Disproportionate share adjustment.
—Direct graduate medical education payments.
—Hospital distribution of ''An Important Message from Medicare.''

- We discussed several provisions of the regulations in 42 CFR part 412 concerning the prospective payment system for capital-related costs, including possible adjustments to the capital Federal and hospital-specific rates, and set forth a proposed change concerning the use of simplified cost accounting.
- We discussed clarifications concerning the calculation of payments to hospitals excluded from the prospective payment system.
- In the addendum to the proposed rule, we set forth proposed changes to the amounts and factors for determining

the FY 1997 prospective payment rates for operating costs and capital-related costs. We also proposed new update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 1997 for hospitals and hospital units excluded from the prospective payment system.

- In Appendix A to the proposed rule, we set forth an analysis of the impact that the proposed changes would have on affected entities.
- In Appendix B to the proposed rule, we set forth our technical appendix on the proposed FY 1997 capital acquisition model.
- In Appendix C to the proposed rule, we set forth the data sources used to determine the market basket relative weights and choice of price proxies.
- In Appendix D to the proposed rule, we included our report to Congress on our initial estimate of an update factor for FY 1997 for both hospitals included in and hospitals excluded from the prospective payment systems as required by section 1886(e)(3)(B) of the Act.
- As required by sections 1886(e)(4) and (e)(5) of the Act, in Appendix E we provided our recommendation of the appropriate percentage change for FY 1997 for the following:

—Large urban area and other area average standardized amounts (and hospital-specific rates applicable to sole community hospitals) for hospital inpatient services paid for under the prospective payment system for operating costs.

—Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the prospective payment system.

- In the proposed rule, we discussed in detail the March 1, 1996 recommendations made by the Prospective Payment Assessment Commission (ProPAC). ProPAC is directed by section 1886(e)(2)(A) of the Act to make recommendations on the appropriate percentage change factor to be used in updating the average standardized amounts. In addition, section 1886(e)(2)(B) of the Act directs ProPAC to make recommendations regarding changes in each of the Medicare payment policies under which payments to an institution are prospectively determined. In particular, the recommendations relating to the hospital inpatient prospective payment systems are to include recommendations concerning the number of DRGs used to classify patients, adjustments to the DRGs to reflect severity of illness, and changes in the methods under which hospitals are paid for capital-related costs. Under section 1886(e)(3)(A) of the Act, the recommendations required of ProPAC under sections 1886(e)(2) (A) and (B) of the Act are to be reported to Congress not later than March 1 of each year.

We printed ProPAC's March 1, 1996 report, which included its recommendations, as Appendix F to the proposed rule. The recommendations, and the actions we proposed to take with regard to them (when an action is recommended), were discussed in detail in the appropriate sections of the preamble, the addendum, or the appendices to the proposed rule.

Set forth below in this preamble, the addendum to this final rule, and the appendices are detailed discussions of the May 31 proposed rule, the public comments received in response to the proposed rule, and the responses to those comments, as well as the changes we are making. In addition, in section V.E.3 of this preamble, we address a recent statutory amendment to the Public Health Service Act that prohibits certain abortion-related discrimination by the Federal Government and State and local governments. The new statutory provision requires the Federal Government to deem accredited for certain purposes any postgraduate physician training program that would otherwise be accredited, except for the accrediting agency's reliance on certain standards concerning induced abortions.

C. Public Comments Received in Response to the May 31 Proposed Rule

A total of 511 items of correspondence containing comments on the proposed rule were received timely. We received over 300 letters on payments for direct graduate medical education programs. The main other areas of concern addressed by the commenters were the following:

- Requests for changes in DRG classification and relative weights.
- Issues related to the wage index.
- Disproportionate share adjustment.
- Possible adjustments to the capital Federal and hospital-specific rates.

II. Changes to DRG Classifications and Relative Weights

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGs.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The changes to the DRG classification system and the recalibration of the DRG weights for discharges occurring on or after October 1, 1996 are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM). The Medicare fiscal intermediary enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG

classification changes and to recalibrate the DRG weights.

Currently, cases are assigned to one of 492 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

In general, principal diagnosis determines MDC assignment. However, there are five DRGs to which cases are assigned on the basis of procedure codes rather than first assigning them to an MDC based on the principal diagnosis. These are the DRGs for liver, bone marrow, and lung transplant (DRGs 480, 481, and 495, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (hereafter CC).

Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not performed in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

We proposed to make several changes to the DRG classification system for FY 1997 and other decisions concerning DRGs. These proposed changes and other revisions, the comments we received concerning them, our responses to those comments, and the final DRG changes are set forth below.

2. Pre-MDC DRGs

Effective October 1, 1994, ICD–9–CM procedure code 41.04, Autologous hematopoietic stem cell transplant, was created to capture the transplantation of stem cells obtained from bone marrow or peripheral blood. At that time, we designated the code as non-OR. When we created this code, we received comments requesting that it be designated as an OR procedure and assigned to DRG 481 (Bone Marrow Transplant) based on the resource use associated with the type of transplant. However, as we stated in the September 1, 1994 final rule (59 FR 45340), when a new code is introduced, our longstanding practice is to assign it to the same DRG category as its predecessor code. Because we could not separately identify the stem cell transplant cases from the other cases coded with 99.73 (the code previously used for stem cell transplant) in order to reclassify them and their charges to a new DRG, we were unable to predict the new weights of both the DRGs in which this code currently is classified and the new DRG to which it would be assigned. Therefore, we were prevented from redesignating code 41.04 as an OR procedure or assigning it to a DRG. However, we stated that we would analyze the stem cell cases as soon as the FY 1995 cases were available.

This year, the FY 1995 MedPAR file is available for use in DRG analysis and weight setting for FY 1997. Since the average resource use associated with stem cell transplant is similar to that associated with bone marrow transplant, we proposed to assign procedure code 41.04 to DRG 481 effective with discharges occurring on or after October 1, 1996. In addition, we proposed to designate stem cell transplant as an OR procedure. In the proposed rule, we noted that, as set forth in the Medicare Coverage Issues Manual at section 35–30.1 (see Transmittal No. 84, April 1996), autologous stem cell transplants are not covered when performed for the following conditions:

- Acute leukemia not in remission (diagnosis codes 204.00, 205.00, 206.00, 207.00 and 208.00).
- Chronic granulocytic leukemia (diagnosis codes 205.10 and 205.11).
- Solid tumors (other than neuroblastomas) (diagnosis codes 140.0 through 199.1).
- Multiple myeloma (diagnosis codes 203.00, 203.01, and 238.6).

We received five comments supporting our proposal to assign procedure code 41.04 to DRG 481, and we will include this change in the final DRG classifications. Two other commenters had specific questions concerning the assignment of cases to DRG 481.

Comment: One commenter questioned the DRG assignment of cases in which an autologous hematopoietic stem cell transplant is performed for one of the noncovered conditions such as acute leukemia not in remission or multiple myeloma. The commenter is unsure whether those cases would be assigned to DRG 481 or retain their current DRG assignment.

Response: When a stem cell transplant is performed for a noncovered condition, the case will *not* be assigned to DRG 481. If the only reason that the patient is admitted to the hospital is to receive the noncovered procedure, then the case receives no Medicare payment because the hospital stay is not covered. If a patient receives a noncovered stem cell transplant during an otherwise Medicare-covered stay, then the case is assigned to a DRG based on the patient's principal and secondary diagnoses as well as any other covered procedure the patient receives. The stem cell transplant will not be considered in the DRG assignment.

Comment: One commenter was concerned about the assignment of a case in which a kidney transplant patient receives an allogeneic bone marrow transplant (procedure code 41.03) from the kidney donor to reduce the incidence and magnitude of organ rejection. The commenter believes it is inappropriate to assign such a case to DRG 481 rather than DRG 302 (Kidney Transplant) and that we should therefore revise the pre-MDC surgical hierarchy.

Response: Allogeneic bone marrow transplants performed for purposes of reducing rejection during a kidney transplant have not yet been subject to a national coverage decision. Therefore, under HCFA policy, the Medicare contractors (Part A fiscal intermediaries and Part B carriers) determine, on a case-by-case basis, whether or not to cover and pay for such claims. If a contractor did decide that one of these claims should be covered, then it would be paid under DRG 481. If the contractor determines that the bone marrow transplant is not covered, the claim would be assigned to a DRG without considering the bone marrow transplant. In most cases, this assignment would be DRG 302.

3. MDC 1 (Diseases and Disorders of the Nervous System)

a. Sleep apnea. As discussed in the proposed rule, we have received correspondence requesting that we review the DRG assignment of cases in which surgery is performed to correct obstructive sleep apnea (diagnosis code 780.57). When coded as a principal diagnosis, sleep apnea is assigned to DRGS 34 and 35 (Other Disorders of the Nervous System)[1] in MDC 1.

[1] A single title combined with two DRG numbers is used to signify pairs. Generally, the first DRG is

Recently, new surgical interventions to correct sleep apnea have been introduced. The procedures most frequently performed for this condition are the following:

Code	Description
27.69	Other plastic repair of palate.
29.4	Plastic operation on pharynx.
29.59	Other repair of pharynx.

Since none of these surgical procedures is assigned to MDC 1, cases of sleep apnea treated with one of these surgeries are assigned to DRG 468 (Extensive OR procedure Unrelated to Principal Diagnosis) or to DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis), depending on the procedure.

We proposed to address this situation by assigning the three surgical procedures to MDC 1. Based on the charges associated with these cases and the fact that they are not clinically similar to the other surgical DRGs in MDC 1, we proposed to include them in DRGs 7 and 8 (Peripheral and Cranial Nerve and Other Nervous System Procedures).

We received two comments in support of the addition of codes 27.69, 29.4 and 29.59 to DRGS 7 and 8. The commenters agree that these procedures are frequently used as surgical interventions to correct sleep apnea and are appropriately classified to DRGs 7 and 8. We also received two comments that disagreed, as discussed below.

Comment: One commenter was opposed to moving the procedure codes to DRGS 7 and 8. The commenter stated that if the patient had obstructive sleep apnea, the more appropriate diagnosis code would be the underlying cause of the obstruction, such as upper airway blockage (diagnosis code 528.9, Other and Unspecified Diseases of the Oral Soft Tissues) or diagnosis code 478.29, Other Diseases of Pharynx for Redundant Pharyngeal Mucosa.

Response: We agree that if the medical record provides a precise diagnosis for the obstruction, then that condition should be coded. However, information supporting these codes is not always provided in the medical record. Physicians frequently document obstructive sleep apnea as the reason for the surgery. In these cases, medical record coders are assigning code 780.57. As explained above, we believe that it is inappropriate to continue to assign these cases to DRGS 468 and 477 and that the better policy is to assign the procedures to MDC 1.

Comment: We received one comment suggesting that obstructive sleep apnea reported in conjunction with procedure codes 27.69, 29.4, or 29.59 would be more appropriately classified to DRGs 76 and 77 (Other Respiratory System Procedures) in MDC 4 (Diseases of the Respiratory System). In addition, the commenter recommended that obstructive sleep apnea medical cases be assigned to DRGs 101 and 102 (Other Respiratory Diagnoses).

Response: In order to properly classify each case, a diagnosis code may be assigned to only one MDC. Diagnoses in each MDC correspond to a single organ system or etiology and in general are associated with a particular medical specialty. In order to classify cases of obstructive sleep apnea to DRGs 76, 77, 101, and 102, code 780.57 would have to be reassigned from MDC 1 to MDC 4. We believe that obstructive sleep apnea is more appropriately classified to MDC 1; therefore, these cases cannot be assigned to a DRG in MDC 4.

Comment: One commenter noted an error in the discussion of sleep apnea in the proposed rule. The second time we referred to the codes to be moved to MDC 1, we listed them as 25.59, 78.49, and 29.4 (see 61 FR 27447).

Response: In the proposed rule, we inadvertently referred to procedures codes 25.59 and 78.49. The codes that will be added to DRGs 7 and 8 are 27.69, 29.4 and 29.59.

b. Guillain-Barré Syndrome. Guillain-Barré syndrome (diagnosis code 357.0) is a post-infectious polyneuropathy in which severely affected patients may require ventilatory assistance and long stays in intensive care. In recognition of the high resource consumption associated with this diagnosis, effective with FY 1991, we reassigned code 357.0 from DRGs 18 and 19 (Cranial and Peripheral Nerve Disorders) to DRG 20 (Nervous System Infection Except Viral Meningitis). (See the September 4, 1990 final rule (55 FR 36024).)

We have recently received requests that we again review this assignment. These commenters stated that the treatment for these cases remains very costly and often entails long hospital stays. Therefore, we conducted an analysis of the cases assigned to DRG 20 using the 10 percent random sample of the FY 1995 MedPAR file that we use for analyzing possible classification changes.

Cases coded with 357.0 constitute approximately 20 percent of the cases assigned to DRG 20. The average standardized charges for these cases, approximately $22,400, was higher than the average charge for the DRG, approximately $17,100. However, the length of stay was virtually the same. Since we believe that DRG 20 is the appropriate assignment clinically for Guillain-Barré cases, we reviewed the other cases assigned to DRG 20 for possible change.

We found that herpes zoster of the nervous system, NOS (diagnosis code 053.10) and herpes zoster of the nervous system, NEC (diagnosis code 053.19) had average charges of only $7,700 and $7,100, respectively. They also had lower average lengths of stay (6.2 and 6.1 days, respectively). (In the proposed rule, we mistakenly cited these lengths of stay as 4.4 and 4.2, respectively (61 FR 27447).) Because these two diagnoses account for approximately 20 percent of the cases in DRG 20, their low average charge has the effect of significantly lowering the average charge for the DRG. We proposed to reassign these codes to DRGs 18 and 19.

Comment: We received two comments regarding our proposal to assign diagnosis codes 053.10 and 053.19 to DRGs 18 and 19, both of which supported the change. However, one commenter noted that even though these cases obviously do not consume the amount of resources as other cases assigned to DRG 20, clinically, they are more closely related to cases in DRG 20 than those in DRGs 18 and 19. The commenter also expressed an interest in the length of stay and charges for geniculate herpes zoster (diagnosis code 053.11), which we did not propose to move from DRG 20.

Response: We do not believe that reassigning these codes to DRGs 18 and 19 is clinically unsound. There are currently two other herpes zoster diagnoses classified to those DRGs (Postherpetic trigeminal neuralgia (code 053.12) and postherpetic polyneuropathy (code 053.13)). Further, as the commenter noted, the charges and length of stay for 053.10 and 053.19 are very close to those for the cases assigned to DRGs 18 and 19.

We had considered moving all three herpes diagnosis codes (035.10, 053.11, and 053.19) from DRG 20 to DRGs 18 and 19. However, the higher charges associated with geniculate herpes zoster ($11,000) and slightly higher length of stay (6.7 days) led us to decide instead to leave 053.11 in DRG 20 and to closely monitor these cases in upcoming years.

4. MDC 5 (Diseases and Disorders of the Circulatory System)

Effective for discharges occurring on or after October 1, 1995, we created a

for cases with CC and the second DRG is for cases without CC. If a third number is included, it represents cases of patients who are age 0–17. Occasionally, a pair of DRGs is split on age>17 and age 0–17.

new code for insertion of a coronary artery stent (procedure code 36.06). Until creation of the new code, insertion of coronary artery stent had been included in the codes for percutaneous transluminal coronary angioplasty (PTCA) (procedure codes 36.01, 36.02, and 36.05).

When a new code is introduced, our longstanding practice is to assign it to the same DRG category as its predecessor code or codes. Therefore, in the September 1, 1995 final rule (60 FR 45785), we assigned procedure code 36.06 to DRG 112 (Percutaneous Cardiovascular Procedures), the DRG to which PTCA is assigned. We also stated that the resource use and other data associated with procedure code 36.06 will be available in the FY 1996 Medicare cases which are used for analysis as part of FY 1998 DRG changes. We will evaluate the DRG assignment of coronary artery stent insertion at that time.

Since publication of the September 1, 1995 final rule, we have received data on stent cases provided by the manufacturer of one of the two stent devices currently approved by the Food and Drug Administration (FDA). In addition, the manufacturer has provided us with an analysis of the charges and length of stay of approximately 7,500 Medicare patients who received stents in FY 1995.

The manufacturer's analysis found that the FY 1995 average charge for PTCA cases without stent is approximately $15,700 and the average charge for cases with stent is approximately $21,000. However, our analysis of the data shows that there is wide variation in the hospital standardized charges reported for cases with implant of coronary artery stent. Individual hospital average charges for these cases range from about $9,000 to over $45,000.

This inconsistency in the data illustrates why our policy of not reassigning new codes until we have collected an entire year of coded Medicare data for analysis is prudent. The uncertainty associated with using incomplete data collected outside the Medicare program that cannot be verified remains a problem. Therefore, we did not propose any DRG assignment change for implant of coronary artery stent.

Comment: We received five comments on this issue. One commenter agreed that the strategy of not assigning new codes into different DRGs until Medicare data have been collected and reviewed is appropriate. Four commenters requested that we take action this year. The commenters suggested various options for reassigning code 36.06: assign the code to its own DRG; move the code to a higher-weighted DRG (DRG 116, Other Permanent Cardiac Pacemaker Implant or AICD Lead or Generator Procedure was suggested); or increase the weight for DRG 112 to recognize that some of these cases involve stents.

One commenter believes that if we delay action, hospitals will not be able to provide stent therapy to Medicare beneficiaries, thereby depriving them of state-of-the-art technology and better outcomes. The commenter noted that although the literature has reported higher costs (for example, cost of the device itself, increased anticoagulation therapy, more frequent monitoring) related to this procedure, there has also been some offset noted because of the reduction in followup medical costs. There is also the potential that further improvement in stent design, implantation techniques, and other anticoagulant therapy could further increase this offset by reducing vascular complications or length of stay.

One commenter, the manufacturer of a coronary stent device, stated that the assignment of coronary stent implant to DRG 112 is inappropriate in light of the higher average lengths of stay and charges associated with this procedure compared to traditional angioplasty. The commenter argued that, given these differences, DRG reclassification of procedure code 36.06 would be consistent with the statutory mandate to adjust the DRG classifications and relative weights to ''reflect changes in treatment patterns, technology, and other factors which may change the relative use of hospital resources.'' (Section 1886(d)(4)(C) of the Act.)

The commenter also cited 1,200 peer-reviewed clinical publications that demonstrate superior clinical outcomes with coronary stent implant. Finally, the commenter stated that the variation in hospital standardized charges for coronary stent implant cases is less than the variation in charges for all PTCA cases without stent implant.

Response: As we stated in the proposed rule (61 FR 27447) and in the September 1, 1995 final rule (60 FR 45785), our practice is to assign a new code to the same DRG or DRGs as its predecessor code. One compelling reason for this practice is our inability to move the cases associated with the new code to a new DRG assignment as part of the DRG reclassification and recalibration process. Because the code is new, we cannot identify the stent cases in DRG 112 to remove the charges from that DRG, revise the relative weight accordingly, and move those cases to another DRG and establish the revised weight of that DRG.

We do not disagree with the commenters that the stent implant cases are more costly, on average, than other PTCA cases. We also do not dispute the clinical superiority of this treatment for certain patients. However, until we can review actual Medicare data to determine exactly what the difference in charges is, we cannot make a reasoned decision as to whether those cases should be moved to another DRG or be assigned to a new DRG. We believe that waiting for appropriate data is entirely consistent with our statutory duty to adjust DRG classifications.

Regarding the comment on the variation in charges for stent versus nonstent PTCA cases, we note that the charges for a specific procedure should vary less than the charges for a set of cases that vary in severity and for which many different treatments may be performed. That is, the homogeneity of the patients who received a stent implant should reflect a lower degree of variation.

Finally, analysis of data provided by the stent manufacturer convinced us that Medicare beneficiaries have access to stent implants that is at least equal to the general population. Moreover, we note that it is a violation of a hospital's Medicare provider agreement to place restrictions on the number of Medicare beneficiaries it will accept for treatment unless it places the same restrictions on all other patients. We will carefully examine the PTCA cases with and without stent implant in the FY 1996 claims data file as soon as it is available. Any DRG changes we determine are supported by the data will be addressed in the FY 1998 proposed rule.

5. MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue)

In the proposed rule, we reviewed the DRG assignment in MDC 8 of bipolar hip replacement cases as a follow-up to a comment received last year. The commenter believed that the procedure for partial hip replacement (code 81.52), currently assigned to DRG 209 (Major Joint and Limb Reattachment Procedures of Lower Extremity), is very similar to the procedure for open reduction of fracture of the femur with internal fixation (code 79.35), which is assigned to DRGs 210, 211, and 212 (Hip and Femur Procedures Except Major Joint). Further, the commenter noted that partial hip replacement patients are more frail individuals than the population that elects total hip replacement and need longer hospital stays to recover.

After reviewing the FY 1995 MedPAR file, we concluded that the charges and lengths of stay for partial hip replacement cases assigned to DRG 209 were very similar to the other cases assigned to DRG 209. However, the average charge for cases in DRG 210 was significantly less than the partial hip replacement charges. We note that the length of stay for partial hip replacement cases was closer to the average length of stay for DRG 210. However, the higher charges of the partial hip replacement cases indicate that they are more resource-intensive than the cases in DRG 210 and similar to the cases in DRG 209. Therefore, we proposed to retain procedure code 81.52 in DRG 209.

We received three comments, all of which supported our proposal, and we will continue to assign partial hip replacement cases to DRG 209.

6. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. It is, therefore, necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most to least resource-intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A relative class can be composed of one or more DRGs. For example, in MDC 5, the surgical class ''heart transplant'' consists of a single DRG (DRG 103) and the class ''coronary bypass'' consists of two DRGs (DRGS 106 and 107). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class, therefore, involves weighting each DRG for frequency to determine the average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5, and that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of ''other OR procedures'' as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, which may sometimes occur in cases involving multiple procedures, this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average relative weight is ordered above a surgical class with a higher average relative weight. For example, the ''other OR procedure'' surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the relative weights for the DRG or DRGS in that surgical class may be higher than that for other surgical classes in the MDC. The ''other OR procedures'' class is a group of procedures that are least likely to be related to the diagnosis in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the relative weights are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we proposed to modify the surgical hierarchy as set forth below. As we stated in the September 1, 1989 final rule (54 FR 36457), we are unable to test the effects of the proposed revisions to the surgical hierarchy and to reflect these changes in the proposed relative weights due to the unavailability of revised GROUPER software at the time the proposed rule is prepared. Rather, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification and then determine the average charge for each DRG. These average charges then serve as our best estimate of relative resource use for each surgical class. We test the proposed surgical hierarchy changes after the revised GROUPER is received and reflect the final changes in the DRG relative weights in the final rule.

We proposed to revise the surgical hierarchy for the Pre-MDC DRGs, MDC 3 (Diseases and Disorders of the Ear, Nose, Mouth, and Throat), and MDC 10 (Endocrine, Nutritional and Metabolic Diseases and Disorders) as follows:

- In the Pre-MDC DRGs, we proposed to reorder Tracheostomy Except for Face, Mouth and Neck diagnoses (DRG 483) above Liver Transplant (DRG 480).
- In MDC 3, we proposed to reorder Cleft Lip and Palate Repair (DRG 52) and Sinus and Mastoid Procedures (DRGs 53 and 54) above Tonsillectomy and Adenoidectomy, Except Tonsillectomy and/or Adenoidectomy Only (DRGs 57 and 58).
- In MDC 10, we proposed to reorder Adrenal and Pituitary Procedures (DRG 286) above Amputation of Lower Limb for Endocrine, Nutritional, and Metabolic Disorders (DRG 285).

We received two comments in support of the three surgical hierarchy changes. In addition, based on a test of the proposed changes using the most recent MedPAR file and the revised GROUPER software, we have found that the changes are still supported by the data and no additional changes are indicated. Therefore, we are incorporating these changes in this final rule.

7. Refinement of Complications and Comorbidities List

a. Addition or Deletion of CCs. There is a standard list of diagnoses that are considered complications or comorbidities (CCs). We developed this list using physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In previous years, we have made changes to the standard list of CCs, either by adding new CCs or deleting any of the diagnosis codes on the CC list.

In the September 1, 1995 final rule (60 FR 45782), we added diagnosis code 008.49 (Bacterial enteritis) to the CC list.

In response to a request from one commenter that we also add diagnosis code 008.45 (Clostridium difficile), we stated that we would review that request as part of our DRG analysis for FY 1997. We have reevaluated diagnosis code 008.45 as well as the remainder of the ''family'' of codes assigned to the category of Intestinal infections due to other specified bacteria (008.41, 008.42, 008.43, 008.44, 008.46, and 008.47). Our analysis shows that all of these diagnoses, when present as a secondary condition, do lead to higher resource use. Therefore, we proposed to add the following diagnosis codes to the CC list:

008.41 Intestinal infections due to staphylococcus
008.42 Intestinal infections due to pseudomonas
008.43 Intestinal infections due to campylobacter
008.44 Intestinal infections due to yersinia enterocolitica
008.45 Intestinal infections due to clostridium difficile
008.46 Intestinal infections due to other anaerobes
008.47 Intestinal infections due to other gram-negative bacteria

These diagnoses would be considered CCs for any principal diagnosis not shown in Table 6f, Additions to the CC Exclusions List (see discussion of CC Exclusions list in section V of the addendum below).

This same commenter also requested that we add the following codes to the CC list:

331.0 Alzheimer's disease
423.9 Unspecified disease of the pericardium
348.5 Cerebral edema
333.4 Huntington's chorea
458.0 Orthostatic hypotension
458.9 Hypotension, not otherwise specified

Our analysis of these codes demonstrated that their presence as a secondary diagnosis did not significantly add to the resource use of the case. Therefore, we did not propose to add them to the CC list.

Finally, the commenter suggested that the following diagnoses be added as cardiovascular complications for DRG 121 (Circulatory Disorders with AMI and Cardiovascular Complications, Discharged Alive):

434.xx Occlusion of cerebral arteries
436 Acute, but ill-defined, cerebrovascular disease

Based on our analysis, charges associated with those cases were indeed comparable to the other cases assigned to DRG 121. However, when we sought the advice of our medical specialists (physicians who work directly for or under contract with HCFA), they strongly opposed adding these codes to the list of conditions for DRG 121 based on the fact that these are not cardiovascular complications. Therefore, they are not clinically similar to other cases assigned to this DRG.

Our analysis of DRG 121 did reveal a large variation in the charges and lengths of stay within this DRG. We believe that a close examination of the list of complicating conditions assigned to DRG 121 is needed. Therefore, we plan to perform a thorough analysis of the cases assigned to that DRG as part of our DRG analysis agenda for FY 1998. In the meantime, we did not propose any change to DRG 121.

We received three comments supporting the addition of the remainder of the ''family'' of codes for intestinal infection due to bacteria to the CC list. We received one comment in support of our decision not to add 331.0, 423.9, 348.5, 333.4, 458.0, and 458.9 to the CC list.

Comment: Two commenters requested that we reconsider our decision not to add codes 434.xx (Occlusion of cerebral arteries) and 436 (Acute, but ill-defined, cerebrovascular disease) to the list of conditions that are designated cardiovascular complications for assignment to DRG 121 (Circulatory Disorders with AMI and Cardiovascular Complications, Discharged Alive). One commenter noted that even though these diagnoses are not cardiac in nature, they are vascular complications. The other commenter stated that there are other conditions assigned to DRG 121, such as acute renal failure, that are not strictly cardiovascular conditions. The commenter supports our decisions to completely review DRG 121, but believes diagnosis codes 434.xx and 436 should be added this year.

Response: As explained in the proposed rule (61 FR 27449), in our initial analysis, cases assigned to DRG 121 that had these diagnoses coded as secondary conditions contained charges that were indeed comparable to the other cases assigned to DRG 121. However, our analysis of DRG 121 and the list of cardiovascular conditions revealed large variations in the charges and lengths of stay for cases within this DRG. Because the diagnoses associated with codes 434.xx and 436 are not strictly cardiovascular in nature, we believe the better course would be to do a comprehensive review of DRG 121, including considering adding additional diagnosis as complicating conditions. We will address these issues as part of our DRG analysis agenda for FY 1998.

b. CC Exclusions List. In the September 1, 1987 final notice concerning changes to the DRG classification system (52 FR 33143), we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes to preclude duplicative coding or inconsistent coding from being treated as CCs, and to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair.

In the May 19, 1987 proposed notIce concerning changes to the DRG classification system (52 FR 18877), we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.
- Conditions that may not co-exist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- The same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended to be only a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCS were intended to identify only the most obvious diagnoses that should not be considered complications or comorbidities of another diagnosis. For that reason, and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition a CC. (See the September 30, 1988 final rule for the revisions made for the discharges occurring in FY 1989 (53 FR 38485); the September 1, 1989 final rule for the FY 1990 revisions (54 FR 36552); the September 4, 1990 final rule for the FY 1991 revisions (55 FR 36126); the August 30, 1991 final rule for the FY 1992 revision (56 FR 43209); the September 1, 1992 final rule for the

FY 1993 revisions (57 FR 39753); the September 1, 1993 final rule for the FY 1994 revisions (58 FR 46278); the September 1, 1994 final rule for the FY 1995 revisions (59 FR 45334); and the September 1, 1995 rule for the FY 1996 revisions (60 FR 45782).)

The proposed rule reflected a limited revision of the CC Exclusions List to take into account the changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 1996, as well as the proposed CC changes described above. (See section II.B.8, below, for a discussion of ICD–9–CM changes.) These changes are being made in accordance with the principles established when we created the CC Exclusions List in 1987.

The changes discussed above have been added to Table 6g, Additions to the CC Exclusions List, in section V of the addendum to this final rule.

Table 6g and 6h in section V of the addendum to this final rule contain the revisions to the CC Exclusions List that will be effective for discharges occurring on or after October 1, 1996. Each table shows the principal diagnoses with final changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk, and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6g—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 1996, the indented diagnoses will not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6h—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 1996, the indented diagnoses will be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained for the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $92.00 plus $6.00 shipping and handling and on microfiche for $20.50, plus $4.00 for shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number, (PB) 88–133970) should be made to the following address: National Technical Information Service; United States Department of Commerce; 5285 Port Royal Road; Springfield, Virginia 22161; or by calling (703) 487–4650.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992, 1993, 1994, 1995, and 1996) and those in Tables 6g and 6h of this document must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 1996.

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which under contract with HCFA, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Version 13.0, is available for $195.00, which includes $15.00 for shipping and handling. Version 14.0 of this manual, which will include the final FY 1997 DRG changes, will be available in October 1996 for $195.00. These manuals may be obtained by writing 3M/HIS at the following address: 100 Barnes Road; Wallingford, Connecticut 06492; or by calling (203) 949–0303. Please specify the revision or revisions requested.

8. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis) in order to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the OR procedures performed is related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

60.0 Incision of prostate
60.12 Open biopsy of prostate
60.15 Biopsy of periprostatic tissue
60.18 Other diagnostic procedures on prostate and periprostatic tissue
60.21 Transurethral prostatectomy
60.29 Other transurethral prostatectomy
60.61 Local excision of lesion of prostate
60.69 Prostatectomy NEC
60.81 Incision of periprostatic tissue
60.82 Excision of periprostatic tissue
60.93 Repair of prostate
60.94 Control of (postoperative) hemorrhage of prostate
60.95 Transurethral balloon dilation of the prostatic urethra
60.99 Other operations on prostate

All remaining OR procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures if performed with an unrelated principal diagnosis was published in Table 6c in section IV of the addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990, August 30, 1991, September 1, 1992, September 1, 1993, September 1, 1994, and September 1, 1995, we moved several other procedures from DRG 468 to 477. (See 55 FR 36135, 56 FR 43212, 57 FR 23625, 58 FR 46279, 59 FR 45336, and 60 FR 45783, respectively.)

a. Adding Procedure Codes to MDCs. We annually conduct a review of procedures producing DRG 468 or 477 assignments on the basis of volume of cases in these DRGs with each procedure. Our medical consultants then identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. This year's review did not identify any necessary changes; therefore, we did not propose to move any procedures from DRG 468 or DRG 477 to one of the surgical DRGs.

b. Reassignment of Procedures Among DRGs 468, 476, and 477. We also reviewed the list of procedures that produce assignments to DRGs 468, 476, and 477 to ascertain if any of those procedures should be moved from one of these DRGs to another based on average charges and length of stay. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we moved one procedure from DRG 468 to DRG 477.

In reviewing the list of OR procedures that produce DRG 468 assignments, we analyzed the average charge and length of stay data for cases assigned to that DRG to identify those procedures that are more similar to the discharges that currently group to either DRG 476 or 477. We identified one procedure, Closed endoscopic biopsy of lung (code

33.27), a needle biopsy, that is significantly less resource-intensive than the other procedures assigned to DRG 468. Therefore, we proposed to move procedure code 33.27 to the list of procedures that result in assignment to DRG 477.

In reviewing the list of procedures assigned to DRG 477, we did not identify any procedures that should be assigned to either DRG 468 or 476. We did, however, identify the following procedures that we believe should be reassigned from an OR to a non-OR designation:

08.81 Linear repair of laceration of eyelid or eyebrow
08.82 Repair of laceration involving lid margin, partial-thickness
08.83 Other repair of laceration of eyelid, partial-thickness
08.84 Repair of laceration involving lid margin, full-thickness
08.85 Other repair of laceration of eyelid, full-thickness
08.86 Lower eyelid rhytidectomy
08.87 Upper eyelid rhytidectomy
08.89 Other eyelid repair

Our analysis of the data associated with these eyelid repair procedures leads us to conclude that the procedures are performed following accidental injury or falls, incurred while the patient is in the hospital. These procedures, which are normally performed at bedside and do not necessitate a trip to the operating room, are significantly less resource-intensive than other procedures designated as OR procedures. Therefore, we proposed to change the procedures from OR to non-OR procedures. We noted that these procedures are assigned to surgical DRGs in MDCs 2, 9, 21, 22, and 24. With this change, cases in which procedure codes 08.81 through 08.89 are the only OR procedure codes listed would no longer be assigned to a surgical DRG.

Comment: We received two comments that generally supported our proposal to move procedure code 33.27 to the list of procedures that result in assignment to DRG 477. However, one of the commenters was concerned because this code also includes transbronchial lung biopsy. The commenter believes that transbronchial lung biopsy is a high-risk procedure and questions whether this would be considered a nonextensive procedure.

Response: In analyzing the procedures that produce assignments to each of DRG 468, 476, and 477 for possible reassignment, we evaluate average charges and lengths of stay. The cases in DRG 468 with procedure code 33.27 are significantly less resource-intensive than the other procedures assigned to DRG 468, and more closely resemble the average charge and length of stay for procedures classified to DRG 477. Although transbronchial lung biopsy may be a more difficult procedure to perform than other procedures assigned to 33.27, we do not know how many of these cases are actually assigned to DRG 468, that is, how many times this procedure is performed for an unrelated principal diagnosis. It is possible that the lower charges associated with closed endoscopic biopsy of lung cases in DRG 468 do not include many transbronchial lung biopsy cases. We also note that in MDC 4, procedure code 33.27 is not assigned to the major procedures DRG (DRG 75). In any case, our data support the reclassification of these procedures to DRG 477. Therefore, we are reassigning procedure code 33.27 from DRG 468 to DRG 477, as proposed.

Comment: We received four comments regarding our proposal to designate procedure code category ''other repair of eyelid'' (codes 08.81 through 08.89) as non-OR. Two commenters supported our decision, although one of those commenters stated that even though these procedures may not require an operating room, they may require a specialist. One commenter requested that we consider designating these eyelid repair codes as non-OR procedures that affect DRG assignment when the procedure is the only one performed in connection with a related principal diagnosis. The fourth commenter understood that our reason for making this change had to do with our belief that many of these injuries are sustained during hospital stays. That commenter believes that the causes surrounding the injury are not necessarily indicative of the nature of the services furnished or the procedures performed and that we should not make this change unless we reviewed the resources consumed delivering these services.

Response: Our proposal to change the OR designation for these procedures was not based on where the injuries were incurred. Rather, we based the decision on our analysis of claims data as part of our annual review of procedures that result in assignment to DRGs 468, 476, and 477, and on the clinical opinions of our physician consultants. Cases in which 08.81 was coded as the only OR procedure, unrelated to the principal diagnosis, were the second most frequently assigned to DRG 477. Our evaluation of the average charges and length of stay for these cases was the deciding factor in our proposal. Both of these statistics were much lower for the eyelid repair cases than the average case assigned to DRG 477. In addition, the opinion of our medical staff was that these repairs would not normally necessitate a trip to the OR, even if they are performed by a specialist. Because there are so many cases of eyelid repair performed for unrelated diagnoses, we speculated that they were the result of injuries sustained while the patient was in the hospital.

Regarding the request to designate codes 08.81 through 08.89 as non-OR procedures that affect DRG assignment in the MDCs to which they were previously assigned, we analyzed the FY 1995 MedPAR file cases in which one of these codes is assigned to DRG 40 and 41 (Extraocular Procedures Except Orbit) in MDC 2 (Diseases and Disorders of the Eye) and DRG 268 (Skin, Subcutaneous Tissue and Breast Plastic Procedures) in MDC 9 (Disease and Disorders of the Skin, Subcutaneous Tissue and Breast). In both DRGs 40 and 268 (no cases were assigned to DRG 41 in FY 1995), there were no cases in which an eyelid repair was the only related procedure coded. That is, in every case, there was another OR procedure code present on the claim that would cause it to be assigned to either DRG 40 or 268. This means that assignment of cases to these DRGs will not be affected by changing the OR designation for the eyelid repair codes.

9. Changes to the ICD–9–CM Coding System

As discussed above in section II.B.1 of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee charged with the mission of maintaining and updating the ICD–9–CM. That mission includes approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the system.

The Committee is co-chaired by the National Center for Health Statistics (NCHS) and HCFA. The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in *Volume 1—Diseases: Tabular List* and *Volume 2—Diseases: Alphabetic Index*, while HCFA has lead responsibility for the ICD–9–CM procedure codes included in

Volume 3—Procedures: Tabular List and Alphabetic Index.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding field, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes at public meetings held on May 5 and November 30, 1995, and finalized the coding changes after consideration of comments received at the meetings and in writing within 30 days following the November 1995 meeting. The initial meeting for consideration of coding issues for implementation in FY 1998 was held on June 6, 1996. Copies of the minutes of these meetings may be obtained by writing to one of the co-chairpersons representing NCHS and HCFA. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; NCHS; Room 1100; 6525 Belcrest Road; Hyattsville, Maryland 20782. Comments may be sent by E-mail to: dfp4@nch11a.em.cdc.gov.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; HCFA, Office of Hospital Policy; Division of Prospective Payment System; C5–06–27; 7500 Security Boulevard; Baltimore, Maryland 21244–1850. Comments may be sent by E-mail to: pbrooks@hcfa.gov.

The ICD–9–CM codes changes that have been approved will become effective October 1, 1996. The new ICD–9–CM codes are listed, along with their DRG classifications, in Tables 6a and 6b (New Diagnosis Codes and New Procedure Codes, respectively) in section V of the addendum to this final rule. As we stated above, the code numbers and their titles were presented for public comment in the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved.

Further, the Committee has approved the expansion of certain ICD–9–CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes, and other codes, or have been deleted, are in Table 6c (Invalid Diagnosis Codes). The procedure codes that have been replaced by expanded codes or have been deleted are in Table 6d (Invalid Procedure Codes). These invalid diagnosis and procedure codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 1996. The corresponding new or expanded codes are included in Tables 6a and 6b. Revisions to diagnosis and procedure code titles are in Tables 6e (Revised Diagnosis Code Titles) and 6f (Revised Procedure Code Titles), which also include the DRG assignments for these revised codes.

Based on the comments received and our own review, we have corrected a code title and added omitted secondary DRG assignments to several codes in Tables 6a and 6b. The code title corrected is 995.59, Other child abuse and neglect. The codes for which DRG changes have been made are as follows:

- In Table 6a, MDC 15 and DRG 391 were added to 752.51 and 752.52 because they are considered ''major problems'' in this DRG; 922.31, 922.32, and 922.33 were modified to add MDC 24 and DRGs 484, 485, 486, and 487; and MDC 15 and DRGs 387 and 389 were added to 998.11, 998.12, 998.13, 998.51 and 998.59 because they are considered ''major problems'' in these DRGs.
- In Table 6b, DRG 303 was added to code 59.03.

Comment: One commenter supported the creation of new procedure codes for partial cholecystectomies; however, the commenter disagreed with their assignment to DRGs 193 and 194 (Biliary Tract Procedures except only Cholecystectomy with or without C.D.E.). The commenter believes that partial cholecystectomy (code 51.21) is similar to cholecystectomy (code 51.22) and laparoscopic partial cholecystectomy (51.23) is similar to laparoscopic cholecystectomy (51.24). Therefore, procedure codes 51.21 and 51.23 should be assigned to the same DRGs as 51.22 and 51.24, respectively.

Response: We agree with the commenter. Partial cholecystectomies are clinically similar to cholecystectomies and laparoscopic partial cholecystectomies are clinically similar to laparoscopic cholecystectomies, as well as being similar in terms of resource use. Therefore, we have revised Table 6b to indicate that procedure code 51.21 is assigned to DRGs 195 and 196 (Cholecystectomy with C.D.E.) and DRGs 197 and 198 (Cholecystectomy except by Laparoscope) and 51.23 is assigned to DRGs 195 and 196 and DRGs 493 and 494 (Laparoscopic Cholecystectomy).

Comment: We received one comment on modifications made to the ICD–9–CM codes involving psychiatric diagnoses. The commenter had participated in the ICD–9–CM Coordination and Maintenance Committee meetings and had submitted written proposals for revisions. The commenter stated that although the proposed rule listed all final code revisions, it did not explain the final action on specific proposals or why that action was taken. The commenter suggested that this information be included in the final rule. The commenter also objected to changing the title of category V61.1 from ''Marital Problems'' to ''Counseling for Marital and Partner Problems'' because it narrows the use of the category.

Response: The National Center for Health Statistics (NCHS) has the lead responsibility for maintaining the diagnosis part of ICD–9–CM. As explained above, after receiving comments at the public meetings held by the Coordination and Maintenance Committee and reviewing subsequent written comments, NCHS proposes final revisions to ICD–9–CM diagnosis codes. These revisions are then jointly approved by NCHS and HCFA. The purpose of printing the final codes in the Federal Register is simply to notify the public and solicit comment on the proposed DRG classifications. We recommend that the commenter, or any other interested party, contact NCHS directly to discuss the final codes. If further revisions are sought, then these can be handled through future meetings of the Coordination and Maintenance Committee. We will forward the commenter's concerns on category V61.1 to NCHS for review.

Comment: One commenter supported the ICD–9–CM code revisions for October 1, 1996, but suggested that rules relating to the sequencing of the new code V66.7, Encounter for palliative care, should be developed prior to its use beginning on October 1, 1996.

Response: We agree with the commenter that medical records technicians and administrators will

need advice on coding this diagnosis. Specific directions in the form of a note within the tabular section of the ICD–9–CM will direct the coder to ''code first underlying disease'' when coding V66.7. The NCHS has also developed an extensive set of V code guidelines that will also clarify that V66.7 should be sequenced second. In addition, AHA routinely includes advice on the use of new and modified codes in the fourth quarter issue of their publication, *Coding Clinic for ICD–9–CM Coding.* This year's issue will clarify that V66.7 will be used only as a secondary diagnosis. The coding advice in *Coding Clinic* is a collaborative effort among HCFA, NCHS, AHA, and AHIMA. Information on ordering *Coding Clinic* can be obtained from the following: American Hospital Association, Central Office on ICD–9–CM, One North Franklin, Chicago, IL 60606, (312) 422–3366.

Comment: Although the Committee made no revisions to the pacemaker codes, a commenter noted that there have been advances in pacemaker technology that may have an effect on coding and DRG classification. One new pacemaker device functions as a dual-chamber pacemaker (procedure code 37.83) but has only a single lead (procedure code 37.71 or 37.73). If these pairs of codes are reported on a claim, the case is assigned to a medical DRG rather than DRG 115 or 116 (Permanent Cardiac Pacemaker Implant).

Response: This coding issue was addressed recently by the Editorial Advisory Board of the *Coding Clinic for ICD–9–CM.* After consultation with the manufacturer of the new pacemaker device, the Board decided that, although this pacemaker has a single lead, it functions as dual electrodes. Therefore, the insertion of this pacemaker should be coded with procedure codes 37.83 and 37.72 (dual lead insertion). If a hospital follows this coding advice, the case will be classified to DRG 115 or 116. This advice will be included in an upcoming issue of *Coding Clinic.* We will monitor this situation to determine if hospitals are following this coding advice or if a change in the DRG software is necessary.

C. Recalibration of DRG Weights

We used the same basic methodology for the FY 1997 recalibration as we did for FY 1996. (See the September 1, 1995 final rule (60 FR 45791).) That is, we recalibrated the weights based on charge data for Medicare discharges. However, we used the most current charge information available, the FY 1995 MedPAR file, rather than the FY 1994 MedPAR file. The MedPAR file is based on fully-coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The recalibrated DRG relative weights are constructed from FY 1995 MedPAR data, based on bills received by HCFA through June 1996, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1995 MedPAR file includes data for approximately 11.1 million Medicare discharges.

The methodology used to calculate the DRG relative weights from the FY 1995 MedPAR file is as follows:

- All the claims were regrouped using the final DRG classification revisions discussed above in section II.B of this preamble.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education costs, disproportionate share payments, and for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers, using the same criteria as were used in computing the current weights. That is, we eliminated all cases that are outside of 3.0 standard deviations from the mean of the log distribution of both the charges per case and the charges per day for each DRG.
- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight. A transfer case is counted as a fraction of a case based on the ratio of its length of stay to the geometric mean length of stay of the cases assigned to the DRG. That is, a 5-day length of stay transfer case assigned to a DRG with a geometric mean length of stay of 10 days is counted as 0.5 of a total case.
- We established the relative weight for heart and heart-lung, liver, and lung transplants (DRGs 103, 480, and 495) in a manner consistent with the methodology for all other DRGs except that the transplant cases that were used to establish the weights were limited to those Medicare-approved heart, heart-lung, liver, and lung transplant centers that have cases in the FY 1995 MedPAR file. (Medicare coverage for heart, heart-lung, liver, and lung transplants is limited to those facilities that have received approval from HCFA as transplant centers.)
- Acquisition cost for kidney, heart, heart-lung, liver, and lung transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant for heart and heart-lung transplants); DRG 480 (Liver Transplant); and DRG 495 (Lung Transplant)). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the effect of the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We proposed to use that same case threshold in recalibrating the DRG weights for FY 1997. For this final rule, using the June 1996 FY 1995 MedPAR data set, there are 37 DRGs that contain fewer than 10 cases. We computed the weights for the 37 low-volume DRGs by adjusting the FY 1996 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs. We note that the FY 1996 weights for the low-volume DRGs were recalculated based on non-Medicare data we acquired from 19 States. This was the first update of the weights since they were initially calculated for FY 1984 based on data from Maryland and Michigan. For a complete description of this process, see the September 1, 1995 final rule (60 FR 45781).

The weights developed according to the methodology described above, using the DRG classification changes, result in an average case weight that is different from the average case weight before recalibration. Therefore, the new weights are normalized by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

Section 1886(d)(4)(C)(iii) of the Act requires that beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to

achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payment to hospitals is affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.b. of the addendum to this final rule, we are making a budget neutrality adjustment to assure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

III. Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts ''for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.'' In accordance with the broad discretion conferred by this provision, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs) (and New England County Metropolitan Areas), issued by the Office of Management and Budget (OMB). In addition, as discussed below, we adjust the wage index to take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act.

Section 1886(d)(3)(E) of the Act requires that the wage index be updated annually beginning October 1, 1993. Furthermore, this section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services.

B. FY 1997 Wage Index Update

The final FY 1997 wage index (effective for hospital discharges occurring on or after October 1, 1996 and before October 1, 1997) is based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 1993 (the FY 1996 wage index is based on FY 1992 wage data). We used the same categories of data that were used in the FY 1996 wage index. Therefore, the FY 1997 wage index reflects the following:

- Total salaries and hours from short-term, acute care hospitals.
- Home office costs and hours.
- Fringe benefits associated with hospital and home office salaries.
- Direct patient care contract labor costs and hours.
- The exclusion of salaries and hours for nonhospital type services such as skilled nursing facility services, home health services, or other subprovider components that are not subject to the prospective payment system.

Finally, we are making a minor revision to § 412.63(s)(1) to state clearly that we update the wage index annually as required by section 1886(d)(3)(E) of the Act.

Although we did not propose any changes in the reporting of hospital wage index data, we received comments regarding our current policies. (Comments specifically related to our policy on contract labor are addressed below in section III.D of this preamble.)

Comment: We received several comments concerning the treatment of Medicare Part A physician salaries in the wage index calculation. One commenter stated that we should immediately exclude all of these costs, using Worksheet A–8–2 of the Medicare cost report to identify physician Part A costs. Alternatively, the commenter suggested that we should include contracted Part A physician salaries in those States where hospitals are prohibited from employing physicians. Two other commenters suggested we should prepare an impact analysis of the effects of the exclusion of Part A physician salaries.

Response: As stated in the September 1, 1994 final rule (59 FR 45355), effective with cost reporting periods beginning on or after October 1, 1994, we revised the Medicare cost report to provide for the separate reporting of all salary costs for physicians (including teaching physicians), interns and residents, and certified registered nurse anesthetists. After evaluating these data, we will consider appropriate changes in developing the FY 1999 wage index update.

In response to the suggestion that we should use Worksheet A–8–2 to expedite our evaluation of excluding physician Part A salaries, we will explore the technical feasibility of using the data from that worksheet. Regarding the suggestion that we should allow contracted Part A physician salaries to be included in the wage index calculation in those States that do not allow hospitals to employ physicians directly, we note that, if we were to adopt such a policy it would not be effective until hospitals' FY 1997 cost reporting periods. Therefore, the data would not be available until the FY 2001 wage index. Because we are already collecting data that would allow us to exclude all physician Part A salaries by the FY 1999 wage index, we are not adopting this comment.

With respect to the comments that we should prepare an analysis of the impact on the wage index of excluding Part A physician salaries, any such analysis is, of course, contingent upon having reliable data to analyze. At this point, we do not foresee having such data prior to the availability of hospitals' FY 1995 cost reports.

Comment: A commenter stated that the wage index value of rural hospitals with swing-bed programs is unfairly deflated by the inclusion of the lower salaries related to skilled nursing level care provided to patients in swing-beds. The commenter indicated that since hospitals can separately identify these salaries, they should be excluded from total salaries to be consistent with the way salaries are reported for hospitals without a swing-bed program.

Response: Salaries related to skilled nursing level care provided to patients in swing-beds are not reported separately on the Medicare cost report. Salary costs for swing-beds are combined with those for general adult and pediatric care on the cost report at line 25 of Worksheet A. Therefore, it would not be possible under the current cost report format to remove from the wage index calculation these costs as we do for direct salaries associated with distinct part skilled nursing facilities and units. Furthermore, given the nature of the swing-bed program, we do not believe it would be appropriate to impose on hospitals the additional recordkeeping requirements that would be necessary to report these salaries.

1. Verification of Wage Data from the Medicare Cost Report

The data for the FY 1997 wage index were obtained from Worksheet S–3, Part II of the Medicare cost report. The data file used to construct the wage index includes FY 1993 data submitted to the Hospital Cost Report Information System (HCRIS). As in past years, we performed an intensive review of the wage data, mostly through the use of edits designed to identify aberrant data.

In the proposed rule, we discussed in detail our review of the wage data as well as the process that hospitals could use to verify their wage data and submit requests for corrections if necessary (61 FR 27455). To be reflected in the final wage index, wage data corrections had

to be reviewed, verified, and transmitted to HCFA through HCRIS by June 17, 1996 (any changes after this date are limited to errors related to handling the data, as described below in section III.C of this preamble). All data elements that failed edits have been resolved and are reflected in this final rule.

2. Computation of the Wage Index

As noted above, we are basing the FY 1997 wage index on wage data reported on the FY 1993 cost reports. The final wage index is based on data from 5,231 hospitals paid under the prospective payment system and short-term acute care hospitals in waiver States. The method used to compute the final wage index is as follows:

Step 1—We gathered data from each of the non-Federal short-term, acute care hospitals for which data were reported on the Worksheet S–3, Part II of the Medicare cost report for the hospital's cost reporting periods beginning on or after October 1, 1992 and before October 1, 1993. In addition, we included data from a few hospitals that had cost reporting periods beginning in September 1992 and reported a cost reporting period exceeding 52 weeks. The data were included because no other data from these hospitals would be available for the cost reporting period described above, and particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 1993 data.

Step 2—For each hospital, we subtracted the excluded salaries (that is, direct salaries attributable to skilled nursing facility services, home health services, and other subprovider components not subject to the prospective payment system) from gross hospital salaries to determine net hospital salaries. To determine total salaries plus fringe benefits, we added direct patient care contract labor costs, hospital fringe benefits, and any home office salaries and fringe benefits reported by the hospital, to the net hospital salaries.

Step 3—For each hospital, we adjusted the total salaries plus fringe benefits resulting from Step 2 to a common period to determine total adjusted wages. To make the wage inflation adjustment, we used the percentage change in average hourly earnings for each 30-day increment from October 14, 1992 through September 15, 1994, for hospital industry workers from Standard Industry Classification 806, Bureau of Labor Statistics Employment and Earnings Bulletin. The annual inflation rates used were 4.8 percent for FY 1992, 3.6 percent for FY 1993, and 2.7 percent for FY 1994. The inflation factors used to inflate the hospital's data were based on the midpoint of the cost reporting period as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
10/14/92	11/15/92	1.044482
11/14/92	12/15/92	1.041408
12/14/92	01/15/93	1.038343
01/14/93	02/15/93	1.035287
02/14/93	03/15/93	1.032240
03/14/93	04/15/93	1.029203
04/14/93	05/15/93	1.026174
05/14/93	06/15/93	1.023154
06/14/93	07/15/93	1.020143
07/14/93	08/15/93	1.017141
08/14/93	09/15/93	1.014147
09/14/93	10/15/93	1.011163
10/14/93	11/15/93	1.008920
11/14/93	12/15/93	1.006683
12/14/93	01/15/94	1.004450
01/14/94	02/15/94	1.002223
02/14/94	03/15/94	1.000000
03/14/94	04/15/94	0.997782
04/14/94	05/15/94	0.995570
05/14/94	06/15/94	0.993362
06/14/94	07/15/94	0.991159
07/14/94	08/15/94	0.988961
08/14/94	09/15/94	0.986767

For example, the midpoint of a cost reporting period beginning January 1, 1993 and ending December 31, 1993 is June 30, 1993. An inflation adjustment factor of 1.020143 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 1993 and covers a period of less than 360 days or greater than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 4—For each hospital, we subtracted the reported excluded hours from the gross hospital hours to determine net hospital hours. We increased the net hours by the addition of any direct patient care contract labor hours and home office hours to determine total hours.

Step 5—As part of our editing process, we deleted data for eight hospitals for which we lacked sufficient documentation to verify data that failed edits because the hospitals are no longer participating in the Medicare program or are in bankruptcy status. We retained the data for other hospitals that are no longer participating in the Medicare program because these hospitals reflected the relative wage levels in their labor market areas during their FY 1993 cost reporting period.

Step 6—Each hospital was assigned to its appropriate urban or rural labor market area prior to any reclassifications under sections 1886(d)(8)(B) or 1886(d)(10) of the Act. Within each urban or rural labor market area, we added the total adjusted wages obtained in Step 3 for all hospitals in that area to determine the total adjusted wages for the labor market area.

Step 7—We divided the total adjusted wages obtained in Step 6 by the sum of the total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Step 8—We added the total adjusted wages obtained in Step 3 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage. Using the data as described above, the national average hourly wage is $19.5533.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

We note that on June 28, 1996, OMB announced the designation of the Pocatello, Idaho MSA comprising Bannock County, Idaho and the Jonesboro, Arkansas MSA comprising Craighead County, Arkansas and the addition of Chester County, Tennessee to the Jackson, Tennessee MSA. These changes are reflected in the final wage index.

3. Revisions to the Wage Index Based on Hospital Redesignation

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system.

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on

the wage index value for the area to which they have been redesignated. Therefore, as provided in section 1886(d)(8)(C) of the Act, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals reduces the MSA wage index value by 1 percentage point or less, the MSA wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the hospitals that are redesignated are subject to the wage index value of the area that results from including the wage data of the redesignated hospitals (the ''combined'' wage index value). However, the wage index value for the redesignated hospitals cannot be reduced below the wage index value for the rural areas of the State in which the hospitals are located.
- If including the wage data for the redesignated hospitals increases the MSA wage index value, the MSA and the redesignated hospitals receive the combined wage index value.
- Rural areas whose wage index values would be reduced by excluding the data for hospitals that have been redesignated to another area continue to have their wage index calculated as if no redesignation had occurred. Those rural areas whose wage index values increase as a result of excluding the wage data for the hospitals that have been redesignated to another area have their wage indexes calculated exclusive of the redesignated hospitals.
- The wage index value for an urban area is calculated exclusive of the wage data for hospitals that have been reclassified to another area. However, geographic reclassification may not reduce the wage index for an urban area below the Statewide rural average, provided the wage index prior to reclassification was greater than the Statewide rural wage index value.
- A change in classification of hospitals from one area to another may not result in the reduction in the wage index for any urban area whose wage index is below the rural wage index for the State. This provision also applies to any urban area that encompasses an entire State.

We note that, except for those rural areas where redesignation would reduce the rural wage index value, and those urban areas whose wage index values are already below the rural wage index and would be reduced by redesignations, the wage index value for each area is computed exclusive of the data for hospitals that have been redesignated from the area for purposes of their wage index. As a result, several MSAs listed in Table 4a have no hospitals remaining in the MSA. This is because all the hospitals originally in these MSAs have been reclassified to another area by the MGCRB. These areas receive the prereclassified wage index value. The prereclassified wage index value will apply as long as the MSA remains empty.

The final wage index values for FY 1997 are shown in Tables 4a, 4b, and 4c in the Addendum to this final rule. The FY 1997 wage index values incorporate all hospital redesignations for FY 1997, withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process. For FY 1997, 385 hospitals are redesignated for purposes of the wage index (hospitals redesignated under section 1886(d)(8)(B) or 1886(d)(10) of the Act). For hospitals that are redesignated, the wage index values are shown in Table 4c. For some areas, Table 4c shows more than one wage index value. This occurs when hospitals from more than one State are included in the group of redesignated hospitals, and one State has a higher Statewide rural wage index value than the wage index value otherwise applicable to the redesignated hospitals.

Tables 4d and 4e list the average hourly wage for each labor market area, prior to the redesignation of hospitals, based on the FY 1993 wage data. In addition, Table 3C in the addendum to this final rule includes the adjusted average hourly wage for each hospital based on the FY 1993 data. Hospitals should use the average hourly wage published in this final rule in applying to the MGCRB for wage index reclassifications that would be effective for FY 1998. The MGCRB will use the average hourly wage published in the final rule to evaluate a hospital's application for reclassification, unless that average hourly wage is later revised in accordance with the wage data correction policy described in § 412.63(s)(2). In such cases, the MGCRB will use the most recent revised data used for purposes of the hospital wage index.

C. Requests for Wage Data Corrections

In the proposed rule, we noted that we would make a diskette available in mid-August that contained the wage data used to construct the wage index values in this final rule. As with the diskette made available in March 1996, HCFA made the August diskette available to hospital associations and the public. (Please note that this data file is also available on HCFA's World-Wide Web page, public use files address (http://www.hcfa.gov/stats/stats.html).) This file is made available only for the purpose of identifying any potential errors made by HCFA or the intermediary in the handling of the final wage data that result from the process described above, not for the initiation of new wage data correction requests.

In addition, as noted above, Table 3C in the Addendum to this final rule contains each hospital's adjusted average hourly wage used to construct the wage index values. A hospital can verify its average hourly wage as reflected on its cost report (after taking into account any adjustments made by the intermediary), by dividing the adjusted average hourly wage in Table 3C by the applicable wage inflation adjustment factors as set forth above in Step 3 of the computation of the wage index.

As noted in the proposed rule, after mid-August, we will make changes to the hospital wage data only in those very limited situations involving an error by the intermediary or HCFA that the hospital could not have known about before its review of the August diskette. Specifically, after that point, neither the intermediary nor HCFA will accept the following types of requests in conjunction with this process:

- Requests for wage data corrections that were submitted too late to be included in the data transmitted to the HCRIS system on or before June 17, 1996.
- Requests for correction of errors made by the hospital that were not, but could have been, identified during the hospital's review of the March 1996 data.
- Requests to revisit factual determinations or policy interpretations made by the intermediary or HCFA during the wage data correction process.

If, after reviewing the data in the August diskette or this final rule, a hospital believes that its wage data are incorrect due to a fiscal intermediary or HCFA error in the entry or tabulation of the final wage data, it should send a letter to both its fiscal intermediary and HCFA. The letters should outline why the hospital believes an error exists and provide all supporting information. These requests must be *received* by HCFA and the intermediaries no later than September 16, 1996. We have set this year's deadline one week earlier than last year's deadline because we found the later deadline made it difficult to evaluate the requests and recalculate the wage index values before

the start of FY 1997 (that is, October 1, 1996). Requests sent to HCFA should be sent to: Health Care Financing Administration, Office of Hospital Policy, Attention: Stephen Phillips, Technical Advisor, Division of Prospective Payment System; C5–06–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Each request must also be sent to the hospital's fiscal intermediary. The intermediary will review requests upon receipt, and, if it is determined that an intermediary or HCFA error exists, the fiscal intermediary will notify HCFA immediately.

We believe the wage data correction process described above and in the proposed rule provides hospitals with sufficient opportunity to bring errors made during the preparation of the Worksheet S–3 to the intermediary's attention. Moreover, because hospitals had access to the wage data in mid-August, they will have had the opportunity to detect any data entry or tabulation errors made by the intermediary or HCFA before the implementation of the FY 1997 wage index on October 1, 1996. If hospitals avail themselves of this opportunity, the wage index implemented on October 1 should be free of such errors. Nevertheless, in the unlikely event that such errors should occur, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(s)(2), we may make midyear corrections to the wage index only in those limited circumstances where a hospital can show: (1) That the intermediary or HCFA made an error in tabulating its data, and (2) that the hospital could not have known about the error, or did not have an opportunity to correct the error, before the beginning of FY 1997 (that is, by the September 16, 1996 deadline). As indicated earlier, since a hospital will have had the opportunity to verify its data, and the intermediary will notify the hospital of any changes, we do not foresee any specific circumstances under which midyear corrections would be made. However, should a midyear correction be necessary, the wage index change for the affected area will be effective prospectively from the date the correction is made.

Comment: One commenter commended us for making the wage data file available on the HCFA home page. The commenter also suggested that the file be updated frequently and include such additional information as the MSA name where the hospital is located, the applicable inflation adjustment factors, and the MSA to which each hospital has been reclassified by the MGCRB, if applicable.

Response: The wage data file is currently updated twice a year, in mid-March and mid-August, in conjunction with the issuances of the proposed and final rules for the hospital inpatient prospective payment systems. This effort is very labor intensive, and since hospitals are able to submit cost reports throughout the year, it is impractical to update the wage data file more frequently. In addition, we would point out that the intent of making these data available is primarily to provide hospitals the opportunity to verify the data used in the calculation of their wage index. Updating this file more frequently is not necessary to fulfill this primary objective.

Regarding the suggestion to include additional information on the wage data file that we make available to the public, we note that the suggested data elements are not necessary for the purpose of allowing an opportunity for providers to verify the accuracy of their wage data. We note that we publish the MSA names and inflation adjustment factors in the proposed and final rules, and the MSAs to which hospitals are reclassified can be found on the PPS Payment Impact Public Use File, available shortly after publication of the proposed and final rules.

D. Contract Labor—Costs Included in the Hospital Wage Index

Our policy concerning inclusion of contract labor costs for purposes of calculating the wage index has evolved over the past several years. Primarily, this has occurred as we recognized the role of contract labor in meeting special personnel needs of many hospitals. In addition, improvements in the wage data have allowed us to more accurately identify contract labor costs and hours. As a result, effective with the FY 1994 wage index, we included the costs of direct patient care contract services in the wage index calculation. Effective with the FY 1999 wage index, which will use data from FY 1995 cost reports, we will begin to include the costs and hours of certain management contract services.

In the proposed rule, we provided a general overview of the issues related to including contract labor costs in the wage index calculation and solicited comments from the public regarding further expansion of the types of contract labor costs included in the wage index. We also listed nine specific issues on which we were seeking public comment. The following background material is identical to the overview included in the proposed rule, but we believe it is useful as a reference for responding to many of the comments we received.

1. Background

In the May 9, 1990 proposed rule (55 FR 19442), we reported the results of the 1988 wage index survey which collected, among other information, data on the costs and hours associated with direct patient care contract labor. All prospective payment hospitals completed the wage survey for their cost reporting periods ending in calendar year 1988. The survey data indicated that hospitals had difficulty in tracking and recording the actual hours worked associated with the contract labor. In addition, there were reporting inconsistencies. For example, some hospitals inappropriately reported patient care services furnished directly by physicians, which are not included in the wage data because they are paid under Medicare Part B rather than Part A.

In the May 9, 1990 proposed rule, we also discussed public comments we received in response to issues we raised related to including contract labor costs in the wage index. Specifically, in the May 8, 1989 proposed rule (54 FR 19647), we requested comment on the following issues:

- Should the wage index include data on contract labor?
- Should the definition of contract services in the wage index survey be expanded to include services indirectly related to patient care, such as billing or housekeeping services?

A majority of the commenters supported the inclusion of contract services, and many argued for the expansion of contract labor services to include indirect patient care services. Those opposed to including contract services, in addition to some commenters who supported including contract service costs, were concerned about the difficulty of accurately tracking and recording hours worked for all types of contract labor. Other commenters were also concerned that if a hospital contracts for services from outside its labor market area, the contract wages could artificially increase or decrease the hospital's area wage index. Based on the comments and the overall poor quality of the 1988 survey data, we decided to exclude all contract labor from the FY 1991 wage index.

We stated that we would continue our analysis of contract labor. In addition, we announced that we would develop a new wage index survey with improved

instructions and auditing criteria to facilitate the inclusion of contract labor in future wage index updates. The new survey, Worksheet S–3, Part II, was included in the hospital cost report effective with cost reporting periods beginning on or after October 1, 1989.

The Worksheet S–3, Part II consists of detailed information for use in the hospital wage index including contract labor for direct patient care services. In the instructions for completing this worksheet, contract labor costs and hours were limited to labor-related payments and hours attributable to direct patient care contract services, such as nursing services. Specifically, we instructed hospitals to exclude indirect patient care contract services (for example, management and housekeeping services), nonlabor-related expenses (for example, equipment and supplies), and any contract services for which labor-related payments and hours could not be accurately determined.

In the September 4, 1990 final rule (55 FR 36036), we discussed additional comments we received on the contract labor issue. Those commenters who supported the inclusion of contract labor stated that some hospitals, especially rural hospitals, are dependent on contract labor for nursing services, and it would be unfair not to include these wage data. Other commenters requested that the definition of contract labor be expanded to include indirect patient care services.

We also received several comments requesting that we continue to exclude contract labor from the wage index. These commenters stated that the contract labor data are not reliable because of the difficulty in tracking and reporting hours and the lack of consistency in the reporting of contract labor. In addition, inclusion of nonlabor contract costs would inappropriately drive up labor costs, and contract labor brought in from outside the labor market area would artificially increase or decrease the area wage index value. Finally, commenters were concerned that contract labor costs are too variable, temporary, and not reflective of true wage costs. Therefore, some suggested that contract labor should not be included in the wage index.

The FY 1994 wage index, which was based on the data collected on the Worksheet S–3, Part II, was the first to include direct patient care contract labor costs. In making the decision to include these costs, we analyzed hospitals' FY 1990 data to determine if it was sufficiently complete for inclusion in the wage index calculation (see the May 26, 1993 proposed rule (58 FR 30236)). We noted that, in most labor market areas, including contract labor in the wage index computation had little effect on the average hourly wage. We further stated that, based on our analysis of the data, including direct patient care contract labor would more accurately and fairly reflect wage levels across hospitals and MSAs. In the September 1, 1993 final rule, we also responded to comments from the hospital industry expressing concern that we did not recognize the costs of certain contract management services (58 FR 46296). In particular, many rural hospitals stated they were either unable to recruit or afford top managers such as hospital administrators and must contract for these services.

In the September 1, 1994 final rule (59 FR 45355), we expanded the definition of contract labor for purposes of determining the hospital wage index to include the personnel costs and hours associated with certain contract management personnel. Contract management services would be limited to individuals working in the top four positions in the hospital: the Chief Executive Officer/Hospital Administrator, Chief Operating Officer, Chief Financial Officer, and Nursing Administrator. We noted that while exact titles may vary, individuals should be performing essentially the same duties as customarily assigned these management positions.

We further noted that, since the cost report did not provide at that time for the collection of management contract data, this revised definition would not be effective until cost reporting periods beginning on or after October 1, 1994 (FY 1995). Hospitals were instructed to continue to exclude all management contract costs and hours until the FY 1995 data were reported (these data will be used to compute the FY 1999 wage index). In addition, we began requiring hospitals to provide descriptions and aggregate totals for all management contracts and complete details on all direct patient care contracts on the Form HCFA–339 (the Provider Cost Report Reimbursement Questionnaire). A hospital must file this form with its corresponding cost report.

We continue to receive requests that we expand our contract labor definition to include more types of contract services in the wage index. In particular, we have been asked to include the costs for pharmacy and laboratory services on the basis that these services are consistent with our definition of direct patient care (see the September 1, 1995 final rule (60 FR 45792)). Others have asked that we expand our definition to include all contracted services, both direct and indirect patient care services, in order to more appropriately calculate relative hospital wage costs.

We have limited the contract services that are included in the wage index to direct patient care services and specific management services for several reasons. First, hospitals reported difficulty in accurately tracking the hours associated with contract services, especially for off-site facilities that serve more than one hospital. Second, we are concerned about the contractor's ability to separate nonlabor costs from labor costs. We believe that the generally higher costs for contract labor compared to salaried labor, due at least in part to the added costs of overhead and supplies not separately identified in most contracts, may distort the wage index. Finally, we are concerned that it is difficult to remove the costs and hours for services such as legal and accounting from total management contracts.

Our goal is to ensure that our wage index policy continues to be responsive to the changing need for contract labor, allowing those hospitals that must depend on contract labor to supply needed services to reflect those costs in their wage data. At the same time, however, we wish to avoid providing an opportunity for hospitals to inflate their average hourly wage inappropriately by including nonlabor contract costs. The advantage of our approach of including only contract labor costs and hours associated with direct patient care and specific management services is that it minimizes distortions in the wage index that are due to a hospital's inability to identify and exclude nonlabor costs. While changes to the wage index values are made in a budget neutral manner and are not expected to affect aggregate payments, we strive for policies that are equitable for all hospitals.

Finally, due to the 4-year time lag between the cost reporting period itself and the fiscal year when data for that period are used in calculating the wage index, it is important that we anticipate any need to change our policy on contract labor. Therefore, in order to formulate the most responsive and responsible policy, we solicited comments on the following issues:

- To what extent do hospitals rely on the use of contract services?
- For which services are contracts typically used?
- Can hospitals accurately determine hours related to contract services?
- Can hospitals accurately isolate labor-related costs from nonlabor-related costs?
- Should the contract labor definition be expanded to include contract

services indirectly related to patient care?

- If contract labor remains limited to direct patient care, what categories of services, if any, in addition to those identified above, should be included?
- Would the wage index more accurately reflect relative wage levels if we did not limit contract labor to direct patient care (generally high wage) services?
- Would expanding the types of contract labor that are included in the wage index provide less incentive to hospitals to keep their labor costs low, as higher labor costs may result in a higher wage index value for that hospital or allow it to reclassify to a labor market with a higher wage index?
- What other issues should be considered in revising the policy for including contract labor in the wage index?

2. Discussion of Comments

We received 27 individual letters addressing the issue of contract labor in the wage index. We appreciate the time and attention of all of the commenters. The information provided has already increased our understanding of the issue, and we intend to include in our future analyses an evaluation of many of the points made by commenters. The remainder of this section discusses the comments—first by responding to the general comments we received and some specific policy questions, then summarizing all of the responses we received to the questions listed above. Although we do not respond directly to these latter comments, they will aid us in our future consideration of this issue.

Comment: One commenter who represents a national association of health systems noted that most of the issues raised by us in the proposed rule were addressed by a special wage index Medicare Technical Advisory Group (MTAG) work group. The commenter stated that ''(a)fter considering all these issues in the MTAG work group, HCFA decided to limit the inclusion of contract labor to direct patient care services. This was because, in general, these services are in revenue producing cost centers that have higher personnel costs (such as nursing services) where the treatment of contract labor in determining the wage index would have the greatest impact on hospitals. Also, these areas generally have had fewer problems than contract services provided in the overhead departments where average personnel costs are lower. Patient care contract labor is more often billed on an hourly rate, and because these are direct patient care services, they are generally performed by personnel working on the hospital premises and therefore include less indirect overhead cost from the contract organization. On the other hand, contract labor costs related to overhead departments normally has lower average cost, often includes more indirect overhead, and often the related hours are not available.''

Response: We appreciate this commenter's past contributions into the development of our contract labor policies and believe that the commenter has presented a generally correct characterization of our rationale for our current policy on contract labor costs. However, as noted above, we are concerned that our policy continue to accurately measure wage costs in a rapidly changing hospital environment and, therefore, have solicited public input into our future policy considerations.

Comment: Several commenters, including ProPAC, supported the principle that all contract labor costs should be included in calculating the wage index if they would have been included had the contract workers been employees of the hospital; but the commenters recognized the problems of accurately collecting contract labor costs. The Commission suggested that, in light of the increasing importance of adjusting payments to reflect input price variations in multiple settings with the accelerating integration of health care delivery, a need exists for a more comprehensive strategy for obtaining geographic input price data. Finally, ProPAC indicated it would ''be pleased to work with HCFA staff to develop and explore feasible approaches to a solution.''

Response: We agree that, in principle, the wage index should measure labor costs across hospitals without regard to who employs the workers if such costs reflect relative wage levels and can be identified. We also agree that, as health care delivery becomes more integrated, so do the labor costs. Of course, we have increasingly been concerned with this issue as we have worked to develop prospective payment systems for various provider types. Therefore, we appreciate ProPAC's offer of cooperation in this regard and look forward to working together to address these issues.

Comment: Several commenters disagreed with our definition of direct patient care contract labor, specifically, the exclusion of the costs of contracted laboratory and pharmacy services. One commenter stated that a preferable definition would include services that are directly identifiable and billable to individual patients. Laboratory and pharmacy services would be included in this definition. Another commenter called our exclusion discriminatory toward rural hospitals as rural hospitals are more likely to contract for a pharmacist than are urban facilities. This commenter stated that pharmacists do have direct patient care contact, noting that they dispense drugs to patients, provide patient education, and are required to participate on ''interdisciplinary patient care'' teams.

Response: While there may be some direct patient care contact in providing laboratory and pharmacy services, the amount varies across hospitals and is only a portion of the total time spent providing service to a hospital. As we noted in the proposed rule, one of the reasons we have limited the types of contract services included in the wage index calculation is that hospitals reported difficulty tracking the hours associated with off-site facilities that serve more than one hospital. Our experience and other comments we received indicate this is also the case for contracted laboratory and pharmacy services. For example, it is possible that a contracted pharmacist would spend part of an hour preparing medications for patients in more than one hospital.

We recognize the necessity for many hospitals, particularly small and rural hospitals, to contract for pharmacy and laboratory services, which are likely to be relatively costly. In fact, this is one of the issues that led us to solicit public input into how our contract labor policy may be improved. We believe that the insight from the comments we received, as well as continuing communication with the hospital industry, will ultimately help to resolve these difficult issues.

Comment: Several commenters representing hospital associations recommended that we reinstitute an MTAG to ''assist in developing the materials and definitions needed to implement these changes in collecting contract labor data * * *'' Other commenters recommended the initiation of a pilot study in selected regions to determine whether ''using (contract labor) costs in the wage index methodology are worth the collection effort.''

Response: Again, we appreciate the volume of the responses we received. Over the next few weeks, we will review our options for pursuing the reinstitution of an MTAG to evaluate the need to revise our policy on contract labor. We will also contact many of the national and State hospital associations that responded to our solicitation for further input.

Comment: Several commenters pointed to the need for greater clarity regarding our definition of contract labor. There was a call for a ''universal model and criteria'' for fiscal intermediaries to follow in determining allowable contract labor costs. One commenter submitted an example of what such a model could look like.

Response: We have provided more detailed cost report instructions for reporting contract labor in periods beginning on or after October 1, 1995. We will also include these more detailed instructions in the desk reviews of the FY 1995 cost reports. In addition, on FORM HCFA–339 (the Provider Cost Report Reimbursement Questionnaire), we require hospitals to provide detailed information on contract labor costs currently included in the wage index calculation. This information consists of descriptions and aggregate costs and hours for top management contracts and costs and hours for each type of direct patient care contract.

We will, however, continue to pursue opportunities for policy improvement. In that regard, we welcome the suggestions we received in response to the proposed rule, and encourage further input from interested parties in the future.

Below, we summarize the comments we received in response to the specific questions listed in the proposed rule. Again, we note that while we are not responding to these comments here, we intend to take them into consideration in our future analysis of this issue.

- To what extent do hospitals rely on the use of contract services?

According to the comments received, hospitals, particularly those in rural areas and smaller cities, rely on contract labor for a variety of services. In general, hospitals have begun to reduce ongoing labor costs by employing contract personnel in many operational areas. Because of fluctuating patient volumes, contract labor is a more cost effective alternative to direct hiring. Furthermore, some States prohibit the direct hiring of certain health care personnel; thus, these positions must be contracted. Hospitals located in areas experiencing shortages in health care personnel such as nurses and pharmacists also rely heavily on contract labor.

- For which services are contracts typically used? Virtually all of those who commented stated that hospitals contract for nursing and therapy (occupational, physical, respiratory, speech) services. Most commenters mentioned the following as services for which hospitals contract: radiology (including mammography and ultrasound); anesthesia; dietary (including therapeutic); psychological and social; pharmacy; laboratory and pathology; emergency room; medical records; housekeeping, laundry, and central supply; clerical; legal; accounting and audit; facility and equipment maintenance; and environmental. The following services were also mentioned by at least one commenter: surgery (technicians); air ambulance; management (e.g., medical director); information systems management; education; and biomedical engineering. Based on these comments, hospitals contract for every category of labor.

- Can hospitals accurately determine hours related to contract services?

Most commenters stated that hospitals could accurately determine hours related to contract services, particularly for contracts billed on an hourly basis and for services such as laboratory, pharmacy, and management. Some commenters explained that their hospitals have established methods for tracking hours, such as time sheets maintained for hourly workers, or invoices that include the hours worked and the hourly rate. Others commented that, if necessary, systems to track hours (for example, log-in sheets) could easily be instituted. Several others suggested that hospitals could more accurately report hours associated with contract services if HCFA clarified the contract labor definition, developed acceptable methods for tracking hours and associated costs, and developed a universal model and criteria for the fiscal intermediaries to follow in auditing contract labor costs and hours.

A few commenters stated concerns that hospitals may not be able to accurately report contract labor hours. One suggested there may be difficulty in reporting hours in situations where the contractor serves more than one client. One hospital explained that for some services, it does not report hours, or it relies on the contractor to supply the hours. For services such as physical therapy, this hospital pays contractors based on a percentage of revenue generated. One hospital association stated that hospitals may not be able to accurately determine the hours for services such as laundry, dietary, housekeeping, and maintenance. Another association explained that, while hospitals in its area are required to report contract hourly rates and hours for nonpatient care cost centers, evidence suggests that the data for many hospitals may not be completely accurate, reflecting the difficulty of capturing such detailed information.

- Can hospitals accurately isolate labor-related costs from nonlabor-related costs?

Several commenters stated that hospitals can accurately isolate labor-related costs from nonlabor-related costs using invoices. One commenter explained that for services with little or no nonlabor costs, such as laboratory, pharmacy, and management, there is no need to identify and isolate these costs.

On the other hand, one commenter suggested there may be difficulty in reporting hours in situations where the contractor serves more than one client. One hospital stated that it does not separate labor and nonlabor costs. One association stated that contracts for services such as laundry, dietary, housekeeping, and maintenance may include more nonlabor costs and may be more difficult for hospitals to isolate nonlabor costs. Another association believes that intermediaries are inconsistent in handling nonlabor costs and that HCFA needs to develop better guidelines.

- Should the contract labor definition be expanded to include contract services indirectly related to patient care?

The majority of the commenters support expanding the definition of contract labor to include services indirectly related to patient care. Two commenters stated that, in principle, all contract labor costs and hours should be included if they would have been included had the workers been employed by the hospital. Two commenters responded that excluding contract labor services understates the cost of providing patient services and puts hospitals at a disadvantage. Two others commented that HCFA's definition of direct patient care is too restrictive and should be revised to include services that can be identified and billed separately and are not included in the routine care charge. One commenter, although in support of including indirect patient care contract services, recognized that considerable review would be necessary to determine which labor costs should be included as contract labor. Another commenter noted that reporting additional types of contract labor should not be considered an unnecessary burden. Two associations expressed concern that excluding large labor expenses, for services such as dietary and housekeeping, may create inconsistencies across labor market areas. Some commenters also suggested that we include the following services (that we consider indirectly related to patient care) in the definition of contract labor: pharmacy, dietary, clerical,

housekeeping and environmental, accounting and audit, legal, consultant, and medical director.

Some commenters, including five large hospital associations, expressed concern over expanding the definition of contract labor to include indirect patient care services. Two commented it would add considerably to the complexity of tracking costs and determining which services should be included or excluded. One commenter added that, based on its analyses, it would be difficult to collect reliable data and that including contracted indirect patient care costs would have only a minor impact on the wage index. Another commented that problems that exist with contract labor data are more prevalent in nonrevenue producing areas.

- If contract labor remains limited to direct patient care, what categories of services, if any, in addition to those identified above, should be included?

Commenters named the following services as those that should be included in the direct patient care definition of contract labor: dietary, anesthesia, social, pharmacy, laboratory, pathology, medical records, equipment maintenance, environmental management, central supply, and all clinical services.

- Would the wage index more accurately reflect relative wage levels if we did not limit contract labor to direct patient care (generally high wage services)?

Five hospitals and ProPAC commented that the wage index would more accurately reflect relative wage levels if we did not limit contract labor to direct patient care. One stated that failure to include all contract labor could result in major biases in the wage index because contract services may vary substantially among types of hospitals and across labor market areas. Two rural hospitals argued that the current policy discriminates against rural hospitals because they are more likely to have to contract pharmacists and other personnel because of employee shortages in their wage areas.

Three associations and a hospital commented that the wage index would not more accurately reflect relative wage levels if we did not limit contract labor to direct patient care. One explained that the results would not be more accurate by adding or subtracting categories of care; rather, the key to an accurate calculation is that the components are consistent for all hospitals, not how many components are included. Another added that, based on its analyses, including contracted indirect patient care costs would have only a minor impact on the wage index. A third commenter expressed concern that the time necessary at the hospital level to obtain this information and the time necessary for the intermediary to review such information would not be cost effective.

- Would expanding the types of contract labor that are included in the wage index provide less incentive to hospitals to keep their labor costs low, as higher labor costs may result in a higher wage index value for that hospital or allow it to reclassify to a labor market with a higher wage index?

Commenters were unanimous in their belief that expanding the types of contract labor that are included in the wage index would not provide less incentive to hospitals to keep their labor costs low. Several commenters explained that hospitals in today's environment have every incentive to keep their costs down. Because Medicare is only one payer, allowing labor costs to increase for improved Medicare payment would put hospitals in an uncompetitive position as far as other payers are concerned. Also, it would take 4 years for those costs to be reflected in the wage index. One of them added that it is difficult to conceive of any situation in which a hospital would benefit from paying higher labor rates than necessary.

- What other issues should be considered in revising the policy for including contract labor in the wage index?

An association, located in a mostly rural State, suggested that changes to expand contract labor should be made as soon as possible to provide a more accurate and equitable wage index for all hospitals.

E. Puerto Rico Wage Index Values

For several years, hospitals in Puerto Rico have experienced large swings in their wage index values. We recognize that large shifts in the wage index values can cause shifts in the payment levels for a particular MSA. Because three of the six MSAs in Puerto Rico (Aguadilla, Arecibo, and Caguas) as well as the rural area have four or fewer hospitals, a large change in one hospital's wage data can cause a large increase or decrease in the wage index value for the entire MSA. One possible method to limit these annual swings in wage index values would be to create a single labor market area encompassing all the hospitals in Puerto Rico. That is, the six MSAs and the rural area could be combined into one area with one wage index value. A single labor market area would create a much larger set of hospitals to develop aggregate wage amounts and would mitigate situations where a change in the wage data of a single hospital has a large effect on the wage index of an MSA.

If we created a single labor market area for Puerto Rico, we would do so in a budget neutral manner; therefore, the effect would be to raise wage index values for some hospitals in Puerto Rico and to lower the values for others. Because of the negative effect on some hospitals, rather than propose such a change, we solicited comment on this approach for mitigating the fluctuations in wage index values for hospitals in Puerto Rico. We noted that the potential change would have no impact on hospitals outside Puerto Rico. We received five comments in response to our solicitation. These comments and our responses are set forth below.

Comment: All of the commenters expressed grave concern regarding the creation of a single MSA in Puerto Rico for purposes of the wage index. Most commenters objected to the negative impact this proposal would have on the wage index values of high wage areas. One commenter protested the elimination of large urban status for the San Juan MSA. Two commenters were concerned about the effect this change would have on hospitals that are able to reclassify through the MGCRB. One commenter noted that HCFA relies on OMB for MSA designations and OMB has not approved this change. Finally, a commenter stated that a single labor market area would not recognize the difference between tertiary and secondary hospitals.

Response: We solicited comment on consolidating Puerto Rico into one labor market area because it was one method for addressing swings in wage index values within Puerto Rico without adversely affecting hospitals outside Puerto Rico. Since commenters do not favor this approach, we will not pursue the option. We note that this approach would not have eliminated large urban status of the San Juan MSA for standardized amount purposes. Puerto Rico would have been treated as one labor market area solely for wage index purposes.

We have recently met with representatives of the Puerto Rico Hospital Association to explore other solutions to the problems faced by hospitals in the Commonwealth. In reviewing the latest Medicare cost report data available, we find that hospitals in Puerto Rico continue to demonstrate average Medicare operating margins comparable to all other prospective payment hospitals.

Comment: One commenter urged an add-on adjustment of not less than 7

percent to the Puerto Rico standardized amounts to account for the penalty resulting from the use of temporary cost allocation methods by government hospitals with a noncharge structure in Puerto Rico.

Response: We do not believe it is appropriate to adjust the standardized amounts of Puerto Rico for those government hospitals with a noncharge structure when we have not adjusted the national standardized amounts applicable to all other hospitals to account for government hospitals with noncharge structures that are located in the 50 States and the District of Columbia. We believe the prospective payment system should be fair and equitable to all hospitals, no matter where they are located.

Comment: A commenter requested that we establish a wage index floor for the labor market areas in Puerto Rico.

Response: The wage index measures relative wage levels across labor market areas. Since Puerto Rico labor market areas have not increased wages at the same average rate as all other hospitals, their wage index values have decreased accordingly. If we were to create a floor, it would improperly benefit labor market areas whose wages are not in line with the national experience. The hospitals receiving the floor wage index would receive artificially high DRG payments.

In addition, we note that, if such a change were to ever be adopted, it would be implemented in a budget neutral manner. Thus, a wage index floor for hospitals in Puerto Rico would result in lower payments to other hospitals.

Comment: Two commenters suggested that we eliminate the Puerto Rico rural area classification and classify those hospitals to the nearest MSA.

Response: We do not believe it is appropriate to offer special treatment to hospitals located in the rural area of Puerto Rico. While we acknowledge certain limitations in the current geographic classification system, we have yet to find a system that is demonstrably better. (See the discussion on labor market area research in the June 2, 1995 proposed rule (60 FR 29218).) Unless we decide to adopt a new method for defining labor market areas, we will continue to use rural areas for hospitals in counties that are not designated as part of MSAs. We note that rural hospitals in Puerto Rico may apply for geographic redesignation under the same criteria as all other hospitals and that some hospitals in rural Puerto Rico have been approved for reclassification.

Comment: One commenter suggested that OMB review the San Juan MSA for possible redesignation of certain San Juan municipalities to other urban areas.

Response: As acknowledged by the commenter, it is OMB that makes the determination of which municipalities are included in a particular MSA. We believe that OMB uses the same criteria to create the San Juan MSA as it does for all other MSAs. We urge the commenter to forward any suggestions directly to OMB for its consideration.

F. Changes to the MGCRB Composition and Criteria

Under section 1886(d)(10) of the Act, the MGCRB considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system. Guidelines concerning the criteria and conditions for hospital reclassification are located at §§ 412.230 through 412.236. The purpose of these criteria is to provide direction, to both the MGCRB and those hospitals seeking geographic reclassification, with respect to the situations that merit an exception to the rules governing the geographic classification of hospitals under the prospective payment system. The composition of the MGCRB and the procedures it follows in making reclassification determinations are set forth in §§ 412.246 through 412.280.

In the May 31, 1996 proposed rule, we proposed one change to the MGCRB regulations. In addition, we requested comments on sources of data that could be used to identify the occupational mix in a given MSA.

1. MGCRB Composition (§ 412.246)

Section 1886(d)(10)(B)(i) of the Act provides that the MGCRB is composed of five members appointed by the Secretary. This provision is implemented in regulations at § 412.246(a). Two of the members must be representative of the concerns of rural hospitals and at least one member must be knowledgeable in the field of analyzing costs of providing inpatient hospital services. Under current § 412.246(b), the term of office for an MGCRB member is 3 years, and appointments are limited to two consecutive 3-year terms. This section further provides that to permit staggered terms of office, initial appointments may be for shorter terms. Finally, the Secretary is permitted to terminate a member's tenure before his or her full term has expired.

In the proposed rule, in order to allow the Secretary maximum flexibility to recruit and retain qualified Board members, we proposed to eliminate the current requirement at § 412.246(b) that a Board member can serve for only two consecutive 3-year terms and to provide that an appointment to the MGCRB may be for any term not to exceed 3 years.

Under the proposed revisions, the Secretary would continue to be able to terminate a member's tenure before his or her full term has expired.

We received no comments on this proposal, and we have incorporated it as final in this document.

2. Occupational Mix Adjustment

Section 1886(d)(10)(D)(i) of the Act requires the Secretary to publish guidelines to be used by the MGCRB in rendering decisions on applications submitted for geographic reclassification. Those are to include guidelines for ''comparing wages, taking into account (to the extent the Secretary determines appropriate) occupational mix, in the area in which the hospital is classified and the area in which the hospital is applying to be classified.''

Section 412.230(e) describes the criteria for hospital reclassification for purposes of the wage index. One of the criteria relates to the relationship between the hospital's wages and those of the area to which it seeks reclassification. Specifically, § 412.230(e)(1)(iv) provides that the hospital must demonstrate that its wages are at least 84 percent of the average hourly wage of hospitals in the area to which it seeks reclassification, or that the hospital's average hourly wage weighted for occupational mix is at least 90 percent of the average hourly wage of hospitals in the area to which it seeks reclassification. Under §§ 412.232(c) and 412.234(b), a group of hospitals seeking to reclassify must demonstrate that its aggregate average hourly wage is at least 85 percent of the average hourly wage of the hospitals in the area to which it seeks reclassification. These sections also provide that the threshold for occupational-mix adjusted hourly wage for hospital groups is the same as that for a single hospital, that is, 90 percent.

In the September 6, 1990 interim final rule (55 FR 36760), we stated that the acceptable sources for occupational mix data were the American Hospital Association (AHA) or the Bureau of Labor Statistics. Since publication of that document, the Bureau of Labor has discontinued its hospital wage surveys. Thus, the only currently acceptable occupational mix data source is the AHA Survey Data. We have been informed by the AHA that the survey for 1993 will be the last survey to collect information on the Hospital Personnel by Occupational Category. Therefore,

requests filed on or before October 1, 1996 for FY 1998 reclassification, which use FY 1993 wage data, may be the last for which we have an appropriate source of occupational mix data.

As we stated in the June 4, 1991 final rule with comment period (56 FR 25458), the reclassification process requires the use of occupational mix data that are comparable across areas and can be consistently applied. We are unaware of any sources other than the AHA data that meet these criteria.

As noted in the proposed rule (61 FR 27459), we did not propose collecting occupational mix data ourselves in light of past experience. Instead, we solicited suggestions about any occupational mix data sources that are available on a national basis. In addition, we indicated that we were willing to consider suggestions about other methods that would account for occupational mix in the wage index reclassification process.

Comment: We received three comments on this issue. One commenter believes that collection of the occupational mix data is burdensome, that the data are unreliable, and that we should therefore eliminate the use of such data. One commenter urged that the AHA continue to collect the data for HCFA. The final commenter suggested that we consider using the Geographic Reference Report to obtain occupational mix information. That commenter noted, however, that this collection effort would have to be expanded for our use.

Response: The AHA has notified us that it does not have enough demand for these data to warrant continued collection. Generally, the AHA, as well as HCFA, have found that hospitals do not want to provide occupational breakdowns in a survey format. The Geographic Reference Report would have to be expanded and tailored to fit our needs, which means that it would be unavailable for at least several years as a data source for this purpose. As there is no readily available data source that can be used immediately to represent occupational mix data for the purposes of reclassification applications, it appears that we will be unable to continue to use such data as an alternative for hospital reclassification applications. However, since the 1993 AHA data are available for reclassification requests for FY 1998, we will not make a final decision in this rule. If a suitable source of occupational mix data becomes available in the next year, we will consider using it beginning with reclassifications for FY 1999.

Comment: We received one comment from a hospital that was concerned that it might not qualify for reclassification for purposes of using the wage index of a proximate area because it could not meet the 108 percent qualifying criteria. This commenter noted that the hospital is located in an area where it materially influences the average hourly wage in its area, but it does not dominate the area. The commenter believes that the current criteria disadvantages such a hospital, because it can no longer meet the 108 percent threshold for reclassification.

Response: We have addressed similar comments a number of times. The purpose of the reclassification wage criteria is to identify situations in which a hospital would receive more appropriate payments if it were redesignated to another area. The 108 percent criterion in particular is designed to identify situations in which a hospital is significantly disadvantaged by its current geographic classification. If a hospital's wages are less than 8 percent higher than the average hourly wage in the hospital's labor market area, we believe the hospital is not significantly disadvantaged by the payments it would receive and, therefore, geographic reclassification is not appropriate.

Comment: One commenter requested confirmation of the process by which a group of hospitals withdraw its application for reclassification. The commenter believes that all the hospitals must be a party to the withdrawal request.

Response: The commenter is correct. The regulations at § 412.273(b) clearly state that all hospitals that are party to the application must request the withdrawal in writing. Therefore, a request to withdraw an approved application by the MGCRB must be agreed upon and requested in writing by the entire group.

IV. Rebasing and Revising of the Hospital Market Baskets

A. Operating Costs

1. Background

Effective for cost reporting periods beginning on or after July 1, 1979, we developed and adopted a hospital input price index (that is, the hospital ''market basket'') for operating costs. Although ''market basket'' technically describes the mix of goods and services used to produce hospital care, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies combined) derived from that market basket. Accordingly, the term ''market basket'' as used in this document refers to the hospital input price index.

The percentage change in the market basket reflects the average change in the price of goods and services hospitals purchase in order to furnish inpatient care. We first used the market basket to adjust hospital cost limits by an amount that reflected the average increase in the prices of the goods and services used to furnish hospital inpatient care. This approach linked the increase in the cost limits to the efficient utilization of resources.

With the inception of the hospital inpatient prospective payment system on October 1, 1983, we continued to use the hospital market basket to update each hospital's 1981 inpatient operating cost per discharge used in establishing the FY 1984 standardized payment amounts. In addition, the projected change in the hospital market basket has been the integral component of the update factor by which the prospective payment rates are updated every year. Under section 1886(b)(3)(B)(i)(XII) of the Act, the prospective payment rates will be updated in FY 1997 by the projected increase in the hospital market basket minus 0.5 percentage points. A detailed explanation of the hospital market basket used to develop the prospective payment rates was published in the Federal Register on September 3, 1986 (51 FR 31461). For additional background information on general development of hospital input price indexes, we refer the reader to the article by Freeland, Anderson, and Schendler, ''National Hospital Input Price Index,'' *Health Care Financing Review*, Summer 1979, pp 37–61. We also refer the reader to the September 4, 1990 Federal Register (55 FR 35990) in which we discussed the previous rebasing of the hospital input price index.

The hospital market basket is a fixed-weight, Laspeyres-type price index that is constructed in three steps. First, a base period is selected and total base period expenditures are estimated for mutually exclusive and exhaustive spending categories based upon type of expenditure. Then, the proportion of total costs that each category represents is determined. These proportions are called cost or expenditure weights. Second, each expenditure category is matched to an appropriate price/wage variable, referred to as a price proxy. These price proxies are price levels derived from a publicly available statistical series published on a consistent schedule, preferably at least on a quarterly basis. Third and finally, the price level for each spending category is multiplied by the expenditure weight for that category. The sum of these products (that is, the

expenditure weights multiplied by the price levels) for all cost categories yields the composite index level in the market basket in a given year. Repeating this step for other years produces a series of market basket index levels over time. Dividing one index level by an earlier index level produces rates of growth in the input price index.

The market basket is described as a fixed-weight index because it answers the question of how much it would cost, at another time, to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent to the base period are not considered. For example, shifting a traditionally inpatient type of care to an outpatient setting might affect the volume of inpatient goods and services purchased by the hospital, but would not be factored into the price change measured by a fixed weight hospital market basket.

We believe that it is desirable to rebase the market basket periodically so the cost weights reflect changes in the mix of goods and services that hospitals purchase (hospital inputs) in furnishing inpatient care. We last rebased the hospital market basket cost weights effective for FY 1991. This market basket, still used through FY 1996, reflected base year data from FY 1987 in the construction of the cost weights.

In its April 1, 1985 report to the Secretary (Appendix C of the June 10, 1985 proposed rule (50 FR 24446)), ProPAC supported HCFA's position on periodic rebasing, stating that the market basket cost weights should be recalculated or ''rebased'' at least every 5 years, or more frequently if significant changes in the weights occur. We note that there are separate market baskets for prospective payment hospitals and hospitals and hospital units excluded from the prospective payment system. The separate, excluded hospital market basket is set forth in section IV.A.5 of this preamble.

2. Rebasing and Revising the Hospital Market Basket

The terms rebasing and revising, while often used interchangeably, actually denote different activities. Rebasing means moving the base year for the structure of costs of an input price index (for example, we are moving the base year cost structure from FY 1987 to FY 1992). Revising means changing data sources, cost categories, or price proxies used in the input price index.

We are adopting a rebased and revised hospital market basket in developing the FY 1997 update factor for the prospective payment rates. The new market basket has been rebased to reflect 1992, rather than 1987, cost data.

In developing the rebased and revised market basket, we reviewed hospital operating expenditure data for the market basket cost categories. In a change from the previous methodology, we relied primarily on Medicare hospital cost report data for the rebasing. For the rebased market baskets, we used data on hospital expenditures for four major expense categories (wages and salaries, employee benefits, pharmaceuticals, and a residual ''all other'') from hospital cost reporting periods beginning in FY 1992 (that is, periods beginning on or after October 1, 1991 and before October 1, 1992). We refer to these as PPS–9 cost reports (the 9th year of the prospective payment system (PPS)). The market basket was previously based on 1987 expense data from the 1988 American Hospital Association (AHA) Annual Survey.

Expenses for wages and salaries, employee benefits, and pharmaceuticals were determined using data from PPS–9 cost reports as reported in the Hospital Cost Report Information System (HCRIS) files. We determined total professional fees using AHA Annual Survey data. Total professional fees include medical and nonmedical professional fees. Since the medical professional fees included in the compensation of provider-based physicians are paid under Medicare Part B, we analyzed HCRIS data to determine the professional component of provider-based physician compensation and subtracted it from total professional fees to obtain an estimate of nonmedical professional fees. Malpractice insurance costs were determined using the cost share for PPS–6 (cost reporting periods beginning in FY 1989), the last year these costs had to be treated separately from all other administrative and general costs, trended forward to 1992 based on the relative importance of malpractice costs found in the previous market basket. The All Other Expenses category was calculated in two steps. First, from PPS–9 cost reports, total operating expenses were tabulated by subtracting capital-related expenses, direct medical education expenses, and the medical professional fees from total expenses. Second, we subtracted the total of the five cost category expenses already determined from total operating expenses to obtain the All Other Expenses category.

After totals for these main cost categories (wages and salaries, employee benefits, professional fees, pharmaceuticals, malpractice insurance, and all other expenses) were calculated, we then determined the proportion each category represents of the total costs. These proportions represent the major rebased market basket weights. The differences between the six major categories for the 1992-based index and the previous 1987-based index are summarized in Table 1 below.

TABLE 1.—COMPARISON OF 1992 AND 1987 PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES AND WEIGHTS

Expense categories	Rebased 1992 hospital market basket	1987-based hospital market basket
Wages and salaries	50.244	52.2
Employee benefits	11.146	9.5
Nonmedical professional fees	2.127	1.6
Malpractice insurance	1.189	1.4
Pharmaceuticals	4.162	3.9
All other	31.132	31.4
Total	100.000	100.0

Note: Although we rounded the weights to the tenths decimal position in the 1987-based market basket as published in the September 4, 1990 final rule, we are presenting the 1992 weights in greater specificity.

Table 2 sets forth the market basket cost categories, weights, and price proxies. Weights for the ''Utilities'' and the ''All Other'' cost categories, as well as the subcategories, were determined using the 1987 Department of Commerce's Bureau of Economic Analysis (BEA) Input-Output Table, from which data for the hospital industry were extracted. The BEA Input-Output database, which is updated at 5-year intervals, was most recently described in the Survey of Current Business, ''Benchmark Input-Output Accounts for the U.S. Economy, 1987'' (April 1994). To date, the Department of Commerce has not released final 1992 cost data. Therefore, we plan to incorporate these data into the FY 1998 proposed rule.

We aged the 1987 cost shares to 1992 using historical price changes between 1987 and 1992 for each category. The aged shares were normalized to be consistent with the 1992 hospital cost report data. Relative weights for the new base year were then calculated for various expenditure categories. This work resulted in the identification of 26 separate cost categories in the rebased hospital market basket, two fewer categories than were included in the 1987-based market basket. Detailed

descriptions of each category and respective price proxy are provided in Appendix C to this final rule.

TABLE 2.—1992–BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Expense categories	Rebased 1992 hospital market basket	Price proxy
1. Compensation	61.390	
A. Wages and salaries*	50.244	HCFA occupational wage index.
B. Employee benefits*	11.146	HCFA occupational benefits index
2. Professional fees*	2.127	ECI—compensation for professional, specialty and technical.
3. Utilities	2.469	
A. Fuel, oil, and gasoline	0.345	PPI refined petroleum products.
B. Electricity	1.349	PPI commercial electric power.
C. Natural gas	0.670	PPI commercial natural gas.
D. Water and sewerage	0.106	CPI–U water and sewerage maintenance.
4. Professional liability insurance	1.189	HCFA professional liability insurance premium index.
5. All other	32.824	
A. All other products	24.033	
(1.) Pharmaceuticals	4.162	PPI ethical (prescription) drugs.
(2.) Food	3.459	
a. Direct purchase	2.363	PPI processed foods and feeds.
b. Contract service	1.096	CPI–U food away from home.
(3.) Chemicals	3.795	PPI industrial chemicals.
(4.) Medical instruments	3.128	PPI medical instruments and equipment.
(5.) Photographic supplies	0.399	PPI photographic supplies
(6.) Rubber and plastics	4.868	PPI rubber and plastic products.
(7.) Paper products	2.062	PPI converted paper and paperboard products.
(8.) Apparel	0.875	PPI apparel.
(9.) Machinery and equipment	0.211	PPI machinery and equipment.
(10.) Miscellaneous products	1.074	PPI finished goods.
B. All other services	8.792	
(1.) Business services*	3.823	ECI—compensation for private workers in business services.
(2.) Computer services*	1.927	AHE computer and data processing services.
(3.) Transportation services	0.188	CPI–U transportation.
(4.) Telephone services	0.531	CPI–U telephone services.
(5.) Postage*	0.272	CPI–U postage.
(6.) All other: labor intensive*	1.707	ECI—compensation for private service occupations.
(7.) All other: nonlabor intensive	0.344	CPI–U all items.
Total	100.000	

*Labor-related.
NOTE: Due to rounding, weights may not sum to total.

The 1987-based market basket included a separate Blood Services cost category. In the 1992-based market basket, Blood Services is contained within the Chemicals cost category. In addition, the 1987-based cost category for Fuel Oil, Coal, etc. has been combined with the 1987-based Motor Gasoline cost category to form the 1992-based Fuel, Oil and Gasoline cost category. Both of these changes are based on revised cost categories from BEA. For comparison purposes, the 1987-based cost categories are set forth in Table 3.

TABLE 3.—1987-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Expense categories	1987 hospital market basket	Price proxy
1. Compensation	61.7	
A. Wages and salaries*	52.2	HCFA occupational wage index.
B. Employee benefits*	9.5	HCFA occupational benefits index.
2. Professional fees*	1.6	ECI—wages and salaries for professional, specialty and technical.
3. Utilities	2.4	
A. fuel, oil, coal, etc.	0.6	WPI light fuel oils.
B. Electricity	1.1	WPI industrial power.
C. Natural gas	0.3	WPI natural gas.

TABLE 3.—1987-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PRICE PROXIES—Continued

Expense categories	1987 hospital market basket	Price proxy
D. Motor gasoline	0.2	WPI gasoline.
E. Water and sewerage	0.0	CPI–U water and sewerage maintenance.
4. Professional liability insurance	1.4	HCFA professional liability insurance premiums.
5. All other	32.8	
A. All other products	21.8	
(1.) Pharmaceuticals	3.9	WPI prescription drugs.
(2.) Food	3.3	
a. Direct purchase	2.1	WPI processed foods.
b. Contract service	1.2	CPI–U food away from home.
(3.) Chemicals	3.1	WPI industrial chemicals.
(4.) Medical instruments	2.7	WPI medical instruments and equipment.
(5.) Photographic supplies	2.6	WPI photographic supplies.
(6.) rubber and plastics	2.3	WPI rubber and plastic products.
(7.) Paper products	1.4	PPI converted paper and paperboard products.
(8.) Apparel	1.1	WPI textile house furnishings.
(9.) machinery and equipment	0.4	WPI machinery and equipment.
(10.) Miscellaneous products	0.8	WPI finished goods.
B. All other services	11.1	
(1.) Business services*	3.8	AHE business services.
(2.) Computer services*	2.0	AHE computer and data processing services.
(3.) Transportation services	1.2	CPI–U transportation.
(4.) Telephone services	1.0	CPI–U telephone services.
(5.) Blood services*	0.6	WPI blood and derivatives.
(6.) Postage*	0.4	CPI–U postage.
(7.) All other: labor intensive*	1.2	ECI—wages and salaries for private service occupations.
(8.) All other: nonlabor intensive	0.8	CPI–U all items.
Total	100.0	

*Labor-related.
NOTE: Due to rounding, weights may not sum to total.

In the September 4, 1990 final rule, for purposes of determining the labor-related portion of the standardized amounts, we summed the percentages of the labor-related items (that is, wages and salaries, employee benefits, professional fees, business services, computer and data processing, blood services, postage, and all other labor-intensive services) in the hospital market basket. This summation resulted in a labor-related portion of the hospital market basket of 71.4 percent and nonlabor-related portion of 28.6 percent. Under sections 1886 (d)(2)(H) and (d)(3)(E) of the Act, in making payments under the prospective payment system, the Secretary estimates from time to time the proportion of payments that are labor-related. Since October 1, 1990, then, we have considered 71.4 percent of costs to be labor-related for purposes of the prospective payment system.

In connection with the rebasing of the hospital market basket, we have reestimated the labor-related share of the standardized amounts. Based on the relative weights of the 1992-based prospective payment hospital market basket, as described in Table 2, the labor-related portion that is subject to hospital wage index adjustments (based on wages and salaries, employee benefits, professional fees, business services, computer and data processing, postage, and all other labor-intensive services) is 71.246 percent and the nonlabor-related portion is 28.754 percent. To implement this change, effective with discharges occurring on or after October 1, 1996, we recomputed the labor-related and nonlabor-related shares of the large urban and other areas' standardized amounts used to establish the prospective payment rates.

The amounts in Table 4 reflect the revised labor-related and nonlabor-related portions. Due to the Bureau of Economic Analysis' reclassification of Blood Services to Chemicals, we now allocate Blood Services to a nonlabor cost category. We note that, although there are revisions of the labor and nonlabor portions, due to both weight changes and the Blood Services category change, the labor-related portions of the rates published in Table 4 have remained essentially the same. The labor-related portion has decreased by 0.146 percentage points.

TABLE 4.—LABOR-RELATED SHARE

Cost category	Weight
Wages and salaries	50.244
Employee benefits	11.146
Professional fees	2.127
Business services	3.823
Computer services	1.927
Postal services	0.272
All other labor intensive	1.707
Total labor related	71.246
Total nonlabor related	28.754

Comment: Several commenters noted that because the prospective payment system hospital input price index directly measures changes in the price of labor for the overall economy as well as the changes in the prices of goods and services purchased by hospitals, if legislation is passed increasing the minimum wage in the United States the market basket update should be revised to reflect this change.

Response: The commenters are correct in asserting that an increase in the minimum wage should be appropriately reflected in the prospective payment system hospital input price index. The structure of the prospective payment

system hospital input price index is designed to track the historical increases in compensation for workers comparable to those employed in the hospital sector (as well as the prices of goods and services comparable to those purchased by hospitals). The blend of occupational data represents a composite of the types of labor that hospitals employ in the production of their services. The proxies selected by HCFA to represent these inputs are Employment Cost Indexes (ECIs) compiled by the Bureau of Labor Statistics for the relevant occupational categories. When the historical data for the period of the minimum wage increase becomes available, the ECIs automatically reflect the impacts of increases in the minimum wage. These proxies will therefore reflect any increases in wages and benefits associated with the legislated increase in the minimum wage.

The second quarter 1996 DRI/McGraw-Hill forecast of the prospective payment system hospital input price index, which is included in this final rule, reflects an anticipated increase in the minimum wage.

In the first quarter of 1996, HCFA commissioned DRI/McGraw-Hill to consider the effects of an increase in the minimum wage on the HCFA input price indexes. In its analysis, DRI/McGraw-Hill stated that the critical factor in determining the relative impact on each of HCFA's input price indexes in comparison with the economy-wide impact is the distribution of minimum wage workers associated with the occupational mix within each health sector. Data from the 1990, 5-percent Public Use Micro Data Survey (scaled for consistency with the nonfarm aggregate from the 1994 Current Population Survey) indicate that the share of all hourly workers at or below the minimum wage is approximately 3.3 percent for the health sector as a whole, versus an economy wide share of 3.6 percent. There is a wide variation in the importance of minimum wage workers across health industry sectors as well, ranging from a low of 2.0 percent for the workforce in hospitals, to a high of 9.3 percent for nursing-care related facilities. For the key wage proxies in the prospective payment system hospital input price index (ECI Civilian Hospital workers and the ECI for Professional-Technical workers) the share of minimum wage workers is negligible. The expected increase in minimum wage will likely affect the annual rates of increase in the prospective payment system hospital input price index in the range of about 0.1 percent.

Comment: One commenter noted that there are few who can afford to spend the time necessary to study the proposal to rebase and revise the hospital market baskets in its present form or hire an economist for an interpretation. The commenter suggests that HCFA could save valuable resources and, at the same time, simplify a process that is extremely complicated by using the overall cost data from the cost reports as a means of simplifying and arriving at an accurate market basket.

Response: The Medicare cost report is designed to track hospitals' costs for services that are covered by Medicare. Expenditures or costs are determined by the price of inputs for a particular good or service times the quantity of that input good or service that is used. An increase in costs could result from input price growth (inflation) or growth in the quantity of services used. It is essential to understanding the growth in Medicare program costs to have a rigorous framework for distinguishing the effects of input price growth from the effects of increases in the quantity of inputs. A measure based upon overall cost data from the cost reports, while appearing to simplify the process, would not separate input price changes from changes in the quantity of inputs and consequently would not serve the needs of government or industry.

We do appropriately use Medicare cost report data in developing weights for the Medicare input price indexes. The 1992 base year weights for the four core operating categories (wages and salaries, employee benefits, pharmaceuticals, and all other) were derived from Medicare cost report data on hospitals' relative shares of costs in these four categories in 1992. By holding the weights constant at their 1992 relative values, and applying proxies to measure price change over time, it is possible to estimate the effect of pure input price inflation while holding quantity and quality of inputs constant. This is the purpose of the prospective payment system hospital input price index.

Comment: A commenter stated that, in rebasing the market basket, HCFA has chosen to put malpractice costs into a separate category. In doing so, this cost was taken from 1989 cost reports and ''trended'' forward. The commenter suggested that, because this cost cannot be taken from cost reports in future years, it would be better to consolidate malpractice cost within an ''all other'' category.

Response: Malpractice has appropriately been a separate cost category since the inception of the prospective payment system hospital input price index. We are modifying the Medicare cost report to again include relevant malpractice cost questions, so that we will not have to estimate the malpractice share of costs.

3. Selection of Price Proxies

After computing the 1992 cost weights for the rebased hospital market basket, it was necessary to select appropriate wage and price proxies to monitor the rate of increase for each expenditure category. Most of the indicators are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

- Producer Price Indexes—Producer Price Indexes (PPIs) measure price changes for goods sold in other than retail markets. For example, we used the PPI for ethical drugs, rather than the Consumer Price Index (CPI) for prescription drugs. PPIs are preferable price proxies for goods that hospitals purchase as inputs in producing their outputs. The PPIs we used measure price change at the final stage of production.
- Consumer Price Indexes—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by the typical consumer. Because they may not represent the price faced by the producer, the consumer price indexes were used if no appropriate PPI was available, or if the expenditure was more similar to that of retail consumers in general rather than a purchase at the wholesale level. For example, the CPI for food purchased away from home was used as a proxy for contracted food services.
- Employment Cost Indexes—Employment Cost Indexes (ECIs) measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are not affected by shifts in employment mix.
- Average Hourly Earnings—Average Hourly Earnings (AHEs) measure the rate of change of hourly earnings for various occupations within a given industry, and, therefore, reflect a weighted occupational mix within a particular industry. The AHE series is calculated by dividing gross payrolls by total hours and measures actual earnings rather than pure wage rates. It is a current-weight series rather than a fixed-weight index and thus reflects shifts in employment mix. An AHE rather than an ECI is used when there is no corresponding ECI category that is an appropriate measure of growth for a

given labor category or when the ECI does not have sufficient length of history to be useful for our purpose.

Our price proxies for the rebased prospective payment hospital market basket are shown in Table 2 above and are summarized in Appendix C to this final rule.

Comment: One commenter believes that the most recent available Medicare cost report and other data should be used to establish the cost weights, particularly because the hospital industry and its cost structure are changing so rapidly.

Response: The prospective payment system hospital input price index was designed to be rebased at 5-year intervals, consistent with the scheduled release of the Commerce Department data on detailed cost structure by industrial sector of the U.S. economy. The Gross Domestic Product (GDP) and other related government statistics are on the same schedule of 5-year intervals between updates. Therefore, when planning for rebasing, HCFA adopted a base year that was 5 years from the most recent previous base year, 1987. We note that the Department of Commerce has not yet made its planned release of the 1992 detailed data on cost structure by industrial sector of the U.S. economy. However, in the proposed rule for FY 1998, we intend to modify the input price indexes for both the prospective payment system and excluded hospitals by incorporating the 1992 detailed cost structure data.

Comment: One commenter requested that we provide a more complete rationale in the final rule concerning the proposed price-proxy changes.

Response: The following discussion is offered to further explain our rationale for the price proxy changes we are adopting.

a. Nonmedical professional fees: The ECI for Compensation for Professional and Technical Workers replaced the ECI for Wages and Salaries for Professional and Technical Workers. The new index measures the growth in input prices associated with employee benefits as well as wages and salaries. Since the nonmedical professional fees category represents the hospital costs associated with obtaining these services, a price measure that accounts for aggregate compensation costs is preferable to one that measures only the wages and salaries component. When the ECI was first collected, it measured only growth in wages and salaries (not employee benefits). We changed the price proxy to reflect the improved data from the Bureau of Labor Statistics (BLS).

b. In an effort to improve the general accuracy and validity of the index's measurement of price growth, we made four minor producer price index changes:

- *Fuel Oil and Gasoline:* In the 1992-based index, the Fuel Oil and Gasoline category represents a combination of the Fuel Oil and Coal category and the Motor Gasoline category from the 1987-based index. The weight for motor gasoline was too small to keep it as a separate category. The price proxy used for the combined group in the 1992-based index, the Producer Price Index for Refined Petroleum Products, encompasses both PPIs used in the 1987-based index.
- *Electricity:* The PPI for Industrial Power was replaced with the PPI for Commercial Electrical Power to reflect information from the hospital industry and utility industry that commercial rates of change for utility costs are generally more appropriate than industrial rates.
- *Paper Products:* The weighted average of the percentage change in the price of converted paper and paperboard products and the percentage change in the price of paper excluding newsprint and packaging paper was replaced by the PPI for converted paper and paperboard products to better reflect the composition of costs in hospitals.
- *Apparel:* The PPI for textile house furnishings was replaced by the PPI for Apparel to better reflect the composition of costs in hospitals.

c. Business Services: The Average Hourly Earnings (AHE) for Business Services (AHE73NS) was replaced by the ECI for Compensation for Business Services. Compensation, which reflects both fringe benefits and wages, more appropriately measures the cost of business services. In addition, the ECI measurement holds the skill mix constant, measuring just the change in the cost of compensation, whereas a change in the AHE for Business Services can reflect a change in skill mix as well as a change in earnings. At the time of publication of the 1987-based index, the ECI for Business Services was not available.

d. All Other Services, Labor Intensive: The ECI Wages and Salaries for Private Service workers was replaced by the ECI Compensation for Private Service workers. A compensation price proxy reflects both a change in the price of benefits as well as a change in the price of wages and salaries.

4. The HCFA Blended Compensation Index

Compensation includes the two largest categories of the rebased market basket: wages and salaries, and employee benefits. Wages and salaries account for 50.244 percent and employee benefits account for 11.146 percent of the total weight in the prospective payment hospital market basket.

The HCFA Blended Compensation Index groups hospital occupations into nine broad categories. For eight of those occupational groups, we believe that hospitals compete for labor generally with employers outside the health care sector. Accordingly, we use economy-wide employment cost indexes (ECI) as price proxies for these eight occupational groups. In the case of compensation for nurses, as well as for certain other health care technicians and professionals, the hospital labor market may be predominant. However, hospitals do compete with other industries to obtain certain skilled professional and technical staff (for example, computer programmers). Therefore, for professional and technical workers, we believe a price proxy that reflects an equal blend of internal and external compensation variables is appropriate.

Similar to the methodology used for the previous rebasing, the weights for the nine cost categories in the occupational blend index were derived from the 1992 Current Population Survey (CPS) produced by BLS. Using the CPS, private hospital workers were classified into the nine occupational categories. Private hospitals better reflect the mix of occupations used to produce acute care services for the prospective payment system hospital input price index. Government hospitals were excluded because their occupational mix reflects the subset of nonacute care hospitals. Once private hospital workers were sorted by occupation into one of the nine occupational groups, weights were estimated using the share of wages and salaries for each of the nine occupations. These shares formed the basis of the weights that were used for the market basket of occupational categories.

An additional adjustment was made for contract labor costs. Rather than treat contract labor as a distinct noncompensation cost category, it was integrated into the occupational blend as a component of hospitals' compensation costs for purposes of the market basket index. Thus, contract labor is treated the same as other labor expenses. Contract labor was allocated to the professional and technical and service occupation categories. After adjusting the professional and technical and service workers' shares to account for contract labor, the weights for the

nine occupational blend categories were renormalized to equal 100.00 percent. The weights and proxies for the nine cost categories of the HCFA Blended Wages and Salaries Index are shown in Table 5.

TABLE 5.—HCFA BLENDED WAGES AND SALARIES INDEX (WAGES AND SALARIES COMPONENT OF THE 1992-BASED MARKET BASKET)

Cost category	Weight	Price proxy
Professional and technical	65.729	Equal blend of ECI for wages and salaries of civilian hospital workers and ECI for wages and salaries of professional, specialty and technical workers.
Managers and administrators	9.554	ECI for wages and salaries for executive, administrative and managerial workers.
Sales	0.402	ECI for wages and salaries for sales workers.
Clerical workers	12.379	ECI for wages and salaries for administrative support including clerical workers.
Craft and kindred	1.689	ECI for wages and salaries for precision production, craft and repair workers.
Operatives except transport	0.437	ECI for wages and salaries for machine operators, assemblers and inspectors.
Transport equipment operatives	0.122	ECI for wages and salaries for transportation and material moving workers.
Nonfarm laborers	0.084	ECI for wages and salaries for handlers, equipment cleaners, helpers and laborers.
Service workers	9.606	ECI for wages and salaries for service occupations.
Total wages and salaries	100.000	Total weight for wages and salaries is 50.2.

Note: Due to rounding, weights may not sum to total.

Comment: One commenter suggested that the manner in which hospital-specific wages and benefits price proxies are incorporated into the market basket should be changed, so that the internal hospital industry wage and benefit price proxies represent more of the compensation weights in the market basket. The ECI for hospital workers should be blended 50–50 for all labor cost categories, not just the professional and technical worker cost group. Although nonprofessional and technical workers may be employed in other settings, many of these workers have skills that are specific to the hospital industry.

Response: The blended compensation index of nine broad occupational groups with the ECI for Hospital Workers that is included in the prospective payment system hospital input price index reflects HCFA's judgment that, except for the professional and technical occupational category, hospitals compete primarily in the economy-wide labor market. Accordingly, HCFA uses Employment Cost Indexes (ECIs) for the private sector of the economy for eight of the nine occupation groups. For one broad occupational group, professional and technical workers, HCFA has recognized that certain subcategory occupations, such as registered nurses and physical therapists, are so specialized that hospitals are the predominant employers. Other types of professional and technical workers such as computer programers and biological researchers are distributed more evenly throughout the private sector economy. Therefore, a blend of the ECI for ''Private Professional Specialty and Technical Workers'' and the ECI for Civilian Hospital workers is used to measure growth in compensation prices for professional and technical. Since none of the other eight occupational categories are likely to use substantial proportions of hospital specific occupations, extending the blend to other labor categories is not appropriate.

As a practical matter, there is virtually no difference in the overall hospital input price index that results from using only a 50–50 blend of the ECI for Professional-Technical Workers and the ECI for Hospital Workers versus using a 50–50 blend for each of the nine ECI occupation groups with the ECI for Civilian Hospital Workers. The following table illustrates this point:

Difference in the Rate of Increase in the Hospital Index 50–50 Blend of Professional-Technical Workers Versus 50–50 Blend of All Occupations

FEDERAL FISCAL YEAR PERCENT CHANGE

	1997	1998	1999
50–50 blend of ECI P&T and ECI civilian hospital workers	2.5	2.9	3.1
50–50 blend of all nine occupations and ECI civilian hospital workers	2.5	2.8	3.1

The latest forecast of the rate of increase in the hospital input price index indicates that there is no difference for the FY 1997 update. For FY 1998, the current forecasts have a 0.1 percent difference. For FY 1999, the forecasts are identical. We will continue to monitor the effect on the hospital input price index that results from the alternative construction of the compensation sub-index. If a material difference develops between the two versions, we will reevaluate our position on the construction of the compensation sub-index.

Comment: One commenter, noting Table 5, ''HCFA Blended Wages and Salaries Index (Wages and Salaries Component of the 1992–Based Market Basket) (61 FR 27463), which lists the nine occupational categories, stated that HCFA is of the opinion that hospitals compete with the general labor market with the first category entitled ''Professional and Technical.'' The commenter questioned how HCFA arrives at this conclusion. The commenter recommended that, unless there is evidence that ''Professional and Technical'' workers provide an accurate proxy for wages in the hospital industry, the ''blend'' be dropped and be replaced by a hospital industry measure.

Response: The professional and technical workers category includes computer programmers, computer systems analysts, social workers, accountants, scientists, and lawyers. To varying degrees, hospitals employ each of these types of personnel. As noted in the previous comment and response, these occupations are also in significant demand outside the hospital industry, and hospitals must compete with employers in other industries as well as with other hospitals. For these types of occupations, competitive market forces that affect the compensation levels paid to workers in the nonhospital sector directly influence the compensation that prudent buyer hospitals pay. In order to account for this, it is appropriate to use the ECI Compensation for Private Professional-Technical Workers.

Hospitals are also major employers of other types of workers such as physical therapists, respiratory therapists, and registered nurses. Because hospitals demand substantial proportions of these types of workers, it is appropriate to reflect, at least in part, hospital industry-specific compensation.

The blend of professional-technical workers with the hospital industry specific compensation ECI is also used mitigate the effect of potential labor market imperfections in the hospital industry. Licensure requirements and the existence of third party insurance are believed by some to have enabled certain occupations to command compensation premiums that are above what can be explained by traditional predictors such as education, skill, experience, and location. Because certain professional and technical workers tend to have licensure restrictions that are more limiting than other occupations in the health care industry, there is some reason to believe that workers with the strictest licensure requirements are most able to realize a compensation premium. A blend provides a reasonable way to recognize that hospital compensation of professional and technical workers is influenced by both economy-wide and hospital sector-specific forces and that licensure requirements may influence compensation in ways different from a competitive market.

The advent of managed care may have diminished the ability of certain health sector labor occupations to achieve compensation premiums. This is suggested by the fact that recently the rate of increase in the ECI for Hospital workers has declined relative to the ECI for economy-wide professional-technical workers while in earlier periods the reverse held. Since FY 1992, the ECI for Hospital Workers has grown at a slower rate than the ECI for Private Professional and Technical workers. We will continue to monitor the ECIs and other data to detect changes in the market dynamics for the types of workers that hospitals employ.

Employment Cost Index Hospital Industry Workers Versus Economywide Professional and Technical Occupations

FEDERAL FISCAL YEAR PERCENT CHANGE

	1992	1993	1994	1995
ECI civilian hospital industry workers	4.3	3.7	3.1	2.5
ECI private P&T occupations	4.5	4.0	3.2	2.6

Comment: One commenter believed that the hospital industry does not compete with the general labor market for the cost category entitled ''Managers and Administrators.'' Therefore, the price proxy for this category should be the ECI for hospital workers, a hospital sector-specific proxy.

Response: Occupations in this category require a knowledge of and the capability to put into effect management principles, practices and techniques. The skills that these personnel possess are in demand in the overall economy as well as the hospital sector.

Since FY 1994, the ECI Compensation for Hospital Workers has grown at a slower rate than the ECI Compensation for Private Executive Administrative and Managerial Workers. Recent projections of these price proxies by DRI/McGraw-Hill suggest that this trend will continue.

Comment: One commenter suggested that, as an alternative to using the ECI for Hospital Industry Workers as a price proxy for all nine occupational categories, HCFA could use the data base it has developed over the last few years dealing with hospital wages.

Response: We assume that the commenter's reference to the data base that HCFA has developed over the last few years refers to the Hospital Area Wage Index. This index was developed pursuant to a statutory requirement that the Secretary adjust the standardized amounts for area differences in hospital wage levels. This index is designed to measure geographic differences in wage levels, not changes in wages over time. Also, because the area wage index is computed using total adjusted compensation divided by the sum total hours worked in a labor market (see section III of this preamble), it does not hold constant the skill-mix of employees from year to year. Therefore, any year-to-year index based upon the area wage index would include both price and quantity effects. The hospital input price index is appropriately designed to measure pure price inflation.

5. Separate Market Basket for Hospitals and Hospital Units Excluded from the Prospective Payment System

In its March 1, 1990 report, ProPAC recommended that we establish a separate market basket for hospitals and hospital units excluded from the prospective payment system. Effective with FY 1991, HCFA adopted ProPAC's recommendation to implement separate market baskets. (See the September 4, 1990 final rule (55 FR 36044).) Prospective payment and excluded hospitals tend to have different case mixes, practice patterns, and composition of inputs. The fact that these hospitals are not included under the prospective payment system in part reflects these differences.

Studies completed by HCFA, ProPAC, and the hospital industry have documented different weights for excluded hospitals and prospective payment hospitals. Table 7 compares major weights in the rebased 1992 market basket for excluded hospitals with weights in the rebased 1992 market basket for prospective payment system hospitals. Wages and salaries are 52.152 percent of total operating costs for excluded hospitals compared to 50.244 percent for prospective payment hospitals. Employee benefits are 11.569 percent for excluded hospitals compared to 11.146 percent for prospective payment hospitals. As a result, compensation costs (wages and salaries plus employee benefits) for excluded hospitals are 63.721 percent of costs compared to 61.390 percent for prospective payment hospitals. Noncompensation costs are 36.279 percent for excluded hospitals and 38.610 of costs for prospective payment hospitals.

Two significant differences in the category weights occur in Pharmaceuticals and Business Services. Pharmaceuticals represent 4.162 percent of costs for prospective payment hospitals and 3.070 percent for excluded hospitals. Business services represent 3.823 percent of costs for prospective payment hospitals and 2.337 percent for excluded hospitals. The weights for the excluded hospital market basket were derived using the same data sources and methods as for the prospective payment market basket (see Appendix C to this final rule).

Differences in weights between the excluded hospital and prospective payment hospital market baskets do not necessarily lead to significant differences in the rate of price growth for the two market baskets. If the individual wages and prices move at the approximately same annual rate, both market baskets may have about the same price growth even though weights may differ substantially because both market baskets use the same wages and prices. Also, offsetting price increases for various cost components can result in similar composite price growth in both market baskets.

The wage and price proxies are the same for the excluded hospital and prospective payment hospital market baskets. As discussed in section IV.A.2 of this preamble, all of the cost expenditure weights for both the prospective payment and excluded hospital market baskets are subject to refinement when the U.S. Department of Commerce 1992 data are released, analyzed by HCFA, and incorporated in

the PPS and exempt final market baskets.

The excluded hospital market basket is a composite set of weights for Medicare participating psychiatric, long-term care, rehabilitation, and children's hospitals. We are using cost report data for excluded hospitals and units whose average length of stay for Medicare patients is within 15 percent (that is, 15 percent higher or lower) of the facility average length of stay for all patients. This is a change from the 1987-based market basket, for which data for all excluded hospitals and units were used. We believe that limiting our sample to hospitals with a Medicare average length of stay within 15 percent of the total facility average length of stay provides a more accurate reflection of the structure of costs for Medicare. We note that the forecast for FY 1997 differs by only 0.1 percent when we included all excluded hospitals in the calculation of weights. The forecast for the limited index was 2.5 percent, while the forecast for the full set of excluded hospitals was 2.6 percent.

TABLE 6.—COMPARISON OF SIGNIFICANT WEIGHTS FOR 1992-BASED EXCLUDED HOSPITAL AND PROSPECTIVE PAYMENT HOSPITAL MARKET BASKETS

Category	Excluded hospitals	Prospective payment hospitals
Wages and salaries	52.152	50.244
Employee benefits	11.569	11.146
Professional fees	2.098	2.127
Pharmaceuticals	3.070	4.162
All other	31.111	32.321
Total	100.000	100.000

TABLE 7.—1992-BASED EXCLUDED HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Expense categories	Rebased 1992 excluded hospital market basket	Price proxy
1. Compensation	63.721	
A. Wages and salaries	52.152	HCFA occupational wage index.
B. Employee benefits	11.569	HCFA occupational benefits index.
2. Professional fees	2.098	ECI—Compensation for professional, specialty and technical.
3. Utilities	2.557	
A. Fuel, oil, and gasoline	0.357	PPI refined petroleum products.
B. Electricity	1.396	PPI commercial electric power.
C. Natural gas	0.694	PPI commercial natural gas.
D. Water and sewerage	0.110	CPI–U water and sewerage maintenance.
4. Professional liability insurance	1.081	HCFA professional liability insurance premiums index.
5. All other	30.543	
A. All other products	23.642	
(1.) Pharmaceuticals	3.070	PPI ethical (prescription) drugs.
(2.) Food	3.581	
a. Direct purchase	2.446	PPI processed foods and feeds.
b. Contract service	1.135	CPI–U food away from home.
(3.) Chemicals	3.929	PPI industrial chemicals.
(4.) Medical instruments	3.238	PPI medical instruments and equipment.
(5.) Photographic supplies	0.413	PPI photographic supplies.
(6.) Rubber and plastics	5.039	PPI rubber and plastic products.
(7.) Paper products	2.134	PPI converted paper and paperboard products.
(8.) Apparel	0.906	PPI apparel.
(9.) Machinery and equipment	0.218	PPI machinery and equipment.
(10.) Miscellaneous products	1.112	PPI finished goods.
B. All other services	6.901	
(1.) Business services	2.337	ECI—compensation for private workers in business services.
(2.) Computer services	1.415	AHE computer and data processing services.
(3.) Transportation services	0.195	CPI–U transportation.
(4.) Telephone services	0.549	CPI–U telephone services.
(5.) Postage	0.282	CPI–U postage.
(6.) All other: labor intensive	1.767	ECI—compensation for private service occupations.
(7.) All other: nonlabor intensive	0.356	CPI–U all items.
Total	100.000	

NOTE: Due to rounding, weights may not sum to total.

Table 8, below, shows what the excluded hospital weights would be if cost data for all excluded hospitals had been used.

TABLE 8.—1992 EXCLUDED HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PROXIES USING DATA FROM ALL EXCLUDED HOSPITALS

Expense categories	Rebased 1992 excluded hospital market basket	Price proxy
1. Compensation	68.074	
A. Wages and salaries	55.714	HCFA occupational wage index.
B. Employee benefits	12.360	HCFA occupational benefits index.
2. Professional fees	2.073	ECI—compensation for professional, specialty and technical.
3. Utilities	2.191	
A. Fuel, oil, and gasoline	0.306	PPI refined petroleum products.
B. Electricity	1.196	PPI commercial electric power.
C. Natural gas	0.595	PPI commercial natural gas.
D. Water and sewerage	0.094	CPI–U water and sewerage maintenance.
4. Professional liability insurance	1.081	HCFA professional liability insurance premiums index.
5. All other	26.582	
A. All other products	20.333	
(1.) Pharmaceuticals	2.704	PPI ethical (prescription) drugs.
(2.) Food	3.069	
a. Direct purchase	2.096	PPI processed foods and feeds.
b. Contract Service	0.973	CPI–U food away from home.
(3.) Chemicals	3.367	PPI industrial chemicals.
(4.) Medical instruments	2.775	PPI medical instruments and equipment.
(5.) Photographic supplies	0.354	PPI photographic supplies.
(6.) Rubber and plastics	4.319	PPI rubber and plastic products.
(7.) Paper products	1.829	PPI converted paper and paperboard products.
(8.) Apparel	0.777	PPI apparel.
(9.) Machinery and equipment	0.187	PPI machinery and equipment.
(10.) Miscellaneous products	0.953	PPI finished goods.
B. All other services	6.248	
(1.) Business services	2.337	ECI—compensation for private workers in business services.
(2.) Computer services	1.213	AHE computer and data processing services.
(3.) Transportation services	0.167	CPI–U transportation.
(4.) Telephone Services	0.471	CPI–U telephone services.
(5.) Postage	0.242	CPI–U postage.
(6.) All Other: Labor Intensive	1.514	ECI—compensation for private service occupations.
(7.) All Other: Nonlabor Intensive	0.305	CPI–U all items.
Total	100.000	

The relatively small differences in weights between the excluded hospital market basket data from excluded hospitals that have a Medicare length of stay within 15 percent of the total facility average length of stay and the excluded hospital market basket using data from all excluded hospitals do not lead to significant changes in the rate of price growth for these two market baskets. If all individual wages and prices move at about the same annual rate, both market baskets could have about the same price growth even if weights are somewhat different. Also, offsetting price increases for various costs components can result in the price growth being the same.

To examine the sensitivity of the change to the limited set of excluded hospitals, we developed a comparison for the period 1988–1998. Using historical data and forecasts for the market baskets, we compared limited and full sets of excluded hospitals.

TABLE 9.—A COMPARISON OF THE EXCLUDED HOSPITAL MARKET BASKET AND THE EXCLUDED HOSPITAL MARKET BASKET REBASED USING ALL EXCLUDED HOSPITALS, PERCENT CHANGE, 1988–1998

Federal fiscal year	Excluded (+/−15%) hospital market basket—1992 base	Excluded hospital market basket using all excluded hospitals—1992 base	Difference
Historical: 1988	4.9	4.8	0.1
1989	5.6	5.5	0.1
1990	4.6	4.7	(0.1)
1991	4.3	4.4	(0.1)

TABLE 9.—A COMPARISON OF THE EXCLUDED HOSPITAL MARKET BASKET AND THE EXCLUDED HOSPITAL MARKET BASKET REBASED USING ALL EXCLUDED HOSPITALS, PERCENT CHANGE, 1988–1998—Continued

Federal fiscal year	Excluded (+/− 15%) hospital market basket—1992 base	Excluded hospital market basket using all excluded hospitals—1992 base	Difference
1992	3.0	3.2	(0.2)
1993	3.1	3.1	(0.0)
1994	2.6	2.7	(0.1)
1995	3.3	3.2	0.1
Forecasted: 1996	2.5	2.7	(0.2)
1997	2.5	2.6	(0.1)
1998	2.8	2.9	(0.1)
Historical average: 1988–1995	3.9	4.0	(0.1)
Forecasted average: 1996–1998	2.6	2.7	(0.1)

Note that the historical average rate of growth from 1988 to 1995 for the excluded hospital market basket including only excluded hospitals with Medicare average length of stay within 15 percent of total facility average length of stay is virtually identical to that for the excluded hospital market basket with all excluded hospitals. The rates of growth using the two methodologies are within 0.1 percent for FY 1996, 1997, and 1998.

Comment: A commenter requested a more detailed explanation about the rationale for dropping from the calculation of the excluded facility market basket those excluded hospitals and units with Medicare average lengths of stay that vary by more than 15 percent from the facility's overall average length of stay. The commenter stated that there is no description of the hospitals being dropped or their characteristics (e.g., if these facilities have low Medicare shares, it may be appropriate to exclude them). More information is needed before the appropriateness of the 15-percent screen can be assessed.

Response: To the extent possible, we used total reimbursable facility costs to determine the weights for Medicare costs. If the patterns of practice for Medicare patients differ significantly from the overall patient population, we believe that total facility costs for facilities with high shares of Medicare patients are more representative of the Medicare population. We chose to compare the average length of stay for all patients to that of Medicare beneficiaries as the test of the similarity of the practice patterns for non-Medicare patients versus Medicare patients. Our method results in retaining hospitals that had a share of patient days attributable to Medicare that was approximately three times that of hospitals that were excluded. Our goal is to measure cost shares that are reflective of case mix and practice patterns associated with providing services to Medicare beneficiaries.

Comment: A commenter questioned whether there will be a need for a separate market basket for each type of excluded hospital once prospective payment systems are developed for psychiatric and rehabilitation hospitals and units. The commenter recommended that HCFA consider whether it would be beneficial to begin identifying a separate market basket for each type of excluded hospital.

Response: We agree with the commenter that HCFA will have to consider whether to use separate market baskets for each type of excluded hospital once prospective payment systems are developed for psychiatric and rehabilitation hospitals. However, until those systems are designed we believe it is premature to develop separate market baskets.

B. Capital Costs

Rebasing the Capital Input Price Index

1. Background

Effective for cost reporting periods beginning on or after October 1, 1995, the Capital Input Price Index (CIPI) is used to determine the price increase associated with prospective payment hospital capital-related expenses. Capital-related expenses are defined as depreciation expenses, capital-related interest expenses, and other capital-related expenses, such as insurance and taxes. The CIPI measures the input price change of these capital-related expenses, and is included in the capital prospective payment update framework to determine a rate of increase in capital prospective payments.

Like the prospective payment hospital operating input price index, the CIPI is a fixed-weight price index. A fixed-weight price index measures how much it would cost at a later date to purchase the same mix of goods and services purchased in the base period. For the prospective payment hospital operating and capital input price indexes, the base period is selected and cost category weights are determined using available data on hospitals. Next, appropriate price proxy indexes are chosen for each cost category. Then a price proxy index level for each expenditure category is multiplied by the comparable cost category weight. The sum of these products (that is, weights multiplied by price proxy index levels) for all cost categories yields the composite index level of the market basket for a given year. Repeating the step for other years produces a time series of composite market basket index levels. Dividing an index level by a later index level produces a rate of growth in the input price index. Since the percent change is computed for the fixed mix of total capital inputs with a 1992 base, the index is called fixed-weight.

Like the operating input price index, the CIPI measures the price changes associated with costs during a given year. In order to do so, the CIPI must differ from the operating input price index in one important aspect. The CIPI must reflect the vintage nature of capital, which is the acquisition and use of capital over time. Capital expenses in any given year are determined by the stock of capital in that year (that is, capital that remains on hand from all current and prior capital acquisitions).

An index measuring capital price changes needs to reflect this vintage nature of capital. Therefore, the CIPI was developed to capture the vintage nature of capital by using a weighted-average of past capital purchase prices up to and including the current year. Using Medicare cost reports, AHA data, and Securities Data Corporation data, a vintage-weighted price index was developed to measure price increases associated with capital expenses.

Comment: A commenter suggested that HCFA's model is overly complicated and relies excessively on assumptions given that capital costs make up approximately 10 percent of total hospital costs. The commenter recommended that HCFA adopt a simpler approach to update the Federal rate for capital-related costs for hospital inpatient services.

Response: Capital payments for prospective payment hospitals are expected to be about $8.6 billion in FY 1997, a significant amount that warrants an appropriate input price index. It would not be appropriate to use a simpler index if it does not accurately reflect the price increases associated with capital costs. Capital costs are inherently complicated and are determined by complex capital purchasing decisions over time, which are based on such factors as interest rates and debt financing decisions. Also, capital is depreciated over periods of time instead of being consumed in the same period it is purchased. The CIPI accurately reflects the annual price increases associated with capital costs, and is a useful simplification of the actual capital accumulation process. By appropriately accounting for the vintage nature of capital in the CIPI, HCFA is able to provide an accurate, stable annual measure of price increases. Annual, non-vintage price changes for capital are highly unstable due to the volatility of interest rate changes. These unstable annual price changes do not reflect the actual annual price changes for Medicare capital-related costs. The HCFA CIPI reflects the underlying stability of the capital acquisition process and provides hospitals with the ability to plan for changes in capital payments.

The most recent discussion on the CIPI and methodological background was published in the May 31, 1996 proposed rule (61 FR 27466). The following Federal Register documents describe development and revisions of the methodology involved with the construction of the CIPI: September 1, 1992 (57 FR 40016), May 26, 1993 (58 FR 30448), September 1, 1993 (58 FR 46490), May 27, 1994 (59 FR 27876), September 1, 1994 (59 FR 45517), June 2, 1995 (60 FR 29229), and September 1, 1995 (60 FR 45815).

We periodically update the base year for the operating and capital input prices to reflect the changing composition of inputs for operating and capital expenses. Previously, both the operating input price index and the CIPI are based to FY 1987. We are updating the base year cost structure to FY 1992, the most recent year with relatively complete data for purposes of rebasing. We explain the process of rebasing the cost structure weights for the CIPI below.

2. Rebasing the Capital Input Price Index

We are using a rebased capital input price index (CIPI) in developing the FY 1997 capital update factor for capital prospective payment rates. The new CIPI is rebased to reflect the 1992, rather than the 1987, structure of capital costs. In developing the rebased CIPI, we reviewed hospital capital expenditure data for capital cost categories (depreciation, interest, and other). Two sets of weights had to be developed in order to compute the rebased CIPI: (1) cost category weights which identify the proportion of total hospital capital expenditures attributable to each capital expenditure category, and (2) relative vintage weights for depreciation and interest which identify the proportion of capital expenditures within a cost category that are attributable to each year over the life of capital assets in that category. Because capital expense data in the Medicare Cost Reports is not available prior to 1980 for use in computing vintage weights, the two sets of weights are measured using the best data sources available as explained below and in Appendix C to this final rule. The computations involved with rebasing the CIPI are explained for each of these sets of weights.

a. Capital Cost Category Weights. The capital cost category weights in Table 10 below were computed using a combination of the FY 1992 Medicare Cost Reports and 1992 AHA Annual Survey data. FY 1992 marked the first year for expanded capital data available in the Medicare Cost Reports. After reviewing the data, we determined that much of the data had been reclassified into different expense categories. Therefore, we removed prospective payment hospital reports that appeared to have reclassified data, and matched the remaining reports to the corresponding reports in the AHA Annual Survey data set. These remaining 2724 prospective payment hospital reports were used to compute capital cost category weights and the expected life of capital, which is used in determining vintage weights for depreciation and interest.

In reviewing the data, we determined that the Medicare Cost Reports provided accurate data for depreciation and other capital expenses, but had reclassified interest data. We determined that AHA Annual Survey data more accurately reflected interest expense, based on past trends in interest rates. Therefore, we used the AHA Annual Survey interest levels along with the Medicare Cost Report levels for depreciation and other capital expenses to develop a more robust capital cost data base.

After removing depreciation, interest, and other capital expenses from total capital expenses, the remainder constitutes lease expenses. Lease expenses are not a separate cost category in the CIPI. They are distributed to the other cost categories (depreciation, interest, other), reflecting an assumption that the underlying cost structure of leases is similar to capital costs in general. We assigned 10 percent of lease expenses to the other capital expenses cost category as overhead, and the remaining lease expenses were distributed to the three cost categories based on the weights of depreciation, interest, and other capital expenses not including lease expenses. (We base this assignment of 10 percent of lease expenses to overhead on the common assumption that overhead is 10 percent of costs.)

We also used the 1992 Medicare cost reports to determine weights for the building and fixed equipment category and the movable equipment category. Expenses for building and fixed equipment and for movable equipment were determined using the same sample of prospective payment hospital reports as was used to compute the major cost category weights. The split between building and fixed equipment and movable equipment was also used to compute the vintage weights described below. Table 10 presents a comparison of the rebased 1992 capital cost weights and the 1987 capital cost weights.

We only used those hospital reports which we considered to have capital data that was not reclassified. Because we did not use all hospital reports, we were concerned that the hospitals used may not be representative of the universe. Therefore, we compared the distribution of costs for the hospitals used with the data re-weighted to reflect the characteristics of the total universe of hospitals. From this analysis we validated that the cost weights derived from the subset we used were

representative of the cost weights for the entire universe of hospitals.

TABLE 10.—COMPARISON OF 1987 AND 1992 COST CATEGORY WEIGHTS

Expense categories	FY 1987	Rebased FY 1992	Price proxy
1. Building and fixed equipment depreciation	0.3054	0.3009	Boeckh Institutional Construction Index—vintage weighted (22 yrs)
2. Movable equipment depreciation	0.3456	0.3475	PPI for machinery and equipment—vintage weighted (10 yrs)
Total interest	0.3274	0.3184	
1. Government/nonprofit interest	0.2783	0.2706	Average yield on domestic municipal bonds (bond buyer 20 bonds)—vintage weighted (22 yrs)
2. For-profit interest	0.0491	0.0478	Average yield on Moody's Aaa Bonds—vintage weighted (22 yrs)
Other	0.0216	0.0332	CPI(U) for residential rent
Total	1.0000	1.0000	
Total depreciation	0.6510	0.6484	

Source: 1992 Medicare Cost Reports, PPS year 9; 1992 AHA Annual Survey.

Note: Due to rounding, weights may not sum to totals.

Comment: The price proxy for ''for-profit interest'' was listed in Table 10 of the May 31, 1996 Federal Register (61 FR 27468) as the Average Yield on Moody's AAA Corporate Bonds. A commenter pointed out that Moody's highest ratings is Aaa instead of AAA.

Response: As the commenter pointed out, the correct Moody's rating is Aaa. While publications other than Moody's may not be as precise in their presentation of Moody's ratings, HCFA will use the more precise definition of Aaa and refer to the price proxy for for-profit interest as the Average Yield on Moody's Aaa Corporate Bonds throughout this final rule.

We had planned to incorporate the 1992 data from the Department of Commerce for developing capital cost category weights. However, these data are not available for inclusion in this final rule.

b. Relative Vintage Weights for Prices. As we have explained in previous Federal Register documents (most recently the September 1, 1995 final rule at 60 FR 45817), the CIPI was developed to capture the vintage nature of capital; that is, because capital is acquired and consumed over time, the capital expenses in any given year are determined by past and current purchases of physical and financial capital. Therefore, a vintage-weighted CIPI was developed which used vintage weights for depreciation (physical capital) and interest (financial capital) to capture the long-term consumption of capital. These vintage weights reflect the purchase patterns of building and fixed equipment and movable equipment over time. Because depreciation and interest expenses are determined by the amount of past and current capital purchases, we use the vintage weights to compute vintage-weighted price changes associated with depreciation and interest expense, which is the purpose of the CIPI.

To compute the vintage weights for depreciation and interest expenses, we used a time series of capital purchases for building and fixed equipment and movable equipment. We found no single source that provides the best time series of capital purchases by hospitals for all of the above components of capital purchases. The Medicare cost reports did not have sufficient capital data to meet this need. The AHA Panel Survey provides a consistent database back to 1963. While the AHA Panel Survey data does not provide annual capital purchases, it does provide a time series of depreciation and interest expenses, which can be used to infer capital purchases over time. The process of using the AHA data to estimate a time series of capital purchases, and eventually vintage weights, is explained in detail below.

In order to estimate capital purchases from AHA data on depreciation and interest expenses, the expected life for building and fixed equipment, for movable equipment, and for debt instruments is needed. The expected life is used in the calculation of vintage weights for building and fixed equipment, movable equipment, and debt instruments as we explain below.

We used the same sample of prospective payment hospitals from FY 1992 Medicare cost reports and the 1992 AHA Annual Survey explained above in computing cost category weights to compute the expected life of building and fixed equipment and movable equipment. (The AHA Panel Survey is a monthly survey of a sample of hospitals, while the AHA Annual Survey is a more detailed survey of all hospitals.) The expected life of any piece of equipment can be determined by dividing the historical asset cost (excluding fully depreciated assets) by the current year depreciation amount. This calculation yields the estimated useful life of an asset if depreciation continued at current year levels, assuming straight-line depreciation, which is the only depreciation method allowed under Medicare. From the FY 1992 costs reports, the expected life of building and fixed equipment was determined to be 22 years, and the expected life of movable equipment was determined to be 10 years. By comparison, the expected life using FY 1987 data was 25 years for building and fixed equipment and 10 years for movable equipment.

It was also necessary to compute the expected life of debt instruments held by hospitals. As in prior exercises, we used hospital issuances of municipal and commercial bonds from Securities Data Corporation to determine the expected life of hospital debt instruments, which is used in the estimation of vintage weights for interest expense. This data source produced a weighted average life for the two types of bonds of 22 years for FY 1992, the same expected life as was computed for the 1987-based CIPI.

An annual series of total expenses and depreciation expenses was obtained from the AHA Panel Survey. For the calculation of vintage weights, this expense data was needed back to 1963. However, the depreciation expense data in the AHA Panel survey was available only back to 1976. We noticed an increasing trend in depreciation expenses as a percentage of total expenses. We performed a regression on this percentage, and used the regression

equation to estimate depreciation expenses back to 1963. We then used the fixed and movable weights derived from the FY 1992 Medicare cost reports to partition the AHA Panel Survey depreciation expenses into annual amounts of building and fixed depreciation and movable depreciation.

Multiplying the annual depreciation amounts by the expected life calculations from the FY 1992 Medicare cost reports, year-end asset costs for building and fixed equipment and movable equipment were determined. Then by subtracting the previous year asset costs from the current year asset costs, annual purchases of building and fixed equipment and movable equipment were estimated back to 1963. This capital purchase time series is then used to compute the vintage weights for building and fixed equipment, movable equipment, and debt instruments. Each of these sets of vintage weights is explained in detail below.

For building and fixed equipment vintage weights, the real annual capital purchase amounts for building and fixed equipment derived from the AHA Panel Survey were used. The real annual purchase amount was used to capture the actual amount of the physical acquisition, net of the effect of price inflation. This real annual purchase amount for building and fixed equipment was produced by deflating the nominal annual purchase amount by the building and fixed equipment price proxy, the Boeckh institutional construction index. Because building and fixed equipment has an expected life of 22 years, the vintage weights for building and fixed equipment were deemed to represent the average purchase pattern of building and fixed equipment over 22-year periods. With real building and fixed equipment purchase estimates available back to 1963, nine 22-year periods could be averaged to determine the average vintage weights for building and fixed equipment. Averaging different periods produces vintage weights that are representative of average building and fixed equipment purchase patterns over time. Vintage weights for each 22-year period are calculated by dividing the real building and fixed capital purchase amount in any given year by the total amount of purchases in the 22-year period. For example, for the 22-year period of 1964–1985, the vintage weight for year 1 is calculated by dividing the real annual capital purchase amount of building and fixed equipment in 1964 into the total amount of real annual capital purchases of building and fixed equipment over the entire 1964–1985 period. This calculation is done for each year in the 22-year period, and for each of the nine 22-year periods. An average is taken of the nine 22-year periods to determine the FY 1992 average building and fixed equipment vintage weights, presented in Table 11 with the FY 1987 vintage weights.

For movable equipment vintage weights, the real annual capital purchase amounts for movable equipment derived from the AHA Panel Survey were used. The real annual purchase amount was used to capture the actual amount of the physical acquisition, net of price inflation. This real annual purchase amount for movable equipment was produced by deflating the nominal annual purchase amount by the movable equipment price proxy, the Producer Price Index for machinery and equipment. Because movable equipment has an expected life of 10 years, the vintage weights for movable equipment were deemed to represent the average purchase pattern of movable equipment over 10-year periods. With real movable equipment purchase estimates available back to 1963, 21 10-year periods could be averaged to determine the average vintage weights for movable equipment. Averaging different periods produces vintage weights which are representative of average movable equipment purchase patterns over time. Vintage weights for each 10-year period are calculated by dividing the real movable capital purchase amount for any given year by the total amount of purchases in the 10-year period. For example, for the 10-year period of 1976–1985, the vintage weight for year 1 is calculated by dividing the real annual capital purchase amount of movable equipment in 1976 into the total amount of real annual capital purchases of movable equipment over the entire 1976–1985 period. This calculation is done for each year in the 10-year period, and for each of the 21 10-year periods. The average of the 21 10-year periods is used to determine the FY 1992 average movable equipment vintage weights, presented in Table 11 with the FY 1987 vintage weights.

For interest vintage weights, the nominal annual capital purchase amounts for total equipment (building and fixed, and movable) derived from the AHA Panel Survey were used. Nominal annual purchase amounts were used to capture the value of the debt instrument. Because debt instruments have an expected life of 22 years, the vintage weights for interest were deemed to represent the average purchase pattern of total equipment over 22-year periods. With nominal total equipment purchase estimates available back to 1963, nine 22-year periods could be averaged to determine the average vintage weights for interest. Averaging different periods produces vintage weights which are representative of average capital purchase patterns over time. Vintage weights for each 22-year period are calculated by dividing the nominal total capital purchase amount for any given year by the total amount of purchases in the 22-year period. For example, for the 22-year period of 1964–1985, the vintage weight for year 1 is calculated by dividing the nominal annual capital purchase amount of total equipment in 1964 into the total amount of nominal annual capital purchases of total equipment over the entire 1964–1985 period. This calculation is done for each year in the 22-year period, and for each of the nine 22-year periods. The average of the nine 22-year periods is used to determine the FY 1992 average interest vintage weights, presented in Table 11 with the FY 1987 weights.

TABLE 11.—VINTAGE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES

Year	Building and fixed equipment		Movable equipment		Interest	
	Fiscal Year 1987 25 yrs	Rebased Fiscal Year 1992 22 yrs	Fiscal Year 1987 10 yrs	Rebased Fiscal Year 1992 10 yrs	Fiscal Year 1987 22 yrs	Rebased Fiscal Year 1992 22 yrs
1	0.015	0.019	0.064	0.069	0.007	0.007
2	0.019	0.020	0.072	0.075	0.009	0.008
3	0.022	0.023	0.077	0.083	0.010	0.010
4	0.024	0.026	0.085	0.091	0.011	0.012
5	0.023	0.028	0.095	0.097	0.013	0.014
6	0.022	0.030	0.101	0.103	0.015	0.016
7	0.020	0.031	0.109	0.109	0.017	0.018
8	0.021	0.032	0.122	0.115	0.020	0.021
9	0.025	0.036	0.132	0.124	0.023	0.024
10	0.030	0.039	0.142	0.133	0.027	0.029
11	0.033	0.043	.....	.....	0.032	0.035
12	0.034	0.047	.....	.....	0.038	0.041
13	0.034	0.050	.....	.....	0.043	0.047
14	0.035	0.052	.....	.....	0.050	0.052
15	0.038	0.055	.....	.....	0.057	0.059
16	0.043	0.059	.....	.....	0.064	0.067
17	0.049	0.062	.....	.....	0.074	0.074
18	0.053	0.065	.....	.....	0.083	0.081
19	0.056	0.067	.....	.....	0.090	0.088
20	0.057	0.069	.....	.....	0.098	0.093
21	0.060	0.072	.....	.....	0.105	0.099
22	0.066	0.073	.....	.....	0.114	0.103
23	0.071	.....	.....	.....	.....	.....
24	0.075	.....	.....	.....	.....	.....
25	0.077	.....	.....	.....	.....	.....
Total	1.000	1.000	1.000	1.000	1.000	1.000

Sources: AHA Panel Survey, 1963–1993; 1992 Medicare Cost Reports; Securities Data Corporation.

Comment: ProPAC again commented that HCFA's capital update framework could be improved, and that ProPAC's capital update framework is similar to the operating update framework. The ProPAC framework also includes a discretionary financing policy adjustment for use in extended periods of unusually high or low interest rates.

Response: The HCFA CIPI measures the annual price increase associated with vintage-weighted capital expenses, making it consistent with the HCFA operating input price index, which measures the annual price increase associated with operating expenses. The ProPAC market basket reflects the price increase of capital purchases from one year to the next, and does not capture the vintage nature of capital that is captured by the HCFA CIPI. Therefore, we believe the HCFA CIPI accurately measures annual price increases in capital expenses, as we stated before in the May 26, 1993 (58 FR 30451), September 1, 1993 (58 FR 46492), May 27, 1994 (59 FR 27889), September 1, 1994 (59 FR 45521), June 2, 1995 (60 FR 29233), and the September 1, 1995 (60 FR 45823) Federal Registers. ProPAC has presented no criteria (objective or subjective) for determining when a discretionary financing policy adjustment would be appropriate. HCFA believes that interest rates are intrinsic to a technically sound and fair measure of price increases in capital expenses (which are defined as depreciation, interest, and lease expenses, and insurance and taxes), just as all expense components are appropriately included in the HCFA operating input price index.

3. Selection of Price Proxies

After the 1992 capital cost category weights were computed, it was necessary to select appropriate price proxies to monitor the rate of increase for each expenditure category. Our price proxies for the FY 1992 based CIPI are the same as those for the FY 1987 based CIPI. The rationale for selecting the price proxies is explained in the June 2, 1995 proposed rule (60 FR 29227) and the September 1, 1995 final rule (60 FR 45817). The price proxies are presented in Table 10.

Comment: A commenter contended the average yield on bonds rated Aaa is not representative of the bond rating the for-profit hospital industry is obtaining. The commenter examined the bond rating of some of its member companies and found them to range from A3 (highest) to B1 (lowest). The commenter recommended the selection of a price proxy that better reflects interest costs of taxpaying hospitals.

Response: The commenter is correct that the average yield on lower-rated corporate bonds is different from the average yield on higher-rated corporate bonds, and that some for-profit hospitals have lower ratings than Aaa. However, the interest component for for-profit hospitals in the HCFA CIPI is based on percent changes in yields and not the yields themselves. We analyzed the percent change in the yield for two bond ratings: Aaa and Baa. Despite the yields for the two bond ratings being significantly different for the 15 years between 1981–1995, the percent changes in the yields for the two bond ratings were nearly identical. We used the percent changes in both yields to calculate the CIPI and determined the impact of the different yields on the overall CIPI was essentially zero. Because our analysis did not reveal any significant difference in the percent change in yields for corporate bonds with different ratings, we believe the average yield for Moody's Aaa corporate bonds is an appropriate price proxy for for-profit interest expense.

4. Forecast of the CIPI for Federal Fiscal Year 1997

DRI forecasts a 1.3 percent increase in the rebased 1992 CIPI for FY 1997, as indicated in Table 12. This is the outcome of a 2.4 percent increase in projected depreciation prices (building and fixed equipment, and movable equipment) and a 2.2 percent increase in other capital expense prices in FY 1997, partially offset by a 1.8 percent decline in vintage-weighted interest rates in FY 1997.

TABLE 12.—HCFA CAPITAL INPUT PRICE INDEX PERCENT CHANGES, TOTAL AND COMPONENTS, FISCAL YEARS 1979 TO 2000

Fiscal year	Total	Depreciation			Interest	Other
		Total	Building and fixed equipment	Movable equipment		
Weights (fiscal year 1992)	1.0000	0.6484	0.3009	0.3475	0.3184	0.0332
VINTAGE-WEIGHTED PRICE CHANGES						
1979	5.4	7.4	7.0	7.7	2.7	7.1
1980	6.9	8.0	7.3	8.5	5.4	8.6
1981	8.7	8.5	7.7	9.1	9.1	8.8
1982	9.2	8.5	8.0	9.0	10.2	8.0
1983	6.7	8.1	7.9	8.2	4.8	6.3
1984	6.3	7.3	7.6	7.1	4.9	5.0
1985	5.2	6.3	7.0	5.8	3.5	5.9
1986	3.7	5.7	6.4	5.1	0.7	6.2
1987	3.1	5.1	5.9	4.5	−0.1	4.5
1988	3.0	4.6	5.4	4.0	0.3	3.8
1989	2.6	4.4	5.2	3.7	−0.5	3.8
1990	2.3	4.0	4.9	3.2	−0.7	4.2
1991	2.0	3.6	4.6	2.7	−1.1	3.9
1992	1.5	3.2	4.4	2.1	−2.0	2.6
1993	1.1	2.9	4.1	1.8	−2.8	2.4
1994	1.1	2.7	3.9	1.7	−2.7	2.3
1995	1.3	2.6	3.8	1.6	−2.0	2.5
1996	1.1	2.5	3.6	1.5	−2.4	2.4
1997	1.3	2.4	3.5	1.5	−1.8	2.2
1998	1.2	2.4	3.3	1.5	−2.2	3.1
1999	1.2	2.4	3.3	1.5	−2.2	2.2
2000	1.3	2.4	3.3	1.5	−2.3	3.1

5. Comparison of Percent Changes in the FY 1992–Based CIPI and the FY 1987–Based CIPI

Rebasing the CIPI from 1987 to 1992 decreased the percent change in the FY 1997 forecast by only 0.2 percentage points, from 1.5 to 1.3 as indicated in Table 13. The effect of rebasing is analyzed by comparing the 1992-based CIPI forecasted percent changes to the 1987-based CIPI forecasted percent changes using the same DRI forecast of component prices. As shown in Table 13, there is only a 0.2 percentage point difference between the percent changes in the 1992-based CIPI and the 1987-based CIPI using the second quarter 1996 forecast. The difference reflects changes to: (1) cost category weights, (2) expected life, and (3) vintage weights. The changes to cost category weights coupled with the wide disparity in price changes between the different cost categories contributed to lowering the CIPI percent change in the FY 1997 forecast. This was the case with fixed depreciation, which has faster price growth than the other cost categories and now has a lower weight by nearly one-half of a percentage point because of rebasing to 1992. Also contributing to the 0.2 percentage point difference in FY 1997 forecast is the change in the expected life of building and fixed equipment and the change in the vintage weights for all three components: building and fixed equipment, movable equipment, and interest. The shorter expected life (22 years in 1992 versus 25 years in 1987) of building and fixed equipment slightly decreased the FY 1997 forecast CIPI percent change because years with higher price increases were not included as they had been before. The change in vintage weights also tended to decrease the FY 1997 CIPI percent change because vintage weights in all cases changed to be spread more evenly over the life of the asset, decreasing the weight of more recent years and increasing the weight of past years. In the years around FY 1997, prices for depreciation and interest are projected to increase slightly faster than prices in earlier years.

TABLE 13.—COMPARISON OF 1987 AND 1992 BASED CAPITAL INPUT PRICE INDEX USING THE SAME DRI FORECAST, PERCENT CHANGE, 1979–1997

Federal fiscal year	CIPI	
	1987	Rebased 1992
1979	5.6	5.4
1980	7.1	6.9
1981	8.8	8.7
1982	9.3	9.2
1983	6.7	6.7
1984	6.3	6.3
1985	5.1	5.2
1986	3.7	3.7
1987	3.1	3.1
1988	3.0	3.0
1989	2.7	2.6
1990	2.4	2.3
1991	2.1	2.0
1992	1.7	1.5
1993	1.3	1.1
1994	1.3	1.1
1995	1.5	1.3
1996	1.4	1.1
1997	1.5	1.3

V. Other Decisions and Changes to the Prospective Payment System for Inpatient Operating Costs

A. Sole Community Hospital Criteria (§ 412.92)

Under the prospective payment system, special payment protections are provided to hospitals that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals, are the sole source of hospital inpatient services reasonably available to Medicare beneficiaries. The criteria a hospital must meet to be classified as a sole community hospital (SCH) as well as the special payment adjustments available are set forth in the regulations at § 412.92.

One of the ways in which a hospital can qualify for sole community status is to be located between 25 and 35 miles from other like hospitals and prove that no more than 25 percent of residents who become inpatients or no more than 25 percent of the Medicare beneficiaries who become inpatients in the hospital's ''service area'' are admitted to other like hospitals located within a 35-mile radius of the hospital (or its service area, if larger).

In the final rule published on September 30, 1988, we stated: ''A hospital may delineate its service area by identifying the zip codes of all its inpatients for the cost reporting period ending before the date it applies for SCH status. The lowest number of zip codes accounting for at least 75 percent of its inpatients would then constitute its service area.'' (53 FR 35810).

In March 1990, we issued a revised manual which inadvertently reflected policy prior to October 1, 1988; specifically, section 2810 A.2.c of the Medicare Provider Reimbursement Manual, Part 1 (HCFA Pub. 15–1) stated, ''A hospital may define its service area as the lowest number of *contiguous* zip codes from which the hospital draws at least 75 percent of its inpatients.'' (Emphasis added.) As discussed in the proposed rule, some hospitals have raised questions about the definition of service area. Therefore, we clarified that our definition of ''service area'' for purposes of determining SCH status does not require contiguous zip code areas. We have applied this definition since October 1, 1988 (the effective date of the September 30, 1988 final rule). We also indicated that we intended to revise the current manual accordingly at our earliest opportunity.

Comment: Two commenters responded to our clarification on the use of zip codes to determine a hospital's service area for SCH purposes. One commenter did not object to the policy clarification, but requested that we also clarify whether use of zip codes and use of a statewide health planning agency are the only two methods of defining a service area. The other commenter believes our current policy may lead to unfair results for some hospitals in sparsely populated areas. The commenter requested that we permit a hospital to use either the lowest number of zip codes or the lowest number of contiguous zip codes to determine its service area.

Response: We discussed the definition of a hospital's service area for SCH purposes at some length in the preamble of the September 30, 1988 final rule (53 FR 38511). In that document, we stated that a hospital's service area is the area from which it draws at least 75 percent of its inpatients for the 12-month cost reporting period ending before it applies for SCH classification.

We noted that not all States have Statewide health planning commissions that identify hospitals' service areas and we offered the zip code methodology as one alternative. We also noted that ''(t)he important consideration is that a hospital be able to define its service area as the area from which it draws 75 percent of its inpatient admissions, as stated in the regulations text at § 412.92(c)(3).''

We have not restricted a hospital's source of data for defining its service area to the use of zip codes or to Statewide planning commissions. These are merely the two most common methods and, thus, are the two we have

discussed in detail. There have been instances where a State hospital association has been the source of data used to define the hospital's service area. If a hospital does not wish to use the zip code methodology to define its service area, we will review data from any independent source that can supply documented data to identify the hospital's service area. The important consideration is that we must be able to verify supportable evidence that a hospital drew at least 75 percent of its inpatients from the defined service area.

In regard to the commenter who requested that a hospital be permitted to define its service area using either the lowest number of zip codes *or* the lowest number of contiguous zip codes, we do not agree. Since October 1, 1988, any hospital choosing to define its service area using the zip code methodology has been required to use the lowest number of zip codes from which it drew at least 75 percent of its inpatients during its most recently completed cost reporting period.

We have not permitted any hospital to define its service area using the lowest number of contiguous zip codes because we do not believe this method presents as accurate a picture of a hospital's true service area as does the actual lowest number of zip codes. Although the commenter presented an elaborate example of how a hospital might meet the market share test if its service area is based on contiguous zip codes, but not meet the market share test when service area is defined strictly as the lowest number of zip codes, we do not believe such a scenario is likely to occur with any frequency. And, as noted above, a hospital is not required to use the zip code methodology to define its service area. If a hospital does not qualify using the lowest number of zip codes, it can look to other sources such as a State hospital association, Statewide planning commission, or any other independent body that can present documentable data to verify that at least 75 percent of its inpatients came from the identified area.

Comment: One commenter was concerned about the interim payments that sole community hospitals receive during the year. Specifically, the commenter was troubled by the method we use to account for outlier payments. Because our pricing methodology assumes that all sole community hospitals will receive ''average ''outlier payments, the aggregate interim payments for a hospital with few outliers are less than the amount ultimately due the hospital. Although the difference is paid to the hospital during its cost report settlement, the commenter claimed that the delay in receiving the money due the hospital has caused dire financial consequences.

Response: One of the difficulties in making interim payments during the year for sole community hospitals is not knowing precisely the amount of outlier payments the hospital is going to receive. Currently, we simply use the overall national expected rate of approximately 5.1 percent to adjust the Federal payment rate. That is, we take the hospital's Federal payment rate, already adjusted for the wage index, indirect medical education factor, and disproportionate share factor, and further adjust the rate by assuming that the hospital's outlier payments will be 5.1 percent of its total DRG payments. Then, we compare this amount to the hospital-specific amount and, if the hospital-specific amount is higher, we make the difference an add-on to the Federal payment rate in making interim payments.

Some sole community hospitals, however, actually receive much less in outlier payments than the national average of 5.1 percent. This causes our estimate of their outlier-adjusted Federal payments to be higher than is really the case. Therefore, the hospital does not receive all of its add-on payments during the year, because the difference between the hospital-specific rate and the estimated adjusted Federal payment rate is understated. The effect is a potentially large payment to the hospital at the time of settlement. We note that for sole community hospitals with higher than average outlier payments, the opposite problem results. That is, the hospitals are overpaid during the year and must repay monies to the Federal Government at cost report settlement.

We believe an assumption based on the expected percentage of overall national outlier payments is reasonable, but we will explore this problem in more detail during the next year and try to determine if use of a hospital-specific outlier adjustment factor for this limited purpose would be more appropriate, as well as feasible.

B. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban rather than the rural standardized amount. As of that date, the other urban and rural standardized amounts are the same. However, rural referral centers continue to receive special treatment under both the disproportionate share hospital payment adjustment and the criteria for geographic reclassification.

One of the criteria under which a rural hospital may qualify as a referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (number of discharges and case-mix index) and at least one of three optional criteria (medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, a hospital may be classified as a rural referral center if its—

- Case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. In determining the proposed national and regional case-mix index values, we follow the same methodology we used in the November 24, 1986 final rule, as set forth in regulations at § 412.96(c)(1)(ii). Therefore, the proposed national case-mix index value included all urban hospitals nationwide, and the proposed regional values were the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105).

The values in the proposed rule were based on discharges occurring during FY 1995 (October 1, 1994 through September 30, 1995) and included bills posted to HCFA's records through December 1995. Therefore, in addition to meeting other criteria, we proposed that to qualify for initial rural referral center status or to meet the triennial review standards for cost reporting periods beginning on or after October 1,

1996, a hospital's case-mix index value for FY 1995 would have to be at least—

- 1.3332; or
- Equal to the median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by HCFA for the census region in which the hospital is located. (See the table set forth in the May 31, 1996 proposed rule at 61 FR 27472.)

Based on the latest data available (FY 1995 bills received through June 1996), the final national case-mix value is 1.3347 and the median case-mix values by region are set forth in the table below:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2249
2. Middle Atlantic (PA, NJ, NY)	1.2230
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.3396
4. East North Central (IL, IN, MI, OH, WI)	1.2471
5. East South Central (AL, KY, MS, TN)	1.2933
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.2125
7. West South Central (AR, LA, OK, TX)	1.3116
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3339
9. Pacific (AK, CA, HI, OR, WA)	1.3303

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing each hospital's FY 1995 case-mix index value in Table 3C in section V of the Addendum to this final rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. However, we proposed to update the regional standards. The proposed regional standards were based on discharges for urban hospitals' cost reporting periods that began during FY 1994 (that is, October 1, 1993 through September 30, 1994). That is the latest year for which we have complete discharge data available.

Therefore, in addition to meeting other criteria, we proposed that to qualify for initial rural referral center status or to meet the triennial review standards for cost reporting periods beginning on or after October 1, 1996, the number of discharges a hospital must have for its cost reporting period that began during FY 1995 would have to be at least—

- 5,000; or
- Equal to the median number of discharges for urban hospitals in the census region in which the hospital is located. (See the table set forth in the June 2, 1996 proposed rule at 61 FR 27472.)

Based on the latest discharge data available, the final median numbers of discharges for urban hospitals by census regions are as follows:

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	6771
2. Middle Atlantic (PA, NJ, NY)	8486
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	7504
4. East North Central (IL, IN, MI, OH, WI)	7384
5. East South Central (AL, KY, MS, TN)	6386
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	5794
7. West South Central (AR, LA, OK, TX)	4806
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	7553
9. Pacific (AK, CA, HI, OR, WA)	5617

We reiterate that, to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 1996, an osteopathic hospital's number of discharges for its cost reporting period that began during FY 1995 must be at least 3,000.

3. Retention of Referral Center Status

Section 412.96(f) states that each hospital receiving the referral center adjustment is reviewed every 3 years to determine if the hospital continues to meet the criteria for referral center status. To retain status as a referral center, a hospital must meet the criteria for classification as a referral center specified in § 412.96 (b)(1) or (b)(2) or (c) for 2 of the last 3 years, or for the current year. A hospital may meet any one of the three sets of criteria for individual years during the 3-year period or the current year. For example, a hospital may meet the two mandatory requirements in § 412.96 (c)(1) (case-mix index) and (c)(2) (number of discharges) and the optional criterion in paragraph (c)(3) (medical staff) during the first year. During the second or third year, the hospital may meet the criteria under § 412.96(b)(1) (rural location and appropriate bed size).

A hospital must meet all of the criteria within any one of these three sections of the regulations in order to meet the retention requirement for a given year. That is, it will have to meet all the criteria of § 412.96(b)(1) or § 412.96(b)(2) or § 412.96(c). For example, if a hospital meets the case-mix index standards in § 412.96(c)(1) in years 1 and 3 and the number of discharge standards in § 412.96(c)(2) in years 2 and 3, it will not meet the retention criteria. All of the standards would have to be met in the same year.

In accordance with § 412.96(f)(2), the review process is limited to the hospital's compliance during the last 3 years. Thus, if a hospital meets the criteria in effect for at least 2 of the last 3 years or if it meets the criteria in effect for the current year (that is, the criteria for FY 1997 outlined above in this section of the preamble), it will retain its status for another 3 years. We have constructed the following chart and example to aid hospitals that qualify as referral centers under the criteria in § 412.96(c) in projecting whether they will retain their status as a referral center.

Under § 412.96(f), to qualify for a 3-year extension effective with cost reporting periods beginning in FY 1997, a hospital must meet the criteria in § 412.96(c) for FY 1997 or it must meet the criteria for 2 of the last 3 years as follows:

For the cost reporting period beginning during FY	Use hospital's case-mix index for FY	Use the discharges for the hospital's cost reporting period beginning during FY	Use numerical standards as published in the Federal Register on
1996	1994	1994	September 1, 1995.
1995	1993	1993	September 1, 1994.
1994	1992	1992	September 1, 1993.

Example: A hospital with a cost reporting period beginning July 1 qualified as a referral center effective July 1, 1994. The hospital has fewer than 275 beds. Its 3-year status as a referral center is protected through June 30, 1997 (the end of its cost reporting period beginning July 1, 1996). To determine if the hospital should retain its status as a referral center for an

additional 3-year period, we will review its compliance with the applicable criteria for its cost reporting periods beginning July 1, 1994, July 1, 1995, and July 1, 1996. The hospital must meet the criteria in effect either for its cost reporting period beginning July 1, 1997, or for two out of the three past periods. For example, to be found to have met the criteria at § 412.96(c) for its cost reporting period beginning July 1, 1995, the hospital's case-mix index value during FY 1993 must have equaled or exceeded the lower of the national or the appropriate regional standard as published in the September 1, 1994 final rule with comment period. The hospital's total number of discharges during its cost reporting year beginning July 1, 1993, must have equaled or exceeded 5,000 or the regional standard as published in the September 1, 1994 final rule with comment period.

For those hospitals that seek to retain referral center status by meeting the criteria of § 412.96(b)(1) (i) and (ii) (that is, rural location and at least 275 beds), we will look at the number of beds shown for indirect medical education purposes (as defined at § 412.105(b)) on the hospital's cost report for the appropriate year. We will consider only full cost reporting periods when determining a hospital's status under § 412.96(b)(1)(ii). This definition varies from the number of beds criterion used to determine a hospital's initial status as a referral center because we believe it is important for a hospital to demonstrate that it has maintained at least 275 beds throughout its entire cost reporting period, not just for a particular portion of the year. We received no comments on the rural referral center criteria.

C. Disproportionate Share Adjustment (§ 412.106)

Section 1886(d)(5)(F) of the Act provides for additional payments for hospitals that serve a disproportionate share of low income patients. The disproportionate share adjustment, which was added to the prospective payment system by section 9105 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272), was intended to address the higher Medicare costs associated with treating a large number of low-income patients. Under this provision, patients who are eligible for Medicaid and Supplemental Security Income (SSI) benefits were used as a proxy measure of the proportion of low-income patients.

A hospital's disproportionate share adjustment is generally determined by calculating the sum of two patient percentages (Medicare Part A/ Supplemental Security Income (SSI) covered days to total Medicare Part A covered days, and Medicaid but not Medicare Part A covered days to total inpatient hospital days). Based on the location and size of the hospital, a formula determines if the hospital's patient percentage qualifies the hospital for an adjustment and how much that adjustment will be. There is also a limited exception providing for disproportionate share adjustments for large urban hospitals that receive substantial state and local revenues for indigent (non-Medicare, non-Medicaid) care.

With respect to the Medicare-SSI calculation, hospitals have expressed dissatisfaction with these proxy measures, and have challenged HCFA's implementation of them in recent litigation. Since SSI beneficiary information is confidential, hospitals do not have access to lists of patients who are eligible for both Medicare Part A and SSI benefits. Hospitals are increasingly frustrated by their inability to monitor these data.

With respect to the Medicaid fraction, hospitals have complained that, because of Medicaid coverage restrictions, Medicaid covered days may not be a consistent measure of indigent care across States. Medicaid reforms under consideration by the President and Congress may further interfere with the utility of Medicaid covered days as a measure of the proportion of low-income patients.

Because of these concerns, we have been examining alternative measures of indigent care. Some of the measures we have explored using are estimates of patient income in a hospital's service area, hospital levels of bad debt, and proportion of emergency room admissions in a hospital. Because of data and other limitations, however, we have yet to find an alternative that appears promising as a replacement to the present measure. Therefore, in the proposed rule, we solicited comments from the industry on better and more direct measures of indigent care than the present measure that relies on SSI and Medicaid data. We also discussed ProPAC's recommendations concerning DSH payments (61 FR 27474).

Comment: A large number of commenters responded to our request for input on the Medicare disproportionate share adjustment calculation and the SSI and Medicaid data that go into its development. Some commenters believe that the current method of identifying disproportionate share hospitals is acceptable. Other commenters stated that we should implement a revised formula only if it captures the current base of eligible hospitals as well as additional facilities. Finally, several commenters believe that the current calculation is flawed beyond repair and that we should reevaluate the current base of hospitals that are eligible for payments under the disproportionate share adjustment and revise the formula dramatically. The suggestions we received follow:

- Use the current formula, but expand Medicaid days to include all days that a person eligible for Title XIX spends in the hospital, whether or not Medicaid paid. Further, in the case of States that have replaced traditional Medicaid programs with alternate health care programs for their low-income population, include all days that a person who is covered by the State's program spends in the hospital, whether or not that person would have been eligible for Title XIX benefits.
- Use the current formula and include outpatient data as well as inpatient data.
- Use data from the Department of Commerce based on income levels and zip code information to determine median income levels within designated service areas. These data can then be compared to Federal poverty guidelines to establish the appropriate level of disbursement of disproportionate share payments.
- Combine charity care and bad debts as reported on the hospital's financial statements and multiply by the hospital's overall cost-to-charge ratio. Then, divide these costs by the hospital's net patient revenue excluding Medicare, Medicaid, Medicare health maintenance organization (HMO), and Medicaid (HMO) data. This method is similar to the current qualifying criteria for an exception under the disproportionate share adjustment calculation set forth at § 412.106(c)(2).
- Use the low-income utilization rate that is currently used in the administration of Medicaid disproportionate share adjustments. This is a combination of a hospital's Medicaid revenues and its State and local subsidies divided by its total revenues and its inpatient charity care charges minus its State and local inpatient subsidies divided by total charges.

Some of the commenters referred to the decisions in court cases in the 6th and the 8th Circuits that require the inclusion of days that would have been paid by Medicaid but for a State day limitation in the disproportionate share calculation. These commenters encouraged HCFA to implement the Court's ruling at the national level. Other commenters were concerned

about the inclusion of HMO and other managed care utilization data in the calculation. Many of these commenters suggested that HCFA should require States to more accurately identify the Medicaid enrollees who receive services under a waiver program, possibly by providing these enrollees with encrypted insurance cards to reflect Title XIX eligibility.

Several commenters believe that the adjusted average per capita cost (AAPCC) payment rate for Medicare managed care plans should be revised to exclude any adjustment for disproportionate share and that those payments should be made directly to the eligible hospitals. Several commenters offered to work with HCFA on this issue.

Response: We appreciate the responses that we received on the disproportionate share adjustment issue. Members of the hospital industry and its representatives carefully considered the question of data sources, targeted hospitals, and the indigent population. In general, commenters believe that compensation for hospitals that treat a disproportionate share of the indigent population is valid. However, as noted above, there are conflicting ideas about how to target that set of hospitals.

Although many of these comments will require further analysis, we will address some suggestions here. First, in the current formula, we believe that Medicaid covered days is the correct measure and the correct interpretation of Congressional intent as we have outlined on numerous previous occasions, most notably in the September 1, 1986 final rule (54 FR 31460–31461). Given the current statute, we believe it is not reasonable to include days that a person spent in the hospital while that person was not eligible for Medicaid under any circumstances. The statute clearly states that title XIX eligibility is a requirement under any circumstances. If a State chooses to adopt some sort of a waiver program and elects to cover people who would not have otherwise been eligible for care, those persons will not be included as Medicaid days in the current formula. Further, inpatient data are used in the Medicare disproportionate share adjustment calculation because the payment add-on is applied to the Medicare inpatient payment. It is not designed to reflect either Medicaid shortfalls or outpatient data, since there is a separate Medicaid disproportionate share adjustment, and payment for outpatient services is not made through a prospective payment system.

Data from the Department of Commerce based on the U.S. Census are collected only during decennial census periods. Thus, while the data look promising on first analysis, they become increasingly unrepresentative of the population's income trends as they relate to geographic areas as the years pass from the base year for which the data are collected. We also have a problem with any data that may be reported on a hospital's financial statements but that are not reported on its annual Medicare cost report. The Medicare cost report data are collected annually and subject to a settlement process. The financial statements of hospitals vary from facility to facility, are audited on an erratic schedule, and are not currently collected by Medicare for evaluation.

Finally, we would not want to duplicate the procedure by which the Medicaid disproportionate share adjustment is determined since the Medicaid program already pays hospitals an adjustment under Medicaid based on these criteria.

Regarding commenters' concerns on HMO days, currently we collect data on HMO utilization for use in the disproportionate share adjustment calculation. However, it is up to the hospital, in securing the contract with the HMO, to obtain an agreement from the HMO that allows the hospital to be able to distinguish those Medicare and Medicaid patients that are utilizing services so that it may report those days to the fiscal intermediary. We note that the President's FY 1997 budget includes a provision that would mandate the removal of disproportionate share payments from the AAPCC calculation and allow these payments to be made directly to the eligible hospital.

While there appears to be no easy or quick solution to improving the disproportionate share payment adjustment, we appreciate the comments that the hospital industry provided on this issue. Our concern is that Medicaid data will continue to vary more and more from State to State and SSI data will continue to be protected from the hospital industry's examination by the Privacy Act. Therefore, we will continue to examine the inconsistencies in the current Medicare disproportionate share adjustment calculation and ways to improve the data and the calculation to better target those hospitals that treat a disproportionate share of the indigent population.

D. Direct Graduate Medical Education (§ 413.86)

1. Initial Residency Period Limitations

As discussed in the proposed rule, we are updating the Initial Residency Period Limitations for direct graduate medical education (GME), originally published in the Federal Register on September 29, 1989 (54 FR 40286). The regulations in § 413.86(g)(1) state that, ''[e]ffective July 1, 1995, an initial residency period is defined as the minimum number of years required for board eligibility.''

The update reflects the following:

- Effective July 1, 1995, section 1886(h)(5)(F) of the Act, as amended by Public Law 103–66, defines an initial residency period as the minimum number of years required for initial board eligibility. Previously, this period had been defined as minimum number of years ''plus one.'' The prior listing had included the additional year, not to exceed five years.
- Changes in curriculum requirements regarding the number of years needed for board eligibility for previously approved programs.
- Addition of newly approved graduate medical education programs.

The table of initial residency periods published in the proposed rule (61 FR 27475) did not constitute a proposal in the usual rulemaking sense because we were simply updating the tables in accordance with current policy. Nevertheless, we received many comments that reflected a misunderstanding of the meaning of ''initial residency period'' in general. The initial residency period, as that term is used in section 1886(h)(5) (F) and (G) of the Act and in § 413.86 refers to the minimum number of years necessary to satisfy the requirements for initial board eligibility in a specialty. During the initial residency period, each full-time resident is weighted at 1.0 full-time equivalent (FTE) for purposes of determining GME payments. Once the resident has worked the minimum number of years required for board eligibility in a specialty, any subsequent training in an approved program is weighted at 0.5 FTE.

The comments on the updated listing also brought to our attention information that has resulted in changes in the table of initial residency periods. We have added allopathic allergy and immunology with an initial residency period of 3 years, osteopathic preventive medicine/aerospace medicine with an initial residency of 4 years, and osteopathic combined programs in internal medicine/emergency medicine and internal medicine/pediatrics with

an initial residency period of 4 years. We have also modified the table by listing pathology/anatomic and pathology/clinical with respective initial residency periods of 3 years and pathology/anatomic and clinical with an initial residency period of 4 years. Finally, in the proposed rule, emergency medicine was listed with an initial residency period of 3/4 years due to our understanding that these programs have been approved for both 3 and 4 years. However, since the Accreditation Council for Graduate Medical Education (ACGME) has approved 3-year programs, the *minimum* number of years of training to become board eligible in emergency medicine is actually 3 years. Accordingly, we are including the appropriate initial residency period limitation of 3 years in the table in this final rule.

INITIAL RESIDENCY PERIOD LIMITATIONS

Residency type	Initial residency period limitation (No. of years)
ALLOPATHY	
ALLERGY AND IMMUNOLOGY	3
ANESTHESIOLOGY	4
Critical Care Medicine	4
Pain Management	4
COLON AND RECTAL SURGERY	5
DERMATOLOGY	4
Dermatopathology	4
Clinical & Laboratory Dermatological Immunology	4
EMERGENCY MEDICINE	3
Sports Medicine	3
FAMILY PRACTICE	3
Geriatric Medicine	5
Sports Medicine	3
INTERNAL MEDICINE	3
Adolescent Medicine	3
Cardiovascular Disease	3
Clinical Cardiac Electrophysiology	3
Clinic & Laboratory Immunology	3
Critical Care Medicine	3
Endocrinology, Diabetes, and Metabolism	3
Gastroenterology	3
Geriatric Medicine	5
Hematology	3
Hematology and Oncology	3
Infectious Disease	3
Medical Oncology	3
Nephrology	3
Pulmonary Disease	3
Pulmonary Disease and Critical Care Medicine	3
Rheumatology	3
Sports Medicine	3
MEDICAL GENETICS	4
NEUROLOGICAL SURGERY	5
Pediatric Neurological Surgery	5
NEUROLOGY	4
Child Neurology	4
Clinical Neurophysiology	4
NUCLEAR MEDICINE	3
OBSTETRICS AND GYNECOLOGY	4
Critical Care Medicine	4
Gynecological Oncology	4
Maternal and Fetal Medicine	4
Reproductive Endocrinology	4
OPHTHALMOLOGY	4
ORTHOPAEDIC SURGERY	5
Adult Reconstructive Orthopaedics	5
Foot and Ankle Orthopaedics	5
Hand Surgery	5
Musculoskeletal Oncology	5
Pediatric Orthopaedics	5
Spinal Cord Injury	5
Sports Medicine	5
OTOLARYNGOLOGY	5
Neurotology/Otolaryngology	5
Pediatric Otolaryngology	5
PATHOLOGY, ANATOMIC	3
PATHOLOGY, CLINICAL	3
PATHOLOGY, ANATOMIC AND CLINICAL	4
Blood Banking/Transfusion Medicine	4
Chemical Pathology	4

INITIAL RESIDENCY PERIOD LIMITATIONS—Continued

Residency type	Initial residency period limitation (No. of years)
Cytopathology	4
Dermatopathology	4
Forensic Pathology	4
Hematology	4
Immunopathology	4
Medical Microbiology	4
Neuropathology	4
Pediatric Pathology	4
PEDIATRICS	3
Adolescent Medicine	3
Clinical and Laboratory Immunology	3
Neonatal-Perinatal Medicine	3
Pediatric Cardiology	3
Pediatric Critical Care Medicine	3
Pediatric Emergency Medicine	3
Pediatric Endocrinology	3
Pediatric Gastroenterology	3
Pediatric Hematology/Oncology	3
Pediatric Infectious Disease	3
Pediatric Nephrology	3
Pediatric Opthamology	3
Pediatric Pulmonology	3
Pediatric Rheumatology	3
Pediatric Sports Medicine	3
PHYSICAL MEDICINE AND REHABILITATION	4
PLASTIC SURGERY	5
Hand Surgery	5
PREVENTIVE MEDICINE	3
Aerospace Medicine	3
Medical Toxicology	3
Occupational Medicine	3
Public Health & General Preventive Medicine	3
PSYCHIATRY	4
Addiction Medicine	4
Child & Adolescent Psychiatry	4
Forensic Psychiatry	4
Geriatric Psychiatry	5
RADIOLOGY, DIAGNOSTIC	4
Neuroradiology	4
Nuclear Radiology	4
Pediatric Radiology	4
Vascular and Interventional Radiology	4
Radiation Oncology	4
SURGERY, GENERAL	5
Critical Care Medicine	5
Hand Surgery	5
Pediatric Surgery	5
Thoracic Surgery	5
Vascular Surgery	5
UROLOGY	5
Pediatric Urology	5
OSTEOPATHY	
ANESTHESIOLOGY	4
Critical Care Medicine	4
DERMATOLOGY	4
Dermatopathology	4
MOHS Micrographic Surgery	4
EMERGENCY MEDICINE	4
Sports Medicine	4
FAMILY PRACTICE	3
Adolescent and Young Adult Medicine	3
Geriatrics	5
Sports Medicine	3
INTERNAL MEDICINE	4
Clinical Allergy and Immunology	4
Cardiology	4
Endocrinology	4
Gastroenterology	4
Hematology	4
Infectious Diseases	4

INITIAL RESIDENCY PERIOD LIMITATIONS—Continued

Residency type	Initial residency period limitation (No. of years)
Nephrology	4
ONCOLOGY	4
Pulmonary Diseases	4
Rheumatology	4
Clinical Cardiac Electrophysiology	4
Critical Care Medicine	4
Geriatrics	6
Sports Medicine	4
NUCLEAR MEDICINE	4
In-Vivo and In-Vitro Nuclear Medicine	4
Nuclear Cardiology	4
Nuclear Imaging and Therapy	4
NEUROLOGY	4
Child Neurology	4
PSYCHIATRY	4
Child Psychiatry	4
OBSTETRICS/GYNECOLOGY	5
Maternal and Fetal Medicine	5
Gynecological Oncology	5
Reproductive Endocrinology	5
FACIAL PLASTIC SURGERY	5
OPHTHALMOLOGY	4
OTORHINO/FACIAL PLASTIC SURGERY	5
OTORHINOLARYNGOLOGY	5
ORTHOPEDIC SURGERY	5
PATHOLOGY, ANATOMIC	4
PATHOLOGY, ANATOMIC/LABORATORY MEDICINE	5
PATHOLOGY, LABORATORY MEDICINE	4
Forensic Pathology	5
Blood Banking/Transfusion Medicine	5
Chemical Pathology	5
Cytopathology	5
Dermatopathology	5
Hematology	5
Immunopathology	5
Medical Microbiology	5
Neuropathology	5
PEDIATRICS	3
Adolescent and Young Adult Medicine	3
Neonatal Medicine	3
Pediatric Allergy/Immunology	3
Pediatric Cardiology	3
Pediatric Hematology/Oncology	3
Pediatric Infectious Diseases	3
Pediatric Intensive Care	3
Pediatric Nephrology	3
Pediatric Pulmonology	3
Pediatric Sports Medicine	3
PREVENTIVE MEDICINE	4
PREVENTIVE/AEROSPACE MEDICINE	4
PROCTOLOGY	3
RADIATION ONCOLOGY	4
RADIOLOGY, DIAGNOSTIC	5
Angiography and Interventional Radiology	5
Diagnostic Ultrasound	5
Neuroradiology	5
Nuclear Radiology	5
Radiological Imaging	5
Pediatric Radiology	5
REHABILITATION MEDICINE	4
Sports Medicine	4
GENERAL SURGERY	5
NEUROSURGERY	5
PLASTIC AND RECONSTRUCTIVE SURGERY	5
THORACIC CARDIOVASCULAR SURGERY	5
UROLOGICAL SURGERY	5
GENERAL VASCULAR SURGERY	5
CRITICAL CARE SURGERY	5
OSTEOPATHIC MANIPULATIVE MEDICINE	3
PODIATRY	
ROTATING PODIATRIC RESIDENCY(PRIMARY CARE)	2

INITIAL RESIDENCY PERIOD LIMITATIONS—Continued

Residency type	Initial residency period limitation (No. of years)
PODIATRIC ORTHOPEDIC RESIDENCY	2
PODIATRIC SURGICAL RESIDENCY	2
DENTISTRY	
DENTAL PUBLIC HEALTH	1
ENDODONTICS	2
ORAL PATHOLOGY	3
ORAL AND MAXILLOFACIAL SURGERY	4
ORTHODONTICS	2
PEDIATRIC DENTISTRY	2
PERIODONTICS	3
PROSTHODONTICS	3
PROSTHODONTICS/MAXILLOFACIAL	3
GENERAL DENTISTRY	1
ADVANCED GENERAL DENTISTRY	2
ALLOPATHY COMBINED PROGRAMS*	
FAMILY PRACTICE(3) AND PSYCHIATRY(4)	4
INTERNAL MEDICINE(3) & EMERGENCY MEDICINE(3)	3
INTERNAL MEDICINE(3) & FAMILY PRACTICE(3)	3
INTERNAL MEDICINE(3) & NEUROLOGY(4)	4
INTERNAL MEDICINE(3) & PEDIATRICS(3)	3
INTERNAL MED(3) & PHYS MED & REHABILITATION(4)	4
INTERNAL MEDICINE(3) & PREVENTIVE MEDICINE(5)	5
INTERNAL MEDICINE(3) & PSYCHIATRY(4)	4
NEUROLOGY(4) & PHYS MEDICINE AND REHAB(4)	4
PEDIATRICS(3) & EMERGENCY MEDICINE(3)	3
PEDIATRICS(3) & PHYSICAL MEDICINE AND REHAB(4)	4
PEDIATRICS(3)/PSYCHIATRY(4)/CHILD&ADOL PSYCH(4)	4
PSYCHIATRY(4) AND NEUROLOGY(4)	4
OSTEOPATHY COMBINED PROGRAMS*	
INTERNAL MEDICINE/EMERGENCY MEDICINE	4
INTERNAL MEDICINE/PEDIATRICS	4

*For residents participating in combined programs, Medicare limits the initial residency period to the time required for individual certification in the longer of the two programs.

2. Combined Residency Programs

As discussed in the proposed rule, when we updated the listing of the Initial Residency Period Limitations for GME, we noted many new programs that were combined specialty residency programs. The combined programs run concurrently for a period of time that is longer than the required time for certification in either specialty, but shorter than would be required if the programs were taken sequentially. Residents completing these programs are eligible for board certification in both specialties.

We use the Internal Medicine and Pediatrics combined program as an example: Taken individually, Internal Medicine is a 3-year program and Pediatrics is also a 3-year program. However, taken as a combined program, Internal Medicine and Pediatrics is a 4-year program, with eligibility for certification in both specialties.

Currently, we are aware of 13 allopathic and 2 osteopathic combined programs, including Internal Medicine/Pediatrics, Pediatrics/Emergency Medicine, Family Practice/Psychiatry, and Neurology/Physical Medicine and Rehabilitation. Due to the increasing prevalence of combined residency programs since our September 29, 1989 final rule, we proposed to clarify how the definition of initial residency period applies in such cases. As discussed in detail in the proposed rule (61 FR 27477), we proposed to clarify the definition of the initial residency period for combined programs as the time required for individual certification in the longer of the two programs. Continuing to use Internal Medicine and Pediatrics as an example, we would define the initial residency for Internal Medicine and Pediatrics as 3 years. The remaining year of the combined program would be treated as 0.5 FTE, in accordance with § 413.86(g)(3). We received numerous comments on this policy, and the issues raised by the commenters are discussed below.

Comment: Many commenters disagreed with our clarification concerning initial residency periods for combined programs. These commenters stated that residents in combined programs are not board eligible in either specialty until they have completed the entire combined program. Some commenters asserted that we did not understand that training in combined programs does not occur sequentially. One commenter noted that the *Graduate Medical Education Directory* states that ''applicants may not appear for certifying examinations until all training has been completed.'' Many commenters stated that the law states that a resident is to be counted as a 1.0 FTE during the resident's initial residency period, which is defined as the ''period of board eligibility'' in section 1886(h)(5)(F) of the Act. These commenters do not believe we have the authority to establish an initial residency period that is shorter than the length of the combined program, because Medicare will not be paying for residents at 1.0 FTE for the period of initial board eligibility.

Several commenters noted that a resident enrolled in a combined program is enrolling in one program and receives a single certificate upon completion. One commenter stated that the directors of combined programs have not sought to independently certify their graduates with a single examination administered by a single

board. This commenter added that similar to family practice, combined programs are not a composite of separate specialties and should be recognized as a single discipline. Other commenters noted that training in combined internal medicine/pediatrics programs is more intensive than family practice and the initial residency period should recognize this superior training in adult and pediatric medicine. Some commenters believe our proposal implies that training in a second specialty is ''superfluous, nonessential or less important.''

Response: We have always recognized that the training in combined programs does not occur sequentially, and we acknowledge that residents participating in combined programs are not board eligible in either specialty until they have completed all of their training requirements. We agree that combined training is more intensive than training in each specialty taken separately, and we never stated or meant to imply that training in a second specialty is unimportant or superfluous. Our intent is simply to establish a reasonable policy, consistent with the statute, that provides for full Medicare payment for training in one speciality.

We believe our policy is consistent with section 1886(h)(5)(F) of the Act, which defines ''initial residency period'' as ''the period of board eligibility.'' Section 1886(h)(5)(G) defines the ''period of board eligibility'' as ''the *minimum* number of years of formal training necessary to satisfy the requirements for initial board eligibility in the particular specialty for which the resident is training.'' (Emphasis added.)

The statute does not address how to count the initial residency period in combined programs, perhaps because such programs were not contemplated at the time the statute was enacted. We believe the statutory scheme indicates congressional intent to allow ''full'' Medicare payment only for the minimum period required to train in *one* specialty. Contrary to the suggestion of the commenters, it is clear that the statute does not require Medicare to apply a weighting factor of 1.0 for a resident until the resident actually becomes board eligible. Rather, the statute requires a weighting factor of 1.0 only for the ''minimum number of years necessary to satisfy the requirements for initial board eligibility''; for time beyond the ''minimum'' period, the statute provides that the weighting factor is 0.5. Thus, the statute contemplates Medicare payments for the costs of graduate medical education, but it does not impose an open-ended obligation for Medicare to pay full costs until a resident becomes board eligible.

The statute defines the initial residency period as the ''minimum number of years'' necessary to satisfy the requirements for the ''particular specialty'' for which the resident is training. Based on the public comments we received, we are not persuaded that combined residency programs are ''particular specialties'' in and of themselves. As we understand it, graduates of these combined residency programs are *not* certified by a single examination by a single board. Rather, they must take each board's examination separately. Thus, these residents can become board eligible for each distinct specialty (for example, Internal Medicine and Pediatrics). It appears that combined programs simply combine training in separate specialties (whose requirements may overlap). As always, we are willing to consider further information on this issue.

We believe our policy on combined programs is reasonable. Residents in combined programs complete all of the training requirements for two specialties, but the *minimum* number of years required to become board eligible in either specialty is less than the length of the combined program. We believe it is reasonable to define the initial residency period for combined programs as the longer of the initial residency periods for the two specialties. Our policy is consistent with the manner in which Medicare payment would be made if the resident trained in two specialties in a sequential manner. In such cases, the resident would be counted as a full 1.0 FTE during the training for the first specialty, and as 0.5 FTE for later years.

Comment: Many commenters stated that Congress established the initial residency period limitation with the intent of discouraging subspecialty training and increasing the primary care work force. These commenters do not believe that Congress intended to limit training in combined programs consisting of two primary care specialties. Similarly, other commenters noted that graduates of combined programs are more likely to enter primary care practice in rural and medically underserved areas than are graduates of other programs. These commenters said that our proposal conflicts with Congress' goal to provide medical care to rural and medically underserved areas.

Response: The initial residency period limitation on full Medicare payment applies to all types of programs, both primary care and non-primary care, and is not intended to discourage primary care practice. We agree with these commenters that in general Federal policy should encourage more training in primary care and that programs designed to encourage practice in rural and medically underserved areas should continue to be an important component of Federal health policy. However, we believe that these concerns are more properly addressed in other contexts. We note that section 1886(h)(2)(D) of the Act provides updates to the per resident amounts for primary care residents, but the statute does not distinguish between primary and non-primary care specialties for purposes of determining the initial residency period.

Comment: Some commenters were concerned that our policy clarification would lead to the dismantling of combined residency programs.

Response: As we have stated, we believe this policy clarification is necessary to avoid full Medicare payments, beyond the time required to train in one specialty. We note that hospitals will continue to be paid for residents in combined programs beyond their initial residency period, with the residents weighted at 0.5 FTE.

Comment: Several commenters were concerned that HCFA developed this policy, in part, to control Medicare's graduate medical education payments. These commenters noted that there are few of these programs in existence with only a small number of graduates who will be affected. Accordingly, Medicare savings resulting from this policy clarification will be small.

Response: This policy clarification is based on considerations concerning the appropriate application of the statute and does not arise solely from a goal of limiting payments. However, we acknowledge that Medicare's payment liabilities will be less under this policy than if hospitals were allowed to weight residents as 1.0 FTE throughout the entire training period in the combined program. We believe that combined training programs may have grown in recent years as physicians seek additional qualifications in a competitive job market. Our understanding is that there are more than 1,400 students in combined programs. Given that only a portion of these students are beyond the initial residency period under this clarification, we agree that any budgetary impact is small relative to the total number of residents participating in approved programs.

Comment: One commenter noted that osteopathic residency programs allow 4 years for internal medicine but that allopathic residency programs allow 3

years. This commenter suggested that if we modified the initial residency periods so that both were of the same duration, the 4-year combined residency could be accommodated.

Response: Allopathic and osteopathic specialty boards set different requirements for board certification. The first year of postgraduate osteopathic training consists of a rotating internship which is followed by subsequent specialty training. Most allopathic training programs do not require similar training. In the September 29, 1989 GME regulation published in the Federal Register (54 FR 40293), we stated that the osteopathic rotating internship, like the transitional year required by some allopathic medical residency programs, would not count as an additional year beyond initial board eligibility.

Comment: One commenter questioned the limitation on the number of years noted on the table for geriatric psychiatry. The listing of the initial residency periods permits an additional year for training in geriatric medicine as a subspecialty of internal medicine and family practice but not as a subspecialty of psychiatry. This commenter noted that there is a minimum requirement of 4 years of training in psychiatry and requested that the initial residency period be extended to 5 years for training in geriatric psychiatry. Another commenter noted that section 1886(h)(5)(F) of the Act provides that a 2-year geriatric residency or fellowship program is treated as part of the initial residency period, ''but shall not be counted against any limitation on the initial residency period.'' This commenter stated that the law clearly provides that geriatric psychiatry programs should be eligible for full funding under the special geriatric medical education provision described in the law. Other commenters noted that the Accreditation Council for Graduate Medical Education (ACGME) only accredited geriatric subspecialty programs in family and internal medicine when the 1989 regulations were published but now recognizes geriatric subspecialty programs in psychiatry.

Response: We agree that the initial residency period for geriatric psychiatry programs should be revised. When the September 29, 1989 regulation (54 FR 40286) was published, the ACGME was in the process of approving training programs in geriatrics as a subspecialty of internal medicine and family practice. At that time, we proposed to consider expanding the exception to the initial residency period limitation to fellowships in other programs when the appropriate national organizations establish criteria for approving these programs. Subsequently, the ACGME established criteria for accrediting 12-month programs in geriatric psychiatry, and the American Board of Psychiatry and Neurology recognizes applicants with the required training for certification in geriatric psychiatry. Accordingly, we are including geriatric psychiatry in the table above with an initial residency period of 5 years, which includes a 1-year exception to the 4-year initial residency period for psychiatry. We are also modifying the definition of ''approved geriatric program'' in § 413.86(b) to reflect that the ACGME is accrediting, and boards are recognizing, training in geriatric medicine in specialties other than internal medicine and family practice.

3. Statutory Provision Regarding Prohibition on Abortion-Related Discrimination in Training and Licensing of Physicians (§§ 412.105(g) and 413.86(b))

Congress recently enacted a statutory provision that prohibits certain abortion-related discrimination by the Federal Government and State and local governments. In section 515 of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 1996 (see section 101(d) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104–134), enacted April 26, 1996, Congress added a new section 245 to the Public Health Service Act to provide that:

''The Federal Government, and any State or local government that receives Federal financial assistance, may not subject any health care entity to discrimination on the basis that—

(1) the entity refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions;

(2) the entity refuses to make arrangements for any of the activities specified in paragraph (1); or

(3) the entity attends (or attended) a post-graduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.''

For purposes of section 245, the statute defines ''financial assistance'' to include ''governmental payments provided as reimbursement for carrying out health-related activities,'' and defines ''health care entity'' to include individual physicians, postgraduate physician training programs (which includes residency training programs), and participants in a program of training in the health professions.

The new section also addresses accreditation of postgraduate physician training programs. Specifically, the statute provides that:

''In determining whether to grant a legal status to a health care entity (including a license or certificate) or to provide such entity with financial assistance, services or other benefits, the Federal government, or any State or local government that receives Federal financial assistance, shall deem accredited any postgraduate physician training program that would be accredited but for the accrediting agency's reliance upon an accreditation standard that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether such accreditation standard provides exceptions or exemptions.''

The statute further requires that the government involved ''shall formulate such regulations or other mechanisms, or enter into such agreements with accrediting agencies, as are necessary to comply with this subsection.''

Under the terms of the statute, the provisions of section 245 shall not ''prevent any health care entity from voluntarily electing to be trained, to train, or to arrange for training in the performance of, to perform, or to make referrals for induced abortions.'' Similarly, the provisions of section 245 shall not ''prevent an accrediting agency or a Federal, State or local government from establishing standards of medical competency applicable only to those individuals who have voluntarily elected to perform abortions.''

In this document, we are making conforming changes to the regulations at § 412.105(g) and § 413.86(b) to reflect the accreditation provisions of section 245. These technical changes merely conform the regulations text to the express requirements of the statute, and do not involve an exercise of discretion by the agency.

E. Distribution of an ''Important Message from Medicare'' (§ 489.27)

Under § 489.27 of our provider agreement regulations, all hospitals that participate in Medicare (including those not paid under the prospective payment system) must agree to furnish each Medicare beneficiary with a notice, at or about the time of admission, that explains the patient's discharge rights. This statement, entitled ''An Important Message from Medicare,'' advises a beneficiary of his or her rights to be fully informed about decisions affecting

Medicare coverage or payment and about his or her appeal rights in response to any hospital's notice to the effect that Medicare will no longer cover the patient's care. The ''Important Message'' also advises the patient of what to do when he or she receives such a hospital statement and how to elicit more information.

In November 1993, the Medicare Technical Advisory Group (M–TAG) established the Beneficiary Protection and Documentation Issues Task Force. The task force consists of HCFA staff as well as representatives from health care industry organizations, beneficiary advocate groups, fiscal ntermediaries, and peer review organizations (PROs). The task force was charged with reviewing various issues that impact beneficiaries and the health care community, including how to improve the effectiveness of ''An Important Message from Medicare.''

We proposed to adopt a recommendation of this task force that would respond to numerous requests for clarification on the timing of the written notice of discharge rights that must be given to hospital inpatients. As noted above, existing § 489.27 specifies that a hospital must distribute the statement ''at or about the time of admission.'' We understand that for monitoring purposes some PROs have interpreted this requirement to mean ''within 24 hours preceding or following the admission.'' However, we agree with the task force's determination that the PRO's interpretation is unnecessarily narrow. We believe that during the first 24 hours of a patient's admission, the hospital is primarily concerned with ensuring appropriate treatment of the patient's illness or injury. Therefore, we proposed to change § 489.27 to specify that the hospital must provide timely notice during the course of the hospital stay.

For purposes of this requirement, we would consider the course of the hospital stay to begin when the hospital provides the individual with a package of information regarding scheduled preadmission testing and registration for a planned hospital admission. This would give hospitals more flexibility in meeting the requirement, as well as encourage the distribution of the ''Important Message'' at a time when the beneficiary is better able to receive and more likely to understand its contents. In complying with the requirement to provide timely notice during the course of the patient's hospital stay, the hospital must give the patient the ''Important Message'' far enough in advance of the hospital's written notice regarding continued stay to provide the beneficiary time to appeal the hospital's decision. Finally, ''timely notice'' would also include adherence to any State requirements on the provision of patient rights notices.

We received only one comment on this proposal.

Comment: One commenter agreed with the proposal to permit hospitals to provide timely notice during the course of the hospital stay. However, the commenter stated that the ''Important Message'' is currently ineffective in meeting its intended purpose, regardless of the timing, because people are too sick and frightened to comprehend the information at the point of hospitalization. The commenter suggested instead using mass mailings to Medicare beneficiaries when they are healthy and have no immediate plans to be hospitalized.

Response: While we agree that making this information available to the Medicare beneficiary prior to hospitalization may enhance comprehension, we believe that the ''Important Message'' may be ignored during a mass mailing because the information would not be considered needed at the time. Moreover, it is a statutory requirement that the ''Important Message'' be provided during an individual's hospitalization; therefore, we cannot accept the commenter's suggestion. Furthermore, in our proposal, while we did not intend to address the effectiveness or the content of the ''Important Message'' in this regulation, we recognize the need to review its contents. Therefore, an internal HCFA workgroup has begun the process to revise the ''Important Message,'' including further consideration of the recommendations for revision made by the Beneficiary Protection and Documentation Issues Task Force of the Medicare Technical Advisory Group (M–TAG). The goals of the Workgroup are to improve clarity for increased comprehension and to improve efficiency of its distribution to Medicare beneficiaries. Comments on the revision will be solicited from selected outside parties in the near future.

VI. Changes and Clarifications to the Prospective Payment System for Capital-Related Costs

A. Consistent Cost Finding During the Capital Transition Period (§ 412.302(d))

Section 412.302(d) requires that during the transition period to full prospective payment for capital-related costs, a hospital must follow consistent cost-finding methods for classifying and allocating capital-related costs. Specifically, the regulation requires that unless there is a change of ownership, a hospital must continue the same cost-finding methods for old capital costs, including its practices for direct assignment of costs and its cost-allocation bases, that were in effect in the hospital's last cost-reporting period before becoming subject to payment under the capital prospective payment transition system. A hospital may request a change in its cost-finding methods for new capital, provided that the request is made in a timely fashion as provided in the regulation, the hospital provides justification for the change, and the intermediary determines that the justification is reasonable.

It is important to note that, while the regulation does permit changes in cost-finding methods for new capital, such changes are only permitted where they do not involve any changes in cost-finding for old capital. In practice, this means that if a hospital claims any old capital, the intermediary cannot permit a change in any of the allocation bases on Worksheet B–1 of the cost report from the bases used in the last cost reporting period prior to the capital prospective payment system transition period. Otherwise, the consistency rule governing old capital cost-finding would be violated.

In response to concerns expressed by the hospital industry about the costs of the recordkeeping required under the cost-reporting rules, HCFA has developed new cost reporting instructions, which will be released later this year, that permit hospitals to voluntarily adopt a simplified cost allocation methodology. This methodology reduces the number of statistical bases that a hospital is required to maintain. Under the new instructions for HCFA Form 2552–96 (the cost report instructions for FY 1996 cost reporting periods), hospitals may request the simplified cost allocation methodology. However, hospitals that elect this methodology must employ a prescribed list of statistical bases with no deviations. Hospitals may not pick and choose among the prescribed statistics for the combination that is most advantageous. The election of the simplified method cannot be used to shift costs inappropriately. Furthermore, a hospital that elects the simplified methodology must continue to use it for at least 3 years, unless a change of ownership occurs. In the proposed rule (61 FR 27478), we proposed to add a new paragraph (d)(4) to § 412.302, to provide that hospitals may elect to adopt the simplified cost allocation

methodology, as will be provided in the instructions for HCFA Form 2552–96.

Comment: One commenter agreed with our proposal to revise § 412.302(d)(4) to allow for a simplified cost allocation methodology, but suggested that we make a technical change to existing § 412.302(d)(1) to reflect the availability of the simplified methodology option.

Response: We are adopting the commenter's recommended change to the regulations. Section 412.302(d)(1) will now read: ''For cost reporting periods beginning on or after October 1, 1991 and before October 1, 2001, the hospital must follow consistent cost finding methods for classifying and allocating capital-related costs, except as otherwise provided in paragraph (d)(4) of this section.''

Comment: In response to our proposal on the simplified cost allocation methodology, one commenter argued that the general capital consistency rule is flawed. The commenter stated that a provider should be able to request that the fiscal intermediary reassign capital costs from the acute care hospital portion of a facility to exempt areas of the facility if the provider is using the space differently than it was used during the capital base year, such as using the space as a skilled nursing facility or a rehabilitation unit.

Response: This comment concerns the underlying intent of the capital consistency rule itself rather than the subject of our May 31, 1995 proposed rule. In the August 30, 1991 final rule that implemented the capital prospective payment system (56 FR 43396), we explained the rationale for the capital consistency rule. We explained that the capital consistency rule is necessary: (1) to prevent cost shifting to outpatient departments through changes in cost finding methods, and (2) to provide consistency with the determination of the hospital-specific rate used in the base year. For these reasons, it is important that the hospital continue the same bases of cost allocation for old capital throughout the transition.

Throughout the transition to a fully prospective payment system for capital, the provider must continue to allocate any space that was part of the acute care hospital in the base year in the same way. However, if the provider opens a new section of the facility as a skilled nursing facility or excluded unit, capital costs in those areas could be allocated directly to those areas.

B. Possible Adjustments to the Capital Prospective Payment System Federal Rate and Hospital-Specific Rates (§§ 412.308(b) and 412.328)

In the proposed and final rules for FY 1996 (60 FR 29238–29239 and 60 FR 45830–45831), we discussed the effects of the expiration of the statutory budget neutrality provision on rates and aggregate payments under the capital prospective payment system. Under the budget neutrality provision, we set the capital-prospective payment system rates during FY 1992 through FY 1995 so that payments were projected to equal 90 percent of Medicare payments that would have been made on a reasonable cost basis for each fiscal year. As a result of the provision's expiration in FY 1996, the capital-prospective payment system rates and payments under the transition system increased significantly. The FY 1996 Federal rate is 22.59 percent higher than the FY 1995 Federal rate. We now estimate that aggregate capital payments will increase 27.5 percent in FY 1996 relative to FY 1995, and that payments will exceed capital costs by 8.8 percent in FY 1996. Under current law and regulations, we estimate that aggregate payments will further increase by 6.8 percent in FY 1997, for an increase of 36.1 percent over 2 years. We also estimate that payments will exceed capital costs by 7.5 percent in FY 1997.

In the May 31, 1996 proposed rule, we stated that we continue to believe that such large increases in capital payments are neither necessary nor warranted. We identified several possible approaches for establishing a more appropriate level for the rates and discussed the options we considered in developing the proposed rule (61 FR 27479). These options included freezing the inflation updates for the rates in FY 1997 or making downward adjustments in the base rates, as discussed below:

- Reduce the standard Federal rate by 7.38 percent and the hospital-specific rates by 9.48 percent to reflect revised data on base year costs used to determine the rates.
- Implement the provision contained in the Administration's budget plan to reduce the base Federal and hospital-specific rates by 15.7 percent.

As discussed in detail in the proposed rule, the rationale for reducing the base rate derives from an analysis of current data compared to data on which the rate was originally based. Under § 412.308, HCFA determined the standard Federal rate, which is used to determine the Federal rate for each fiscal year, on the basis of an estimate of the FY 1992 national average Medicare capital cost per discharge. The FY 1992 national average Medicare capital cost per discharge was estimated by updating the FY 1989 national average Medicare capital cost per discharge by the estimated increase in Medicare inpatient capital cost per discharge.

Section 13501(a)(3) of Public Law 103–66 amended section 1886(g)(1)(A) of the Social Security Act to require that, for discharges occurring after September 30, 1993, the unadjusted standard Federal rate be reduced by 7.4 percent. The purpose of that reduction was to reflect revised inflation estimates as of May 1993, for the increases in Medicare capital costs per discharge during FY 1989 through FY 1992. We now have extensive cost report data for FY 1992 that shows an audit-adjusted FY 1992 Medicare inpatient capital cost per discharge that is an additional 7.38 percent lower that the estimate on which the Federal rate is currently based. Accordingly, the rate could be reduced to reflect accurate FY 1992 capital cost per discharge data.

Under § 412.328, HCFA determined the FY 1992 hospital-specific rate by using a process similar to the process for determining the FY 1992 Federal rate. The intermediary determined each hospital's allowable Medicare inpatient capital cost per discharge for the hospital's latest cost reporting period ending on or before December 31, 1990. The intermediary then updated each hospital's FY 1990 allowable Medicare capital cost per discharge to FY 1992 based on the estimated increase in Medicare inpatient capital cost per case. As with the Federal rate updates, current data demonstrate that the estimates used to update the hospital specific rates from FY 1990 to FY 1992 were overstated. In order to adjust the hospital-specific rate to reflect actual FY 1992 data, the rates must be reduced by 9.48 percent.

The reduction reflected in the President's budget plan is based on a different consideration. That reduction would build the budget neutrality adjustment for FY 1995 (0.8432, or −15.68 percent) permanently into the base rates, effectively using the FY 1995 base payment rate as the base for future years. The actual payment rates for future years would then be determined by applying the analytical update framework that we adopted in the final rule for FY 1996 (60 FR 45815–45829). Our last analysis (60 FR 45826–45829) suggested that the estimated FY 1992 capital costs used to set the Federal and hospital-specific capital rates exceeded by approximately 28 percent the level that could be accounted for by known factors. This unaccounted for difference

in the rates justifies a 15.7 percent reduction to the rates.

We seriously considered proposing one of these options in the proposed rule, and we invited public comment on their merits and on the advisability of implementing one or the other in the final rule, in the absence of legislative action.

We received many comments on our discussion of possible adjustments to the capital Federal rate, and these comments and our responses are presented below. Although we continue to believe that any of these options is justified on the basis of current data and analysis, we are not implementing any freeze or reduction to the capital Federal rates in this final rule. The President's budget bill includes numerous proposals to reform the Medicare program, including a reduction to the capital prospective payment rate. At this time, we believe it would be more appropriate to adopt a change to the rate in the context of more global changes to the Medicare program than to implement this one specific provision of the President's budget through regulation. Therefore, we are not implementing any of the possible reductions to the capital Federal rate that were discussed in the proposed rule but instead are updating the capital rates in accordance with the capital update framework, as discussed in section III of the addendum to this final rule.

In general, commenters opposed freezing or reducing the capital Federal rate as suggested in the proposed rule. Commenters cited various reasons why the suggested changes were inappropriate or unnecessary. One commenter, ProPAC, agreed that continued significant increases in capital payments are unjustified and supported reductions to the capital rate. ProPAC suggested several options for our consideration, such as using the FY 1995 rates as the base for future years, or rebasing the FY 1992 capital payment rates and updating them to the current year using an analytic framework. As explained earlier, although we agree with ProPAC that a reduction in the rates is warranted, we have decided not to proceed with reducing the rates by regulation at this time. We discuss the comments on the possible changes in more detail below.

Comment: Some commenters contended that it would be illegal for HCFA to implement any of the identified reductions to the rates (including an efficiency adjustment) because HCFA does not have the authority to rebase the capital payment rate. Two commenters characterized the rate reduction options as thinly disguised attempts to rebase hospitals' base year capital costs, and asserted that Congress has not given the Secretary of Health and Human Services the authority to rebase hospital capital costs. One commenter stated that the rate revisions discussed in the proposed rule would violate a fundamental principle of prospective payment: that the system provide certain and predictable payment rates. Another commenter opposed any reduction in the capital Federal rate undertaken without legislative direction.

Finally, one commenter noted that when Congress specified the 7.4 percent reduction in the Federal rate as part of OBRA 93, Congress referenced the capital Federal rate ''as described in § 412.308(c).'' That regulation describes the methodology for defining the Federal rate. The commenter believes that the regulation does not contemplate the substitution of actual cost data for periods in which estimated data were used initially. The commenter believes that because Congress cited this section of the regulations, it implicitly approved the continued use of estimated data for setting the rates rather than the use of actual data.

Response: Section 1886(g) of the Act states that ''the Secretary shall, for hospital cost reporting periods beginning on or after October 1, 1991, provide for payments for [capital-related] costs in accordance with a prospective payment system established by the Secretary.'' The statute gives the Secretary wide discretion in determining the particular features of the prospective payment system for capital-related costs, including the appropriate level of payment rates.

We believe that, consistent with this broad authority, it is appropriate to make prospective adjustments to the capital rates. We believe that any rate revision implemented prospectively would satisfy the principle of certainty and predictability under a prospective system. We have never contemplated a retroactive adjustment to payment rates used in prior years.

The provision of OBRA 93 cited by the commenter does not indicate that we cannot make other adjustments to the capital Federal rate in future years. Section 412.308(c) describes the process for determining the Federal rate by adjusting the standard Federal rate by an update factor each year. We believe that Congress cited this section solely to identify the rate to which we applied the 7.4 percent reduction.

Since the inception of the capital prospective payment system, rates have been set on the basis of FY 1992 capital costs. Since we set initially set rates before FY 1992 started, we necessarily had to project capital costs for FY 1992. We used FY 1989 costs as the basis for projecting FY 1992 costs because they were the latest cost report data available at that time. (Even the FY 1989 data required an estimated adjustment for the effect of audits not yet performed.) We applied estimated adjustment factors to the FY 1989 data to derive estimated FY 1992 capital costs. We used this estimated FY 1992 cost level to set rates beginning in FY 1992.

When Congress legislated that the unadjusted standard Federal rate be reduced by 7.4 percent in 1993, the size of the adjustment was based on more recent data on FY 1992 costs available at that time. The latest available data now indicate an additional 7.36 percent reduction is appropriate. Again, although we are not implementing this adjustment, we believe that we have the authority to do so and that it would represent a logical extension of our policy of basing the capital Federal rate on FY 1992 capital costs.

Comment: Several commenters stated that the discussion in the proposed rule of the possibility of implementing reductions to the capital Federal rate through the final rule did not constitute sufficient notice to the public of proposed regulatory changes. The commenters asserted that before implementing a reduction in the capital payment rates, HCFA was obligated to provide ''formal'' public notice and time for the public to respond.

Response: As noted above, we do not intend to implement any reduction to the capital Federal rate at this time. However, we believe that the discussion in the proposed rule would have satisfied the requirements of the Administrative Procedure Act by (1) describing in some detail three potential options for cutting the capital rate, (2) informing the public that we might implement one of these options if Congress and the Administration did not act to cut the rate, and (3) soliciting public comment on the possible options. We stated that it was our intention to consider all of the options in light of the comments received. Moreover, in the FY 1996 proposed rule (60 FR 29238), we discussed in some detail and invited comments on two options for adjusting the Federal and hospital specific rate, to account for the overestimation of the FY 1992 Medicare inpatient capital cost per discharge, and to compensate for the effects of the expiration of budget neutrality. Finally, since FY 1992 we have printed seven discussions of the efficiency issue, and providers have long known that we

might make an adjustment in the rate to account for possible inefficiency.

Comment: Some commenters stated that we should not adjust the Federal rate to reflect the actual level of FY 1992 capital spending because the FY 1992 level is lower than was projected. The commenters asserted that FY 1992 capital cost levels are lower than projected because hospitals responded in FY 1992 to the incentives of the prospective payment system and modified their capital spending behavior. Some commenters argued that hospitals responded to the possible implementation of a capital prospective payment system even prior to FY 1992. These commenters asserted that in order to get a true sense of the impact of the capital prospective payment system on hospital capital expenditure behavior, one must look further back to when hospitals believed implementation of such a system was imminent.

One commenter explained that one reason actual increases in capital costs in FY 1992 were less than projected was because lengthy certificate of need (CON) approval processes prevented hospitals from beginning building projects as planned. The commenter also stated that if rates were reduced, hospitals in States with strict CON processes should not be subjected to the same rate reductions as hospitals in States without such processes. The commenter asserted that facilities in the commenter's State are undercapitalized relative to facilities in the rest of the country.

Finally, some commenters believe that the overestimation of FY 1992 capital costs (discussed above) stems not from a forecast error in the FY 1992 capital cost per case but from a change in the treatment of allowable interest that was implemented in the first capital prospective payment system final rule published on August 30, 1991. Thus, they believe the overestimation resulted from a change in the rules regarding capital and that the proposed reduction based on a revised FY 1992 capital cost data is not justified.

Response: Since the inception of the capital prospective payment system, we have based capital rates on FY 1992 cost levels. We believe it is appropriate for the rate to reflect actual FY 1992 capital spending, even if hospitals had modified capital spending behavior before the current system was implemented.

We agree that the prospective payment system provides an incentive for hospitals to modify their capital spending behavior, and that it is likely that hospitals have done so. However, we do not believe that the magnitude of the difference between the projection for FY 1992 capital costs and the latest measurement of FY 1992 capital costs can be completely explained by changes in capital spending behavior caused by the incentives of the prospective payment system. First, most of the capital costs in FY 1992 would be attributable to capital acquired before FY 1992 that was still being depreciated. Second, most capital acquired in FY 1992 would have been planned and committed prior to FY 1992. Thus, only a small proportion of FY 1992 capital spending would have been impacted by the implementation of the capital prospective payment system. Consequently, the implementation of the prospective payment system would have had little, if any, effect on capital growth in FY 1992. Moreover, the anticipated onset of the prospective payment system for capital-related costs may have encouraged some hospitals to limit spending, but we are aware of several situations in which hospitals actually hastened building projects in order to qualify for possible old capital protections.

We recognize that CON processes may well delay hospital building projects. However, the commenter does not explain why these effects would have been greater in FY 1992 than in previous years. Our data on the cumulative percentage change in capital-related cost per case, which we presented in the September 1, 1995 final rule (60 FR 45828), demonstrate that the growth of capital costs has slowed considerably in recent years, from a high of 19.9 percent per year in 1986 to a low of 2.9 percent per year in 1992. The most recent FY 1992 HCRIS data available show that hospitals' actual FY 1992 capital costs per discharge are an additional 7.36 percent lower than the estimate on which the capital Federal rate is currently based (taking into consideration the adjustment mandated by Public Law 103–66). We believe it is appropriate for the rate to reflect actual costs.

In designing the prospective payment system for capital costs, we recognized the unique position of hospitals in States with CON programs by developing special rules with regard to obligated capital. Those special rules (see § 412.302(c)(2), ''Lengthy certificate-of-need process'') are designed to ensure that hospitals in States with CON programs receive equitable treatment in terms of recognition ''old capital costs.'' Essentially, this provision permits certain obligated capital costs in CON States to be treated in the same manner as actual capital expenditures in non-CON States. We believe these provisions adequately address the concerns of hospitals in states with CON processes.

Finally, we do not agree that the August 30, 1991 final rule implemented any change in the treatment of allowable interest. Section 412.302(b)(2)(v), which defines old capital costs for purposes of the prospective payment system for capital-related costs, states that ''Investment income, excluding income from funded depreciation accounts, is used to reduce old capital interest expense based on the ratio of total old capital interest expense to *total allowable interest expense* in each cost reporting period. ''(Emphasis added.) The commenter apparently believes that this statement reflects a change in the treatment of allowable interest because § 413.130(g)(2), which defines capital-related interest expense net of investment income (under our reasonable cost reimbursement rules), provides that in determining the proportion of investment income to be offset, the ratio is to be based on capital-related interest to total interest. However, § 413.130(g) derives from § 413.130(a)(7), and § 413.130(a)(7) addresses only ''allowable interest expense'' (that is, interest expense as determined under § 413.153), so the ratio expressed in § 413.130(g) is reasonably interpreted to refer to ''total *allowable* interest expense.''

Comment: Commenters also addressed the possible adjustment based in part on an efficiency analysis. A few commenters stated that higher than expected capital costs per case for FY 1992 were not the result of inefficient use of capital resources, but rather a reaction to pent-up demand in States that had restrictive certificate of need (CON) policies. Another commenter argued that no overexpansion of health facilities has occurred in the commenter's State, because it is highly regulated, and that the average age of hospitals' physical plants in the State is among the oldest in the country. This commenter too believes that it is inappropriate to apply a rate reduction equally in all States.

Some commenters agreed with our statement that economic theory would suggest incentives for the overuse of capital during a period in which capital was paid on a cost basis while operating costs were paid on the basis of a prospective rate. However, the commenters contended that economic theory would also suggest that, if hospitals over purchased capital, they conversely had to under employ operating inputs. Thus, the commenters believe that reductions to the capital Federal rate to account for the

inefficient overuse of capital should be matched by increases in the operating rates to account for inefficient underutilization of operating inputs.

Finally, one commenter suggested that we obtain an independent evaluation of HCFA's capital model and the factors that account for the known increase in costs per case, such as the inflation in capital input prices, quality enhancing intensity increases, and real case-mix growth, as well as the factors that may be responsible for the unexplained growth in capital costs per case.

Response: As noted in our September 1, 1995 final rule in response to a similar comment (60 FR 45829), we agree that the conjunction of rate-based payment for operating costs and cost-based payment for capital costs encouraged hospitals to substitute capital inputs for labor and other operating inputs. However, we do not agree that an inefficiently *high* level of capital inputs under those conditions necessarily implies an inefficiently *low* level of operating inputs. Rather, the conjunction of rate-based payment for operating costs and cost-based payment for capital could also lead to the substitution of inefficient capital inputs for inefficient operating inputs. Indeed, our previous analysis of efficient operating costs for hospitals during FY 1985 through FY 1991 (57 FR 40014) indicates that operating prospective payments during that period were sufficient for the efficient and cost-effective delivery of quality care. In conjunction with the analysis of capital spending during FY 1985 to FY 1992, these results suggest that hospitals may indeed have responded to the existing incentives by substituting an inefficiently high level of capital inputs for inefficient operating inputs. Under these circumstances, it would not be appropriate to increase operating rates in conjunction with a decrease in capital rates. Decreased capital rates, along with the existing level of operating rates, would provide the appropriate incentives for hospitals to achieve efficient levels of both capital and operating inputs.

As we stated in our September 1, 1995 final rule in response to a similar comment (60 FR 45828), our analysis suggests a significant measure of inefficiency in capital costs, and was based on national figures. Therefore, since we are evaluating an efficiency adjustment in the national Federal rate, our analysis does not consider regional differences, such as the existence of CON requirements in some States. The national Federal rate is based on an average; thus, we recognize that some States will have higher costs than the average and other States will have lower costs. We note, however, that although we did not make adjustments for CON policies for purposes of this particular analysis, § 412.302(c)(2) does provide for differential treatment of hospitals in CON States in terms of the recognition of obligated capital (as discussed in more detail above).

In response to the commenter's suggestion that a group of independent economists should evaluate the capital model and our theory about the possible cause of the unexplained growth in capital costs per case, we note that ProPAC has also analyzed the current capital rate and has discussed possible reductions to the capital rate, implicitly endorsing a reduction to the capital rate in the order of magnitude that we discussed in the proposed rule.

Comment: A number of commenters contended that the reductions discussed in the proposed rule would jeopardize the ability of many hospitals to meet current obligations and reduce their ability to meet future capital needs.

Response: Our data indicate that there is ample room to cut the capital rate without a major adverse affect on facilities in any region. Before the implementation of the prospective payment system for capital-related costs, facilities were paid only 85 percent of their capital costs. In the proposed rule, we estimated that payments would exceed capital costs by 9.6 percent in FY 1996 (61 FR 27479). We now estimate that capital payments will exceed capital costs by 8.8 percent in FY 1996 and 7.5 percent in FY 1997.

C. Possible Adjustment to Capital Prospective Payment System Minimum Payment Levels

Section 412.348(b) of the regulations provides that, during the capital prospective payment system transition period, a hospital may receive an additional payment under an exceptions process if its total inpatient capital-related payments under its payment methodology (that is, fully prospective or hold-harmless) are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment levels are established by class of hospitals under § 412.348(c). The minimum payment levels for portions of cost reporting periods occurring in FY 1996 are:

- Sole community hospitals (located in either an urban or rural area), 90 percent;
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent and urban hospitals with at least 100 beds that qualify for disproportionate share payments under § 412.106(c)(2), 80 percent; and,
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments for previous cost reporting periods exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

Section 412.348(h) further provides that total estimated exceptions payments under the exceptions process may not exceed 10 percent of the total estimated capital prospective payments (exclusive of hold-harmless payments for old capital) for the same fiscal year. In the final rule implementing the prospective payment system for capital-related costs we stated that the minimum payment levels in subsequent transition years would be revised, if necessary, to keep the projected percentage of payments under the exceptions process at no more than 10 percent of capital prospective payments.

In section III of the addendum to the proposed rule (61 FR 27499), we discussed the factors and adjustments used to develop the FY 1997 Federal and hospital-specific rates. In particular, we discussed the FY 1997 exceptions payment reduction factor. This factor adjusts the annual payment rates for the estimated percentage of additional payments for exceptions in FY 1997. In the proposed rule, we estimated that exceptions would equal 6.07 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We indicated that it might be necessary to implement adjustments to the minimum payment levels in the final rule and that it will almost certainly be necessary to adjust the minimum payment levels for FY 1998. We therefore provided public notification that adjustments to the minimum payment levels were imminent, discussed our ideas on the most appropriate method for adjusting the minimum payment levels, and solicited public comment.

We stated that, when it does become necessary to adjust the minimum payment levels, we intended to adjust each of the existing levels (that is, 90 percent for sole community hospitals, 80 percent for large urban DSH hospitals, and 70 percent for all other

hospitals) by 5 percentage point increments until estimated exceptions payments are within the 10 percent limit.

Current estimates indicate that we will not reach the 10 percent exception limit in FY 1997. Therefore, we are not making adjustments to the minimum payment levels at this time; the minimum payment levels for exception payments will remain at the current levels.

We received several comments regarding the necessity and methodology of adjustments to the minimum payment levels.

Comment: Some commenters objected to the proposed method for handling necessary reductions to the minimum payment levels. One commenter suggested that we develop a more sophisticated methodology that would allow more refined adjustment of the minimum payment levels. Another commenter suggested a 1 or 2 percent reduction increment, rather than the proposed 5 percent increment.

Response: As stated above, in this final rule the minimum payment levels for exception payments will remain at the current levels, since our current forecasts indicate that we will not reach the 10 percent limit in FY 1997. All comments received on this issue will be taken under advisement and considered at such time as it becomes necessary to make such an adjustment.

Comment: Some commenters believe that HCFA's capital acquisition model (see appendix B to this final rule for a detailed discussion) projects excessive growth in exception payments. These commenters objected to any reduction in the capital minimum payment levels based on projected rapid growth in exceptions and requested further explanation. The commenters further stated that they could not understand why exception payments would be so large when average payments exceed costs.

Response: Since payments under the capital prospective payment system are based on averages, not on an individual hospital's costs, some hospitals may receive payments exceeding their costs, while other hospitals may receive payments less than their costs. Even if aggregate payments exceed aggregate costs, some hospitals may have costs so much higher than payments that they qualify for large exceptions payments.

It is these large exceptions payments that are driving the aggregate exception payments toward the 10 percent ceiling on exception payments. We have reviewed the cost reports for the first 3 years under the capital prospective payment system. The number of hospitals receiving exceptions payments and the aggregate amount paid for exceptions have increased each year. We expect this trend to continue throughout the transition period, as some hospitals' payments deviate even more from their actual costs. Our model is consistent with these findings. The model projects, as expected, that exceptions payments will continue to grow.

''Low cost'' hospitals are paid a blend of their hospital-specific rate, and a higher Federal rate. ''High cost'' hospitals are paid 85 percent of their old capital plus their ratio of new capital to total capital applied to the Federal rate. In both cases, the capital the hospitals had at the time the capital prospective payment system was implemented is addressed by the standard payments.

Capital prospective payment rates for FY 1992 were designed to adequately address capital costs that existed at the time the prospective payment system began. Since then, hospitals have acquired additional capital, with some hospitals acquiring more than others. With each passing year, more additional capital is accumulated. In some cases, this additional capital is large, and the affected hospitals' capital costs greatly exceed their standard payments. Exceptions payments mitigate the financial impact on these hospitals.

High cost hospitals are more likely to qualify for exceptions payments. Their old capital costs are encompassed in the hold harmless payments, while their new capital costs are reimbursed at a fraction of the Federal rate. If their new capital costs are high, these high cost hospitals will need the full benefit of the exceptions process. Since high cost hospitals will acquire more additional capital over time, more hospitals will qualify for exceptions payments. In fact, high cost hospitals showed rapid growth in exceptions in the first three years under the capital prospective payment system. We expect this rapid growth to continue.

Comment: Regarding minimum payment levels, one commenter suggested we reconcile exceptions payments retrospectively and recoup any overpayments on a pro rata basis by reducing future payments to hospitals. The commenter recommends reductions in subsequent Medicare payments to hospitals.

Response: Section 412.348(d) states that ''Total estimated payments under the exceptions process may not exceed 10 percent of the total estimated capital prospective payments (exclusive of hold-harmless payments for old capital) *for the same fiscal year.*'' (Emphasis added.) We believe reconciling actual exceptions payments with estimated exceptions payments on a retroactive basis would fundamentally undermine the prospectivity of the system. Moreover, recouping ''overpayments'' on a retroactive basis may be potentially unfair to individual hospitals. An individual hospital that qualifies for an exception payment in one year may not also qualify for an exception in the later year in which a ''retroactive'' exception payment is to be made. Hospitals would not be able to predict the effects of retroactive adjustments to supposedly prospective payment rates.

VII. Changes for Hospitals and Units Excluded From the Prospective Payment Systems

Application of Ceiling in Calculating Payment for Hospital Inpatient Operating Costs (§ 413.40 (d) and (g))

Section 1886(b)(1)(B) of the Act provides for an additional payment to a hospital excluded from the prospective payment system when the hospital's reasonable operating costs exceed its target amount. The additional payment is based on the lesser of 50 percent of the amount by which the operating costs exceed the target amount, or 10 percent of the target amount. The Medicare statute further provides that this comparison is made ''after any exceptions or adjustments are made to such target amount for any cost reporting period.'' The regulations, at 42 CFR § 413.40(d)(3), state that the total payment to the hospital for inpatient operating costs (including the additional payment described above) is based on the lesser of the following: the ceiling (target amount multiplied by the number of Medicare discharges) plus 50 percent of the allowable net inpatient operating costs in excess of the ceiling, or 110 percent of the ceiling. However, the regulations do not explicitly include the additional statutory requirement regarding the effect of exceptions or adjustments.

As discussed in the proposed rule (61 FR 27481), we understand that there are questions about the calculation of the additional payment under the regulations, which require comparison of two amounts: the ''ceiling'' plus 50 percent of the difference between allowable costs and the ceiling, and 110 percent of the ''ceiling.'' Specifically, where a hospital has received an adjustment to the target amount under § 413.40(g), there has been confusion as to whether the ''ceiling'' used for purposes of calculating the additional payment under § 413.40(d) is the unadjusted ceiling (the amount determined without consideration of

any adjustments granted to the hospital) or the adjusted ceiling.

To address any confusion about these issues, we proposed to revise § 413.40(d)(3) to indicate specifically that calculation of payments for hospital inpatient operating costs under that provision reflects the adjusted ceiling amount (the amount determined after an adjustment under § 413.40(g)). This would apply to all adjustments, including adjustments based on a longer average length of stay in the hospital's rate year as compared to the base year and adjustments for increased routine services.

We received only two comments on this proposal. Both commenters supported the proposal, and we will adopt as final the proposed changes to the regulations at § 413.40(d)(3).

VIII. ProPAC Recommendations

As required by law, we reviewed the March 1, 1996 report submitted by ProPAC to Congress and gave its recommendations careful consideration in conjunction with the proposals set forth in the proposed rule. We also responded to the individual recommendations in the proposed rule (61 FR 27482). The comments we received on the treatment of the ProPAC recommendations are set forth below along with our responses to those comments. However, if we received no comments from the public concerning a ProPAC recommendation, we have not repeated the recommendation and response in the discussion below. The update factors for inpatient operating costs and the update factor for hospitals excluded from the prospective payment system and distinct-part units (ProPAC recommendations 10 and 12, respectively) are discussed in Appendix E to this final rule. Capital payment rates (recommendation 11) are discussed in section VI of this final rule. Disproportionate share hospitals (recommendations 17 and 18) are discussed in section V of this final rule. The remaining recommendations on which we received comments are discussed below.

A. Discharges From Hospitals to Other Facilities (Recommendation 19)

Recommendation: Medicare payments should be modified to account for the shift in services from acute to postacute settings. Broadening the definition of transfer cases, however, is not an appropriate approach.

Response in the Proposed Rule: In both the September 1, 1994 and September 1, 1995 final rules, we expressed our concern that the current trend of declining average lengths of stay as hospitals discharge Medicare patients into alternative health care settings (other than acute care prospective payment hospitals) in less time may result in a misalignment of payments and costs under our existing payment systems (59 FR 45362; 60 FR 29221). In particular, we expressed concern over the potential for hospitals paid under the prospective payment system to shift costs (for which they are compensated through the DRG payments) to alternative settings, which are in turn paid on a cost basis. Although we solicited comments on possible solutions to this problem, we did not propose any change in policy.

The President's FY 1997 budget includes a proposal to redefine discharges from acute care hospitals to excluded hospitals and units and skilled nursing facilities as transfers for payment purposes. Currently, for cases transferred from one acute care hospital paid under the prospective payment system to another like hospital, the sending hospital is paid a per diem rate instead of the full DRG amount. For cases transferred to an excluded hospital or unit or to a skilled nursing facility (as well as cases discharged home or home with home health care), hospitals receive the full DRG payment amount, regardless of the length of stay in the hospital. Under the per diem transfer payment methodology, hospitals receive a per diem amount (doubled for the first day of the stay) until the full DRG amount is reached. Therefore, under the President's budget proposal, hospitals transferring patients to excluded facilities or skilled nursing facilities prior to the geometric mean length of stay for the DRG, minus one day (to account for the double per diem on the first day), would receive less than the full DRG amount for that case.

The basis for ProPAC's opposition to this proposal is that it ''* * * thinks this policy would discourage the use of postacute providers. Moreover, it could result in longer inpatient stays, which may not be desirable or cost effective in the long run.'' We acknowledge that the change in the definition of a transfer is not the ultimate solution to this health care trend. In response to immediate concerns about overpaying hospitals for the reduced services they are providing and the rate of increase in expenditures for postacute care services, however, we believe this is an appropriate interim measure while we continue to explore long-term policy alternatives that will better integrate our payment systems for care provided to Medicare beneficiaries across the acute and postacute care settings.

Comment: We received several comments on this response. ProPAC repeated its concern that redefining transfers may not be the right approach, indicating that ''(m)ore needs to be known about the relationships among these services before implementing a policy that assumes that hospitals are being overpaid for cases who use post-acute care.'' Two other commenters expressed their objections to the redefinition of transfers from acute care hospitals. Generally, both of these commenters agreed with ProPAC's assessment that this would lead to longer inpatient stays and discourage the use of postacute care. Also, both commenters objected to ProPAC's suggestion that HCFA bundle acute and postacute care payments. Finally, one commenter recommended that ''the total Medicare funding for hospitals be reduced to recognize the shift of patient days away from the hospital setting.''

Response: We agree with ProPAC that a better understanding of this phenomenon is needed, and we are well aware of the improved efficiency claims made by those who advocate even greater use of postacute care. However, while we continue to explore potential refinements to reflect the shift in services from acute to postacute settings, we believe it is appropriate to concurrently explore interim measures for responding to the undisputed trends showing continuing declining lengths of hospital inpatient stays and increasing postacute care utilization, particularly for certain DRGs. The present overlaps between our acute and postacute payment methodologies demand immediate attention, given our responsibility for preserving the Medicare Trust Fund.

We also understand the commenters' concerns about the transfer redefinition. In evaluating any such interim measures two fundamental questions need to be answered: Will this approach protect beneficiaries' access to quality, effective health care and will it adequately compensate the providers of that care for their costs? To the extent that increasing utilization of postacute care allows hospitals to release patients earlier, redefining transfers would better match payments with costs, as well as eliminate some of the potential incentive for premature discharges.

With regard to the comments we received about ProPAC's suggestion that bundling might be a potential alternative, we intend to continue to evaluate all potential payment approaches. For example, implementing an offset to the hospital inpatient standardized amounts to reflect cost

shifting is another approach under examination.

B. Prospective Payment for Postacute Care (Recommendation 20)

Recommendation: Prospective payment systems should be implemented for all postacute services. The payment method for each service should be consistent across delivery sites. The Secretary should explore methods to control volume of postacute service use, such as bundling services for a single payment.

Response in the Proposed Rule: We agree that HCFA should develop prospective payment systems for all postacute services, and we have made significant progress in this area. As we discuss in our responses to Recommendations 22 and 23, we have developed detailed implementation plans for interim prospective payment systems for skilled nursing facilities (SNFs) and home health agencies (HHAs) that do not require patient classification systems. Execution of these plans will, of course, require legislative action.

Beyond our interim plan, we have developed a strategy for developing a full-fledged prospective payment system for SNFs. In the absence of legislation, we have been pursuing data that could be used to support a case-mix prospective payment system through our Multi-State Case Mix Demonstration Project. This demonstration project, now in its operational phase, is collecting data on patient case mix using a modified version of the minimum data set, the assessment tool SNFs use in developing patient care plans. Through the course of the demonstration, we hope to gather data on the full range of SNF resources needed for each resource utilization group. We are proceeding to require by regulation that all facilities provide resident assessment data. Consolidated billing of SNF services (that is, requiring SNFs to bill for all services furnished to their patients) and uniform coding of SNF services are also prerequisites for a SNF prospective payment system. Consolidated billing and uniform coding are needed to determine the appropriate payment for the ancillary services component of SNF services and to provide useful data on the range of services SNFs furnish.

We have also been working on a strategy to develop a full-fledged prospective payment system for HHAs. We have funded a project to develop outcome measures for home care that can be used for an outcome-based quality improvement system. These measures will be based largely on a core standard assessment data set that includes items measuring sociodemographic, environmental, support system, health status, functional status, and health service utilization characteristics of patients. Many of the data items included in the core standard assessment data set are not only essential for assessing patient outcomes but are also critical for designing an adequate case-mix system for payment purposes. To test and refine Medicare's approach to outcome based quality improvement for home health care, HCFA is currently sponsoring the Medicare Quality Assurance and Improvement Demonstration, which uses this instrument. We plan to publish regulations identifying the required data elements and addressing the collection of information from the core standard assessment data set. We also plan to sponsor additional research that would lead to an appropriate case mix adjuster that can be used in a national prospective payment system.

In addition to the developmental work underway on SNF and HHA prospective payment systems, we have begun work on the preliminary steps necessary for the development of a prospective payment system for hospital inpatient rehabilitation services. The biggest obstacle we have faced in this effort is the lack of appropriate patient classification systems for the types of patients treated by rehabilitation hospitals. We have recently contracted with the Rand Corporation to evaluate a rehabilitation coding system known as the Functional Independence Measure (FIM), which is a scoring system that measures the degree of functional independence of rehabilitation patients. These researchers will also evaluate the patient classification system known as function related groups (FRGs), which are based on the FIM, as a possible basis for a Medicare prospective payment system for rehabilitation services. If the research confirms functional status measures can be used to develop an appropriate patient classification system, we will begin the additional work necessary to put a prospective payment system into place. This would require collecting patient assessment data from Medicare rehabilitation hospitals and units and developing all the necessary components of the new payment system. It will take at least 3 years to design and implement such a system. To facilitate implementation, we are considering initiating collection of patient assessment data in advance of legislation establishing a prospective payment system. We will be seeking public input on whether to proceed with a requirement for patient assessment data in the absence of legislation and what data elements should be included in a core data set that could be used not only as the basis for a patient classification system but also to assess outcomes.

We recognize that there are advantages to a coordinated approach in developing prospective payment systems for postacute services and we will be evaluating how to make them as consistent as possible. We also recognize that the demand for implementation of prospective payment systems for postacute services is sufficiently immediate so that there may not be time for the broad study, data collection, and research needed to develop a ''unified'' system using similar resource grouping principles. Most of the current legislative proposals, including the Administration's proposals, would require implementation dates within the next several years. It may not be feasible to develop a ''unified'' system within the time frames contemplated by the current legislative proposals. Trade-offs may be required between continuation of the interim payment systems versus the prospective payment systems on one hand, and the separate versus ''unified'' prospective payment systems on the other hand.

Comment: One commenter strongly supported adoption of a prospective payment system for inpatient rehabilitation and believes that the RAND research project will likely produce such a system. The commenter noted that we are considering initiating the collection of patient assessment data in advance of legislation establishing a prospective payment system and urged us to begin collecting the data at the earliest possible date. The commenter believes that imposition of a reporting requirement based on the FIM should not be a great burden on the industry since rehabilitation hospitals and units are already using the FIM or similar patient evaluation measures. Systematizing collection of such data would expedite introduction of a prospective payment system based on FRGs and would considerably reduce the 3-year minimum implementation period suggested in HCFA's response in the proposed rule. The commenter also urged, as a means toward developing a payment system that is consistent across payment sites based on patient characteristics, that HCFA expand the RAND research project to determine the feasibility of using an FRG-based payment system for rehabilitation patients in skilled nursing facilities.

Response: Since the collection of patient assessment data in advance of legislation establishing a prospective payment system would expedite implementation of the system, we are exploring whether we can initiate the collection of data from rehabilitation facilities without legislative action. Our estimate of 3 years to design and implement a payment system includes beginning data collection at the earliest possible time and continuing the collection over a period sufficient to ensure the validity and stability of the components of a payment system, such as payment rates, relative weights of patient groups, outlier payments, and facility payment adjustments, in addition to ensuring the validity of coding within and across hospitals.

We agree with the commenter that, as a step toward developing a payment system that is consistent across delivery sites, it would be desirable to explore the usefulness of FRGs in a payment system for rehabilitation services in skilled nursing facilities. We will, therefore, evaluate our ability to expand the RAND project given the limits of available resources. We note that we are also engaged in research on other case-mix measures for SNF and home health services and we will investigate the suitability of these measures for rehabilitation hospital services.

C. Case-Mix Measures for Postacute Services (Recommendation 21)

Recommendation: Reliable case-mix measurement is important in prospective payment systems to account for resource use and to analyze treatment patterns and costs across sites. The Secretary should coordinate case-mix research across postacute care settings, using consistent methods for measuring patient acuity and resource use.

Response in the Proposed Rule: We are attempting to coordinate our work on case-mix adjustment for home health care, long-term and SNF care, and rehabilitative services. To develop a case-mix adjustment system for SNF care, time studies were conducted in order to measure resource utilization. Similarly, as noted above in response to Recommendation 20, we have funded a new home health case-mix study.

In addition, in the case-mix work to date for both home health care and SNF care, dependence in activities of daily living is the biggest predictor of resource utilization. Some of the other predictors differ across SNF care and home health care due to differences in the treatment settings and the availability of information for a classification system.

As also noted in the preceding response, researchers at the University of Pennsylvania have developed a classification system based on FIMs called Function Related Groups (FIM–FRGs). This system appears promising for use in a case-mix adjusted prospective payment system for rehabilitation and long-term care facilities, and we are working with the Rand Corporation on a research project to evaluate the suitability of FIM–FRGs for this purpose.

We agree that a compatible cross-provider measure of resource use would be the best multiplier in any universal postacute system. We also believe that such measures do not now exist and to produce them would require the program to incur significant costs and impose significant data reporting and collection requirements on providers. We would prefer to obtain explicit legislative direction before we incur these costs and impose these burdens. Even so, we believe several years would be required to gather the data and develop the case-mix measures. For these reasons, we believe that interim prospective payment systems of the types contained in the President's FY 1997 budget should be put in place.

Comment: One commenter agreed with ProPAC's recommendation to develop a unified case-mix prospective payment system for postacute care, but expressed concern that such a prospective payment system based on ICD–9–CM codes will require the development of uniform coding guidelines that do not currently exist.

Response: We have not yet decided whether it would be appropriate to use ICD–9–CM codes in connection with a postacute prospective payment system. We will keep the overall concern of uniform coding guidelines in mind as we progress in our evaluation of postacute prospective payment.

D. Update to the Composite Rate for Dialysis Services (Recommendation 24)

Recommendation: The Secretary should develop methods to control total Medicare per capita expenditures for end stage renal disease (ESRD) beneficiaries. In the meantime, the composite rate should be updated by 2.7 percent for hospital-based dialysis facilities and by 2.0 percent for freestanding facilities for fiscal year 1997. The Secretary should also develop reliable measures of patient severity and outcomes to analyze the relationships among treatment processes, patient outcomes, and costs. These factors should be considered in evaluating the need for and the level of future payment updates.

Response in the Proposed Rule: One of ProPAC's suggestions is that HCFA consider opening enrollment for ESRD beneficiaries to participate in Medicare risk programs. The reason for this recommendation is the rapid growth in total Medicare spending for ESRD beneficiaries. A large part of this increase is attributable to the expanding ESRD population, especially older patients who require more services. These beneficiaries are using more acute inpatient, skilled nursing and other dialysis-related services than ever before. ProPAC suggests that to control these expenditures, Medicare examine the possibility of adopting a capitation payment system for ESRD services, since capitation rates have been successful in controlling expenditure growth for other populations. At a minimum, they are recommending that utilization review or other managed care techniques be used to control the total volume of services provided to ESRD beneficiaries across all sites of care.

Section 1876(d) of the Act currently prevents an individual with ESRD from enrolling in an HMO or a competitive medical plan. However, an individual who is enrolled in a prepaid health plan when he or she is determined to have ESRD may continue enrollment in that plan. A prepaid health plan may only disenroll a beneficiary as provided by regulations at § 417.460.

Congress addressed the issue of paying for ESRD services in a capitation setting in legislation. Section 13567(b) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) (August 10, 1993) amended section 2355 of Public Law 98–369 by requiring the Secretary to include the integration of acute and chronic care management for patients with ESRD through expanded community care case management services in a social health maintenance organization (SHMO). Initial legislation required the Secretary to grant demonstration waivers for SHMOs that provide for the integration of health and social services at a fixed annual prepaid capitation rate. In the January 26, 1996 Federal Register, we published a notice informing interested parties of the opportunity to apply for funds for a cooperative agreement to operate an ESRD Managed Care Demonstration (61 FR 2516). Two of the demonstration's purposes would be to test whether ESRD beneficiaries can and should be given access to HMOs during open enrollment and whether the statewide capitation rate can and should be adjusted. The demonstration would adjust rates for treatment status (such as dialysis, transplant, or a functioning graft), age groups and the cause of renal

failure (for example, diabetes). As the legislation requires, rates would be based on 100 percent of the adjusted average per capita costs (AAPCC); additional non-Medicare-covered benefits would be offered by the provider to justify the additional 5 percent beyond the 95 percent of the AAPCC paid to Medicare risk-contracting HMOs on behalf of ESRD enrollees. Based on the results of this demonstration, we would make recommendations to Congress concerning the appropriateness of paying for dialysis services in a capitation setting.

To improve the quality of care ESRD patients are receiving, we are in the process of developing proposed rules for ESRD conditions for coverage. The essence of the regulation is patient-centered and outcome-oriented. The proposed conditions for coverage will focus on facilities achieving an optimal level of health and well-being for all dialysis patients. The proposed rules will be published in Spring 1996 with expected implementation in late fiscal year 1997.

While we share ProPAC's concern that payment rates be sufficient to assure quality care for ESRD patients, we do not believe there is sufficient evidence at this point to conclude that more money is needed to provide appropriate care. Currently, the University of Michigan, as part of a National Institute of Health grant, is examining the relationship between facilities' costs and the level of KT/V. Also the National Institute of Diabetes and Digestive and Kidney Diseases is sponsoring a study on the impact of increasing dialysis as measured by KT/V and the use of high-flux-dialysis on ESRD patients. The results of these studies should help us analyze the relationship between patient outcomes and costs, and thus provide us with a basis for recommending an appropriate payment rate increase.

While we acknowledge that an increase in the composite rate may be appropriate in the next few years, we believe that any rate increase should be linked to implementation of the revised conditions for coverage. Moreover, any ESRD rate increase must be considered within the context of Medicare budgetary concerns and should have a direct link to improved patient outcomes. We will continue to monitor ESRD facility costs, and, if appropriate, we may recommend an update to the ESRD composite rate for FY 1998.

We note that ProPAC's recommendation provides for an across-the-board rate increase for all renal facilities. However, data show that high volume independent facilities (over 6,000 treatments per year) account for about 85 percent of independent dialysis treatments. These high volume facilities report margins between Medicare payments and costs that are higher than average. Therefore, in proposing a future rate increase, we would want to examine the need to adjust payment increases for volume. In addition, we believe that any update to the composite rate should include an update to the wage index currently used to adjust the labor portion of the rate. We are currently using an outdated wage index which is a blend of 1980 Bureau of Labor Statistics (BLS) and 1984 prospective payment system wage data and does not reflect the MSA revisions resulting from the 1990 census.

The Commission's final recommendation is that the Secretary closely monitor treatment patterns and patient outcomes to ensure that facilities use the payment increase to improve quality of care. The proposed ESRD conditions for coverage should address this issue. We expect the proposed rule to be published in the Federal Register before Summer 1996. Between the publication of the proposed and final rules, HCFA is planning to meet with the renal community to develop complete clinical data sets to monitor patient outcomes and medical conditions. These data will then be used to evaluate the quality of dialysis services furnished by individual facilities. Of course, this is a long-term project. In the short term, we are exploring the possibility of collecting limited patient outcome data such as KT/V and URR.

Comment: One commenter and the Commission reiterated that ProPAC's recommended update framework was appropriate. According to ProPAC, its analysis suggests that input costs are rising and large productivity gains may no longer be possible. Consequently, renal facilities may be unable to continue to provide quality dialysis without some payment increase.

Response: As discussed above, we recognize that an increase in the composite payment rate may be appropriate in the future, but we believe that any rate increase should be linked to implementation of the revised conditions for coverage for ESRD facilities. Until such implementation, we will continue to monitor facility costs and other factors to determine if it is appropriate to recommend a payment rate increase. At this time, the composite payment rate is set by statute.

IX. Other Required Information

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 provides for notice and comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, in the proposed rule, we solicited public comment on each of these issues for the information collection requirement discussed below.

The only information collection or paperwork burden item contained in the FY 1997 proposed or final rules involves the requirement under § 489.27 that a hospital furnish each Medicare beneficiary with a notice of discharge rights supplied by HCFA, that is, ''An Important Message from Medicare.''

As discussed in section V of this preamble, we are revising the current requirement that a hospital must distribute the ''Important Message'' to each Medicare beneficiary at or about the time of admission. In order to permit hospitals more flexibility, but still ensure that beneficiaries are aware of their discharge rights, we are revising § 489.27 to specify that a hospital must provide the notice of discharge rights ''during the course of the hospital stay.'' We estimated that the paperwork burden associated with the requirement that hospital personnel distribute the ''Important Message'' to each Medicare beneficiary is approximately 1 minute per admission. Based on our most recent available data (1995 Data Compendium, HCFA Pub. No. 03364), there are approximately 11 million Medicare beneficiaries admitted to hospitals each year, resulting in an annual burden of approximately 183,000 hours.

This paperwork burden is not effective until it has been approved by OMB. A notice will be published in the Federal Register when approval is obtained.

B. Requests for Data From the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape format or cartridges; however, some files are available on diskette, and on the internet at HTTP://WWW.HCFA.GOV/STATS/PUBFILES.HTML. In our May 31, 1996 proposed rule, we published a list of data sets that are available for purchase (61 FR 27490).

C. Waiver of Notice of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking for a rule to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to public interest.

Most provisions of this final rule were directly addressed in the May 31, 1996 proposed rule (61 FR 27444) or were made in response to comments on that proposed rule. The only issue raised in this final rule for which we have not provided an opportunity for notice and comment concerns a recently enacted statutory provision. On April 26, 1996, Congress enacted the Omnibus Consolidated Rescissions and Appropriations Act of 1996. Among other things, the new statute requires that, for certain purposes, the Federal Government ''shall deem accredited any postgraduate physician training program that would be accredited but for the accrediting agency's reliance upon an accreditation standard that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether such standard provides exceptions or exemptions.''

In this final rule, we are revising the regulations at § 412.105 and § 413.86 to conform the regulations to the new statutory provision. We find good cause to waive the procedure for notice and comment with respect to these conforming changes. We find that the procedure for notice and comment is unnecessary because these technical changes merely conform the regulations text to the express requirements of the statute and do not involve an exercise of agency discretion; moreover, delaying these technical changes would be contrary to the public interest because any perceived discrepancy between the regulations and the statute might cause confusion.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare.

42 CFR chapter IV is amended as set forth below:

A. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart D—Basic Methodology for Determining Prospective Payment Federal Rates for Inpatient Operating Costs

2. In § 412.63(s)(1), a new sentence is added at the end to read as follows:

§ 412.63 Federal rates for inpatient operating costs for fiscal years after Federal fiscal year 1984.

* * * * *

(s) * * *

(1) * * * The wage index is updated annually.

* * * * *

Subpart G—Special Treatment of Certain Facilities Under the Prospective Payment System for Inpatient Operating Costs

3. In § 412.105, the introductory text of both paragraph (g)(1) and paragraph (g)(1)(i) is republished and a new paragraph (g)(1)(i)(D) is added to read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(g) *Determining the total number of full-time equivalent residents for cost reporting periods beginning on or after July 1, 1991.*

(1) For cost reporting periods beginning on or after July 1, 1991, the count of full-time equivalent residents for the purpose of determining the indirect medical education adjustment is determined as follows:

(i) The resident must be enrolled in an approved teaching program. An approved teaching program is one that meets one of the following requirements:

* * * * *

(D) Is a program that would be accredited except for the accrediting agency's reliance upon an accreditation standard that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether the standard provides exceptions or exemptions.

* * * * *

Subpart L—The Medicare Geographic Classification Review Board

4. In § 412.246, paragraph (b) is revised to read as follows:

§ 412.246 MGCRB members.

* * * * *

(b) *Term of office.* The term of office for an MGCRB member may not exceed 3 years. A member may serve more than one term. The Secretary may terminate a member's tenure prior to its full term.

Subpart M—Prospective Payment System for Inpatient Hospital Capital Costs

5. In § 412.302, paragraph (d)(1) is revised and a new paragraph (d)(4) is added to read as follows:

§ 412.302 Introduction to capital costs.

* * * * *

(d) *Consistency in cost reporting*—(1) *General rule.* For cost reporting periods beginning on or after October 1, 1991, and before October 1, 2001, the hospital must follow consistent cost finding methods for classifying and allocating capital-related costs, except as otherwise provided in paragraph (d)(4) of this section.

* * * * *

(4) Hospitals may elect the simplified cost allocation methodology under the terms and conditions provided in the instructions for HCFA Form 2552.

B. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

Subpart C—Limits on Cost Reimbursement

2. In § 413.40, paragraph (d)(3) is revised to read as follows:

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

* * * * *

(d) * * *

(3) *Net inpatient operating costs are greater than the ceiling.* For cost reporting periods beginning on or after October 1, 1991, if a hospital's allowable net inpatient operating costs exceed the hospital's ceiling (or the adjusted ceiling, if applicable), payment will be based on the lower of the—

(i) Ceiling (or the adjusted ceiling, if applicable) plus 50 percent of the allowable net inpatient operating costs in excess of the ceiling (or the adjusted ceiling, if applicable); or

(ii) One hundred-ten percent of the ceiling (or the adjusted ceiling, if applicable).

* * * * *

Subpart F—Specific Categories of Costs

3. In § 413.86, under paragraph (b), the definition of ''Approved geriatric program'' is revised and a new paragraph (4) is added to the definition of ''Approved medical residency program'' and a new sentence is added at the end of paragraph (g)(1) introductory text to read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(b) *Definitions.*

* * * * *

Approved geriatric program means a fellowship program of one or more years in length that is approved by the Accreditation Council for Graduate Medical Education (ACGME) under the ACGME's criteria for geriatric fellowship programs.

Approved medical residency program

* * *

(4) Is a program that would be accredited except for the accrediting agency's reliance upon an accreditation standard that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether the standard provides exceptions or exemptions.

* * * * *

(g) * * *

(1) * * * For combined residency programs, an initial residency period is defined as the time required for individual certification in the longer of the programs.

* * * * *

C. Part 489 would be amended as follows:

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, and 1871 of the Social Security Act (42 U.S.C. 1302, and 1395hh).

Subpart B—Essentials of Provider Agreements

2. Section 489.27 is revised to read as follows:

§ 489.27 Beneficiary notice of discharge rights.

A hospital that participates in the Medicare program must furnish each Medicare beneficiary, or an individual acting on his or her behalf, the notice of discharge rights HCFA supplies to the hospital to implement section 1886(a)(1)(M) of the Act. The hospital must provide timely notice during the course of the hospital stay. For purposes of this paragraph, the course of the hospital stay may begin with the provision of a package of information regarding scheduled preadmission testing and registration for a planned hospital admission. The hospital must be able to demonstrate compliance with this requirement.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 23, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 23, 1996.

Donna E. Shalala,

Secretary.

[Note: The following addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Schedule of Standardized Amounts Effective With Discharges On or After October 1, 1996 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 1996

I. Summary and Background

In this addendum, we are setting forth the amounts and factors for determining prospective payment rates for Medicare inpatient operating costs and Medicare inpatient capital-related costs. We are also setting forth rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 1996, except for sole community hospitals and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will be based on 100 percent of the Federal national rate.

Sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. For hospitals in Puerto Rico, the payment per discharge is based on the sum of 75 percent of a Puerto Rico rate and 25 percent of a national rate (section 1886(d)(9)(A) of the Act).

As discussed below in section II, we are making changes in the determination of the prospective payment rates for Medicare inpatient operating costs. The changes, to be applied prospectively, will affect the calculation of the Federal rates. In section III, we discuss changes we are making in determining the prospective payment rates for Medicare inpatient capital-related costs. Section IV sets forth our changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in the preamble to this final rule are presented at the end of this addendum in section V.

II. Changes to Prospective Payment Rates for Inpatient Operating Costs for FY 1997

The basic methodology for determining prospective payment rates for inpatient operating costs is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for inpatient operating

costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the manner in which we are changing some of the factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes are effective with discharges occurring on or after October 1, 1996. As required by section 1886(d)(4)(C) of the Act, we must also adjust the DRG classifications and weighting factors for discharges in FY 1997.

In summary, the standardized amounts set forth in Tables 1a and 1c of section V of this addendum reflect—

- Updates of 2.0 percent for all areas (that is, the market basket percentage increase of 2.5 percent minus 0.5 percentage points);
- An adjustment to ensure budget neutrality as provided for in sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure budget neutrality as provided for in section 1886(d)(8)(D) of the Act by removing the FY 1996 budget neutrality factor and applying a revised factor; and
- An adjustment to apply the revised outlier offset by removing the FY 1996 outlier offsets and applying a new offset.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required that Medicare target amounts be determined for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(C) and (d)(9)(B)(ii) of the Act required that the updated base-year per discharge costs and, for Puerto Rico, the updated target amounts, respectively, be standardized in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Since the standardized amounts have already been adjusted for differences in case mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, no additional adjustments for these factors for FY 1997 were made. That is, the standardization adjustments reflected in the FY 1997 standardized amounts are the same as those reflected in the FY 1996 standardized amounts.

Under sections 1886(d)(2)(H) and (d)(3)(E) of the Act, in making payments under the prospective payment system, the Secretary estimates from time to time the proportion of costs that are wages and wage-related costs. Since October 1, 1990, when the market basket was last rebased, we have considered 71.4 percent of costs to be labor-related for purposes of the prospective payment system. As discussed in section IV of the preamble, we are using a rebased market basket effective for FY 1997. Based on the rebased market basket, we are revising the labor and nonlabor proportions of the standardized amounts. Effective with discharges occurring on or after October 1, 1996, we are establishing a labor-related proportion of 71.2 percent and a nonlabor- related proportion of 28.8 percent. The standardized amounts in Table 1a of section V of this addendum have been recomputed to reflect the revised labor-related and nonlabor-related proportions. (We are revising the Puerto Rico standardized amounts by the average labor share in Puerto Rico of 82.8 percent. We are also revising the discharged-weighted national standardized amount to reflect the proportion of discharges in large urban and other areas from the FY 1995 MedPAR file.)

2. Computing Large Urban and Other Averages Within Geographic Areas

Section 1886(d)(3) of the Act requires the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: one for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9)(B)(iii) and (C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in urban and other areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 75 percent of the applicable Puerto Rico standardized amount and 25 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines ''urban areas'' as those areas within a Metropolitan Statistical Area (MSA). A ''large urban area'' is defined as an urban area with a population of more than 1,000,000. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a ''large urban area'' are referred to as ''other urban areas.'' Areas that are not included in MSAs are considered ''rural areas'' under section 1886(d)(2)(D). Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

Based on 1995 population estimates published by the Bureau of the Census, 56 areas meet the criteria to be defined as large urban areas for FY 1997. These areas are identified by an asterisk in Table 4a.

Table 1a contains the two national standardized amounts that are applicable to all hospitals, except for sole community hospitals and hospitals in Puerto Rico. For a number of years, Table 1b had been used to set forth the 18 regional standardized amounts applicable for hospitals located in census areas subject to the regional floor. However, as provided in section 1886(d)(1)(A)(iii)(II) of the Act, the regional floor expires effective with discharges occurring on or after October 1, 1996. Therefore, all hospitals (except sole community hospitals and hospitals in Puerto Rico) will be paid solely on the basis of the national standardized amounts. Under section 1886(d)(9)(A)(ii) of the Act, the national standardized payment amount applicable to hospitals in Puerto Rico consists of the discharge-weighted average of the national large urban standardized amount and the national

other standardized amount (as set forth in Table 1a). The national average standardized amount for Puerto Rico is set forth in Table 1c. This table also includes the two standardized amounts that will be applicable to most hospitals in Puerto Rico.

We note that on June 28, 1996, the Office of Management and Budget announced the designation of the Pocatello, Idaho MSA and the Jonesboro, Arkansas MSA. In addition, Chester County was added to the Jackson, Tennessee MSA. We have incorporated these changes in this final rule.

3. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A)(iv) of the Act, we are updating the large urban and the other areas average standardized amounts for FY 1997 using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(XII) of the Act specifies that, for hospitals in all areas, the update factor for the standardized amounts for FY 1997 is the market basket percentage increase minus 0.5 percentage points.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the rebased hospital market basket increase for FY 1997 is 2.5 percent. For FY 1997, this yields an update to the average standardized amounts of 2.0 percent (2.5 percent minus 0.5 percent). (See section IV of the preamble to this final rule for a discussion of the market basket rebasing.)

As in the past, we are adjusting the FY 1996 standardized amounts to remove the effects of the FY 1996 geographic reclassifications and outlier payments before applying the FY 1997 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliers. After including the FY 1997 offsets to the standardized amounts for outliers and geographic reclassification, we estimate that there will be an actual increase of 1.8 percent to the large urban and other area standardized amounts.

We note that the FY 1996 standardized amounts reflected a budget neutrality factor of 0.997575 to account for the change in transfer payment policy implemented in FY 1996. See 60 FR 45854. In the proposed rule we stated that ''there will be no need for a further budget neutrality adjustment'' (61 FR 27573), but we incorrectly suggested that the FY 1996 budget neutrality adjustment for transfers should be removed in setting the FY 1997 rates. The budget neutrality adjustment for the transfer policy is built permanently into the unadjusted rates.

Although the update factor for FY 1997 is set by law, we were required by section 1886(e)(3)(B) of the Act to report to Congress on our initial recommendation of update factors for FY 1997 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we published the report to Congress as Appendix D to the proposed rule. That recommendation was based on an earlier forecast of the market basket increase. Our final recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act) is set forth as Appendix D to this final rule.

4. Other Adjustments to the Average Standardized Amounts

a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment.—Section 1886(d)(4)(C)(iii) of the Act specifies that beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration.

Section 1886(d)(3)(E) of the Act specifies that the hospital wage index must be updated on an annual basis beginning October 1, 1993. This provision also requires that any updates or adjustments to the wage index must be made in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that DRG reclassification and recalibration of the relative weights be budget neutral, and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be budget neutral, we compared aggregate payments using the FY 1996 relative weights and wage index to aggregate payments using the FY 1997 relative weights and wage index. The same methodology was used for the FY 1996 budget neutrality adjustment. (See the discussion in the September 1, 1992 final rule (57 FR 39832).) Based on this comparison, we computed a proposed budget neutrality adjustment factor equal to 0.998509. Based on the final FY 1997 relative weights and wage index, the final budget neutrality adjustment factor is 0.998703. This budget neutrality adjustment factor is applied to the standardized amounts without removing the effects of the FY 1996 budget neutrality adjustment. We do not remove the prior budget neutrality adjustment because estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

In addition, we will continue to apply the same FY 1997 adjustment factor to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 1996, in order to ensure that we meet the statutory requirement that aggregate payments neither increase nor decrease as a result of the implementation of the FY 1997 DRG weights and updated wage index. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

b. Reclassified Hospitals—Budget Neutrality Adjustment.—Section 1886(d)(8)(B) of the Act provides that certain rural hospitals are deemed urban effective with discharges occurring on or after October 1, 1988. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8) (B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. To calculate this budget neutrality factor, we used historical discharge data to simulate payments, and compared total prospective payments (including indirect medical education and disproportionate share payments) prior to any reclassifications to total prospective payments after reclassifications. In the proposed rule, we applied an adjustment factor of 0.994059 to ensure that the effects of reclassification are budget neutral. The

final budget neutrality adjustment factor is 0.993514.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 1996 budget neutrality adjustment factor. We note that the proposed FY 1997 adjustment reflected wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of March 14, 1996. The final budget neutrality adjustment factor reflects the effects of all reclassification changes resulting from appeals and reviews of the MGCRB decisions for FY 1997 or from a hospital's request for the withdrawal of a reclassification request.

c. Outliers.—Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for ''outlier'' cases, cases involving extraordinarily high costs (cost outliers) or long lengths of stay (day outliers). Section 1886(d)(3)(B) of the Act requires the Secretary to adjust both the large urban and other area national standardized amounts by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to adjust the large urban and other standardized amounts applicable to hospitals in Puerto Rico by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Furthermore, under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total payments based on DRG prospective payment rates.

Beginning with FY 1995, section 1886(d)(5)(A) of the Act requires the Secretary to phase out payments for day outliers (correspondingly, payments for cost outliers would increase). Under the requirements of section 1886(d)(5)(A)(v), the proportion of day outlier payments to total outlier payments is reduced from FY 1994 levels as follows: 75 percent of FY 1994 levels in FY 1995, 50 percent of FY 1994 levels in FY 1996, and 25 percent of FY 1994 levels in FY 1997. We estimated the FY 1994 proportion of day outlier payments to total outlier payments at 31.3 percent in our September 1, 1993 final rule (58 FR 46348). Thus, the proportion of day outlier payments to total outlier payments in FY 1997 will be approximately 8 percent (25 percent of 31.3 percent). For discharges occurring after September 30, 1997, the Secretary will no longer pay for day outliers under the provisions of section 1886(d)(5)(A)(I) of the Act.

i. FY 1997 Outlier Payment Policies, Including Outlier Thresholds

For FY 1996, the day outlier threshold is the geometric mean length of stay for each DRG plus the lesser of 23 days or 3.0 standard deviations. The marginal cost factor for day outliers (the percent of Medicare's average per diem payment paid for each outlier day) is 44 percent for FY 1996. The fixed loss cost outlier threshold is equal to the prospective payment for the DRG plus $15,150 ($13,800 for hospitals that have not yet entered the prospective payment system for capital-related costs). The marginal cost factor for cost outliers (the percent of costs paid after costs for the case exceed the threshold) is 80 percent. We applied an outlier adjustment to the FY 1996 standardized amounts of 0.949054 for the large urban and other areas rates and 0.9526 for the capital Federal rate.

For FY 1997, we proposed to set the day outlier threshold at the geometric mean length of stay for each DRG plus the lesser of 24 days or 3.0 standard deviations. Section 1886(d)(5)(A)(iii) of the Act, as amended by section 13501(c)(3) of Public Law 103–66, provides that additional payments for day outlier cases may be reduced below the marginal cost of care to meet the requirements of section 1886(d)(5)(A)(v) of the Act. We also proposed to reduce the marginal cost factor for each outlier day from 44 percent to 35 percent in FY 1997. The thresholds that we are establishing in this final rule will be the geometric mean length of stay for each DRG plus the lesser of 24 days or 3.0 standard deviations. Based on updated simulations, we are establishing in this final rule a marginal cost factor of 33 percent for each outlier day in FY 1997. We estimate that these policies will reduce the proportion of outlier payments paid to day outliers to approximately 8 percent, in accordance with section 1886(d)(5)(A) of the Act.

In the proposed rule, we proposed to maintain the marginal cost factor for cost outliers at 80 percent and proposed a fixed loss cost outlier threshold in FY 1997 equal to the prospective payment rate for the DRG plus $11,050 ($10,075 for hospitals that have not yet entered the prospective payment system for capital-related costs). In this final rule, based on simulations using updated data and a revised cost inflation factor (discussed below), we are establishing a fixed loss cost outlier threshold in FY 1997 equal to the prospective payment rate for the DRG plus $9,700 ($8,850 for hospitals that have not yet entered the prospective payment system for capital-related costs). We are also establishing a marginal cost factor for cost outliers of 80 percent, as proposed. We note that the FY 1997 cost outlier calculations are to be completed using the revised labor/nonlabor shares discussed above in section II.A.1 in this Addendum.

The final FY 1997 cost outlier threshold reflects a revised cost inflation factor. As explained in the proposed rule, in setting the proposed FY 1997 cost outlier threshold, we used a cost inflation factor of 0.0 percent to simulate payments using FY 1995 hospital bills (61 FR 27497). That is, to determine when a case should qualify for cost outlier payments in FY 1997, we calculated FY 1997 ''costs'' for each bill in the FY 1995 MedPAR file by applying a cost inflation factor of 0.0 percent. We indicated that we would reevaluate this factor in developing the final rule.

The latest available Medicare cost reports indicate that hospital cost per case *decreased* from FY 1993 to FY 1994 as well as from FY 1994 to FY 1995. Cost report data for 4,600 hospitals for cost reporting periods beginning in FYs 1993 and 1994 show that cost per case decreased 1.906 percent from FY 1993 to FY 1994. Preliminary data for cost reports beginning in FY 1995, which were unavailable when we developed the proposed rule, show that cost per case decreased 2.392 percent from FY 1994 to FY 1995. The latter figure is preliminary to the extent that it reflects only 1,800 hospitals and also reflects ''as submitted'' cost reports. Nevertheless, it suggests a continued trend in cost *deflation*. Accordingly, based on the more complete data for hospital cost reporting periods beginning in FYs 1993 and 1994, we have decided to use a cost inflation factor of minus 1.906 percent (a cost per case decrease of 1.906 percent) for purposes of setting the final FY 1997 outlier thresholds (as compared with our proposed FY 1997 cost inflation factor of 0.0 percent). We note that this is the first time we have deflated costs in making the outlier projection.

The use of a negative cost inflation factor results in lower FY 1997 ''costs'' for the set of cases analyzed. For example, if a bill in the FY 1995 MedPAR file reflects FY 1995 ''costs'' of $1,000, the FY 1997 ''costs'' will be $\$1{,}000\times(1-0.01906)\times(1-0.01906)$ (reflecting 2 years of cost deflation), or $962.24. These lower costs, in turn, result in a lower cost outlier threshold relative to a methodology using a positive or zero cost inflation factor (other things being equal). As stated above, the final FY 1997 cost outlier threshold is the DRG amount plus $9,700, rather than $11,050 as indicated in the proposed rule.

In accordance with section 1886(d)(5)(A)(iv) of the Act, we calculated outlier thresholds so that outlier payments are projected to equal 5.1 percent of total payments based on DRG prospective payment rates. In accordance with section 1886(d)(3)(E), we reduced the FY 1997 standardized amounts by the same percentage to account for the projected proportion of payments paid to outliers.

As stated in the September 1, 1993 final rule (58 FR 46348), we establish outlier thresholds that are applicable to both inpatient operating costs and inpatient capital-related costs. When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a higher percentage of outlier payments for capital-related costs than for operating costs. We project that the thresholds for FY 1997 will result in outlier payments equal to 5.1 percent of operating DRG payments and 5.2 percent of capital payments based on the Federal rate.

The proposed outlier adjustment factors applied to the standardized amounts and the capital Federal rate for FY 1997 were as follows:

Operating standardized amounts	Capital Federal rate
0.948968	0.9476

The final outlier adjustment factors applied to the standardized amounts and the capital Federal rate for FY 1997 are as follows:

Operating standardized amounts	Capital Federal rate
0.948766	0.9481

As in the proposed rule, we apply the final outlier adjustment factors after removing the effects of the FY 1996 outlier adjustment factors on the standardized amounts and the capital Federal rate.

ii. Other Changes Concerning Outliers

Table 5 of section V of this addendum contains the DRG relative weights, geometric and arithmetic mean lengths of stay, as well as the day outlier threshold for each DRG. When we recalibrate DRG weights, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight and geometric mean length of stay. DRGs that do not have at least 10 cases are considered to be low volume DRGs. For the low volume DRGs, we use the original geometric mean lengths of stay, because no arithmetic mean length of stay was calculated based on the original data.

Table 8a in section V of this addendum contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. These Statewide average ratios will replace the ratios published in the September 1, 1995 final rule (60 FR 45922), effective October 1, 1996. Table 8b contains comparable Statewide average capital cost-to-charge ratios. These average ratios will be used to calculate cost outlier payments for those hospitals for which the intermediary computes operating cost-to-charge ratios lower than 0.24265 or greater than 1.28879 and capital cost-to-charge ratios lower than 0.013243 or greater than 0.19730. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. We note that the cost-to-charge ratios in Tables 8a and 8b will be used for all cost reports settled during FY 1997 (regardless of the actual cost reporting period) when hospital-specific cost-to-charge ratios are either not available or outside the three standard deviations range.

iii. FY 1995 and FY 1996 Outlier Payments

In the proposed rule, we estimated that actual outlier payments for FY 1995 were approximately 3.7 percent of actual total DRG payments (lower than the 5.1 percent we projected in setting outlier policies for FY 1995). This percentage was computed by simulating payments using actual FY 1995 bill data available at the time of the proposed rule. Our current estimate is that actual outlier payments for FY 1995 were approximately 3.8 percent of actual total DRG payments. These estimates are based on simulations using the July 1996 update of the provider-specific file and the June 1996 update of the FY 1995 MedPAR file.

In the proposed rule, we estimated that actual outlier payments for FY 1996 would be approximately 4.2 percent of actual total DRG payments (lower than the 5.1 percent we projected in setting outlier policies for FY 1996). We currently estimate that FY 1996 outlier payments will approximate 4.0 percent of total DRG payments. This current estimate is based on simulations using the July 1996 update of the provider-specific file and the June 1996 update of the FY 1995 MedPAR file. We used these data to calculate an estimate of the actual outlier percentage for FY 1996 by applying FY 1996 rates and policies to the FY 1995 bills.

In the proposed rule, we discussed in detail our methodology for setting outlier thresholds, our periodic refinements to that methodology, and some possible explanations for the recent differences between projected and actual outlier percentages (61 FR 27496). We invited comments and suggestions for further refinements to the methodology. The comments on our outlier policies and methodology and our responses are set forth below.

Comment: A number of commenters are concerned that the percentages of actual outlier payments for FYs 1995 and 1996 are lower than we projected when we set the respective thresholds for those years. Some commenters requested that we monitor outlier payments during a fiscal year, so that we can change the thresholds in the middle of the year in the event that projected actual outlier payments are not between 5 and 6 percent of projected actual total DRG payments. Other commenters requested that any difference between outlier payments and the amount set aside be used to offset the amount required in the next year. One commenter argued that it is fundamentally inequitable, even assuming that it is not illegal, not to make additional outlier payments after the end of the fiscal year to assure that we meet our 5.1 percent goal. The commenter cited historical figures on outlier payments from a pending court case in the United States District Court for the District of Columbia, *County of Los Angeles v. Shalala,* C.A. No. 93–0146 SSH (D.D.C).

Response: We have responded to similar comments a number of times, including the final rules for FY 1993 (57 FR 39784), FY 1994 (58 FR 46347), FY 1995 (59 FR 45408), and FY 1996 (60 FR 45856). As we have explained before and as explained below, we believe our outlier policies are consistent with the statute and the goals of the prospective payment system and are not inequitable.

In accordance with section 1886(d)(5)(A)(iv) of the Act, we set outlier thresholds before a fiscal year so that outlier payments for the fiscal year are projected to be 5.1 percent of total DRG payments. In doing so, we use the best available Medicare discharge data and hospital-specific data.

Many of the factors used to set prospective payment amounts for a given fiscal year are based on estimates. These factors include not only the outlier thresholds, but also the market basket rate of increase used to establish

the update factors, the recalibration of the DRG weights, and the various required budget neutrality provisions. We do not believe that Congress intended for us to revise these factors in midyear. Similarly, we do not believe that Congress intended that the standardized amounts for a given fiscal year should be adjusted (upward or downward) to reflect any difference between projected and actual outlier payments for a past fiscal year. Payments for a given discharge in a given fiscal year are generally intended to reflect or address the average costs of that discharge in that year; that goal would be undermined if we adjusted prospective payment system payments to account for ''underpayments'' or ''overpayments'' in other years.

Moreover, the midyear or retroactive adjustments contemplated by the commenters would be extremely difficult or impracticable (if not impossible) to administer. Hospital bill data with respect to a given fiscal year continues to be added to the MedPAR file for some time after the end of the fiscal year. (We update the MedPAR file for 2 full years after the end of the respective fiscal year.) Therefore, precise figures on actual outlier payments for a given fiscal year cannot be determined until well after that fiscal year ends. We do publish estimates of ''actual'' outlier payments for recent fiscal years, but those estimates are based on available bills (and sometimes based on simulations using bills for a previous year, adjusted for estimates of inflation).

In short, we believe our outlier policies are consistent with the statute and the goals of the prospective payment system. In a recent court decision, the United States District Court for the Central District of California upheld the agency's interpretation of the statute as reasonable, writing in part that ''[a]ny retroactive adjustment would be inconsistent with [prospective payment system] because the incentives for cost reduction and efficiency would be eliminated.'' *Alvarado Community Hospital* v. *Shalala*, Case No. CV 94–0972 RMT (Ex) (C.D. Cal May 6, 1996), *appeal filed*, No. 96–55967 (9th Cir.). (There is pending litigation on the same issues in the U.S. District Court for the District of Columbia.)

Finally, we do not agree that our outlier policies are fundamentally inequitable. As we discussed in the proposed rule, we believe that one reason outlier payments have been lower than expected is that hospital costs are not increasing at the rate we expected, and costs may even be decreasing. Available data show that, beginning in FY 1994, for the first time since the inception of the prospective payment system, hospitals are experiencing actual decreases in cost per case from one year to the next. This information is confirmed by ProPAC in its June 1996 Report to Congress ''Medicare and the American Health Care System'' (Table 3–3, Annual Change in PPS Operating Costs and Payments, First 11 Years of PPS, p. 65). These actual decreases in cost per case follow a period of several years in which the rate of increase in operating cost per case declined from one year to the next.

The thresholds for a given fiscal year reflect a certain level of costs, so if hospitals are generally holding costs down, then fewer cases qualify for outlier payments and outlier payments are lower than expected. But if lower hospital costs result in lower than expected outlier payments, it also results in higher than expected ''profits'' (at least with respect to nonoutlier cases). Hospital, Medicare profit margins have rebounded to levels not seen since the middle of the 1980s. In the June 1996 report, ProPAC found the aggregate prospective payment system operating margin to be 6.0 percent for FY 1994 (Figure 3–2, Aggregate PPS Operating Margin, First 13 Years of PPS p. 68). ProPAC believes that aggregate prospective payment system margins are even higher for FYs 1995 and 1996.

Therefore, we believe that ''underpayments'' for outliers are not fundamentally inequitable because one factor contributing to this result—lower hospital costs—results in ''overpayments'' with respect to the standard DRG payments. We do not make retroactive adjustments to the standard DRG payments to account for the effect of actual costs being lower than expected; similarly, we do not make retroactive adjustments to outlier payments.

As we have stated previously, we believe the more appropriate action for addressing outlier payments is to continue to examine the outlier policy and try to refine our estimation methodology.

Comment: Two commenters stated that, after modeling the outlier payments, they were able to replicate HCFA's result of 5.1 percent for operating outlier payments, but that their analysis yielded only 4.8 percent for capital outlier payments as compared with HCFA's result of 5.2 percent.

Response: We have determined that the methodology used by the commenters contained several technical errors.

Comment: Two commenters requested that we develop an econometric hospital cost model to help us predict the cost inflation factors used for purposes of setting outlier thresholds.

Response: Currently, we calculate the cost inflation factor used to set outlier thresholds by analyzing hospital cost report data on cost per case for recent cost reporting periods. The nature of the econometric cost model contemplated by the commenters is not entirely clear to us, but we are interested in exploring such an approach and welcome specific suggestions for developing an econometric model. We believe such an approach might be helpful if the model could analyze data that are more recent than the data available in hospital cost reports.

We did not receive any specific suggestions for refinements to our outlier estimation methodology. We note that one commenter believes that the 0.0 percent cost inflation factor reflected in the proposed rule is warranted. As explained above, in this final rule, we are using a cost inflation factor of minus 1.906 percent to further reflect the decreases in cost per case.

B. Adjustments for Area Wage Levels and Cost of Living

The adjusted standardized amounts are divided into labor and nonlabor portions. Tables 1a and 1c, as set forth in this addendum, contain the actual labor-related and nonlabor-related shares that will be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the prospective payment rates as described in this addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of the preamble, we discuss certain revisions we are making to the wage index. This index is set forth in Tables 4a through 4e of this addendum.

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 1997, we are adjusting the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
County of Honolulu	1.225
County of Hawaii	1.15
County of Kauai	1.20
County of Maui	1.225
County of Kalawao	1.225

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs. Table 5 of section V of this addendum contains the relative weights that we will use for discharges occurring in FY 1997. These factors have been recalibrated as explained in section II of the preamble.

D. Calculation of Prospective Payment Rates for FY 1997

General Formula for Calculation of Prospective Payment Rates for FY 1997

Prospective payment rate for all hospitals located outside Puerto Rico except sole community hospitals = Federal rate.

Prospective payment rate for sole community hospitals = Whichever of the following rates yields the greatest aggregate payment: 100 percent of the Federal rate, 100 percent of the updated FY 1982 hospital-specific rate, or 100 percent of the updated FY 1987 hospital-specific rate.

Prospective payment rate for Puerto Rico = 75 percent of the Puerto Rico rate + 25 percent of a discharge-weighted average of the national large urban standardized amount and the national other standardized amount.

1. Federal Rate

For discharges occurring on or after October 1, 1996 and before October 1, 1997, except for sole community hospitals and hospitals in Puerto Rico, the hospital's payment is based exclusively on the Federal national rate. Section 1866(d)(1)(A)(iii) of the Act provides that the Federal rate is comprised of 100 percent of the Federal national rate.

The payment amount is determined as follows:

Step 1—Select the appropriate national standardized amount considering the type of hospital and designation of the hospital as large urban or other (see Tables 1a, section V of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4a, 4b, and 4c, section V of this addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted if appropriate under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5, section V of this addendum).

2. Hospital-Specific Rate (Applicable Only to Sole Community Hospitals)

Sections 1886(d)(5)(D)(i) and (b)(3)(C) of the Act provide that sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge.

Hospital-specific rates have been determined for each of these hospitals based on both the FY 1982 cost per discharge and the FY 1987 cost per discharge. For a more detailed discussion of the calculation of the FY 1982 hospital-specific rate and the FY 1987 hospital-specific rate, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); and the September 4, 1990 final rule (55 FR 35994).

a. Updating the FY 1982 and FY 1987 Hospital-Specific Rates for FY 1997.—We are increasing the hospital-specific rates by 2.0 percent (the hospital market basket percentage increase of 2.5 percent minus 0.5 percentage points) for sole community hospitals located in all areas in FY 1997. Section 1886(b)(3)(C)(ii) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals equals the update factor provided under section 1886(b)(3)(B)(ii) of the Act, which, for FY 1997, is the market basket rate of increase minus 0.5 percentage points.

b. Calculation of Hospital-Specific Rate.—For sole community hospitals, the applicable FY 1997 hospital-specific rate will be calculated by multiplying a hospital's hospital-specific rate for the preceding fiscal year by the applicable update factor (2.0 percent), which is the same as the update for all prospective payment hospitals. In addition, the hospital-specific rate will be adjusted by the budget neutrality adjustment factor (that is, 0.998703) as discussed in section II.A.4.a of this addendum. This resulting rate will be used in determining under which rate a sole community hospital is paid for its discharges beginning on or after October 1, 1996, based on the formula set forth above.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1996 and Before October 1, 1997

a. Puerto Rico Rate.—The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1c, section V of the addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate wage index (see Tables 4a and 4b, section V of the addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 75 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5, section V of the addendum).

b. National Rate.—The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1c, section V of the addendum) by the appropriate wage index.

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 25 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5, section V of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Changes to Payment Rates for Inpatient Capital-Related Costs for FY 1997

The prospective payment system for hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, hospital inpatient capital-related costs are paid based on an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of the hospital's historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth at §§ 412.308 through 412.352. Below we discuss the factors that we used to determine the Federal rate and the hospital-specific rates for FY 1997. The rates will be effective for discharges occurring on or after October 1, 1996.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992 we update the standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated additional payments under the Federal rate for outlier cases, determined as a proportion of total capital payments under the Federal rate. Section 412.308(c)(3) further requires that the Federal rate be reduced by an adjustment factor equal to the estimated additional payments made for exceptions under § 412.348, and § 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FY 1992 through FY 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that estimated aggregate payments for inpatient hospital capital costs were projected to equal 90 percent of the estimated payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision expired in FY 1996.

The hospital-specific rate for each hospital was calculated by dividing the hospital's Medicare inpatient capital-related costs for a specified base year by its Medicare discharges (adjusted for transfers), and dividing the result by the hospital's case mix index (also adjusted for transfers). The resulting case-mix adjusted average cost per discharge was then updated to FY 1992 based on the national average increase in Medicare's inpatient capital cost per discharge and adjusted by the exceptions payment adjustment factor and the budget neutrality adjustment factor to yield the FY 1992 hospital-specific rate. The hospital-specific rate is updated each year after FY 1992 for inflation and for changes in the exceptions payment adjustment factor. For FY 1992 through FY 1995, the hospital-specific rate was also adjusted by a budget neutrality adjustment factor.

To determine the appropriate budget neutrality adjustment factors and the exceptions payment adjustment factor, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projects changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the model is still used to estimate the exceptions payment adjustment and other factors. The model and its application are described more fully in Appendix B.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. These hospitals are paid a blended rate that consists of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. Section 412.374 provides for this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital. Hospitals in Puerto Rico are paid based on 75 percent of the Puerto Rico rate and 25 percent of the Federal rate.

A. Determination of Federal Inpatient Capital-Related Prospective Payment Rate Update

For FY 1996, the Federal rate was $461.96. In the proposed rule, we stated that the proposed FY 1997 Federal rate was $441.84. In this final rule, we are establishing an FY 1997 Federal rate of $438.92.

In the discussion that follows, we explain the factors that were used to determine the FY 1997 Federal rate. In particular, we explain why the FY 1997 Federal rate has decreased 4.99 percent compared to the FY 1996 Federal rate. We also explain that capital payments per case are estimated to increase by 3.92 percent. Taking into account the effects of increases in projected discharges, we estimate that aggregate capital payments will increase 6.77 percent.

The major factor contributing to the decrease in the FY 1997 rate in comparison to FY 1996 is the change in the exceptions reduction factor. We have expected the number and amount of exceptions payments generally to increase throughout the transition period.

Total payments to hospitals under the prospective payment system are relatively insensitive to changes in the capital prospective payments. Since capital payments are about 10 percent of hospital payments, a 1 percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Aggregate payments under the capital prospective payment transition system are estimated to increase in FY 1997 compared to FY 1996. Specifically, we estimate that aggregate payments in FY 1997 will be 6.77 percent higher than they were in FY 1996. Changes in aggregate payments include changes in capital payments per discharge and changes in the number of discharges. Under the prospective payment system for capital-related costs, payments per discharge (or case) are estimated to increase 3.92 percent in FY 1997 compared to FY 1996.

1. Standard Federal Rate Update

Section 412.308(c)(1)(ii) has provided that the standard Federal rate is updated based on an analytical framework that takes into account changes in a capital input price index and other factors. The update framework consists of a capital input price index and several policy adjustment factors. Specifically, we have adjusted the projected CIPI rate of increase as appropriate each year for

case-mix index related changes, for intensity, and for errors in previous CIPI forecasts. The proposed rule reflected an update factor of 1.0 percent, based on the data available at the time. The final update factor for FY 1997 under that framework is 0.7 percent. This update factor is based on a projected 1.3 percent increase in the CIPI, and on policy adjustment factors of −0.6 percent. We explain the basis for the FY 1997 CIPI projection in section IV.B of the preamble to this final rule. Here we describe the policy adjustments that have been applied.

The case-mix index (CMI) is the measure of the average DRG weight for cases paid under the prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the CMI corresponds to an equal percentage increase in hospital payments.

The CMI can change for any of several reasons: because the average resource use of Medicare patients changes (''real'' case-mix change); because changes in hospital coding of patient records result in higher weight DRG assignments (''coding effects''); and because the annual DRG reclassification and recalibration changes may not be budget neutral (''reclassification effect''). We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs but do not reflect higher resource requirements. In the update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the CMI. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all CMI-related changes other than patient severity. (For example, we adjusted for the effects of the FY 1992 DRG reclassification and recalibration as part of our FY 1994 update recommendation.) The operating adjustment consists of a reduction for total observed case-mix change, an increase for the portion of case-mix change that we determine is due to real case-mix change rather than coding modifications, and an adjustment for the effect of prior DRG reclassification and recalibration changes. We have adopted this CMI adjustment in the capital update framework as well.

For FY 1997, we are projecting a 1.6 percent increase in the case-mix index. We now estimate that real case-mix increase will be 1.0 percent in FY 1997. In previous years, we have assumed that real case mix will increase at about 1.0 percent per year. We expect this pattern to continue. The final net adjustment for case-mix change in FY 1997 is therefore 0.6 percentage points.

We estimate that DRG reclassification and recalibration resulted in a 0.0 percent change in the case mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs.

The current operating update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming year. In any given year there may be unanticipated price fluctuations that may result in differences between the actual increase in prices faced by hospitals and the forecast used in calculating the update factors. In setting a prospective payment rate under the proposed framework, we make an adjustment for forecast error only if our estimate of the capital input price index rate of increase for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. Thus, for example, we would adjust for a forecast error made in FY 1996 through an adjustment to the FY 1998 update. Because we only introduced this analytical framework in FY 1996, FY 1998 is the first year in which a forecast error adjustment could be required.

Under the capital prospective payment system framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data as in the framework for the operating prospective payment system. The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI hospital component) and changes in real case mix. The use of total charges in the calculation of the proposed intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. We have therefore incorporated the intensity adjustment from the operating update framework into the capital update framework. Without reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework thus provides an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

For FY 1997, we have developed a Medicare-specific intensity measure based on a 5-year average using FY 1991–1995. In determining case-mix constant intensity, we found that observed case-mix increase was 2.8 percent in FY 1991, 1.8 percent in FY 1992, 0.9 percent in FY 1993, 0.8 percent in FY 1994, and 1.6 percent in FY 1995. For FY 1991, FY 1992 and FY 1995, we estimate that real case-mix increase was 1.0 to 1.4 percent each year. The estimate for those years is supported by past studies of case-mix change by the RAND Corporation. The most recent study was ''Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988'' by G.M. Carter, J.P. Newhouse, and D.A. Relles, R–4098–HCFA/ProPAC (1991). The study suggested that real case-mix change was not dependent on total change, but was rather a fairly steady 1.0 to 1.5 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment. Following that study, we consider up to 1.4 percent of observed case-mix change as real for FY 1991 through FY 1995.

Given estimates of real case-mix increase of 1.0 percent for FY 1991 and FY 1992, 0.9 percent for FY 1993, 0.8 percent for FY 1994, and 1.0 percent for FY 1995, we estimate that case-mix constant intensity declined by an average 1.1 percent during FY 1991 through FY 1995, for a cumulative decrease of 5.3 percent. If we assume that real case-mix increase was 1.4 percent for FY 1991 and FY 1992, 0.9 percent for FY 1993, 0.8 percent for FY 1994, and 1.4 percent for FY 1995, we estimate that case-mix constant intensity declined by an average 1.2 percent during FY 1991 through FY

1995, for a cumulative decrease of 5.8 percent. Since we estimate that intensity has declined during that period, we are recommending a 0.0 percent intensity adjustment for FY 1997.

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on the portion of the Federal rate used to calculate the hospital's inpatient capital-related payments (for example, 60 percent for cost reporting periods beginning in FY 1997 for hospitals paid under the fully prospective methodology). Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated additional payments under the Federal rate for outlier cases, determined as a proportion of inpatient capital-related payments under the Federal rate. The outlier thresholds are set so that estimated outlier payments are 5.1 percent of estimated total DRG payments. The inpatient capital-related outlier reduction factor is then set according to the estimated inpatient capital-related outlier payments that would be made if all hospitals were paid according to 100 percent of the Federal rate. For purposes of calculating the outlier thresholds and the outlier reduction factor, we model all hospitals as if paid 100 percent of the Federal rate because, as explained above, outlier payments are made only on the portion of the Federal rate that is included in the hospital's inpatient capital-related payments.

In the September 1, 1995 final rule, we estimated that outlier payments for capital in FY 1996 would equal 4.64 percent of inpatient capital-related payments based on the Federal rate. Accordingly, we applied an outlier adjustment factor of 0.9536 to the Federal rate. Based on the thresholds as set forth in section II.A.4.d of the addendum, we estimate that outlier payments will equal 5.19 percent of inpatient capital-related payments based on the Federal rate in FY 1997. We are, therefore, applying an outlier adjustment factor of 0.9481 to the Federal rate. Thus, estimated capital outlier payments for FY 1997 represent a higher percentage of total capital payments than in FY 1996.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the net change in the outlier adjustment to the Federal rate for FY 1997 is 0.9942 (.9481/.9536). Thus, the outlier adjustment decreases the FY 1997 Federal rate by 0.58 percent (1–0.9942) compared with the FY 1996 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that estimated aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the geographic adjustment factor equal estimated aggregate payments that would have been made based on the Federal rate without such changes. We use the actuarial model described in Appendix B to estimate the aggregate payments that would have been made on the basis of the Federal rate without changes in the DRG classifications and weights and in the geographic adjustment factor. We also use the model to estimate aggregate payments that would be made on the basis of the Federal rate as a result of those changes. We then use these figures to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the geographic adjustment factor.

For FY 1996, we calculated a GAF/DRG budget neutrality factor of 0.9994. In the proposed rule for FY 1997, we proposed a GAF/DRG budget neutrality factor of 0.9992. In this final rule, based on calculations using updated data, we are applying a factor of 0.9987 to meet this requirement. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that estimated aggregate payments each year be no more than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the geographic adjustment factor. The incremental change in the adjustment from FY 1996 to FY 1997 is 0.9987. The cumulative change in the rate due to this adjustment is 1.0012 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996, and FY 1997: $0.9980 \times 1.0053 \times 0.9998 \times 0.9994 \times 0.9987 = 1.0012$).

This factor accounts for DRG reclassifications and recalibration and for changes in the geographic adjustment factor. It also incorporates the effects on the geographic adjustment factor of FY 1997 geographic reclassification decisions made by the MGCRB compared to FY 1996 decisions. However, it does not account for changes in payments due to changes in the disproportionate share and indirect medical education adjustment factors or in the large urban add-on.

4. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated additional payments for exceptions under § 412.348 determined as a proportion of total payments under the hospital-specific rate and Federal rate. We use the model originally developed for determining the budget neutrality adjustment factor to estimate payments under the exceptions payment process and to determine the exceptions payment adjustment factor. We describe that model in Appendix B to this final rule.

For FY 1996, we estimated that exceptions payments would equal 1.51 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of 0.9849 (1–.0151) in determining the Federal rate. For FY 1997, we estimated in the May 31, 1996, proposed rule that exceptions payments would equal 6.07 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we proposed to apply an exceptions reduction factor of 0.9393 (1–0.0607) to determine the FY 1997 Federal rate. For this final rule, we estimate that exceptions payments for FY 1997 will equal 6.42 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We are, therefore, applying an exceptions payment reduction factor of 0.9358 to the Federal rate for FY 1997.

The final exceptions reduction factor for FY 1997 is thus 4.99 percent lower than the factor for FY 1996, and 0.37 percent lower than the factor in the FY 1997 proposed rule. As we have stated before, we have expected the number and amount of exceptions payments generally to increase throughout the transition period.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. Therefore, the net adjustment to the FY 1997 Federal rate is 0.9358/0.9849, or 0.9501.

5. Standard Capital Federal Rate for FY 1997

For FY 1996, the capital Federal rate was $461.96. With the changes we proposed to the factors used to establish the Federal rate, we proposed that the FY 1997 Federal rate would be $441.84. In this final rule, we are establishing an FY 1997 Federal rate of $438.92. The final Federal rate for FY 1997 was calculated as follows:

- The FY 1997 update factor is 1.0070, that is, the update is 0.70 percent.
- The FY 1997 outlier adjustment factor is 0.9481.
- The FY 1997 budget neutrality adjustment factor applied to the standard Federal payment rate for changes in the DRG relative weights and in the geographic adjustment factor is 0.9987.
- The FY 1997 exceptions payments adjustment factor is 0.9358.

Since the Federal rate has already been adjusted for differences in case mix, wages, cost of living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we are making no additional adjustments in the standard Federal rate for these factors other than the budget neutrality factor for changes in the DRG relative weights and the geographic adjustment factor.

We are providing a chart that shows how each of the factors and adjustments for FY 1997 affected the computation of the final FY 1997 Federal rate in comparison to the FY 1996 Federal rate. The final FY 1997 update factor increases the Federal rate 0.70 percent compared to the rate in FY 1996, while the final geographic and DRG budget neutrality factor decreases the Federal rate by 0.13 percent. The final FY 1997 outlier adjustment factor decreases the Federal rate by 0.58 percent compared to FY 1996. The final FY 1997 exceptions reduction factor decreases the Federal rate by 4.99 percent compared to the exceptions reduction for FY 1996. The combined effect of all the changes is to decrease the Federal rate by 4.99 percent compared to the Federal rate for FY 1996.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 1996 FEDERAL RATE AND FY 1997 FEDERAL RATE

		Change	Percent change
Update factor [1]:			
FY 1996	1.0120		
FY 1997	1.0070	1.0070	0.70
GAF/DRG adjustment factor [1]:			
FY 1996	0.9994		
FY 1997	0.9987	0.9987	–0.13
Outlier adjustment factor [2]:			
FY 1996	0.9536		
FY 1997	0.9481	0.9942	–0.58
Exceptions adjustment factor [2]:			
FY 1996	0.9849		
FY 1997	0.9358	0.9501	–4.99
Federal Rate:			
FY 1996	$461.96		
FY 1997	$438.92	0.9501	–4.99

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 1996 to FY 1997 resulting from the application of the 0.9987 GAF/DRG budget neutrality factor for FY 1997 is 0.9987.

[2] The outlier reduction factor and the exceptions reduction factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 1997 exceptions reduction factor is 0.9358/0.9849, or 0.9501.

We are also providing a chart that shows how the final FY 1997 Federal rate differs from the proposed FY 1997 Federal rate.

This chart shows the factors that contributed to the 0.66 percent decrease in the rate since the proposed rule. The update factor decreased 0.30 percent since the proposed rule. Another change since the proposed rule is seen in the exceptions reduction factor, decreasing 0.37 percent from the earlier estimate. The GAF/DRG reduction factor decreased only 0.05 percent since the proposed rule and the outlier reduction factor increased 0.05 percent since the proposed estimate.

COMPARISON OF FACTORS AND ADJUSTMENTS: PROPOSED FY 1997 FEDERAL RATE AND FINAL FY 1997 FEDERAL RATE

		Net adjustment	Percent change
Update factor:			
Proposed FY 1997	1.0100		
Final FY 1997	1.0070	0.9970	−0.30
Outlier reduction factor:			
Proposed FY 1997	0.9476		
Final FY 1997	0.9481	1.0005	0.05
GAF/DRG reduction factor:			
Proposed FY 1997	0.9992		
Final FY 1997	0.9987	0.9995	−0.05
Exceptions reduction factor:			
Proposed FY 1997	0.9393		
Final FY 1997	0.9358	0.9963	−0.37
Federal rate:			
Proposed FY 1997	$441.84		
Final FY 1997	$438.92	0.9934	−0.66

6. Special Rate for Puerto Rico Hospitals

For FY 1996, the special rate for Puerto Rico hospitals was $355.35. With the changes we proposed to the factors used to determine the rate, the proposed FY 1997 special rate for Puerto Rico was $339.87. In this final rule, the FY 1997 capital rate for Puerto Rico is $337.63.

B. Determination of Hospital-Specific Rate Update

Section 412.328(e) of the regulations provides that the hospital-specific rate for FY 1997 be determined by adjusting the FY 1996 hospital-specific rate by the following factors:

1. Hospital-Specific Rate Update Factor

The hospital-specific rate is updated in accordance with the update factor for the standard Federal rate determined under § 412.308(c)(1). For FY 1997, the hospital-specific rate will be updated by a factor of 1.0070.

2. Exceptions Payment Adjustment Factor

For FY 1992 through FY 2001, the updated hospital-specific rate is multiplied by an adjustment factor to account for estimated exceptions payments for capital-related costs under § 412.348, determined as a proportion of the total amount of payments under the hospital-specific rate and the Federal rate. For FY 1997, we estimated in the proposed rule that exceptions payments would be 6.07 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We therefore proposed that the updated hospital-specific rate be reduced by a factor of 0.9393. In this final rule, we estimate that exceptions payments will be 6.42 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We are therefore applying an exceptions reduction factor of 0.9358 to the hospital-specific rate. The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the hospital-specific rate. Therefore, the net adjustment to the FY 1997 hospital-specific rate is 0.9358/0.9849, or 0.9501.

3. Net Change to Hospital-Specific Rate

We are providing a chart to show the net change to the hospital-specific rate. The chart shows the factors for FY 1996 and FY 1997 and the net adjustment for each factor. It also shows that the cumulative net adjustment from FY 1996 to FY 1997 is 0.9568, which represents a decrease of 4.32 percent to the hospital-specific rate. The FY 1997 hospital-specific rate for each hospital is determined by multiplying the FY 1996 hospital-specific rate by the cumulative net adjustment of 0.9568.

FY 1997 UPDATE AND ADJUSTMENTS TO HOSPITAL-SPECIFIC RATES

		Net adjustment	Percent change
Update factor:			
FY 1996	1.0100	.....	.....
FY 1997	1.0070	1.0070	0.70
Exceptions payment adjustment factor:			
FY 1996	0.9849	.....	.....
FY 1997	0.9358	0.9501	−4.99
Cumulative adjustments:			
FY 1996	0.9947	.....	.....
FY 1997	0.9518	0.9568	−4.32

Note: The update factor for the hospital-specific rate is applied cumulatively in determining the rates. Thus, the incremental increase in the update factor from FY 1996 to FY 1997 is 1.0070. In contrast, the exceptions payment adjustment factor and the budget neutrality factor are not applied cumulatively. Thus, for example, the incremental increase in the exceptions reduction factor from FY 1996 to FY 1997 is 0.9358/0.9849, or 0.9501.

C. Calculation of Inpatient Capital-Related Prospective Payments for FY 1997

During the capital prospective payment system transition period, a hospital is paid for inpatient capital-related costs under one of two alternative payment methodologies: the fully prospective payment methodology or the hold-harmless methodology. The payment methodology applicable to a particular hospital is determined when a hospital comes under the prospective payment system for capital-related costs by comparing its hospital-specific rate to the Federal rate applicable to the hospital's first cost reporting period under the prospective payment system. The applicable Federal rate is determined by adjusting:

- For outliers by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and,
- For the payment adjustment factors applicable to the hospital (that is, the hospital's geographic adjustment factor, the disproportionate share adjustment factor, and the indirect medical education adjustment factor, when appropriate).

If the hospital-specific rate is above the applicable Federal rate, the hospital is paid under the hold-harmless methodology. If the hospital-specific rate is below the applicable Federal rate, the hospital is paid under the fully prospective methodology.

For purposes of calculating payments for each discharge under both the hold-harmless payment methodology and the fully prospective payment methodology, the standard Federal rate is adjusted as follows:

(Standard Federal Rate) × (DRG weight) × (Geographic Adjustment Factor) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share Adjustment Factor + Indirect Medical Education Adjustment Factor, if applicable).

The result is termed the adjusted Federal rate.

Payments under the hold-harmless methodology are determined under one of two formulas. A hold-harmless hospital is paid the higher of:

- 100 percent of the adjusted Federal rate for each discharge; or
- An old capital payment equal to 85 percent (100 percent for sole community hospitals) of the hospital's allowable Medicare inpatient old capital costs per discharge for the cost reporting period plus a new capital payment based on a percentage of the adjusted Federal rate for each discharge. The percentage of the adjusted Federal rate equals the ratio of the hospital's allowable Medicare new capital costs to its total Medicare inpatient capital-related costs in the cost reporting period.

Once a hospital receives payment based on 100 percent of the adjusted Federal rate in a cost reporting period beginning on or after October 1, 1994 (or the first cost reporting period after

obligated capital that is recognized as old capital under § 412.302(c) is put in use for patient care, if later), the hospital continues to receive capital prospective payment system payments on that basis for the remainder of the transition period.

Payment for each discharge under the fully prospective methodology is the sum of:

- The hospital-specific rate multiplied by the DRG relative weight for the discharge and by the applicable hospital-specific transition blend percentage for the cost reporting period; and
- The adjusted Federal rate multiplied by the Federal transition blend percentage.

The blend percentages for cost reporting periods beginning in FY 1997 are 60 percent of the adjusted Federal rate and 40 percent of the hospital-specific rate.

Hospitals may also receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on that portion of the hospital's inpatient capital-related payments that is based on the Federal rate. For fully prospective hospitals, that portion is 60 percent Federal rate for discharges occurring in cost reporting periods beginning during FY 1997. Thus, a fully prospective hospital will receive 60 percent of the capital-related outlier payment calculated for the case for discharges occurring in cost reporting periods beginning in FY 1997. For hold-harmless hospitals paid 85 percent of their reasonable costs for old inpatient capital, the portion of the Federal rate that is included in the hospital's outlier payments is based on the hospital's ratio of Medicare inpatient costs for new capital to total Medicare inpatient capital costs. For hold-harmless hospitals that are paid based on 100 percent of the Federal rate, 100 percent of the Federal rate is included in the hospital's outlier payments.

The outlier thresholds for FY 1997 are published in section II.A.4.c of this addendum. For FY 1997, a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the prospective payment rate for the DRG plus $9,700. A case qualifies as a day outlier for FY 1997 if the length of stay is greater than the geometric mean length of stay for the DRG plus the lesser of 3 standard deviations of the length of stay or 24 days.

During the capital prospective payment system transition period, a hospital may also receive an additional payment under an exceptions process if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment level is established by class of hospital under § 412.348. The minimum payment levels for portions of cost reporting periods occurring in FY 1997 are:

- Sole community hospitals (located in either an urban or rural area), 90 percent;
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent and urban hospitals with at least 100 beds that qualify for disproportionate share payments under § 412.106(c)(2), 80 percent; and,
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

New hospitals are exempted from the capital prospective payment system for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. A new hospital's old capital costs are its allowable costs for capital assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of the hospital's base year cost reporting period, and are subject to the rules pertaining to old capital and obligated capital as of the applicable date. Effective with the third year of operation, we will pay the hospital under either the fully prospective methodology, using the appropriate transition blend in that Federal fiscal year, or the hold-harmless methodology. If the hold-harmless methodology is applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period.

IV. Changes to Payment Rates for Excluded Hospitals and Hospital Units

A. Rate-of-Increase Percentages for Excluded Hospitals and Hospital Units

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors). The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Effective with cost reporting periods beginning on or after October 1, 1991, a hospital that has Medicare inpatient operating costs in excess of its ceiling is paid its ceiling plus 50 percent of its costs in excess of the ceiling. Total payment may not exceed 110 percent of the ceiling. A hospital that has inpatient operating costs less than its ceiling is paid its costs plus the lower of—

- Fifty percent of the difference between the allowable inpatient operating costs and the ceiling; or
- Five percent of the ceiling.

Each hospital's target amount is adjusted annually, at the beginning of its cost reporting period, by an applicable rate-of-increase percentage. Section 1886(b)(3)(B) of the Act provides that for cost reporting periods beginning on or after October 1, 1993 and before October 1, 1994, the applicable rate-of-increase percentage is the market basket percentage increase minus the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's ''update adjustment percentage'' except for hospitals with an ''update adjustment percentage'' of at least 10 percent. The rate-of-increase percentage for hospitals in the latter case is the market basket percentage increase. The ''update adjustment percentage'' is the percentage by which a hospital's allowable inpatient operating costs exceeds the hospital's ceiling for the cost reporting period beginning in FY 1990. For cost reporting periods beginning on or after October 1, 1994 and before October 1, 1997, the update adjustment percentage is the update adjustment percentage from the previous year plus the previous year's

applicable reduction. The applicable reduction and applicable rate of increase percentage are then determined in the same manner as for FY 1994. The most recent forecast of the market basket increase for FY 1997 for hospitals and hospital units excluded from the prospective payment system is 2.5 percent.

B. Wage Index Exceptions for Excluded Hospitals and Units

In the August 30, 1991 final rule (56 FR 43232), we set forth our policy for target amount adjustments for significant wage increases. Effective with cost reporting periods beginning on or after April 1, 1990, significant increases in wages since the base period are recognized as a basis for an adjustment in the target amount under § 413.40(g).

To qualify for an adjustment, the excluded hospital or hospital unit must be located in a labor market area for which the average hourly wage increased significantly more than the national average hourly wage between the hospital's base period and the period subject to the ceiling. We use the hospital wage index for prospective payment hospitals to determine the rate of increase in the average hourly wage in the labor market area. For a hospital to qualify for an adjustment, the wage index value for the cost reporting period subject to the ceiling must be at least 8 percent higher than the wage index based on wage survey data collected for the base year cost reporting period. If survey data are not available for one (or both) of the cost reporting periods used in the comparison, the wage index based on the latest available survey data collected before that cost reporting period will be used. For example, to make the comparison between a 1983 base period and a hospital's cost reporting period beginning in FY 1994, we would use the rate of increase between the wage index based on 1982 wage data and the wage index based on the FY 1993 data, since the FY 1993 data are the most recent data currently available. Further, the comparison is made without regard to geographic reclassifications made by the MGCRB under sections 1886(d) (8) and (10) of the Act. Therefore, the comparison is made based on the wage index value of the labor market area in which the hospital is actually located.

We determine the amount of the adjustment for wage increases by considering three factors for the time between the base period and the period for which an adjustment is requested: the rate of increase in the hospital's average hourly wage; the rate of increase in the average hourly wage in the labor market area in which the hospital is located; and, the rate of increase in the national average hourly wage for hospital workers. The adjustment is limited to the amount by which the lower of the hospital's or the labor market area's rate of increase in average hourly wages significantly exceeds the national increase (that is, exceeds the national rate of increase by more than 8 percent). For purposes of computing the adjustment, the relative rate of increase in the average hourly wage for the labor market area is assumed to have been the same over each of the intervening years between the wage surveys.

To determine the rate of increase in the national average hourly wage, we use the average hourly earnings (AHE) component of the wages and salaries portion of the market basket. This measure is derived from the 1982-based market basket since the 1987-based market basket uses the employment cost index (ECI) for hospital workers as the price proxy for this component. Unlike the AHE, the ECI for hospital workers can be measured historically only back to 1986. In addition, the ECI does not adjust for skill-mix shifts and, therefore, measures only the change in wage rates per hour.

The average hourly earnings for hospital workers as measured by the market basket show the following increases:

1992 = 4.8 percent
1993 = 3.6 percent
1994 = 2.7 percent
1995 = 3.3 percent
1996 = 3.3 percent
1997 = 3.2 percent

We note that this section merely provides updated information with respect to areas that would qualify for the wage index adjustment under § 413.30(g). This information was calculated in accordance with established policy and does not reflect any change in that policy. The geographic areas in which the percentage difference in wage indexes was sufficient to qualify for a wage index adjustment are listed in Table 10 of section V of the addendum to this final rule. The table is constructed with old MSAs instead of the revised MSAs effective October 1, 1993 because current adjustment requests are for years prior to FY 1995.

V. Tables

This section contains the tables referred to throughout the preamble to this final rule and in this Addendum. For purposes of this final rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1A, 1C, 1D, 3C, 4a, 4b, 4c, 4d, 4e, 5, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 7A, 7B, 8A, 8B, and 10 are presented below. The tables presented below are as follows:

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 1D—Capital Standard Federal Payment Rate
Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1995 and Hospital Average Hourly Wage for Federal Fiscal Year 1997 Wage Index
Table 4a—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4b—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4c—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified
Table 4d—Average Hourly Wage for Urban Areas
Table 4e—Average Hourly Wage for Rural Areas
Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Length of Stay Outlier Cutoff Points Used in the Prospective Payment System
Table 6A—New Diagnosis Codes
Table 6B—New Procedure Codes
Table 6C—Invalid Diagnosis Codes
Table 6D—Invalid Procedure Codes
Table 6E—Revised Diagnosis Code Titles
Table 6F—Revised Procedure Code Titles
Table 6G—Additions to the CC Exclusions List
Table 6H—Deletions to the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 95 MEDPAR Update 06/95 GROUPER V13.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 95 MEDPAR Update 06/95 GROUPER V14.0
Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) August 1996
Table 8B—Statewide Average Capital Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) August 1996

Table 10—Percentage Difference in Wage Indexes for Areas that Qualify for a Wage Index Exception for Excluded Hospitals and Units

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$2,782.84	$1,125.64	$2,738.79	$1,107.83

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National	$2,759.22	$1,116.09	$2,759.22	$1,116.09
Puerto Rico	2,488.70	518.65	2,449.31	510.446

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	$438.92
Puerto Rico	337.63

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1995

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
010001	01.4404	14.82	010095	00.9193	11.25	030004	01.0049	13.48	040003	01.0725	13.23	040106	01.2549	12.84
010004	00.9693	11.10	010097	00.9352	15.20	030006	01.5554	17.52	040004	01.4587	14.83	040107	01.1909	14.95
010005	01.1626	15.40	010098	01.1820	11.02	030007	01.3159	16.41	040005	01.0378	11.59	040109	01.1653	12.69
010006	01.4724	15.23	010099	01.1144	15.49	030008	02.0954	20.42	040007	01.8743	18.12	040114	01.8503	16.64
010007	01.1025	13.12	010100	01.1699	14.77	030009	01.2852	15.58	040008	01.0326	10.77	040116	01.3868	19.25
010008	01.1344	09.54	010101	01.1120	14.21	030010	01.4117	17.75	040010	01.2297	13.78	040118	01.1263	14.29
010009	01.1393	14.82	010102	00.9570	13.63	030011	01.5040	17.66	040011	00.9313	10.75	040119	01.0928	14.34
010010	01.1289	14.33	010103	01.7657	17.15	030012	01.2238	15.81	040014	01.1951	16.07	040124	01.2159	14.30
010011	01.6182	18.94	010104	01.6869	17.90	030013	01.2435	18.99	040015	01.1979	12.12	040126	00.9606	11.74
010012	01.2658	16.27	010108	01.1476	13.68	030014	01.4395	17.86	040016	01.7360	16.43	050002	01.5608	25.91
010015	01.0576	15.63	010109	01.0643	11.48	030016	01.2487	17.09	040017	01.2593	11.68	050006	01.3917	19.15
010016	01.2642	16.76	010110	01.0158	13.44	030017	01.5214	18.98	040018	01.1718	16.66	050007	01.5863	25.29
010018	00.9019	16.19	010112	01.1218	14.09	030018	01.7970	19.57	040019	01.1544	13.52	050008	01.5106	25.48
010019	01.2853	14.99	010113	01.6345	13.69	030019	01.2020	19.31	040020	01.5961	14.08	050009	01.7160	31.63
010021	01.2330	12.20	010114	01.3192	15.37	030022	01.5026	17.41	040021	01.2317	14.69	050013	01.8083	22.05
010022	01.0214	16.89	010115	00.8472	11.98	030023	01.2631	17.64	040022	01.6987	14.73	050014	01.1762	22.55
010023	01.4798	14.71	010117	00.8122	13.54	030024	01.7885	21.04	040024	01.1694	12.16	050015	01.3901	22.18
010024	01.4003	15.62	010118	01.2505	15.07	030025	01.1635	12.76	040025	00.9192	11.81	050016	01.1490	18.51
010025	01.4321	13.16	010119	01.4921	16.36	030027	01.0796	14.69	040026	01.5567	16.35	050017	02.0442	24.39
010027	00.8360	13.55	010120	00.9671	14.32	030030	01.6610	18.19	040027	01.2885	12.56	050018	01.3313	18.49
010029	01.4936	14.84	010121	01.2282	12.92	030033	01.2472	16.40	040028	01.0910	11.40	050021	01.4226	23.40
010031	01.1845	14.58	010123	01.2531	16.95	030034	01.0470	15.89	040029	01.2512	14.12	050022	01.4532	22.63
010032	00.9480	12.45	010124	01.2853	16.15	030035	01.3434	20.77	040030	00.8948	11.09	050024	01.3916	21.31
010033	01.9155	17.61	010125	01.0231	12.86	030036	01.1448	18.23	040032	01.0009	11.18	050025	01.7849	21.97
010034	01.0754	13.48	010126	01.1654	13.13	030037	02.0251	19.60	040035	01.0269	10.24	050026	01.4559	21.79
010035	01.2416	15.13	010127	01.2974	16.29	030038	01.6224	18.82	040036	01.4885	16.45	050028	01.4384	15.33
010036	01.1248	15.34	010128	00.9619	12.34	030040	01.1863	15.88	040037	01.1075	11.55	050029	01.3835	25.55
010038	01.3476	16.70	010129	01.0826	13.29	030041	00.9847	13.68	040039	01.2413	12.23	050030	01.3340	19.24
010039	01.7027	16.14	010130	01.0405	15.28	030043	01.1901	18.25	040040	01.0021	15.73	050032	01.2750	22.76
010040	01.5324	18.21	010131	01.3555	17.75	030044	01.0338	13.19	040041	01.3902	13.95	050033	01.4227	25.47
010043	01.1075	10.35	010134	00.9077	13.36	030046	00.9532	16.38	040042	01.2961	12.03	050036	01.6184	18.61
010044	01.0952	11.01	010137	01.2701	16.36	030047	00.9496	19.91	040044	00.9581	10.04	050038	01.4467	29.05
010045	01.2215	10.79	010138	00.9454	09.85	030049	00.9747	17.30	040045	01.0339	14.28	050039	01.6003	21.04
010046	01.5270	15.51	010139	01.6545	19.67	030054	00.8681	12.63	040047	01.0992	14.78	050040	01.0789	22.92
010047	01.0203	10.05	010143	01.1818	15.83	030055	01.2107	16.85	040048	01.2128	13.48	050041	02.8307	22.21
010049	01.1130	15.66	010144	01.3065	18.42	030059	01.2755	19.95	040050	01.1009	11.66	050042	01.3156	20.20
010050	01.0631	13.48	010145	01.3277	14.59	030060	01.2055	13.90	040051	01.0953	12.64	050043	01.5742	30.15
010051	00.8526	10.24	010146	01.1731	15.59	030061	01.6515	16.75	040053	01.1051	11.67	050045	01.2631	17.44
010052	00.9891	12.78	010148	00.9991	12.83	030062	01.2298	15.56	040054	01.0313	12.44	050046	01.1948	23.81
010053	01.0623	12.67	010149	01.3548	16.86	030064	01.6287	17.31	040055	01.4492	14.51	050047	01.6384	29.15
010054	01.1715	16.17	010150	01.0458	16.29	030065	01.6550	18.87	040058	01.0595	13.61	050051	01.1150	16.63
010055	01.4799	16.35	010152	01.5001	16.29	030067	01.0493	15.92	040060	00.9905	09.85	050054	01.1945	20.55
010056	01.3958	17.99	010155	01.0155	09.42	030068	00.9533	14.04	040062	01.6183	16.66	050055	01.3688	27.48
010058	01.0940	12.96	020001	01.4893	25.53	030069	01.3387	19.11	040063	01.4690	15.67	050056	01.3269	25.23
010059	01.0172	14.17	020002	01.0275	24.16	030071	00.9564	.....	040064	01.0568	10.49	050057	01.4831	20.22
010061	01.0121	14.70	020004	01.1018	25.46	030072	00.8597	.....	040066	01.1450	14.63	050058	01.4657	22.78
010062	01.0056	13.45	020005	00.9023	28.36	030073	00.9795	.....	040067	01.0823	11.34	050060	01.5871	24.25
010064	01.8006	17.85	020006	01.1404	23.19	030074	00.8590	.....	040069	01.1002	14.90	050061	01.4278	22.12
010065	01.3671	14.30	020007	00.8988	21.82	030075	00.8591	.....	040070	00.9422	14.98	050063	01.4169	21.44
010066	00.9765	10.87	020008	01.1004	26.45	030076	00.9802	.....	040071	01.5971	15.42	050065	01.6154	22.37
010068	01.2347	18.82	020009	00.9164	21.29	030077	00.8769	.....	040072	01.0869	13.39	050066	01.2719	24.33
010069	01.1593	13.06	020010	00.9035	22.13	030078	01.0972	.....	040074	01.2491	14.51	050067	01.3827	21.09
010072	01.2165	12.72	020011	01.0329	22.27	030079	00.7727	.....	040075	01.0588	11.57	050068	01.0946	19.05
010073	00.9681	09.66	020012	01.3114	23.99	030080	01.6582	20.82	040076	01.0307	14.71	050069	01.6194	23.15
010078	01.1765	15.50	020013	01.0331	24.03	030083	01.3074	21.70	040077	00.9164	10.72	050070	01.2861	30.65
010079	01.2797	13.72	020014	01.0795	24.52	030084	00.9397	.....	040078	01.4848	17.29	050071	01.3190	30.60
010080	01.0410	12.99	020017	01.5155	26.83	030085	01.5017	20.21	040080	01.0736	15.45	050072	01.3045	30.90
010081	01.9870	16.16	020018	00.8963	.....	030086	01.3255	18.76	040081	00.9292	09.91	050073	01.3242	31.28
010083	01.0482	13.25	020019	00.8718	.....	030087	01.6136	18.77	040082	01.2135	13.69	050074	01.2333	33.23
010084	01.4758	16.64	020020	00.8462	.....	030088	01.3530	19.90	040084	01.0970	14.83	050075	01.4037	30.63
010085	01.3193	17.11	020021	00.8338	.....	030089	01.5845	18.66	040085	01.2469	15.18	050076	01.7727	29.53
010086	01.0497	13.54	020024	01.0892	22.64	030092	01.5679	20.62	040088	01.3050	13.73	050077	01.6129	22.83
010087	01.6125	16.88	020025	01.0122	24.44	030093	01.3720	18.08	040090	00.8995	13.78	050078	01.3591	24.44
010089	01.1896	15.13	020026	01.3245	.....	030094	01.2482	18.57	040091	01.2939	18.25	050079	01.5793	28.30
010090	01.5738	16.40	020027	01.0132	.....	030095	01.2170	13.09	040093	00.9710	10.98	050080	01.2370	16.56
010091	00.9216	13.43	030001	01.3125	19.28	030098	00.9899	.....	040095	00.9117	10.56	050081	01.6631	24.01
010092	01.4203	15.35	030002	01.8022	20.25	040001	01.1237	12.37	040100	01.2420	12.81	050082	01.5000	21.34
010094	01.1427	16.76	030003	01.8995	21.05	040002	01.1641	13.07	040105	01.0034	11.90	050084	01.5602	22.33

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
050088	01.1393	21.94	050188	01.3477	25.25	050295	01.4128	20.86	050419	01.3115	18.88	050542	01.2233	13.79
050089	01.3622	19.92	050189	00.9734	21.50	050296	01.2084	22.69	050420	01.4349	25.15	050543	00.9225	21.68
050090	01.2815	21.75	050191	01.5035	20.64	050298	01.2991	20.77	050421	01.4202	24.62	050545	00.8302	20.39
050091	01.2000	24.42	050192	01.1398	18.74	050299	01.3639	22.49	050423	00.9862	19.25	050546	00.7201	21.10
050092	00.8597	16.12	050193	01.3513	22.56	050300	01.3143	18.87	050424	01.8327	22.16	050547	00.9283	20.65
050093	01.5911	22.35	050194	01.2422	25.03	050301	01.3882	21.54	050425	01.2730	30.30	050549	01.7151	25.86
050096	01.1293	12.95	050195	01.5895	31.26	050302	01.4072	24.31	050426	01.3016	23.89	050550	02.3039	23.34
050097	01.4914	18.40	050196	01.4171	16.40	050305	01.5823	29.82	050427	00.9243	18.44	050551	01.3441	24.20
050099	01.4623	22.91	050197	01.8264	29.07	050307	01.4384	20.51	050430	00.9414	15.94	050552	01.1681	22.44
050100	01.7458	29.38	050199	00.8980	19.48	050308	01.5751	29.77	050431	01.0690	22.58	050557	01.4977	21.08
050101	01.4057	25.12	050204	01.5012	23.12	050309	01.3320	23.63	050432	01.5759	23.69	050559	01.3565	24.18
050102	01.4495	22.34	050205	01.4071	19.99	050310	01.2559	22.24	050433	01.0471	17.37	050560	01.1958	.....
050103	01.6149	26.74	050207	01.2968	20.58	050312	01.9778	23.66	050434	01.1429	18.08	050561	01.2258	30.34
050104	01.3954	21.73	050208	00.9598	27.60	050313	01.1978	20.90	050435	01.2450	18.98	050564	01.2054	24.02
050107	01.4293	22.92	050211	01.3146	29.60	050315	01.1780	20.82	050436	01.0070	15.77	050565	01.1520	21.26
050108	01.5836	22.79	050213	01.3874	21.12	050317	01.3273	20.90	050438	01.6314	23.33	050566	00.8825	19.75
050109	02.3476	24.68	050214	01.4375	21.76	050320	01.3287	27.27	050440	01.3954	19.93	050567	01.6587	23.01
050110	01.2507	18.72	050215	01.5190	27.75	050324	01.8319	25.93	050441	01.9149	28.55	050568	01.4204	18.28
050111	01.3798	18.81	050217	01.3643	18.44	050325	01.2523	20.87	050443	00.9587	15.95	050569	01.3542	22.93
050112	01.5220	22.15	050219	01.3321	20.37	050327	01.6010	21.00	050444	01.3523	22.19	050570	01.6980	24.91
050113	01.2853	28.23	050222	01.5922	24.56	050328	01.4495	32.92	050446	00.8940	17.25	050571	01.4204	22.37
050114	01.3991	21.65	050224	01.5653	22.17	050329	01.3164	20.34	050447	01.0844	18.59	050573	01.6397	23.66
050115	01.5990	21.11	050225	01.3294	20.67	050331	01.4127	27.08	050448	01.1051	19.82	050575	01.2273	.....
050116	01.4567	22.73	050226	01.3370	22.58	050333	00.9784	18.66	050449	01.3604	21.99	050577	01.3597	20.32
050117	01.2834	20.93	050228	01.3736	29.90	050334	01.7734	28.22	050454	01.8370	26.64	050578	01.1992	23.70
050118	01.2808	23.24	050230	01.2918	26.22	050335	01.2452	19.62	050455	01.9214	22.89	050579	01.5677	26.94
050121	01.4021	19.96	050231	01.6412	24.14	050336	01.3479	21.04	050456	01.1402	20.24	050580	01.3586	23.47
050122	01.7000	22.90	050232	01.7744	24.17	050337	01.1692	23.87	050457	01.9338	28.66	050581	01.4202	24.63
050124	01.2720	19.72	050233	01.2916	30.88	050342	01.3725	17.55	050459	01.1867	28.20	050583	01.5832	23.08
050125	01.3165	25.98	050234	01.3192	22.00	050343	01.0360	18.56	050464	01.8999	22.62	050584	01.2104	22.39
050126	01.4674	23.23	050235	01.5083	25.00	050348	01.5885	22.83	050468	01.3992	16.26	050585	01.2578	23.70
050127	01.2913	22.89	050236	01.6581	24.28	050349	00.9126	14.28	050469	01.0927	17.33	050586	01.3811	21.76
050128	01.5432	20.97	050238	01.4934	22.95	050350	01.3885	22.68	050470	01.1184	21.29	050588	01.3856	26.55
050129	01.5533	22.11	050239	01.5043	21.24	050351	01.4758	24.81	050471	01.7401	24.07	050589	01.3208	25.37
050131	01.2667	27.78	050240	01.3972	22.82	050352	01.2909	23.35	050476	01.3455	19.12	050590	01.4063	23.00
050132	01.4398	24.55	050241	01.2317	25.78	050353	01.5639	21.45	050477	01.5165	24.50	050591	01.2961	22.97
050133	01.3529	20.16	050242	01.4661	27.10	050355	00.9639	15.53	050478	00.9231	21.73	050592	01.3448	20.34
050135	01.3822	26.86	050243	01.5339	21.58	050357	01.7182	23.17	050481	01.4226	24.85	050593	01.5312	24.40
050136	01.3787	21.89	050245	01.3997	21.74	050359	01.2130	18.78	050482	00.9467	14.55	050594	02.0186	23.81
050137	01.3809	31.46	050248	01.2055	24.50	050360	01.4693	30.15	050483	01.1688	23.89	050597	01.2823	21.91
050138	01.8792	32.07	050251	01.0803	17.68	050366	01.3068	20.47	050485	01.6321	22.34	050598	01.4008	26.87
050139	01.3410	31.14	050253	00.7756	18.87	050367	01.2858	27.02	050486	01.4321	24.94	050599	01.6761	22.70
050140	01.4209	30.76	050254	01.1917	22.13	050369	01.3286	23.30	050488	01.3939	30.41	050601	01.3057	29.03
050144	01.5867	26.03	050256	01.7682	19.70	050373	01.4241	23.83	050489	00.9463	27.10	050603	01.4202	23.50
050145	01.3536	27.67	050257	01.0737	20.65	050376	01.3722	25.86	050491	01.2864	23.76	050604	01.5879	29.45
050146	01.3368	.....	050260	01.0937	21.96	050377	00.9038	15.01	050492	01.2453	23.05	050607	01.2965	21.79
050147	00.6982	20.55	050261	01.1916	17.91	050378	01.1132	22.45	050494	01.1689	24.95	050608	01.3088	15.23
050148	01.1363	19.62	050262	01.9314	26.89	050379	01.0922	19.04	050496	01.7816	31.64	050609	01.4337	31.39
050149	01.4384	21.97	050263	01.2879	24.44	050380	01.6730	28.31	050497	00.7940	.....	050613	01.1371	22.70
050150	01.2549	23.23	050264	01.3787	26.01	050382	01.4475	20.97	050498	01.2605	22.42	050615	01.7184	23.31
050152	01.4365	24.60	050267	01.5206	24.88	050385	01.3946	24.83	050502	01.6552	23.61	050616	01.3002	20.68
050153	01.6526	30.53	050270	01.2597	23.60	050388	00.9121	14.19	050503	01.3025	23.01	050618	01.0773	19.37
050155	01.1138	23.60	050272	01.3290	19.69	050390	01.2239	20.80	050506	01.4050	25.57	050623	01.1535	24.40
050158	01.6868	27.88	050274	00.9762	18.36	050391	01.2734	21.61	050510	01.3660	30.46	050624	01.3672	25.95
050159	01.2594	22.01	050276	01.2209	26.99	050392	00.9526	17.49	050512	01.4632	31.27	050625	01.5887	24.00
050167	01.4435	21.67	050277	01.3813	21.30	050393	01.4172	21.56	050515	01.3623	30.78	050630	01.3492	21.26
050168	01.6111	24.83	050278	01.5176	23.01	050394	01.5474	20.71	050516	01.6598	24.33	050633	01.2939	21.76
050169	01.5874	24.53	050279	01.2425	20.58	050396	01.6173	21.89	050517	01.2778	19.15	050635	01.4086	31.06
050170	01.5243	21.58	050280	01.6603	22.80	050397	01.0096	19.97	050522	01.3194	30.40	050636	01.4306	20.37
050172	01.2559	19.96	050281	01.4482	22.74	050401	01.1146	19.09	050523	01.2674	27.65	050638	01.0967	24.28
050173	01.2322	23.70	050282	01.3406	21.42	050404	01.1459	16.51	050526	01.3671	24.28	050641	01.2440	12.26
050174	01.6918	27.89	050283	01.1645	27.24	050406	01.1157	15.29	050528	01.3348	16.46	050643	00.7692	.....
050175	01.3877	21.97	050286	01.0345	17.99	050407	01.3194	27.06	050531	01.3097	23.60	050644	00.9068	26.86
050177	01.2949	18.76	050289	01.7959	27.38	050410	01.0758	17.45	050534	01.3868	23.83	050660	01.3466	.....
050179	01.2634	17.29	050290	01.6280	32.31	050411	01.4012	29.35	050535	01.3837	22.46	050661	00.8839	20.21
050180	01.5556	30.12	050291	01.2616	24.46	050414	01.2883	24.32	050537	01.2702	21.30	050662	00.8598	21.17
050183	01.1975	19.09	050292	01.0830	21.20	050417	01.3024	21.14	050539	01.2222	21.90	050663	01.0612	23.51
050186	01.2894	24.12	050293	01.0595	19.93	050418	01.4205	24.24	050541	01.5919	30.97	050666	00.7408	22.84

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
050667	01.1376	24.88	060043	00.9469	11.78	080003	01.3117	19.32	100069	01.3695	17.29	100165	01.3116	13.45
050668	01.1691	28.20	060044	01.2667	17.32	080004	01.2876	17.59	100070	01.4431	17.56	100166	01.4649	20.31
050670	00.7582	20.12	060046	01.1210	16.56	080005	01.3302	16.82	100071	01.2985	16.98	100167	01.3941	20.54
050672	00.6286	23.77	060047	00.9812	11.40	080006	01.3946	20.49	100072	01.2499	17.24	100168	01.3762	19.35
050674	01.2103	29.09	060049	01.3584	17.47	080007	01.3608	17.99	100073	01.7985	20.61	100169	01.8614	18.29
050675	01.7287	16.32	060050	01.1733	13.77	090001	01.4141	19.64	100075	01.6343	17.85	100170	01.5053	16.56
050676	01.0181	13.83	060052	01.1025	12.56	090002	01.2979	20.51	100076	01.3934	17.15	100172	01.3679	13.38
050677	01.4291	32.99	060053	00.9924	13.73	090003	01.3037	24.74	100077	01.3130	17.25	100173	01.6821	16.33
050678	01.0695	24.07	060054	01.3339	16.80	090004	01.7183	23.49	100078	01.1660	15.14	100174	01.5414	18.20
050680	01.2184	26.13	060056	00.9638	13.37	090005	01.3403	27.07	100079	01.8349	16.01	100175	01.2188	16.18
050682	00.8554	14.98	060057	01.0526	21.45	090006	01.3699	19.52	100080	01.6185	19.40	100176	02.0480	21.95
050684	01.2032	21.30	060058	00.9353	12.54	090007	01.4082	19.58	100081	01.1190	13.33	100177	01.3381	18.55
050685	01.2265	26.94	060060	00.9689	12.21	090008	01.5337	24.06	100082	01.5411	17.93	100179	01.6547	19.03
050686	01.3481	30.96	060062	00.9518	15.85	090010	00.9987	21.70	100083	01.3214	17.50	100180	01.4234	17.67
050688	01.2759	27.89	060063	01.0378	11.12	090011	01.9774	24.77	100084	01.5306	16.53	100181	01.2716	17.59
050689	01.4006	29.12	060064	01.4255	20.21	090015	01.1679	.....	100085	01.4393	19.50	100183	01.3672	19.33
050690	01.4317	30.29	060065	01.3431	19.98	100001	01.5420	18.86	100086	01.3389	21.32	100186	01.4766	16.70
050693	01.9223	28.80	060066	00.9927	13.10	100002	01.4781	19.71	100087	01.8063	20.83	100187	01.4519	18.35
050694	01.3722	21.20	060068	01.2574	14.00	100004	01.0281	11.81	100088	01.6818	17.41	100189	01.3788	23.13
050695	01.1715	24.30	060070	01.0379	14.99	100005	01.0125	16.26	100090	01.4281	16.49	100191	01.3328	19.19
050696	02.0081	27.85	060071	01.2272	14.69	100006	01.5475	18.99	100092	01.4493	16.91	100199	01.4386	21.91
050697	01.1596	17.93	060073	00.9804	14.32	100007	01.8482	19.61	100093	01.5191	14.28	100200	01.3968	21.35
050698	01.1420	22.83	060075	01.3519	20.27	100008	01.7482	19.80	100098	01.1444	17.43	100203	01.2655	19.34
050699	00.5836	23.13	060076	01.3688	15.97	100009	01.5619	18.17	100099	01.2518	13.09	100204	01.6212	19.95
050700	01.4316	32.46	060085	00.9849	10.28	100010	01.5539	20.58	100102	01.1013	16.44	100206	01.3436	19.47
050701	01.3067	27.13	060087	01.6543	18.67	100012	01.6867	16.73	100103	01.1795	14.46	100207	01.4708	19.86
050702	00.8621	16.98	060088	01.0424	15.38	100014	01.4263	18.57	100105	01.4672	18.08	100208	01.6280	21.86
050704	01.2122	20.48	060090	00.9635	14.23	100015	01.2474	17.60	100106	01.0473	15.46	100209	01.6581	22.39
050706	00.9234	16.16	060096	01.0000	21.70	100017	01.6490	17.18	100107	01.4657	18.26	100210	01.6673	16.51
050707	01.1851	25.62	060100	01.4179	20.95	100018	01.2838	19.94	100108	01.1057	15.45	100211	01.3452	19.17
050708	00.9454	15.13	060103	01.2446	21.10	100019	01.4953	18.81	100109	01.3492	16.81	100212	01.6712	18.54
050709	01.3089	.....	060104	01.3185	20.32	100020	01.3391	18.31	100110	01.4144	18.91	100213	01.5487	20.00
050710	01.4032	.....	070001	01.7660	24.78	100022	01.8412	23.05	100112	00.9727	10.84	100217	01.2995	17.06
050711	02.3704	.....	070002	01.8658	24.78	100023	01.3492	15.88	100113	02.0782	18.19	100220	01.9605	19.66
050712	02.1009	.....	070003	01.1262	24.50	100024	01.3428	19.54	100114	01.4899	17.73	100221	01.5710	20.68
060001	01.5508	18.95	070004	01.1725	23.70	100025	01.8824	16.22	100117	01.3400	18.32	100222	01.3999	18.80
060003	01.2948	16.17	070005	01.3749	25.45	100026	01.6407	15.52	100118	01.2643	16.03	100223	01.4871	18.53
060004	01.2527	19.46	070006	01.3549	26.73	100027	00.9771	11.53	100121	01.3066	15.44	100224	01.4719	19.83
060006	01.1975	16.19	070007	01.3479	24.08	100028	01.2652	16.38	100122	01.4506	16.39	100225	01.3254	19.52
060007	01.2004	13.06	070008	01.3150	23.47	100029	01.4199	18.94	100124	01.3626	19.41	100226	01.3465	16.58
060008	01.0187	14.31	070009	01.2763	25.01	100030	01.2742	18.25	100125	01.1588	17.77	100228	01.3104	21.73
060009	01.4655	19.88	070010	01.5525	22.46	100032	01.9211	17.39	100126	01.4979	18.74	100229	01.3245	16.27
060010	01.5260	20.98	070011	01.3234	22.80	100034	01.7396	18.34	100127	01.6887	17.42	100230	01.5387	18.97
060011	01.3370	20.75	070012	01.2507	23.38	100035	01.6148	16.60	100128	02.2486	20.13	100231	01.6719	17.53
060012	01.3930	15.79	070013	01.2967	24.01	100038	01.6027	21.18	100129	01.2547	17.45	100232	01.2671	17.95
060013	01.2675	18.83	070015	01.3575	23.82	100039	01.7141	21.15	100130	01.2030	17.45	100234	01.5302	19.03
060014	01.7036	20.52	070016	01.3214	25.46	100040	01.6660	17.04	100131	01.3906	20.00	100235	01.4767	17.51
060015	01.5654	19.33	070017	01.3822	23.54	100043	01.4572	17.78	100132	01.4161	15.67	100236	01.4469	17.14
060016	01.0899	11.42	070018	01.3711	27.83	100044	01.5020	19.01	100134	01.0905	14.50	100237	02.1542	22.65
060018	01.2065	16.36	070019	01.2155	24.04	100045	01.4043	17.12	100135	01.5238	16.11	100238	01.4815	18.68
060020	01.5157	16.73	070020	01.3663	24.32	100046	01.5110	18.53	100137	01.3214	18.42	100239	01.4625	19.34
060022	01.6703	17.89	070021	01.3063	25.47	100047	01.9063	18.62	100138	00.9490	13.00	100240	00.8493	15.06
060023	01.6452	16.65	070022	01.7748	24.30	100048	01.0049	11.69	100139	01.0446	14.54	100241	00.9419	12.47
060024	01.8238	21.86	070024	01.3565	23.81	100049	01.3205	18.04	100140	01.2494	16.91	100242	01.4130	16.29
060026	01.4257	19.44	070025	01.7832	24.06	100050	01.2217	15.06	100142	01.1996	16.68	100243	01.4202	18.82
060027	01.6710	19.41	070026	01.2095	23.07	100051	01.1641	16.60	100144	01.1391	13.65	100244	01.4365	17.32
060028	01.4813	21.26	070027	01.2527	24.31	100052	01.3742	15.60	100145	01.3457	14.87	100246	01.3480	20.92
060029	00.9561	13.93	070028	01.4842	24.67	100053	01.2969	17.36	100146	01.2636	14.27	100248	01.7029	17.88
060030	01.3302	20.36	070029	01.3530	21.65	100054	01.2845	17.74	100147	01.1046	13.43	100249	01.3523	18.87
060031	01.6125	18.60	070030	01.3017	24.71	100055	01.3733	17.47	100150	01.3716	18.64	100252	01.2487	19.21
060032	01.5798	19.35	070031	01.2736	22.24	100056	01.4638	19.83	100151	01.8558	18.63	100253	01.4795	20.60
060033	01.1592	11.96	070033	01.2828	28.25	100057	01.3486	16.78	100154	01.5652	17.95	100254	01.5994	17.50
060034	01.4918	15.10	070034	01.3756	24.74	100060	01.8574	17.64	100156	01.2197	18.65	100255	01.3326	19.11
060036	01.1876	14.12	070035	01.3457	24.31	100061	01.5097	20.88	100157	01.6104	19.31	100256	01.8928	19.32
060037	01.0382	13.22	070036	01.4357	26.98	100062	01.7312	17.34	100159	00.9792	12.76	100258	01.6487	21.12
060038	01.0165	12.25	070039	00.9163	.....	100063	01.3440	16.12	100160	01.1077	18.07	100259	01.4550	16.36
060041	00.9131	16.53	080001	01.6108	23.66	100067	01.4273	16.38	100161	01.5218	19.76	100260	01.4008	20.44
060042	01.0563	15.65	080002	01.1901	17.34	100068	01.3898	17.42	100162	01.3906	14.53	100262	01.4078	19.32

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100263	01.3780	15.44	110061	01.0125	10.61	110154	00.8337	12.68	130009	00.9607	14.78	140042	01.0485	13.30
100264	01.3927	18.24	110062	00.9133	09.73	110155	01.2457	12.27	130010	00.9378	15.04	140043	01.1788	16.37
100265	01.3736	17.47	110063	01.0733	11.44	110156	01.0063	12.68	130011	01.2462	16.74	140045	01.0658	14.21
100266	01.2340	15.64	110064	01.2886	15.87	110161	01.3364	20.79	130012	01.0306	18.53	140046	01.3024	14.83
100267	01.3054	16.39	110065	01.0226	12.00	110162	00.8869	.....	130013	01.2406	17.21	140047	01.1337	13.20
100268	01.1963	22.00	110066	01.4492	15.93	110163	01.4519	18.52	130014	01.3064	16.43	140048	01.2661	21.68
100269	01.3576	19.07	110069	01.1724	15.22	110164	01.4148	19.63	130015	00.8651	12.43	140049	01.5736	19.35
100270	00.8215	12.95	110070	01.1711	11.37	110165	01.3220	17.47	130016	00.9236	16.18	140051	01.4909	19.14
100271	01.6484	19.22	110071	01.0312	10.29	110166	01.4938	16.67	130017	01.3329	13.03	140052	01.3125	17.02
100273	00.5356	19.72	110072	01.0247	11.53	110168	01.6565	19.22	130018	01.6907	17.60	140053	01.8943	17.53
100275	01.4323	21.96	110073	01.2039	12.67	110169	00.7217	19.70	130019	01.1299	13.74	140054	01.3596	.....
100276	01.3023	21.94	110074	01.4766	18.11	110171	01.4568	21.21	130021	01.0465	11.96	140055	00.9522	13.00
100277	01.0092	12.71	110075	01.2078	15.29	110172	01.3364	22.83	130022	01.1801	15.79	140058	01.2417	15.26
100279	01.3749	18.35	110076	01.3901	18.01	110174	01.0421	17.57	130024	01.0502	15.25	140059	01.1373	13.52
100280	01.3702	16.93	110078	01.6719	20.46	110176	01.1237	19.42	130025	01.1504	15.21	140061	01.0923	13.80
100281	01.2549	20.85	110079	01.3994	21.08	110177	01.4754	19.21	130026	01.1837	17.88	140062	01.2440	23.10
100282	01.0458	16.99	110080	01.1584	17.55	110178	01.3367	16.78	130027	00.9547	17.18	140063	01.4167	22.48
100283	01.5652	.....	110082	02.0181	20.36	110179	01.2418	21.56	130028	01.2487	16.08	140064	01.3103	16.15
110001	01.2981	17.40	110083	01.7259	20.66	110181	00.9808	12.59	130029	01.0228	17.07	140065	01.4933	23.68
110002	01.2392	15.22	110086	01.2202	13.76	110183	01.3677	17.07	130030	01.0169	16.20	140066	01.3703	13.39
110003	01.3058	15.41	110087	01.3382	19.17	110184	01.1756	17.58	130031	01.0188	13.26	140067	01.8244	18.24
110004	01.3077	16.17	110088	00.9695	11.17	110185	01.0884	12.23	130034	01.0391	16.38	140068	01.3717	19.00
110005	01.1844	21.40	110089	01.2124	15.37	110186	01.3073	15.75	130035	01.0662	15.37	140069	01.0074	14.23
110006	01.3576	18.87	110091	01.3396	19.15	110187	01.2468	17.19	130036	01.2648	12.50	140070	01.2760	16.18
110007	01.4531	16.31	110092	01.1806	12.55	110188	01.4230	18.00	130037	01.2740	14.58	140074	00.9717	14.60
110008	01.2394	15.47	110093	01.0117	09.81	110189	01.1532	19.78	130043	00.9512	14.61	140075	01.4676	21.53
110009	01.0428	15.71	110094	00.9605	12.06	110190	01.0880	14.41	130044	01.1521	12.37	140077	01.1406	17.05
110010	02.1537	21.39	110095	01.2790	13.86	110191	01.3522	18.06	130045	01.0312	12.15	140079	01.2381	20.90
110011	01.2831	16.01	110096	01.1394	14.30	110192	01.3947	22.17	130048	01.0694	11.90	140080	01.5767	19.60
110013	01.1303	14.36	110097	01.0211	15.58	110193	01.2332	16.16	130049	01.2951	17.55	140081	01.0786	13.92
110014	01.0358	14.48	110098	01.0943	11.76	110194	00.9677	11.77	130054	00.9652	17.12	140082	01.5017	22.10
110015	01.3568	16.52	110100	01.0953	12.27	110195	01.0807	10.50	130056	00.8422	09.45	140083	01.2513	16.51
110016	01.2935	14.21	110101	01.0963	09.24	110198	01.3335	22.58	130058	00.9768	12.87	140084	01.2323	17.94
110017	00.8913	11.01	110103	00.9600	10.35	110200	01.9391	15.79	130060	01.1395	18.38	140086	01.1440	13.93
110018	01.1312	17.20	110104	01.1190	13.28	110201	01.4569	16.13	130061	00.9484	.....	140087	01.3815	17.10
110020	01.2347	17.30	110105	01.1311	15.17	110203	00.9715	14.94	140001	01.2991	14.63	140088	01.6591	23.33
110023	01.2424	17.53	110107	01.8265	17.61	110204	00.8135	13.48	140002	01.2823	17.06	140089	01.2280	15.85
110024	01.4719	16.51	110108	00.9766	11.27	110205	01.1045	11.84	140003	01.0185	13.14	140090	01.5067	23.62
110025	01.4105	16.85	110109	01.1048	12.14	110207	01.0934	15.59	140004	01.0772	13.75	140091	01.8655	17.70
110026	01.1893	14.02	110111	01.1951	15.43	110208	00.9744	14.94	140005	00.9515	09.98	140093	01.1958	17.17
110027	01.1003	14.56	110112	01.1526	16.19	110209	00.8260	.....	140007	01.4661	20.56	140094	01.2893	18.81
110028	01.6029	17.75	110113	01.1372	12.86	120001	01.7306	24.22	140008	01.4816	20.57	140095	01.4253	.....
110029	01.3446	17.71	110114	01.0725	13.75	120002	01.1982	21.46	140010	01.3912	22.14	140097	00.9264	14.15
110030	01.2789	16.60	110115	01.6206	21.82	120003	01.1664	21.82	140011	01.1461	15.31	140100	01.2257	17.62
110031	01.3373	19.59	110118	01.0282	13.18	120004	01.2809	20.56	140012	01.2854	17.59	140101	01.2060	18.04
110032	01.2263	15.31	110120	01.0844	13.35	120005	01.2640	18.34	140013	01.6583	16.49	140102	01.0399	14.09
110033	01.5143	20.32	110121	01.1813	11.84	120006	01.2131	22.75	140014	01.0788	16.53	140103	01.3225	16.66
110034	01.5234	16.64	110122	01.3572	16.03	120007	01.6283	20.27	140015	01.2919	13.45	140105	01.3087	18.25
110035	01.4060	18.53	110124	01.0707	15.32	120009	00.9840	18.05	140016	00.9315	11.59	140107	01.0822	11.63
110036	01.6813	.....	110125	01.2239	15.97	120010	01.8462	22.11	140018	01.4546	18.85	140108	01.3622	20.00
110037	01.0852	10.18	110127	00.9150	14.43	120011	01.2509	30.31	140019	00.9900	11.80	140109	01.1367	12.95
110038	01.4649	15.04	110128	01.2059	17.54	120012	00.9944	20.30	140024	01.0188	13.59	140110	01.2343	14.51
110039	01.3761	17.93	110129	01.6793	14.06	120014	01.3609	21.25	140025	01.0804	15.88	140112	01.1043	13.55
110040	01.0393	16.26	110130	01.0709	10.57	120015	00.8375	21.01	140026	01.1408	15.58	140113	01.4630	19.21
110041	01.2212	16.43	110132	01.1522	12.87	120016	00.8646	21.94	140027	01.3210	15.96	140114	01.3392	18.95
110042	01.2049	14.63	110134	00.8920	11.65	120018	01.0071	21.16	140029	01.3790	19.62	140115	01.2253	19.32
110043	01.7109	15.17	110135	01.1993	13.83	120019	01.1783	19.48	140030	01.6766	21.46	140116	01.2899	19.68
110044	01.0952	14.31	110136	01.1192	13.74	120021	01.0173	19.68	140031	01.1664	13.02	140117	01.4908	17.63
110045	01.2460	22.04	110140	00.8194	15.03	120022	01.7340	17.83	140032	01.2528	16.44	140118	01.6836	23.01
110046	01.1964	15.07	110141	00.9075	11.65	120026	01.2870	22.30	140033	01.2626	19.10	140119	01.6901	19.58
110048	01.3156	12.97	110142	00.9799	11.15	120027	01.5254	21.16	140034	01.1754	16.74	140120	01.5071	14.72
110049	01.0670	13.71	110143	01.4049	18.27	130001	01.0518	17.21	140035	01.0183	10.70	140121	01.5259	10.91
110050	01.0687	14.00	110144	01.1632	16.44	130002	01.3744	14.66	140036	01.2342	15.03	140122	01.5567	21.02
110051	00.9846	16.35	110146	01.0267	09.43	130003	01.3166	18.11	140037	00.9837	12.24	140124	01.1235	23.06
110052	00.9986	09.11	110149	01.1280	12.17	130005	01.4466	18.49	140038	01.1512	15.00	140125	01.3444	15.60
110054	01.2820	16.57	110150	01.3562	16.56	130006	01.9033	18.19	140039	00.9224	11.51	140127	01.3521	17.11
110056	00.9698	12.61	110152	01.1389	13.06	130007	01.6435	19.45	140040	01.3038	14.34	140128	01.0617	16.10
110059	01.2862	14.39	110153	01.0201	15.49	130008	00.9993	10.28	140041	01.2502	15.01	140129	01.0511	13.18

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
140130	01.2732	21.67	140224	01.3678	22.10	150039	01.0056	14.51	150125	01.4257	18.17	160068	01.1088	13.30
140132	01.4192	18.58	140228	01.7080	17.36	150042	01.2901	15.47	150126	01.5188	19.24	160069	01.4027	16.05
140133	01.3737	19.77	140230	00.9428	15.48	150043	01.0529	16.65	150127	01.0449	14.34	160070	01.0379	13.84
140135	01.3086	14.29	140231	01.6699	19.79	150044	01.2628	17.63	150128	01.2306	18.59	160072	01.0673	12.08
140137	01.0318	13.61	140233	01.7418	16.57	150045	01.0901	15.00	150129	01.2088	20.35	160073	01.0129	11.50
140138	00.9633	12.15	140234	01.1961	16.03	150046	01.5910	16.06	150130	01.1433	16.23	160074	01.1103	12.98
140139	01.0713	13.46	140236	01.0474	12.82	150047	01.6262	17.74	150132	01.3406	19.17	160075	01.1107	13.84
140140	01.1363	13.05	140239	01.5891	18.81	150048	01.1670	16.18	150133	01.2048	14.96	160076	01.0695	16.33
140141	00.9005	13.30	140240	01.5057	20.90	150049	01.0814	13.72	150134	01.3003	16.53	160077	01.1355	10.97
140143	01.0710	15.95	140242	01.5840	22.51	150050	01.1857	14.50	150136	00.9384	18.69	160079	01.4258	15.22
140144	00.9814	16.57	140245	01.1287	13.55	150051	01.3842	16.92	150138	01.1552	.....	160080	01.2094	15.46
140145	01.1986	14.80	140246	01.0547	12.03	150052	01.0656	12.93	150139	01.5412	.....	160081	01.0669	14.36
140146	00.9645	14.85	140250	01.3128	21.35	150053	01.0612	16.69	150141	01.1063	.....	160082	01.7526	17.09
140147	01.1905	13.32	140251	01.3100	18.25	150054	01.1373	12.39	150142	02.4300	.....	160083	01.5750	17.49
140148	01.7984	16.51	140252	01.4282	21.53	150056	01.7052	21.58	160001	01.2713	16.39	160085	01.0913	12.79
140150	01.5793	26.00	140253	01.4398	.....	150057	02.3094	15.06	160002	01.1942	13.14	160086	01.0153	12.88
140151	01.1069	17.61	140258	01.5311	20.98	150058	01.6859	18.64	160003	01.0183	11.87	160088	01.0346	13.10
140152	01.0701	22.68	140271	01.0187	13.54	150059	01.3219	18.93	160005	01.1028	12.93	160089	01.1654	14.12
140155	01.1892	16.91	140275	01.2297	18.20	150060	01.1301	12.79	160007	01.0097	12.02	160090	01.0018	13.98
140158	01.2623	21.41	140276	01.9808	20.48	150061	01.3042	15.86	160008	01.1070	13.93	160091	01.1032	10.56
140160	01.2330	15.34	140280	01.2730	16.16	150062	01.0694	15.20	160009	01.1682	13.54	160092	00.9729	12.93
140161	01.1376	17.05	140281	01.6371	20.19	150063	01.0497	18.88	160012	01.0622	14.05	160093	01.1433	15.20
140162	01.7733	18.38	140285	01.1995	14.75	150064	01.2128	16.48	160013	01.2233	16.64	160094	01.2151	14.79
140164	01.2955	16.01	140286	01.1484	17.59	150065	01.1479	15.94	160014	01.0356	12.21	160095	01.0295	12.30
140165	01.1122	13.06	140288	01.7729	22.68	150066	01.0006	12.89	160016	01.2891	15.68	160097	01.0918	13.47
140166	01.2945	16.62	140289	01.3068	15.73	150067	01.1174	14.35	160018	00.9441	13.19	160098	01.0813	13.90
140167	01.1593	14.64	140290	01.3353	19.21	150069	01.2347	16.53	160020	01.0854	12.11	160099	00.9773	12.80
140168	01.1855	15.02	140291	01.2791	22.84	150070	01.0425	16.70	160021	01.0514	13.85	160101	01.1119	17.71
140170	01.1292	12.39	140292	01.1677	19.04	150071	01.1521	12.69	160023	01.1553	13.66	160102	01.3846	15.69
140171	00.9125	12.53	140294	01.1871	16.10	150072	01.1943	15.32	160024	01.5685	17.39	160103	01.0159	12.95
140172	01.5367	18.29	140297	01.2576	21.42	150073	01.0179	15.49	160026	01.0997	15.21	160104	01.2441	19.21
140173	00.9787	13.11	140300	01.6558	24.90	150074	01.5921	18.63	160027	01.1632	13.22	160106	01.0809	14.18
140174	01.4289	18.89	150001	01.0902	16.95	150075	01.2189	13.82	160028	01.3375	17.78	160107	01.1459	13.78
140176	01.2609	18.83	150002	01.4428	19.23	150076	01.1446	19.89	160029	01.4982	17.46	160108	01.1575	14.09
140177	01.2794	16.44	150003	01.7127	18.32	150077	01.2631	16.21	160030	01.2329	16.67	160109	01.1710	12.01
140179	01.3313	19.51	150004	01.4240	20.15	150078	01.0858	17.20	160031	01.1857	13.26	160110	01.5051	17.76
140180	01.5279	20.22	150005	01.1897	17.17	150079	01.1456	13.01	160032	01.1518	14.66	160111	01.1008	10.75
140181	01.3085	18.82	150006	01.2020	16.72	150082	01.4952	18.38	160033	01.7266	15.82	160112	01.4058	14.48
140182	01.3245	19.11	150007	01.2261	17.95	150084	01.8742	21.80	160034	01.0638	13.81	160113	00.9632	11.39
140184	01.1998	14.20	150008	01.3450	18.38	150086	01.3003	15.76	160035	00.9589	11.91	160114	01.0691	14.13
140185	01.4563	16.35	150009	01.3279	16.97	150088	01.1875	16.71	160036	01.0735	12.83	160115	01.0315	13.87
140186	01.3197	18.48	150010	01.2026	16.10	150089	01.4010	18.99	160037	01.1648	14.80	160116	01.1763	15.46
140187	01.4891	16.33	150011	01.2227	16.76	150090	01.2547	19.34	160039	01.0629	15.23	160117	01.3429	15.52
140188	00.9624	10.54	150012	01.6885	20.57	150091	01.0744	15.66	160040	01.3465	16.04	160118	01.0327	12.42
140189	01.1723	15.74	150013	01.1612	13.09	150092	01.0659	12.44	160041	01.0613	12.88	160120	01.0161	09.94
140190	01.1204	13.36	150014	01.4250	18.85	150094	00.9984	16.65	160043	01.0335	13.38	160122	01.1556	14.96
140191	01.3847	23.16	150015	01.2351	17.85	150095	01.1097	15.78	160044	01.1566	13.36	160123	01.1606	12.18
140192	01.1887	16.51	150017	01.8496	17.26	150096	01.1003	17.15	160045	01.6893	17.48	160124	01.2587	15.35
140193	01.0150	12.24	150018	01.2888	17.47	150097	01.1268	16.64	160046	01.0357	11.92	160126	01.1485	13.82
140197	01.2770	16.05	150019	01.1204	13.82	150098	01.1387	11.81	160047	01.3555	15.87	160129	01.0397	13.07
140199	01.0179	15.13	150020	01.1507	13.19	150099	01.2979	17.10	160048	01.0230	11.76	160130	01.1619	13.04
140200	01.4263	20.12	150021	01.6805	18.22	150100	01.6831	18.15	160049	00.9816	12.04	160131	01.0980	12.63
140202	01.3108	20.09	150022	01.1445	17.62	150101	01.0919	14.46	160050	01.0242	14.12	160134	00.9706	11.37
140203	01.1567	19.02	150023	01.4993	17.81	150102	01.0920	14.61	160051	00.9990	12.90	160135	01.0543	13.24
140205	00.9105	13.88	150024	01.4398	16.96	150103	01.0356	17.63	160052	01.0599	14.80	160138	01.0612	13.48
140206	01.0979	19.58	150025	01.4540	16.32	150104	01.1461	15.09	160054	01.0268	10.82	160140	01.0940	14.86
140207	01.3773	26.85	150026	01.1855	16.69	150105	01.4058	16.61	160055	01.0383	11.48	160142	01.0318	13.60
140208	01.6155	23.94	150027	01.0681	16.04	150106	01.1387	15.58	160056	01.0434	12.84	160143	01.1292	13.03
140209	01.7014	17.46	150029	01.2766	20.57	150109	01.4513	16.04	160057	01.3212	15.92	160145	01.0839	13.74
140210	01.0830	12.87	150030	01.1946	16.20	150110	00.9917	14.72	160058	01.6811	18.42	160146	01.4188	15.32
140211	01.2257	20.44	150031	01.0622	15.93	150111	01.2066	12.88	160060	01.0858	13.82	160147	01.2744	15.02
140212	01.2970	22.65	150032	01.7930	18.85	150112	01.2228	16.84	160061	01.0104	14.19	160151	01.0694	12.75
140213	01.2892	20.44	150033	01.6075	20.07	150113	01.1843	16.78	160062	00.9605	11.95	160152	01.0169	13.30
140215	01.1640	13.22	150034	01.4013	18.15	150114	01.0253	13.44	160063	01.2810	14.24	160153	01.7061	17.05
140217	01.2388	21.09	150035	01.4004	17.90	150115	01.4004	17.31	160064	01.6369	16.41	170001	01.2005	15.90
140218	01.0502	13.64	150036	01.0404	17.35	150122	01.1415	17.55	160065	01.0755	14.51	170004	01.0839	13.18
140220	01.1066	14.22	150037	01.2647	17.06	150123	01.1703	12.81	160066	01.1226	14.06	170006	01.1973	13.48
140223	01.5408	25.37	150038	01.2712	16.65	150124	01.1239	15.00	160067	01.3756	16.70	170008	00.9787	13.35

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
170009	01.1209	16.81	170089	00.9887	14.21	180011	01.1747	15.71	180103	02.0746	17.85	190060	01.4965	16.51
170010	01.2604	16.38	170090	01.0970	09.58	180012	01.3355	17.14	180104	01.5020	16.55	190064	01.5617	17.46
170011	01.4042	14.59	170092	00.8625	11.45	180013	01.5057	17.38	180105	00.9303	12.23	190065	01.4781	15.75
170012	01.4938	15.48	170093	00.9308	11.58	180014	01.6061	19.67	180106	00.9112	12.65	190071	00.8601	11.38
170013	01.3148	13.27	170094	01.0437	12.81	180015	01.2422	14.91	180108	00.8502	12.49	190077	00.9184	13.41
170014	01.0357	15.18	170095	01.0793	13.80	180016	01.3158	14.91	180115	01.0276	14.18	190078	01.1344	11.21
170015	00.9779	13.74	170097	01.0290	13.42	180017	01.2736	13.52	180116	01.3708	14.92	190079	01.2606	13.61
170016	01.6634	21.80	170098	01.0823	16.21	180018	01.2225	15.73	180117	01.1829	16.14	190081	00.8818	09.70
170017	01.1668	16.76	170099	01.3430	11.00	180019	01.3412	17.22	180118	01.0472	11.72	190083	00.9480	12.45
170018	01.0636	12.23	170100	00.9977	14.63	180020	01.0343	15.37	180120	01.0465	12.49	190086	01.3623	14.02
170019	01.1792	15.13	170101	00.9112	14.13	180021	01.1778	13.25	180121	01.2193	13.09	190088	01.1960	16.01
170020	01.3277	14.54	170102	01.0195	12.78	180023	00.8339	11.27	180122	01.0457	14.47	190089	01.1207	09.60
170022	01.1643	14.15	170103	01.2461	15.28	180024	01.3934	15.69	180123	01.4536	19.34	190090	01.0617	15.75
170023	01.4219	15.57	170104	01.4212	19.52	180025	01.1240	16.18	180124	01.4782	16.00	190092	01.3320	20.14
170024	01.1563	12.71	170105	01.0263	14.45	180026	01.1079	13.66	180125	00.9495	16.23	190095	00.9953	14.04
170025	01.1622	18.37	170106	00.8380	12.54	180027	01.2747	14.17	180126	01.1697	11.90	190098	01.5422	17.56
170026	01.0141	16.38	170108	00.9468	10.88	180028	00.9964	16.19	180127	01.2380	16.63	190099	01.1497	17.31
170027	01.3730	15.02	170109	01.0494	14.67	180029	01.2190	15.99	180128	01.1870	15.40	190102	01.5854	16.15
170030	01.0399	13.61	170110	01.0197	13.62	180030	01.1777	12.89	180129	01.0306	13.93	190103	00.8408	09.66
170031	00.9163	12.36	170112	00.9254	13.44	180031	01.0461	12.38	180130	01.4219	17.87	190106	01.1388	17.27
170032	01.1121	14.18	170113	01.1501	13.43	180032	00.9926	15.30	180132	01.2453	15.43	190109	01.1894	14.20
170033	01.3417	14.08	170114	00.9540	12.96	180033	01.1325	12.57	180133	01.2455	18.31	190110	00.9431	11.96
170034	00.9579	13.74	170115	00.9905	11.01	180034	01.0720	13.61	180134	01.0124	13.71	190111	01.5456	17.24
170035	00.9370	12.37	170116	01.0367	13.94	180035	01.5668	18.26	180136	01.5752	16.63	190112	01.5143	20.35
170036	00.8755	12.31	170117	00.9947	12.63	180036	01.2433	17.36	180137	01.6637	17.00	190113	01.3748	17.85
170037	01.1197	15.02	170119	00.9470	11.32	180037	01.2824	20.29	180138	01.2089	17.02	190114	01.0043	11.51
170038	00.9180	10.94	170120	01.2814	14.66	180038	01.4336	14.73	180139	01.0714	16.41	190115	01.2409	16.75
170039	01.1372	11.69	170122	01.9013	19.69	180040	02.0237	19.04	180140	01.0106	.....	190116	01.2969	14.97
170040	01.5594	18.21	170123	01.7740	17.69	180041	01.0904	13.03	190001	00.9354	16.67	190118	01.0464	11.87
170041	00.9886	11.41	170124	00.9495	12.10	180042	01.1215	13.43	190002	01.6389	16.28	190120	00.9281	12.89
170043	00.9329	13.41	170126	00.9261	11.07	180043	01.0168	15.31	190003	01.4461	17.16	190122	01.2732	12.96
170044	01.1174	14.73	170128	01.0762	14.31	180044	01.0336	14.68	190004	01.3781	14.81	190124	01.5748	18.80
170045	01.0311	13.54	170131	01.0910	10.54	180045	01.2089	16.86	190005	01.6913	14.94	190125	01.5826	16.74
170049	01.3345	18.05	170133	01.1401	14.09	180046	01.2073	16.81	190006	01.2839	14.07	190128	01.2172	17.04
170050	00.8380	09.63	170134	00.9226	12.10	180047	01.0087	13.79	190007	01.0054	12.79	190130	00.9983	11.74
170051	00.9591	13.31	170137	01.1832	16.81	180048	01.1345	15.53	190008	01.6481	17.79	190131	01.2691	17.33
170052	01.0675	13.31	170139	00.9838	11.66	180049	01.3619	14.47	190009	01.1897	13.40	190133	01.0518	15.09
170053	01.0064	13.09	170140	00.9990	11.17	180050	01.2650	15.58	190010	01.1104	15.31	190134	00.9992	12.16
170054	01.0821	12.86	170142	01.2590	16.10	180051	01.4236	14.35	190011	01.1162	14.08	190135	01.4027	17.70
170055	01.0629	17.05	170143	01.1201	12.53	180053	01.1138	14.22	190013	01.4152	15.27	190136	01.1264	10.66
170056	00.9457	10.99	170144	01.6225	18.74	180054	01.1573	14.02	190014	01.0568	15.36	190138	00.7080	15.62
170057	01.0529	13.75	170145	01.1678	17.02	180055	01.0383	13.61	190015	01.2394	16.38	190140	00.9434	11.60
170058	01.1738	17.54	170146	01.4164	17.58	180056	01.1035	16.68	190017	01.3740	17.22	190142	00.9384	12.20
170060	01.1254	12.73	170147	01.2279	18.33	180058	01.0125	12.85	190018	01.1705	13.78	190144	01.2227	18.82
170061	01.1532	12.59	170148	01.4736	18.35	180059	00.9719	11.98	190019	01.5074	17.57	190145	00.9867	13.77
170062	00.9501	10.45	170150	01.0772	13.13	180060	00.7427	13.48	190020	01.1936	15.83	190146	01.5911	18.99
170063	00.8993	09.30	170151	00.9962	11.69	180063	00.9643	10.28	190025	01.2979	12.36	190147	00.9929	13.30
170064	00.9472	11.38	170152	00.9812	13.27	180064	01.3019	14.40	190026	01.4497	15.65	190148	00.8949	11.81
170066	00.9901	12.26	170160	01.0305	11.25	180065	00.9850	09.05	190027	01.4805	15.62	190149	00.9972	11.02
170067	01.0335	11.05	170164	01.0288	13.87	180066	01.2107	16.87	190029	01.1364	14.09	190151	01.1567	12.30
170068	01.3864	14.01	170166	01.1446	13.49	180067	01.8972	15.96	190033	00.9673	09.64	190152	01.4477	20.50
170069	01.1712	13.20	170168	00.9486	09.97	180069	01.0363	16.08	190034	01.2482	14.93	190155	00.9246	10.54
170070	01.0193	11.83	170171	01.0923	11.15	180070	01.0919	14.86	190035	01.4173	20.27	190156	00.8872	11.89
170072	00.9565	11.53	170172	00.9841	11.07	180072	01.0544	13.80	190036	01.6581	21.15	190158	01.2399	20.36
170073	01.1115	12.66	170174	01.0916	11.58	180075	00.9745	13.08	190037	00.9667	11.05	190160	01.2163	15.56
170074	01.1546	12.86	170175	01.2906	16.30	180078	01.1237	17.35	190039	01.4275	16.41	190161	01.0457	12.98
170075	00.8688	10.55	170176	01.5023	18.40	180079	01.2461	13.75	190040	01.3850	19.03	190162	01.1677	21.04
170076	01.0722	11.15	170181	01.0745	.....	180080	01.0640	15.16	190041	01.4986	19.72	190164	01.2267	16.86
170077	00.9683	11.12	170182	00.8647	.....	180085	01.2920	17.49	190043	01.1369	12.38	190166	01.0709	14.81
170079	01.0838	11.81	170183	02.1585	.....	180087	01.0844	13.72	190044	01.1725	18.27	190167	01.2039	16.09
170080	00.9559	11.05	180001	01.2298	16.16	180088	01.5754	19.42	190045	01.3644	19.09	190170	00.9613	12.34
170081	00.9254	10.42	180002	01.0070	17.16	180092	01.0511	14.43	190046	01.4846	16.87	190173	01.4516	19.47
170082	01.0572	10.60	180004	01.0887	13.54	180093	01.3575	14.76	190048	01.0651	14.55	190175	01.2790	.....
170084	00.9830	11.06	180005	01.0375	17.40	180094	01.0158	11.93	190049	00.9679	14.74	190176	01.7076	18.06
170085	00.9074	12.01	180006	00.9157	08.63	180095	01.1597	12.78	190050	01.0446	13.90	190177	01.6056	22.02
170086	01.7241	18.04	180007	01.5430	14.17	180099	01.2008	11.72	190053	01.0575	11.98	190178	00.9842	11.20
170087	01.4580	18.87	180009	01.3358	17.70	180101	01.3403	18.84	190054	01.4118	13.67	190182	01.1627	20.12
170088	00.9068	10.59	180010	01.8318	16.91	180102	01.5134	16.31	190059	00.9449	13.58	190183	01.1310	13.81

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
190184	01.0574	12.13	210002	01.9575	16.84	220028	01.4667	22.45	220162	01.0805	.....	230102	01.1047	.....
190185	01.3141	19.03	210003	01.5314	22.97	220029	01.1906	22.25	220163	02.0697	24.73	230103	01.0214	17.37
190186	00.9515	11.69	210004	01.3228	20.30	220030	01.0842	16.42	220171	01.6908	22.55	230104	01.6223	20.32
190187	00.7862	14.05	210005	01.2352	17.70	220031	02.0234	27.21	230001	01.2061	15.98	230105	01.6171	19.46
190189	00.9439	14.54	210006	01.1253	16.84	220033	01.3931	19.40	230002	01.2210	19.28	230106	01.1730	18.07
190190	00.9294	18.74	210007	01.6144	18.82	220035	01.2748	19.72	230003	01.0891	18.07	230107	00.8972	12.56
190191	01.3146	18.47	210008	01.3145	21.21	220036	01.6198	23.26	230004	01.6087	20.95	230108	01.2387	16.64
190194	01.1471	19.16	210009	01.7113	18.57	220038	01.2797	21.85	230005	01.2812	18.02	230110	01.3356	17.10
190196	00.9064	16.46	210010	01.2016	17.00	220041	01.2446	20.87	230006	01.1331	16.19	230111	00.9762	15.13
190197	01.2631	19.05	210011	01.2066	20.12	220042	01.2043	24.10	230007	01.0869	16.51	230113	00.9500	17.66
190199	01.3557	12.82	210012	01.4880	21.27	220046	01.3991	21.48	230013	01.2823	20.70	230114	00.6368	23.27
190200	01.5122	21.33	210013	01.2755	20.65	220049	01.2668	21.58	230015	01.1305	18.28	230115	01.0218	15.14
190201	01.2417	18.24	210015	01.2700	18.48	220050	01.0856	17.45	230017	01.5161	20.40	230116	00.9079	15.58
190202	01.4412	18.34	210016	01.7323	20.37	220051	01.2701	19.70	230019	01.5116	20.50	230117	01.9633	23.81
190203	01.5963	19.50	210017	01.1297	15.35	220052	01.2969	22.76	230020	01.7218	21.17	230118	01.2381	17.25
190204	01.5211	20.12	210018	01.2426	20.93	220053	01.2476	18.86	230021	01.5949	17.25	230119	01.3182	21.13
190205	01.8559	17.63	210019	01.3992	17.42	220055	01.3472	20.61	230022	01.2454	17.62	230120	01.2209	19.00
190206	01.4848	21.17	210022	01.4541	20.07	220057	01.4402	20.91	230024	01.4230	21.79	230121	01.2308	19.67
190207	01.1759	19.43	210023	01.2870	20.31	220058	01.0628	17.55	230027	01.0568	16.25	230122	01.3310	18.32
190208	00.8210	10.20	210024	01.5093	18.06	220060	01.2567	24.78	230029	01.5980	20.91	230124	01.1514	16.49
190218	01.1418	15.05	210025	01.3259	17.84	220062	00.6041	19.30	230030	01.2372	16.55	230125	01.3587	13.01
190223	00.4998	12.04	210026	01.3221	24.54	220063	01.2982	18.42	230031	01.4622	18.32	230128	01.3795	19.33
190227	00.8050	30.01	210027	01.2047	17.47	220064	01.2108	20.66	230032	01.7401	18.97	230129	01.8851	19.07
190230	00.8511	.....	210028	01.2362	16.66	220065	01.2162	20.00	230034	01.1936	16.64	230130	01.6896	22.37
190231	01.3052	.....	210029	01.3022	20.04	220066	01.2825	19.39	230035	01.1374	15.84	230132	01.5360	22.92
190232	01.6623	.....	210030	01.0938	15.77	220067	01.2910	22.82	230036	01.2859	19.78	230133	01.2321	14.06
190233	01.1753	.....	210031	01.6379	16.97	220068	00.5210	15.95	230037	01.1680	16.96	230134	01.1066	15.87
190234	01.0977	.....	210032	01.2064	18.42	220070	01.2693	17.77	230038	01.6453	21.18	230135	01.2023	19.88
200001	01.2668	15.74	210033	01.1813	17.38	220071	01.8550	24.38	230040	01.1967	18.35	230137	01.1665	17.78
200002	01.0219	16.15	210034	01.3999	20.29	220073	01.3821	25.34	230041	01.2106	19.17	230141	01.6842	20.84
200003	01.1282	15.90	210035	01.1950	17.25	220074	01.2579	21.18	230042	01.1517	19.03	230142	01.2118	18.71
200006	01.0627	14.95	210037	01.2862	16.14	220075	01.3235	20.09	230046	01.8323	24.65	230143	01.1404	15.23
200007	01.0052	16.86	210038	01.3397	19.90	220076	01.1791	22.47	230047	01.3036	19.61	230144	01.1171	21.06
200008	01.2463	18.34	210039	01.1588	15.25	220077	01.7205	22.32	230053	01.5335	23.82	230145	01.1817	15.41
200009	01.7644	19.84	210040	01.2948	20.32	220079	01.1871	21.28	230054	01.8245	19.74	230146	01.2933	19.49
200012	01.1610	16.11	210043	01.2538	20.04	220080	01.2723	17.77	230055	01.1799	17.36	230147	01.4832	19.34
200013	01.1360	15.32	210044	01.2025	20.28	220081	00.9625	23.55	230056	00.9745	14.17	230149	01.2487	14.92
200015	01.2341	17.15	210045	01.0197	11.73	220082	01.2932	19.28	230058	01.0807	17.42	230151	01.3634	21.32
200016	01.0283	16.10	210046	01.1047	12.34	220083	01.1845	19.80	230059	01.4913	19.00	230153	01.1245	15.61
200017	01.2444	16.86	210048	01.1780	22.47	220084	01.2361	22.24	230060	01.2802	16.90	230154	00.9519	12.09
200018	01.1671	14.27	210049	01.1482	16.57	220086	01.5481	24.60	230062	01.0313	13.61	230155	00.9759	13.80
200019	01.2445	18.01	210051	01.4488	13.94	220088	01.5772	21.76	230063	01.3188	18.41	230156	01.7043	21.57
200020	01.1821	19.86	210054	01.2726	20.17	220089	01.3301	22.99	230065	01.5013	18.63	230157	01.2036	19.67
200021	01.1844	17.66	210055	01.2866	22.48	220090	01.2380	20.78	230066	01.3628	18.72	230159	01.3967	18.93
200023	00.8848	14.61	210056	01.4106	16.51	220092	01.2548	20.86	230068	01.4399	22.29	230162	00.9885	13.73
200024	01.2892	19.16	210057	01.3623	.....	220094	01.2795	19.76	230069	01.1716	18.86	230165	01.8687	20.92
200025	01.2698	18.81	210058	01.6823	18.09	220095	01.2220	17.77	230070	01.4873	19.30	230167	01.3648	19.18
200026	01.0913	15.20	210059	01.2586	21.91	220098	01.2874	19.81	230071	01.1375	20.78	230169	01.4359	21.16
200027	01.1419	16.51	210060	01.1661	25.28	220099	01.1836	15.97	230072	01.2839	18.87	230171	00.9842	14.18
200028	00.9343	14.83	210061	01.0947	14.25	220100	01.2742	23.48	230075	01.5188	19.29	230172	01.3154	17.85
200031	01.2955	14.96	220001	01.1632	20.98	220101	01.5044	22.58	230076	01.3263	21.53	230174	01.2896	19.11
200032	01.3528	17.72	220002	01.5425	21.62	220104	01.2488	23.12	230077	01.9786	18.44	230175	04.1740	14.83
200033	01.7115	19.57	220003	01.0771	16.92	220105	01.2188	21.97	230078	01.0937	14.82	230176	01.2350	20.89
200034	01.1951	17.19	220004	01.1778	18.85	220106	01.2489	21.83	230080	01.1934	20.41	230178	01.0502	16.02
200037	01.2200	15.53	220006	01.4287	21.79	220107	01.1695	18.46	230081	01.2169	16.55	230180	01.0710	15.03
200038	01.1115	17.66	220008	01.2538	19.26	220108	01.1491	20.96	230082	01.1611	14.88	230184	01.2276	16.99
200039	01.2513	18.06	220010	01.2956	20.94	220110	01.9412	30.07	230085	01.1161	17.10	230186	01.3686	15.81
200040	01.0917	16.48	220011	01.1550	27.95	220111	01.2575	21.21	230086	00.9918	14.03	230188	01.1727	15.49
200041	01.2221	17.37	220012	01.3665	27.84	220116	01.9442	23.95	230087	01.0641	13.65	230189	00.8937	14.50
200043	00.5614	16.96	220015	01.1777	20.35	220118	02.0524	26.47	230089	01.3393	21.55	230190	01.0395	22.66
200050	01.1978	16.71	220016	01.3747	20.16	220119	01.3288	24.40	230092	01.3264	17.77	230191	00.8900	14.99
200051	00.9723	17.70	220017	01.4278	23.78	220123	01.0371	23.85	230093	01.2267	17.37	230193	01.2471	16.03
200052	00.9716	13.07	220019	01.1780	17.06	220126	01.3041	19.39	230095	01.2357	15.53	230194	01.2111	14.37
200055	01.1557	14.56	220020	01.2189	18.47	220128	01.1441	20.85	230096	01.1957	19.85	230195	01.2822	19.80
200062	00.9198	14.64	220021	01.3862	23.21	220133	00.8406	30.53	230097	01.5406	17.75	230197	01.2640	22.00
200063	01.1662	16.63	220023	01.1469	19.37	220135	01.2559	23.97	230099	01.2173	19.06	230199	01.1553	17.72
200066	01.1689	14.34	220024	01.1752	20.14	220153	01.0402	19.74	230100	01.1533	15.19	230201	01.2138	14.02
210001	01.4102	17.94	220025	01.1894	18.87	220154	00.9268	18.96	230101	01.0658	16.79	230204	01.3660	19.78

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
230205	01.0570	14.54	240044	01.2004	16.02	240129	01.0159	12.18	250032	01.2599	15.70	250134	00.9882	12.70
230207	01.2586	19.85	240045	01.0731	18.49	240130	01.0112	14.54	250033	00.9948	11.57	250136	00.7904	16.84
230208	01.1857	16.10	240047	01.5172	18.27	240132	01.2360	21.80	250034	01.5348	12.99	250138	01.3513	16.94
230211	00.9823	13.86	240048	01.2728	20.43	240133	01.1709	16.16	250035	00.9044	11.82	250140	00.9213	09.37
230212	01.0970	21.13	240049	01.7768	20.33	240135	00.8166	11.38	250036	00.9786	11.34	250141	01.2098	15.50
230213	01.0251	12.69	240050	01.1319	19.89	240137	01.2521	15.40	250037	00.8704	09.53	250144	00.9384	11.18
230216	01.5269	17.91	240051	00.9956	15.97	240138	00.8994	13.09	250038	00.9851	12.52	250145	00.9432	.....
230217	01.2172	18.06	240052	01.2612	17.21	240139	00.9643	14.24	250039	01.0021	11.71	250146	01.0011	13.25
230219	01.0186	15.18	240053	01.5152	19.67	240141	01.0919	19.12	250040	01.2981	15.65	250148	01.1518	.....
230221	01.1845	18.15	240056	01.2438	20.13	240142	01.1289	15.16	250042	01.1494	13.78	250149	00.9174	.....
230222	01.3604	18.98	240057	01.7426	22.04	240143	01.0597	12.48	250043	01.0352	10.49	260001	01.6549	16.08
230223	01.3187	19.85	240058	00.9668	09.64	240144	00.9459	13.39	250044	00.9822	13.98	260002	01.4877	20.05
230227	01.5187	22.00	240059	01.0942	17.98	240145	00.9654	12.37	250045	01.1477	17.17	260003	00.9457	12.45
230228	01.2121	17.29	240061	01.7512	20.93	240146	00.9209	17.20	250047	00.9674	09.12	260004	01.0314	11.86
230230	01.5400	20.38	240063	01.4674	20.88	240148	00.9490	11.34	250048	01.4542	13.51	260005	01.6146	19.68
230232	01.0356	15.87	240064	01.2630	18.13	240150	00.8906	11.72	250049	00.9037	09.93	260006	01.5247	16.72
230235	01.1038	14.65	240065	01.1600	11.14	240152	01.0128	17.85	250050	01.2407	12.30	260007	01.4679	16.03
230236	01.3542	21.07	240066	01.4040	19.08	240153	01.0199	14.30	250051	00.8548	09.44	260008	01.2220	15.65
230239	01.1770	16.07	240069	01.1629	18.35	240154	01.0158	13.15	250057	01.1806	14.06	260009	01.2407	15.63
230241	01.1553	17.08	240071	01.1200	18.05	240155	00.9827	14.39	250058	01.1385	13.65	260011	01.6765	16.87
230244	01.3134	20.14	240072	01.0257	16.08	240157	01.1226	13.92	250059	01.0304	12.16	260012	01.0472	11.96
230253	01.0735	17.39	240073	00.9213	15.13	240160	01.0116	14.65	250060	00.8121	12.19	260013	01.1520	14.02
230254	01.2785	22.64	240075	01.2132	18.79	240161	00.9351	14.56	250061	00.8654	10.75	260014	01.7769	17.84
230257	01.1031	19.01	240076	01.1434	19.94	240162	00.9629	15.28	250063	00.8615	12.68	260015	01.2698	13.16
230259	01.1967	19.06	240077	01.0646	14.15	240163	00.9381	14.10	250065	00.8878	11.72	260017	01.2272	13.94
230264	00.9614	16.74	240078	01.4510	21.46	240166	01.1661	14.67	250066	00.9422	12.17	260018	00.9658	09.56
230269	01.3062	21.71	240079	01.0143	12.57	240169	00.9528	15.25	250067	01.1241	14.14	260019	00.9862	12.63
230270	01.2238	20.08	240080	01.3766	20.87	240170	01.1518	14.42	250068	00.8546	11.19	260020	01.7312	19.29
230273	01.6568	22.11	240082	01.1233	14.55	240171	00.9973	14.02	250069	01.1820	13.42	260021	01.5117	18.47
230275	00.5764	16.53	240083	01.3779	16.60	240172	01.0856	14.50	250071	00.9499	08.06	260022	01.3423	18.69
230276	00.8113	16.23	240084	01.3446	17.20	240173	00.9609	14.82	250072	01.2933	17.40	260023	01.2569	15.58
230277	01.2440	21.76	240085	00.9356	14.90	240179	00.9990	14.30	250076	00.9378	10.32	260024	01.0179	12.28
230278	02.1143	19.50	240086	01.0496	15.23	240180	01.0157	10.51	250077	00.9481	11.08	260025	01.3240	13.61
230279	00.7080	.....	240087	01.1088	15.69	240184	01.0352	11.31	250078	01.4504	14.21	260027	01.5963	18.92
230280	01.0737	.....	240088	01.4423	18.10	240187	01.2576	16.56	250079	00.8573	15.12	260029	01.1241	15.76
230281	01.8228	.....	240089	00.9966	15.23	240193	01.0505	14.73	250081	01.3046	15.19	260030	01.0922	09.73
240001	01.5705	21.24	240090	01.0889	13.57	240196	00.6134	22.50	250082	01.2852	12.30	260031	01.5029	18.49
240002	01.6951	19.40	240093	01.3149	16.49	240200	00.8945	13.34	250083	01.0297	11.01	260032	01.5899	17.59
240004	01.4733	20.16	240094	01.0470	17.26	240205	00.9066	.....	250084	01.0930	13.92	260034	00.9820	14.22
240005	00.9911	13.49	240096	01.0126	14.12	240206	00.8405	.....	250085	01.0146	11.42	260035	01.0725	11.44
240006	01.1243	19.75	240097	01.1262	17.05	240207	01.2516	21.47	250088	00.9555	15.43	260036	01.0697	15.72
240007	01.1114	15.15	240098	00.9639	16.41	240210	01.2558	21.44	250089	01.0349	11.77	260037	01.3946	15.17
240008	01.0447	15.22	240099	01.1186	11.00	240211	00.9295	11.18	250093	01.1144	12.17	260039	01.1393	11.17
240009	00.9722	14.18	240100	01.3180	19.58	240212	01.9942	.....	250094	01.2380	14.41	260040	01.6081	14.92
240010	01.9804	20.17	240101	01.1585	17.32	250001	01.6860	15.91	250095	00.9763	13.57	260042	01.4179	15.65
240011	01.1378	15.69	240102	00.8877	12.27	250002	00.7948	13.34	250096	01.3058	16.49	260044	01.0453	14.29
240013	01.3077	15.90	240103	01.0788	14.10	250003	01.0260	14.13	250097	01.1879	13.83	260047	01.3608	14.19
240014	01.0825	17.79	240104	01.2317	21.71	250004	01.4695	15.12	250098	00.8668	13.73	260048	01.2801	18.05
240016	01.3045	15.46	240105	01.0024	12.70	250005	00.9707	09.15	250099	01.2736	12.73	260050	01.0896	14.71
240017	01.1365	15.15	240106	01.3351	23.68	250006	00.9603	12.27	250100	01.2423	14.53	260052	01.3429	15.95
240018	01.2985	15.82	240107	00.9779	15.07	250007	01.2699	16.88	250101	00.9416	09.89	260053	01.1239	09.46
240019	01.2259	19.58	240108	00.9570	11.64	250008	00.9041	11.36	250102	01.5340	14.80	260054	01.3205	16.08
240020	01.1410	18.11	240109	00.9926	13.59	250009	01.1772	15.04	250104	01.3615	15.58	260055	01.0344	13.67
240021	00.9545	12.49	240110	01.0347	15.18	250010	01.0374	11.07	250105	00.9185	13.13	260057	01.1563	13.85
240022	01.1265	17.33	240111	00.9806	13.06	250012	00.9543	13.77	250107	00.9101	14.16	260059	01.1218	14.17
240023	01.0070	15.86	240112	01.0585	13.30	250015	01.0921	09.75	250109	00.9351	11.54	260061	01.1737	10.87
240025	01.1710	15.02	240114	00.9961	11.13	250017	01.0049	13.77	250112	00.9915	14.22	260062	01.1677	19.89
240027	00.9990	12.60	240115	01.6186	22.30	250018	00.9576	09.81	250117	01.0706	13.28	260063	01.1867	14.82
240028	01.1340	16.50	240116	00.9450	12.43	250019	01.4239	17.43	250119	01.2057	10.80	260064	01.3241	15.40
240029	01.1619	15.70	240117	01.0688	16.21	250020	01.0024	10.78	250120	01.0683	12.04	260065	01.7807	15.31
240030	01.2995	16.78	240119	00.8459	16.93	250021	00.8612	07.74	250122	01.2814	15.87	260066	01.0907	12.78
240031	00.9285	13.50	240121	00.8986	17.10	250023	00.8655	11.22	250123	01.3253	17.72	260067	00.9812	10.43
240036	01.5566	19.05	240122	01.0462	16.80	250024	00.9845	08.25	250124	00.9123	10.69	260068	01.6696	18.49
240037	01.0463	16.40	240123	01.0518	13.30	250025	01.1440	13.58	250125	01.3189	18.35	260070	01.0868	11.09
240038	01.4513	22.50	240124	01.0123	15.71	250027	01.0290	10.40	250126	00.9867	10.22	260073	00.9754	11.58
240040	01.2271	17.67	240125	00.9399	10.75	250029	00.8857	11.87	250127	00.7659	.....	260074	01.2444	11.49
240041	01.3105	14.43	240127	01.0272	12.51	250030	00.9703	11.39	250128	01.0941	12.64	260077	01.7237	16.30
240043	01.2029	16.83	240128	01.1234	14.55	250031	01.3147	17.20	250131	01.0545	09.36	260078	01.1752	12.39

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
260079	00.9808	11.78	270002	01.1914	13.92	280024	01.0190	13.22	280111	01.2501	16.06	310014	01.7262	23.69
260080	00.9748	09.77	270003	01.2463	18.65	280025	00.9834	11.07	280114	00.9302	10.26	310015	01.7788	24.34
260081	01.4994	16.44	270004	01.6543	17.33	280026	01.1268	12.80	280115	00.9762	13.59	310016	01.2218	22.93
260082	01.1249	13.50	270006	01.0348	18.67	280028	01.0603	13.64	280117	01.2367	14.48	310017	01.3316	21.95
260085	01.5653	18.92	270007	00.9630	12.26	280029	01.0513	12.62	280118	00.9917	13.47	310018	01.2149	21.06
260086	01.0538	12.67	270009	01.0369	14.91	280030	01.7482	23.06	280119	00.8442	.....	310019	01.6444	20.84
260089	00.9595	13.31	270011	01.1240	16.46	280031	01.0457	12.48	280123	00.7968	.....	310020	01.1914	19.66
260091	01.6036	18.96	270012	01.5997	17.10	280032	01.3205	15.11	290001	01.6296	22.35	310021	01.3482	21.15
260094	01.1818	15.98	270013	01.2868	16.78	280033	00.9881	13.62	290002	00.9009	17.99	310022	01.2391	19.38
260095	01.4416	16.05	270014	01.7155	15.97	280034	01.2104	13.41	290003	01.6155	21.15	310024	01.2539	22.60
260096	01.5553	21.52	270016	00.8195	11.51	280035	00.9439	11.75	290005	01.4321	19.66	310025	01.2317	21.92
260097	01.1803	15.82	270017	01.2264	18.32	280037	01.0150	13.55	290006	01.2223	16.54	310026	01.2770	21.91
260100	00.9672	13.12	270019	01.0747	13.34	280038	01.0733	13.39	290007	01.9023	25.07	310027	01.3756	18.17
260102	01.0113	16.75	270021	01.1036	15.55	280039	01.1841	14.24	290008	01.2244	17.14	310028	01.1453	20.46
260103	01.3826	16.73	270023	01.2906	18.76	280040	01.5869	18.30	290009	01.6096	21.07	310029	01.8972	20.69
260104	01.6337	19.57	270024	00.9931	11.15	280041	00.9988	10.95	290010	01.2116	19.33	310031	02.6282	24.14
260105	01.8722	19.18	270026	00.8677	11.95	280042	01.0970	13.22	290011	00.8854	14.39	310032	01.2962	20.00
260107	01.3844	18.55	270027	01.0389	12.69	280043	01.1235	12.75	290012	01.4484	19.97	310034	01.2537	19.14
260108	01.8056	18.26	270028	01.0735	14.91	280045	01.1409	13.48	290013	01.0180	14.85	310036	01.2137	18.44
260109	00.9922	11.92	270029	00.9056	14.51	280046	01.0729	11.09	290014	01.0424	16.52	310037	01.3032	25.43
260110	01.6069	14.16	270031	00.8747	09.71	280047	01.1632	15.70	290015	00.9691	15.38	310038	01.9189	22.82
260111	00.9994	08.04	270032	01.1776	16.46	280048	01.0813	11.17	290016	01.1476	18.71	310039	01.2906	20.51
260112	01.4123	17.47	270033	00.8822	11.39	280049	01.0363	13.82	290019	01.2779	17.92	310040	01.2680	23.12
260113	01.1111	14.05	270035	01.0294	15.87	280050	00.9263	13.11	290020	01.0783	17.65	310041	01.3192	22.90
260115	01.2400	14.92	270036	00.9483	10.42	280051	01.0572	13.72	290021	01.5602	19.17	310042	01.2513	21.74
260116	01.1317	13.70	270039	01.0661	11.99	280052	01.0352	11.85	290022	01.7398	22.47	310043	01.2027	20.60
260119	01.1592	15.01	270040	01.0819	17.60	280054	01.2613	15.54	290027	00.9516	14.68	310044	01.2981	20.16
260120	01.1606	15.72	270041	01.0700	11.14	280055	00.9274	11.63	290029	00.9400	.....	310045	01.3866	25.76
260122	01.1407	13.12	270044	01.1997	13.40	280056	00.9925	10.99	290032	01.4088	18.66	310047	01.3405	23.05
260123	01.0309	11.17	270046	00.9328	13.50	280057	01.0060	14.48	290036	01.4927	.....	310048	01.1853	20.69
260127	00.9517	13.71	270048	01.0968	13.30	280058	01.3349	13.75	290038	01.1066	.....	310049	01.3247	23.54
260128	00.9877	08.95	270049	01.8369	18.19	280060	01.5930	18.38	300001	01.3969	20.70	310050	01.2623	20.88
260129	01.2126	13.51	270050	01.0374	15.96	280061	01.4692	14.76	300003	01.8661	20.92	310051	01.3232	24.26
260131	01.3183	16.32	270051	01.2969	18.02	280062	01.2236	11.92	300005	01.2669	18.65	310052	01.2516	20.53
260134	01.1485	13.87	270052	01.0663	18.02	280064	01.0732	12.61	300006	01.1225	16.24	310054	01.2937	23.19
260137	01.2635	13.71	270053	00.8716	09.53	280065	01.2934	16.22	300007	01.1477	16.76	310056	01.1800	20.11
260138	01.9683	20.66	270057	01.1700	17.35	280066	01.0101	11.38	300008	01.2465	16.95	310057	01.2906	20.10
260141	01.8935	16.53	270058	00.9419	11.20	280068	00.9716	09.31	300009	01.1071	17.45	310058	01.1047	25.35
260142	01.1604	14.50	270059	00.8676	19.21	280070	01.0712	10.75	300010	01.2380	17.80	310060	01.2112	17.55
260143	00.9437	10.52	270060	00.9653	11.92	280073	01.0399	12.78	300011	01.3508	21.36	310061	01.2156	19.85
260147	01.0490	12.81	270063	00.8933	12.94	280074	01.0981	12.87	300012	01.2779	21.64	310062	01.2941	23.90
260148	00.9639	09.33	270068	00.8629	12.38	280075	01.2063	12.90	300013	01.2250	16.87	310063	01.3515	20.78
260158	01.1355	11.80	270072	00.8526	14.88	280076	01.0602	12.54	300014	01.2336	18.41	310064	01.2988	21.35
260159	01.2962	18.17	270073	01.0764	11.06	280077	01.3589	17.36	300015	01.1776	17.37	310067	01.3199	21.14
260160	01.0683	14.07	270074	00.8861	.....	280079	01.0649	09.40	300016	01.3172	17.41	310069	01.1308	18.19
260162	01.6912	17.70	270075	00.8706	.....	280080	01.0842	11.34	300017	01.2081	20.49	310070	01.3980	22.16
260163	01.3188	14.11	270076	00.8386	.....	280081	01.5683	17.24	300018	01.2333	18.85	310072	01.2980	20.74
260164	00.9955	12.07	270079	00.9563	13.36	280082	01.1154	13.03	300019	01.2621	18.43	310073	01.5552	22.31
260166	01.2126	21.51	270080	01.1536	14.27	280083	01.0646	15.64	300020	01.2622	19.78	310074	01.4149	21.08
260172	01.0128	12.07	270081	01.0790	09.77	280084	01.0366	10.92	300021	01.1644	15.69	310075	01.2933	21.67
260173	00.9588	11.15	270082	01.0039	16.10	280085	00.7201	14.02	300022	01.1031	17.08	310076	01.3854	28.16
260175	01.1310	14.60	270083	01.1160	10.96	280088	01.8032	18.12	300023	01.3278	20.13	310077	01.5172	23.09
260176	01.6716	19.26	270084	00.9034	12.77	280089	01.0548	13.79	300024	01.2736	16.56	310078	01.3568	22.70
260177	01.3854	19.46	280001	01.0830	14.11	280090	00.9850	11.70	300028	01.2674	15.52	310081	01.2644	20.80
260178	01.4707	19.06	280003	01.9484	18.11	280091	01.1370	13.17	300029	01.3084	21.29	310083	01.2592	22.20
260179	01.5633	18.48	280005	01.3783	16.64	280092	00.8990	11.63	300033	01.1012	13.70	310084	01.2622	20.43
260180	01.6919	18.45	280009	01.7335	16.70	280094	01.1464	13.32	300034	01.9356	21.31	310086	01.1738	20.89
260183	01.6448	16.51	280011	00.9513	11.56	280097	01.0552	12.56	310001	01.7775	24.91	310087	01.2345	18.95
260186	01.2538	15.20	280012	01.2413	14.88	280098	01.0077	09.68	310002	01.7278	25.68	310088	01.2566	19.57
260188	01.2759	15.70	280013	02.0235	19.71	280101	01.1173	10.92	310003	01.2230	23.16	310090	01.1884	22.86
260189	00.9409	11.23	280014	00.9990	10.78	280102	01.1321	11.77	310005	01.2257	19.20	310091	01.2193	21.35
260190	01.2003	18.46	280015	01.0254	13.78	280104	00.9599	09.88	310006	01.2209	19.02	310092	01.3080	20.52
260191	01.1725	19.44	280017	01.1524	13.42	280105	01.2988	16.46	310008	01.2785	21.23	310093	01.2193	19.52
260193	01.2262	19.13	280018	01.1939	12.25	280106	00.9481	13.23	310009	01.2877	21.35	310096	01.9014	21.19
260195	01.1678	.....	280020	01.5198	18.97	280107	01.0284	12.36	310010	01.2966	21.05	310105	01.1914	22.41
260197	01.3273	20.38	280021	01.3322	14.01	280108	01.1433	13.26	310011	01.3050	21.71	310108	01.3940	21.08
260198	01.2292	14.98	280022	00.9740	11.07	280109	00.9424	10.61	310012	01.5915	23.53	310110	01.2108	19.69
260200	01.3542	19.14	280023	01.3802	13.73	280110	01.0201	10.88	310013	01.2813	19.91	310111	01.2536	19.70

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
310112	01.2441	20.58	330024	01.9152	30.03	330126	01.2229	20.35	330230	01.5076	26.44	330396	01.2740	25.30
310113	01.2115	20.70	330025	01.1879	13.80	330127	01.3974	25.01	330231	01.1364	27.57	330397	01.3146	26.82
310115	01.1954	19.78	330027	01.4751	28.56	330128	01.3390	25.26	330232	01.2180	15.46	330398	01.2362	26.59
310116	01.2905	21.67	330028	01.3453	23.76	330132	01.1636	13.74	330233	01.5344	29.08	330399	01.3284	29.65
310118	01.1883	21.86	330029	01.1091	17.36	330133	01.3525	28.31	330234	02.1947	24.17	340001	01.4939	19.54
310119	01.5440	27.27	330030	01.2330	15.20	330135	01.2522	16.25	330235	01.1384	17.37	340002	01.8814	18.53
310120	01.0653	17.24	330033	01.2702	13.46	330136	01.2620	20.45	330236	01.3965	26.57	340003	01.1186	16.56
310121	01.0416	16.61	330034	00.7745	36.61	330140	01.7171	17.19	330238	01.1734	14.53	340004	01.4952	17.21
320001	01.4645	16.76	330036	01.3260	21.00	330141	01.3544	23.17	330239	01.2034	15.44	340005	01.2172	14.57
320002	01.4190	21.55	330037	01.1403	15.17	330144	00.9809	13.27	330240	01.3472	26.47	340006	01.2315	14.56
320003	01.1694	15.57	330038	01.2154	14.91	330148	01.0806	14.39	330241	01.8842	20.92	340007	01.1793	14.81
320004	01.2647	17.86	330039	00.8474	13.18	330151	01.0508	13.77	330242	01.3486	22.98	340008	01.1505	16.90
320005	01.3207	17.86	330041	01.3957	27.81	330152	01.4256	27.77	330245	01.2684	17.15	340009	01.3744	19.12
320006	01.3742	15.20	330043	01.2516	26.92	330153	01.6484	17.44	330246	01.2600	22.99	340010	01.3111	16.41
320009	01.5332	16.49	330044	01.2413	17.05	330154	01.5904	.....	330247	00.7043	26.49	340011	01.1105	13.98
320011	00.9883	17.79	330045	01.4206	24.83	330157	01.3111	18.41	330249	01.2271	15.89	340012	01.2599	15.82
320012	01.0365	16.57	330046	01.5166	30.08	330158	01.3798	24.33	330250	01.3148	16.01	340013	01.2783	16.58
320013	01.2196	18.28	330047	01.2282	16.63	330159	01.3217	17.55	330252	00.9107	15.40	340014	01.5898	22.15
320014	01.0172	13.13	330048	01.3029	16.10	330160	01.4707	26.09	330254	01.0280	15.94	340015	01.2409	16.44
320016	01.1611	12.00	330049	01.2452	17.52	330161	00.7237	16.00	330258	01.4226	25.28	340016	01.2062	15.18
320017	01.2209	17.34	330053	01.1285	14.39	330162	01.2663	26.18	330259	01.4498	21.99	340017	01.2587	15.96
320018	01.4884	16.61	330055	01.5084	29.02	330163	01.2137	17.75	330261	01.2244	24.35	340018	01.1282	14.78
320019	01.4863	19.01	330056	01.4474	28.37	330164	01.3963	18.96	330263	00.9929	17.00	340019	01.0519	13.69
320021	01.7092	20.62	330057	01.7158	16.48	330166	00.9723	14.11	330264	01.2681	20.00	340020	01.1686	17.33
320022	01.1787	16.34	330058	01.3270	15.85	330167	01.6440	27.45	330265	01.3105	15.78	340021	01.2198	15.08
320023	01.0348	13.29	330059	01.6224	29.66	330169	01.4303	31.95	330267	01.2786	22.78	340022	01.0527	14.56
320030	00.9822	16.54	330061	01.2977	23.38	330171	01.2804	22.28	330268	00.9740	15.79	340023	01.3923	18.44
320031	00.9008	14.78	330062	01.1779	14.99	330175	01.1255	14.11	330270	01.9655	30.33	340024	01.2228	15.49
320032	00.9936	16.66	330064	01.3752	28.38	330177	01.0208	12.46	330273	01.2942	21.36	340025	01.1893	14.38
320033	01.1484	19.23	330065	01.1890	17.14	330179	00.8617	14.09	330275	01.2178	18.34	340027	01.1954	15.46
320035	01.0033	14.82	330066	01.2343	17.26	330180	01.1952	16.36	330276	01.1877	16.61	340028	01.5380	17.48
320037	01.2052	15.17	330067	01.3770	19.68	330181	01.3076	28.32	330277	01.1372	16.35	340030	02.0110	19.06
320038	01.1660	15.62	330072	01.3458	26.89	330182	02.5837	26.92	330279	01.2893	17.24	340031	00.9808	12.56
320046	01.1839	18.23	330073	01.1820	14.32	330183	01.4389	18.88	330285	01.8218	21.81	340032	01.3999	17.87
320048	01.3187	13.90	330074	01.1874	17.35	330184	01.3396	25.83	330286	01.3203	22.59	340035	01.1695	14.97
320056	00.9819	.....	330075	01.0879	16.48	330185	01.2256	24.23	330290	01.7578	28.28	340036	01.1713	17.04
320057	01.0573	.....	330078	01.4454	16.90	330186	00.9205	18.79	330293	01.1689	13.72	340037	01.1725	15.50
320058	00.9038	.....	330079	01.3130	16.60	330188	01.1850	17.75	330304	01.2689	25.52	340038	01.1103	14.52
320059	00.9778	.....	330080	01.4167	24.95	330189	01.3177	16.20	330306	01.4522	26.59	340039	01.2748	19.18
320060	00.9187	.....	330082	01.1199	16.29	330191	01.2688	17.18	330307	01.2171	18.33	340040	01.7746	17.75
320061	01.1051	.....	330084	00.9919	15.59	330193	01.3086	27.34	330308	01.1772	28.68	340041	01.2471	15.99
320062	00.9353	.....	330085	01.3266	18.66	330194	01.8119	26.07	330309	01.2334	24.67	340042	01.1864	13.80
320063	01.3272	15.84	330086	01.2540	24.13	330195	01.6272	29.02	330314	01.3526	21.07	340044	01.1056	13.26
320065	01.2822	16.76	330088	01.1094	24.41	330196	01.3367	25.53	330315	01.2558	24.58	340045	01.0365	10.95
320067	00.8203	09.19	330090	01.5534	16.86	330197	01.0945	14.43	330316	01.3037	26.23	340047	01.9028	17.98
320068	00.9119	17.98	330091	01.3842	17.64	330198	01.3399	22.17	330327	00.9253	15.30	340048	00.9055	09.39
320069	01.0454	09.08	330092	01.1025	13.64	330199	01.4635	24.80	330331	01.2220	27.78	340049	00.6394	15.10
320070	01.0243	.....	330094	01.2299	15.78	330201	01.5377	27.83	330332	01.2606	24.30	340050	01.1904	14.69
320074	01.1107	17.15	330095	01.2598	16.49	330202	01.4872	25.07	330333	01.3624	22.00	340051	01.2639	16.23
320079	01.2049	17.41	330096	01.0679	14.88	330203	01.3994	19.16	330336	01.3438	27.39	340052	01.0447	18.62
330001	01.1955	24.84	330097	01.1652	14.63	330204	01.4236	24.90	330338	01.1329	22.52	340053	01.6969	18.96
330002	01.4938	24.26	330100	00.6895	25.95	330205	01.1568	19.46	330339	00.8034	18.09	340054	01.0901	12.68
330003	01.3393	19.29	330101	01.8031	33.09	330208	01.2061	23.16	330340	01.2081	23.91	340055	01.2079	16.69
330004	01.2785	19.10	330102	01.3004	16.32	330209	01.1871	21.17	330350	01.8138	27.96	340060	01.1390	16.38
330005	01.8133	19.53	330103	01.2486	15.94	330211	01.2093	16.31	330353	01.3975	27.49	340061	01.7128	19.20
330006	01.3128	24.11	330104	01.3604	25.44	330212	01.1755	20.25	330354	01.3898	.....	340063	01.0555	13.01
330007	01.3289	17.43	330106	01.5666	33.04	330213	01.1241	16.19	330357	01.3757	32.07	340064	01.2278	17.24
330008	01.1187	15.77	330107	01.2590	24.38	330214	01.7379	28.90	330359	00.9471	23.70	340065	01.3129	12.82
330009	01.3480	28.08	330108	01.2119	15.85	330215	01.2197	15.65	330372	01.2689	22.53	340067	01.1907	12.84
330010	01.1648	15.34	330111	01.0877	14.62	330218	01.1661	17.16	330381	01.1945	27.09	340068	01.2333	14.21
330011	01.2464	17.22	330114	00.8876	15.48	330219	01.6358	18.39	330385	01.1735	29.27	340069	01.7159	18.31
330012	01.6173	27.84	330115	01.2008	14.46	330221	01.3421	26.57	330386	01.1478	20.82	340070	01.3795	16.78
330013	02.0611	16.93	330116	00.9149	13.82	330222	01.2611	15.28	330387	00.8589	23.28	340071	01.0726	14.30
330014	01.3852	27.12	330118	01.6360	18.19	330223	01.0811	15.10	330389	01.8045	29.95	340072	01.1400	13.86
330016	01.0249	14.55	330119	01.7390	29.88	330224	01.2647	18.85	330390	01.2567	28.38	340073	01.4546	20.50
330019	01.1339	23.60	330121	01.0050	14.35	330225	01.1856	23.23	330393	01.7319	25.24	340075	01.1558	15.98
330020	01.0573	14.25	330122	01.2081	20.92	330226	01.2808	16.83	330394	01.5114	17.27	340080	01.1240	13.55
330023	01.2492	22.80	330125	01.8059	19.91	330229	01.3242	14.92	330395	01.3557	30.16	340084	01.0689	14.51

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
340085	01.2597	15.46	350008	01.0366	15.15	360032	01.0867	16.18	360108	01.0267	15.08	360197	01.2031	16.76
340087	01.1439	16.80	350009	01.1592	15.74	360034	01.1593	13.30	360109	01.0942	17.43	360200	01.0011	13.48
340088	01.1199	16.46	350010	01.1821	12.30	360035	01.5736	19.90	360112	01.7563	21.61	360203	01.1469	15.55
340089	00.9632	12.28	350011	01.9090	17.37	360036	01.3217	17.31	360113	01.3031	18.24	360204	01.2935	16.96
340090	01.1321	16.30	350012	01.1445	12.36	360037	02.1462	20.14	360114	01.1423	16.05	360210	01.2312	19.23
340091	01.6457	18.32	350013	01.0749	14.58	360038	01.5947	18.31	360115	01.3193	18.08	360211	01.2323	17.25
340093	01.0600	11.60	350014	01.0459	14.29	360039	01.2539	15.34	360116	01.1312	16.04	360212	01.3976	20.25
340094	01.3349	16.83	350015	01.7084	15.42	360040	01.3179	17.72	360118	01.3243	17.37	360213	01.1708	15.77
340096	01.2029	17.18	350016	01.0584	10.35	360041	01.3771	18.25	360121	01.2823	16.74	360218	01.2976	16.21
340097	01.1577	16.04	350017	01.4608	14.88	360042	01.1043	16.74	360122	01.3977	17.77	360230	01.3323	20.27
340098	01.6813	19.05	350018	01.1656	10.67	360044	01.1490	15.84	360123	01.2541	17.50	360231	01.1369	12.45
340099	01.1020	13.36	350019	01.6065	18.69	360045	01.4935	19.25	360124	01.2534	17.08	360234	01.3572	17.90
340101	01.0289	11.11	350020	01.4956	18.57	360046	01.1278	18.52	360125	01.1047	16.87	360236	01.1905	18.56
340104	00.9432	10.60	350021	01.0704	10.94	360047	01.2351	13.85	360126	01.2042	18.97	360239	01.2400	18.70
340105	01.3861	17.75	350023	00.8923	15.59	360048	01.7480	21.00	360127	01.1566	16.28	360241	00.5347	17.69
340106	01.1062	17.79	350024	01.1031	13.69	360049	01.2653	17.36	360128	01.1287	13.85	360242	01.7176	.....
340107	01.3146	16.17	350025	01.0558	12.60	360050	01.1666	12.43	360129	01.0400	14.06	360243	00.7473	14.35
340109	01.3269	15.91	350027	00.9712	12.57	360051	01.5445	21.82	360130	01.1366	15.16	360244	00.7208	16.77
340111	01.1675	13.78	350029	01.0062	12.34	360052	01.7086	17.88	360131	01.4162	16.27	360245	00.8023	12.10
340112	01.2839	14.03	350030	01.0917	15.42	360054	01.2621	15.55	360132	01.2311	20.78	360246	00.8798	15.05
340113	02.0160	19.50	350033	00.9596	13.23	360055	01.2391	18.92	360133	01.4596	17.61	360247	00.4357	.....
340114	01.5131	19.16	350034	01.0571	13.58	360056	01.3529	16.92	360134	01.5973	18.25	370001	01.6944	18.41
340115	01.5532	17.23	350035	00.9015	10.11	360057	01.0445	13.04	360135	01.1672	17.12	370002	01.2462	13.60
340116	01.9191	20.30	350038	01.0538	13.26	360058	01.2628	15.35	360136	01.0528	14.73	370004	01.2787	15.30
340119	01.2839	15.21	350039	00.9705	13.53	360059	01.5433	20.00	360137	01.5604	18.98	370005	01.0273	14.12
340120	01.1296	12.33	350041	01.0446	13.05	360062	01.4697	18.40	360140	01.0178	15.47	370006	01.3096	14.88
340121	01.0450	14.52	350042	01.0504	12.39	360063	01.1243	17.19	360141	01.4412	19.84	370007	01.1404	12.80
340122	00.9921	10.30	350043	01.6433	16.58	360064	01.5567	19.65	360142	01.0184	14.99	370008	01.4080	16.02
340123	01.1293	14.07	350044	00.9113	10.01	360065	01.2287	16.97	360143	01.2979	17.74	370011	01.0616	12.47
340124	01.0275	12.27	350047	01.2204	16.64	360066	01.3889	17.16	360144	01.3148	20.19	370012	00.8457	10.05
340125	01.4145	16.94	350049	01.2419	10.38	360067	01.2670	12.11	360145	01.6244	16.84	370013	01.7611	18.61
340126	01.4353	16.23	350050	00.9371	10.24	360068	01.6576	21.91	360147	01.2662	.....	370014	01.3196	17.14
340127	01.3099	16.30	350051	00.9466	14.13	360069	01.1437	16.38	360148	01.0715	16.50	370015	01.2617	13.84
340129	01.3429	18.65	350053	01.0767	09.58	360070	01.6677	16.57	360149	01.1450	20.33	370016	01.3790	14.25
340130	01.3332	16.03	350055	00.9216	11.50	360071	01.2655	15.42	360150	01.2825	17.70	370017	01.1042	12.14
340131	01.4267	16.05	350056	00.9601	12.92	360072	01.1448	16.29	360151	01.3167	16.55	370018	01.2647	14.06
340132	01.3222	12.41	350058	00.9495	12.18	360074	01.3535	19.15	360152	01.4765	17.73	370019	01.3066	11.91
340133	01.0518	13.87	350060	00.7458	08.17	360075	01.4875	20.80	360153	01.1500	13.64	370020	01.2884	12.53
340136	00.7885	24.45	350061	01.0625	13.77	360076	01.3060	18.84	360154	01.0235	12.39	370021	00.9781	10.01
340137	01.2154	12.68	350063	00.8969	.....	360077	01.4820	18.59	360155	01.3290	18.75	370022	01.2741	15.13
340138	01.1811	17.60	350064	00.9840	.....	360078	01.2766	18.97	360156	01.3403	16.47	370023	01.3301	14.95
340141	01.6320	18.27	350066	00.7996	.....	360079	01.7539	19.31	360159	01.1943	18.50	370025	01.4024	15.37
340142	01.1998	14.94	360001	01.3171	17.88	360080	01.1169	14.39	360161	01.2798	18.78	370026	01.4279	16.08
340143	01.3874	18.50	360002	01.2012	15.33	360081	01.3564	17.96	360162	01.2593	17.27	370028	01.8659	17.67
340144	01.4263	14.85	360003	01.7460	20.67	360082	01.3158	19.81	360163	01.8617	19.87	370029	01.2335	12.79
340145	01.3230	16.80	360006	01.7465	19.53	360083	01.2516	15.77	360164	00.8576	13.98	370030	01.2425	12.05
340146	01.0175	15.42	360007	01.0523	15.41	360084	01.6097	18.16	360165	01.2134	14.31	370032	01.5284	14.28
340147	01.2925	17.80	360008	01.2955	16.20	360085	01.8261	19.63	360166	01.1750	15.83	370033	01.0754	11.23
340148	01.4427	18.28	360009	01.3969	17.35	360086	01.4494	16.75	360169	00.9859	16.99	370034	01.2609	12.79
340151	01.1215	14.05	360010	01.2298	15.38	360087	01.4106	17.32	360170	01.2826	15.68	370035	01.6338	15.21
340153	01.9740	21.08	360011	01.2267	17.83	360088	01.2136	15.48	360172	01.3727	16.62	370036	01.0298	09.22
340155	01.3941	20.91	360012	01.2961	17.61	360089	01.1654	16.92	360174	01.2295	19.24	370037	01.7224	16.37
340156	00.8042	.....	360013	01.0861	16.71	360090	01.2325	17.90	360175	01.2416	17.61	370038	00.9103	12.01
340158	01.1785	15.94	360014	01.1236	17.57	360091	01.2653	18.90	360176	01.1811	15.62	370039	01.4595	17.22
340159	01.1571	16.88	360016	01.5986	17.81	360092	01.2754	17.85	360177	01.2619	16.30	370040	01.1036	10.89
340160	01.0888	12.88	360017	01.7484	19.82	360093	01.2219	16.66	360178	01.2206	15.58	370041	01.0290	13.52
340162	01.2211	17.78	360018	01.5417	18.51	360094	01.3012	20.27	360179	01.2895	19.01	370042	00.8626	11.22
340164	01.4594	18.17	360019	01.2939	18.22	360095	01.3299	16.68	360180	02.0595	22.07	370043	00.9753	12.91
340166	01.4192	18.51	360020	01.4334	20.05	360096	01.1102	16.20	360184	00.4913	17.11	370045	01.1501	10.20
340168	00.5028	14.78	360021	01.2759	18.04	360098	01.3988	18.00	360185	01.2472	17.09	370046	00.9820	09.22
340171	01.1220	.....	360024	01.4300	17.76	360099	01.1087	16.91	360186	01.1741	15.04	370047	01.3236	15.40
350001	01.0070	11.08	360025	01.2331	17.66	360100	01.3108	15.63	360187	01.2880	16.00	370048	01.1790	13.46
350002	01.7570	16.04	360026	01.1939	15.59	360101	01.7511	19.71	360188	01.0028	14.77	370049	01.3544	16.07
350003	01.1983	15.67	360027	01.5318	19.06	360102	01.2675	19.68	360189	01.0113	15.40	370051	00.9604	13.31
350004	01.9399	17.94	360028	01.4723	15.28	360103	01.3274	18.70	360192	01.2451	19.28	370054	01.3882	14.79
350005	01.0794	13.14	360029	01.1573	16.41	360104	01.9146	20.28	360193	01.3171	16.77	370056	01.5659	15.41
350006	01.3898	16.16	360030	01.1350	14.82	360106	01.0557	13.89	360194	01.1176	16.14	370057	01.1762	15.05
350007	00.9506	12.20	360031	01.3576	18.42	360107	01.2429	16.98	360195	01.1297	17.72	370059	01.1142	13.53

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
370060	01.0828	12.88	370190	01.6289	17.49	390002	01.3694	17.03	390078	01.0673	15.98	390164	01.9539	19.14
370063	01.0959	13.12	370192	01.1353	.....	390003	01.2550	15.57	390079	01.7078	16.83	390166	01.1034	17.40
370064	00.9954	10.14	370194	02.0879	.....	390004	01.3802	16.70	390080	01.2568	18.66	390167	01.2653	20.71
370065	01.0424	14.76	370195	02.4526	.....	390005	01.0808	14.82	390081	01.3530	20.23	390168	01.2043	17.54
370071	01.0343	10.18	380001	01.3214	19.27	390006	01.7350	17.39	390083	01.2270	20.87	390169	01.2058	18.63
370072	00.9116	11.67	380002	01.2073	22.74	390007	01.1796	21.33	390084	01.2421	15.29	390170	01.8570	22.43
370076	01.3116	12.42	380003	01.1475	18.75	390008	01.1300	15.08	390086	01.1340	16.87	390173	01.1954	17.08
370077	01.2139	16.30	380004	01.8006	22.89	390009	01.6087	18.07	390088	01.3283	18.42	390174	01.7088	24.17
370078	01.7084	14.58	380005	01.1861	19.47	390010	01.1790	16.58	390090	01.8006	19.41	390176	01.1460	16.79
370079	00.9678	11.98	380006	01.3890	18.29	390011	01.2467	16.49	390091	01.1700	17.09	390178	01.2822	17.74
370080	00.9908	11.12	380007	01.5689	22.66	390012	01.1943	19.15	390093	01.1538	15.20	390179	01.2710	22.80
370082	00.9103	12.48	380008	01.0706	18.69	390013	01.2311	16.77	390095	01.1758	13.95	390180	01.5397	22.83
370083	00.9505	10.95	380009	01.8307	22.17	390014	01.6424	16.42	390096	01.2633	16.88	390181	01.0583	17.80
370084	01.0351	08.88	380010	01.0879	24.15	390015	01.2054	13.06	390097	01.3262	20.91	390183	01.1883	17.16
370085	00.8092	12.94	380011	01.1042	14.95	390016	01.2233	15.58	390098	01.7539	20.06	390184	01.1032	17.69
370086	01.1831	09.89	380013	01.2681	21.54	390017	01.1747	14.20	390100	01.6285	19.30	390185	01.2281	16.12
370089	01.2759	14.01	380014	01.4266	18.89	390018	01.2261	19.47	390101	01.2027	15.70	390189	01.0384	18.41
370091	01.6816	16.13	380017	01.7014	21.77	390019	01.1185	14.53	390102	01.3635	20.34	390191	01.0441	13.91
370092	01.0706	12.73	380018	01.8329	19.21	390022	01.3887	21.81	390103	01.0941	17.17	390192	01.1158	17.15
370093	01.8716	18.67	380019	01.2061	18.88	390023	01.2485	19.71	390104	01.0526	15.15	390193	01.1854	15.39
370094	01.4235	16.67	380020	01.4312	20.06	390024	00.8664	22.60	390106	01.0134	14.85	390194	01.1543	18.97
370095	00.9189	11.62	380021	01.2831	19.10	390025	00.6470	16.64	390107	01.2490	18.66	390195	01.8317	22.08
370097	01.3652	18.99	380022	01.1731	19.92	390026	01.2710	20.58	390108	01.4094	19.97	390196	01.3947	.....
370099	01.1641	12.91	380023	01.2312	17.76	390027	01.9535	23.48	390109	01.1447	14.44	390197	01.3094	18.40
370100	01.0343	13.02	380025	01.2677	21.90	390028	01.7850	18.54	390110	01.6460	17.36	390198	01.1948	15.21
370103	00.9027	11.77	380026	01.1914	16.87	390029	01.9570	18.73	390111	01.8484	26.22	390199	01.2026	14.89
370105	02.0050	17.06	380027	01.2567	20.25	390030	01.2446	16.29	390112	01.1485	12.16	390200	01.0202	14.67
370106	01.5501	16.96	380029	01.1523	17.29	390031	01.1536	16.93	390113	01.2135	16.04	390201	01.2674	18.75
370108	01.0589	10.82	380031	01.0334	15.92	390032	01.2594	17.80	390114	01.1068	21.07	390203	01.3159	20.45
370112	01.0733	12.33	380033	01.7873	22.97	390035	01.2733	17.28	390115	01.3311	21.40	390204	01.2627	20.05
370113	01.1633	12.33	380035	01.3604	18.58	390036	01.3360	17.63	390116	01.2395	19.91	390205	01.3650	22.42
370114	01.6326	14.69	380036	01.1184	17.27	390037	01.3511	18.49	390117	01.1590	15.65	390206	01.3418	19.91
370121	01.1757	15.78	380037	01.2075	18.24	390039	01.0973	15.60	390118	01.1514	16.34	390209	01.0388	15.48
370122	01.1255	09.78	380038	01.3358	21.15	390040	01.0015	12.71	390119	01.3484	17.17	390211	01.1864	17.10
370123	01.2080	14.12	380039	01.3285	18.89	390041	01.2556	16.82	390121	01.3362	18.95	390213	00.9413	14.55
370125	01.0313	11.90	380040	01.2529	19.23	390042	01.4303	21.35	390122	01.0707	16.06	390215	01.1567	20.69
370126	00.9473	10.66	380042	01.1547	18.06	390043	01.1059	15.65	390123	01.3002	20.58	390217	01.2820	17.92
370131	01.0515	12.93	380047	01.6980	19.84	390044	01.6035	18.80	390125	01.2243	15.08	390219	01.3126	18.57
370133	01.1108	09.82	380048	01.0877	13.92	390045	01.7250	17.35	390126	01.3270	20.07	390220	01.2051	19.33
370138	01.1139	14.40	380050	01.3535	16.37	390046	01.5479	18.49	390127	01.2341	20.26	390222	01.3047	20.42
370139	01.0952	10.62	380051	01.5153	19.13	390047	01.6934	23.83	390128	01.2022	17.96	390223	01.6436	23.15
370140	00.9914	11.71	380052	01.1886	16.70	390048	01.1867	16.26	390130	01.1400	16.62	390224	00.9380	13.04
370141	01.3994	19.17	380055	01.2332	23.88	390049	01.5481	19.82	390131	01.2704	16.24	390225	01.2136	15.42
370146	01.0334	12.03	380056	01.0805	15.78	390050	02.1410	21.21	390132	01.2472	20.25	390226	01.7849	23.22
370148	01.5867	19.01	380060	01.5427	21.51	390051	02.1789	24.98	390133	01.7840	20.57	390228	01.2097	18.67
370149	01.2406	15.19	380061	01.5190	21.85	390052	01.1942	16.68	390135	01.2903	19.73	390231	01.3073	21.89
370153	01.0980	13.17	380062	01.1022	15.07	390054	01.2238	14.56	390136	01.2304	15.66	390233	01.3224	16.71
370154	01.0184	12.31	380063	01.3291	19.90	390055	01.7758	21.82	390137	01.3205	17.80	390235	01.5737	23.94
370156	01.0910	13.37	380064	01.4379	18.47	390056	01.1158	15.73	390138	01.3335	17.41	390236	01.1730	15.90
370158	01.0520	12.08	380065	01.0522	19.24	390057	01.3213	18.94	390139	01.5034	23.50	390237	01.6110	20.17
370159	01.3498	13.95	380066	01.3198	17.60	390058	01.3256	17.46	390142	01.6703	22.64	390238	01.3009	16.12
370163	00.8598	10.99	380068	01.0572	19.31	390060	01.1441	16.68	390145	01.3568	18.64	390242	01.2706	18.69
370165	01.0906	11.74	380069	01.1302	17.51	390061	01.4388	20.47	390146	01.3133	16.19	390244	00.9314	13.32
370166	01.0846	15.48	380070	01.3936	21.21	390062	01.1400	15.76	390147	01.2593	19.22	390245	01.3505	23.15
370169	01.1130	10.66	380071	01.2923	18.06	390063	01.7390	19.30	390149	01.2546	19.59	390246	01.2343	15.91
370170	00.9813	.....	380072	00.9776	14.15	390064	01.5536	16.30	390150	01.1045	17.50	390247	01.0532	17.11
370171	01.0235	.....	380075	01.4343	20.90	390065	01.2840	18.85	390151	01.2950	18.26	390249	01.0339	10.81
370172	00.8846	.....	380078	01.1630	16.95	390066	01.2949	17.15	390152	01.0397	17.07	390256	01.7863	23.51
370173	01.2880	.....	380081	01.1420	17.66	390067	01.8124	18.03	390153	01.2439	21.93	390258	01.2630	19.78
370174	00.9656	.....	380082	01.2830	20.35	390068	01.3206	18.13	390154	01.1846	13.93	390260	01.1752	20.02
370176	01.1460	16.48	380083	01.2473	18.93	390069	01.3149	19.23	390155	01.2947	20.56	390262	01.9683	17.25
370177	00.9746	10.10	380084	01.2083	20.61	390070	01.2872	19.49	390156	01.4292	22.61	390263	01.4329	18.66
370178	01.0093	12.17	380087	01.0126	12.30	390071	01.1143	13.36	390157	01.3465	17.97	390265	01.3177	17.72
370179	00.8839	14.28	380088	01.0041	15.71	390072	01.1098	15.76	390158	01.5904	.....	390266	01.2130	16.69
370180	01.0671	.....	380089	01.2966	21.87	390073	01.5899	18.94	390160	01.2106	17.51	390267	01.2925	18.93
370183	01.0923	14.00	380090	01.3003	24.41	390074	01.2338	16.26	390161	01.0926	14.87	390268	01.3885	19.94
370186	01.0180	12.72	380091	01.2100	23.79	390075	01.2463	15.92	390162	01.4285	19.03	390270	01.3067	15.89
370189	00.9704	10.13	390001	01.3711	18.16	390076	01.3156	20.45	390163	01.2240	16.55	390272	00.4528	.....

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390277	00.5603	20.34	420002	01.3814	18.80	430011	01.3374	14.33	440024	01.3270	16.22	440146	00.9338	11.08
390278	00.7678	17.52	420004	01.8677	18.35	430012	01.3054	14.99	440025	01.1364	13.01	440147	01.1985	17.06
390279	01.0751	13.63	420005	01.2065	14.35	430013	01.2411	15.06	440029	01.2900	16.30	440148	01.1378	14.37
390281	03.2278	.....	420006	01.2691	18.90	430014	01.2803	16.77	440030	01.2038	13.21	440149	01.2007	15.19
400001	01.2220	08.25	420007	01.5104	16.31	430015	01.1797	14.41	440031	00.9661	12.29	440150	01.2814	19.58
400002	01.4856	10.96	420009	01.2122	15.70	430016	01.8135	17.59	440032	01.0524	12.65	440151	01.3711	15.86
400003	01.2332	08.92	420010	01.1103	14.35	430018	00.9842	14.06	440033	01.0675	14.84	440152	01.5691	16.91
400004	01.1483	07.59	420011	01.0948	14.89	430022	00.9711	10.91	440034	01.5752	16.64	440153	01.2623	15.10
400005	01.1206	06.10	420014	01.1243	14.11	430023	00.9247	09.95	440035	01.3207	15.65	440156	01.5611	18.85
400006	01.2016	08.16	420015	01.3249	15.96	430024	00.9133	12.28	440039	01.6370	16.76	440157	01.0908	13.64
400007	01.2693	07.55	420016	01.0738	14.39	430026	01.0802	11.36	440040	00.9724	17.03	440159	01.2247	14.83
400009	01.0262	07.68	420018	01.7297	18.63	430027	01.8126	16.64	440041	01.0380	12.35	440161	01.6915	20.63
400010	00.9203	07.94	420019	01.2334	14.90	430028	01.0919	13.68	440046	01.3297	13.59	440166	01.4435	17.80
400011	00.9992	08.65	420020	01.3863	15.98	430029	00.9945	13.10	440047	00.9562	15.31	440168	01.0268	13.03
400012	01.2240	07.45	420023	01.4196	18.07	430031	00.9633	11.31	440048	01.7952	16.64	440173	01.5203	16.91
400013	01.3026	07.90	420026	01.9243	18.05	430033	01.0190	11.90	440049	01.6599	15.62	440174	00.9800	13.30
400014	01.3669	07.72	420027	01.3766	15.51	430034	01.0691	11.58	440050	01.2144	16.03	440175	01.2313	18.06
400015	01.2460	10.88	420030	01.3136	15.83	430036	01.0403	10.11	440051	00.9274	13.29	440176	01.2943	18.36
400016	01.3669	10.57	420031	00.9596	12.15	430037	00.9746	12.89	440052	01.2208	14.25	440178	01.1828	20.20
400017	01.2323	06.27	420033	01.2169	19.24	430038	01.0102	10.77	440053	01.3082	15.64	440180	01.1590	16.68
400018	01.3497	09.15	420035	00.8201	12.43	430039	01.0851	11.53	440054	01.2219	12.82	440181	01.0247	11.75
400019	01.6713	09.52	420036	01.2109	15.61	430040	00.9125	12.17	440056	01.0837	13.45	440182	00.9496	15.33
400021	01.4363	07.63	420037	01.2790	19.65	430041	00.9368	11.91	440057	01.0173	10.77	440183	01.5317	15.06
400022	01.3221	09.94	420038	01.3043	14.43	430042	00.9807	10.63	440058	01.3195	14.95	440184	01.3454	18.63
400024	01.0278	08.62	420039	01.1575	14.52	430043	01.1884	12.02	440059	01.3263	15.63	440185	01.1231	14.24
400026	00.9518	05.90	420042	01.2023	12.15	430044	00.9113	13.17	440060	01.1970	14.76	440186	01.1936	16.21
400027	01.1389	08.01	420043	01.1809	18.82	430047	01.1401	12.24	440061	01.2086	15.46	440187	01.2024	14.85
400028	01.0186	07.77	420048	01.1316	14.26	430048	01.2003	15.01	440063	01.6128	17.43	440189	01.4803	18.81
400029	01.1282	06.64	420049	01.1758	14.55	430049	00.9292	12.66	440064	01.1917	15.05	440192	01.1477	14.18
400031	01.1362	08.00	420051	01.5589	17.99	430051	01.0196	13.48	440065	01.2342	16.18	440193	01.2835	17.88
400032	01.1227	07.75	420053	01.1416	14.03	430054	01.0137	13.13	440067	01.1944	15.54	440194	01.4255	16.89
400044	01.2346	09.09	420054	01.3673	16.39	430056	00.8553	08.93	440068	01.2212	16.43	440196	00.9505	13.32
400048	01.1349	07.30	420055	01.0608	12.51	430057	00.9283	10.47	440069	01.1286	14.17	440197	01.4034	19.15
400061	01.6729	11.80	420056	01.1544	13.41	430060	01.1566	08.46	440070	01.1243	12.52	440200	01.1971	15.41
400079	01.2619	08.43	420057	01.1466	14.96	430062	00.8743	10.31	440071	01.3952	14.87	440203	00.9399	13.17
400087	01.3682	07.87	420059	00.9934	13.96	430064	01.1303	11.89	440072	01.5223	13.92	440205	01.0953	14.15
400094	01.0449	07.49	420061	01.1508	16.16	430065	00.9479	09.93	440073	01.3496	16.96	440206	01.0265	13.82
400098	01.2488	07.50	420062	01.4491	15.65	430066	00.9678	10.93	440078	01.0256	13.28	440208	01.8205	.....
400102	01.1685	08.67	420064	01.1139	13.45	430073	01.0704	.....	440081	01.1542	15.31	450002	01.4659	19.35
400103	01.3822	08.80	420065	01.3039	16.72	430076	00.9751	09.41	440082	01.9853	20.54	450004	01.1678	12.38
400104	01.3757	08.97	420066	00.9103	14.40	430077	01.5817	16.53	440083	01.1097	10.96	450005	01.1514	13.79
400105	01.1767	08.37	420067	01.2427	16.24	430079	00.9610	11.47	440084	01.1791	11.41	450007	01.2393	13.73
400106	01.2375	08.39	420068	01.2907	16.08	430080	01.1317	08.89	440087	00.9425	14.44	450008	01.3554	14.96
400109	01.5324	09.13	420069	01.1030	13.71	430081	01.0291	.....	440090	00.9368	13.29	450010	01.3345	15.37
400110	01.1163	07.65	420070	01.2642	15.05	430082	00.8067	.....	440091	01.5497	16.53	450011	01.5020	17.43
400111	01.1523	07.98	420071	01.3101	16.13	430083	00.8649	.....	440100	01.0343	12.82	450014	01.0617	13.84
400112	01.2541	06.01	420072	01.0775	10.64	430084	00.9278	.....	440102	01.0720	12.26	450015	01.5403	15.15
400113	01.2466	08.20	420073	01.3072	18.13	430085	00.9194	.....	440103	01.2317	17.24	450016	01.6194	17.57
400114	01.0452	06.50	420074	00.9037	11.72	430087	00.9027	09.29	440104	01.6500	17.68	450018	01.6073	21.75
400115	01.0096	07.56	420075	00.9694	12.66	440001	01.1291	12.18	440105	01.3509	16.69	450020	01.0239	15.47
400117	01.1759	09.23	420078	01.8104	18.59	440002	01.6019	15.73	440109	01.1368	12.28	450021	01.8149	21.11
400118	01.1868	08.61	420079	01.5628	16.94	440003	01.0727	15.23	440110	00.9697	16.06	450023	01.4758	15.45
400120	01.3057	09.14	420080	01.2627	19.18	440006	01.6333	17.55	440111	01.3691	18.00	450024	01.3739	16.45
400121	01.0090	05.80	420082	01.3944	19.13	440007	01.0099	11.83	440114	01.0453	12.68	450025	01.5088	16.23
400122	00.9993	05.88	420083	01.1937	18.36	440008	00.9877	13.50	440115	01.1184	14.66	450028	01.6360	17.17
400123	01.1685	08.24	420084	00.7413	13.56	440009	01.1773	13.22	440120	01.5405	16.14	450029	01.3996	12.98
400124	02.6681	09.27	420085	01.3941	16.86	440010	00.9181	08.75	440125	01.4435	16.09	450031	01.5825	18.72
410001	01.3237	23.02	420086	01.3585	16.90	440011	01.2884	16.28	440130	01.1725	14.16	450032	01.2733	13.63
410004	01.3672	21.15	420087	01.5958	16.53	440012	01.4781	17.72	440131	01.1390	13.44	450033	01.6352	16.84
410005	01.3477	21.90	420088	01.1487	15.05	440014	01.0633	09.06	440132	01.1117	14.01	450034	01.6414	16.28
410006	01.2581	21.40	420089	01.2296	19.40	440015	01.6236	16.42	440133	01.5475	17.78	450035	01.4498	18.91
410007	01.6598	20.37	420091	01.2145	13.16	440016	01.0124	11.35	440135	01.3052	17.20	450037	01.6198	17.78
410008	01.1681	21.05	430004	01.0941	17.25	440017	01.6214	18.42	440137	00.9781	12.14	450039	01.3536	18.70
410009	01.2979	20.66	430005	01.3166	14.06	440018	01.4781	16.10	440141	01.0780	13.59	450040	01.5551	17.75
410010	01.0163	25.40	430007	01.0466	12.56	440019	01.6255	19.06	440142	01.0334	10.75	450042	01.6664	15.75
410011	01.2082	22.25	430008	01.1342	14.01	440020	01.2332	15.43	440143	01.1007	17.21	450043	01.4465	20.40
410012	01.7245	19.51	430009	01.0881	11.86	440022	01.2045	13.72	440144	01.3344	18.35	450044	01.6233	20.51
410013	01.3149	24.63	430010	01.1233	09.23	440023	01.0084	11.58	440145	01.0427	10.99	450046	01.3659	14.67

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
450047	01.1220	13.43	450152	01.2584	16.04	450292	01.2041	20.69	450473	01.0025	17.83	450648	01.0330	11.36
450050	01.0646	16.00	450153	01.5850	17.97	450293	00.9718	13.55	450475	01.1382	14.13	450649	01.0760	14.64
450051	01.5938	18.22	450154	01.1993	12.23	450296	01.3113	16.46	450484	01.4918	18.53	450651	01.8202	21.97
450052	01.0170	13.18	450155	01.0180	12.61	450297	01.0190	12.01	450488	01.2564	15.04	450652	00.9227	13.44
450053	01.1454	13.11	450157	01.0065	12.97	450299	01.3347	17.02	450489	00.9782	11.56	450653	01.2431	18.84
450054	01.7192	21.32	450160	00.9923	17.50	450303	00.9406	09.97	450497	01.1271	12.05	450654	01.0022	11.11
450055	01.1447	12.92	450162	01.1938	16.77	450306	01.0853	12.50	450498	01.2476	13.88	450656	01.4892	16.48
450056	01.6156	18.26	450163	01.0440	15.34	450307	00.8981	13.62	450508	01.5513	16.37	450658	00.9782	14.01
450058	01.5801	14.76	450164	01.0742	12.56	450309	01.0640	12.74	450514	01.2130	18.78	450659	01.5709	21.98
450059	01.2524	13.14	450165	00.9592	14.34	450315	01.1187	19.65	450517	00.9987	10.94	450660	01.5676	21.85
450060	01.3645	22.17	450166	00.9684	10.06	450320	01.3390	18.20	450518	01.5354	16.84	450661	01.1458	19.26
450063	00.9796	11.51	450169	00.9080	13.82	450321	00.9595	12.45	450523	01.5274	21.38	450662	01.6776	16.53
450064	01.5134	15.34	450170	00.9791	11.32	450322	00.7151	15.40	450530	01.4471	21.64	450665	00.9352	11.45
450065	01.1489	14.75	450176	01.2251	15.23	450324	01.6544	15.19	450534	00.9729	20.29	450666	01.2706	19.71
450068	01.7905	20.31	450177	01.0924	13.18	450325	01.2253	11.93	450535	01.2548	14.12	450668	01.5402	18.90
450070	01.2681	15.46	450178	01.0088	14.65	450327	00.9860	12.11	450537	01.3601	17.80	450669	01.2864	19.10
450072	01.2416	18.19	450181	01.0019	15.15	450330	01.2227	16.86	450538	01.3999	21.17	450670	01.3009	19.44
450073	01.1264	12.84	450184	01.5407	23.27	450334	01.0534	11.65	450539	01.2984	13.27	450672	01.6541	19.75
450076	01.5782	.....	450185	01.1327	08.47	450337	01.2371	17.14	450544	01.4369	22.65	450673	01.1436	11.38
450078	00.9932	11.17	450187	01.2814	16.44	450340	01.3187	14.54	450545	01.2718	14.13	450674	01.0111	22.09
450079	01.4322	19.03	450188	01.0119	12.46	450341	01.0248	16.26	450546	01.8222	18.37	450675	01.5087	17.94
450080	01.2955	15.79	450190	01.1860	19.53	450346	01.3451	16.27	450547	01.1713	15.09	450677	01.4313	19.18
450081	01.0995	12.87	450191	01.0888	15.75	450347	01.1474	15.48	450550	00.9808	17.01	450678	01.4822	20.45
450082	00.9666	12.75	450192	01.2364	16.25	450348	01.0026	10.99	450551	01.1921	13.75	450681	03.0551	17.29
450083	01.7113	17.42	450193	02.0587	21.32	450351	01.1755	18.65	450558	01.7741	17.17	450683	01.3220	20.22
450085	01.0883	14.38	450194	01.2395	18.11	450352	01.1091	16.21	450559	00.9492	12.75	450684	01.2741	18.53
450087	01.4225	19.35	450196	01.5055	17.58	450353	01.3200	17.98	450561	01.6456	17.65	450686	01.5540	14.30
450090	01.2033	12.40	450197	01.0524	19.66	450355	01.1377	11.18	450563	01.2363	21.98	450688	01.2881	18.65
450092	01.2143	13.12	450200	01.3821	16.35	450358	02.0797	20.57	450565	01.3067	15.63	450690	01.4332	20.17
450094	01.2606	19.39	450201	01.0166	15.38	450362	01.1880	18.62	450570	01.0343	11.74	450691	01.0990	14.91
450096	01.5374	19.25	450203	01.1911	16.13	450369	01.0899	10.21	450571	01.4975	14.52	450694	01.2392	15.91
450097	01.4459	18.33	450209	01.5470	16.62	450370	01.1322	13.02	450573	01.0043	13.58	450696	01.6532	23.37
450098	01.1700	13.75	450210	01.1942	12.03	450371	01.1439	11.02	450574	00.9401	13.41	450697	01.5296	16.28
450099	01.2845	17.70	450211	01.3875	15.53	450372	01.2685	20.49	450575	01.0588	16.98	450698	00.9741	11.66
450101	01.4874	15.03	450213	01.5135	16.27	450373	01.1458	13.68	450578	00.9188	12.94	450700	00.9361	12.68
450102	01.7024	21.87	450214	01.3724	18.61	450374	00.9606	12.20	450580	01.1043	12.59	450702	01.6116	17.58
450104	01.2215	13.74	450217	01.0493	12.61	450376	01.5130	16.26	450583	01.0101	12.24	450703	01.5347	22.71
450107	01.6114	18.75	450219	01.1376	14.22	450378	01.0872	21.56	450584	01.2252	12.86	450704	01.3685	17.86
450108	00.9951	14.49	450221	01.0919	14.05	450379	01.5119	21.28	450586	00.9990	11.26	450705	01.0325	16.80
450109	00.9937	15.36	450222	01.6583	17.32	450381	01.0501	12.56	450587	01.2284	16.93	450706	01.2203	21.90
450110	01.2581	19.34	450224	01.3804	16.16	450388	01.7618	17.41	450591	01.1443	16.28	450709	01.2258	20.05
450111	01.2467	19.56	450229	01.5720	15.17	450389	01.2091	16.74	450596	01.3111	17.29	450711	01.6445	17.90
450112	01.3458	13.87	450231	01.5952	18.09	450393	01.3286	20.94	450597	01.0558	14.23	450712	00.7326	15.03
450113	01.2354	16.99	450234	00.9894	11.27	450395	01.0373	14.68	450603	00.8313	16.27	450713	01.4795	18.10
450118	01.5684	21.60	450235	01.0641	13.47	450399	00.9972	13.37	450604	01.3843	13.57	450715	01.4608	19.89
450119	01.2883	16.37	450236	01.0680	14.17	450400	01.1529	13.70	450605	01.4572	17.91	450716	01.2763	19.64
450121	01.4394	18.70	450237	01.5497	16.60	450403	01.3695	19.91	450609	00.8873	12.25	450717	01.3876	22.95
450123	01.1501	17.47	450239	01.2041	12.35	450411	00.9528	11.46	450610	01.4525	16.09	450718	01.2410	20.52
450124	01.5911	19.48	450241	01.0376	15.67	450417	01.0520	12.95	450614	01.0500	12.43	450723	01.3595	18.17
450126	01.3790	11.95	450243	00.8397	11.57	450418	01.3231	17.42	450615	01.0751	11.70	450724	01.2949	16.59
450128	01.2417	14.78	450246	00.9745	15.02	450419	01.2764	22.40	450617	01.2951	20.82	450725	01.0238	20.88
450130	01.5026	16.34	450249	00.9682	10.70	450422	00.8069	23.47	450620	01.0721	12.48	450726	00.8634	14.54
450131	01.3704	21.35	450250	00.9525	09.93	450423	01.4345	21.03	450623	01.1422	17.62	450727	00.9554	09.78
450132	01.6500	16.45	450253	01.3238	13.51	450424	01.2052	16.33	450626	01.0899	14.09	450728	00.9742	14.31
450133	01.5434	16.49	450258	01.0987	11.17	450429	01.1218	13.35	450628	00.9432	15.48	450730	01.3596	21.14
450135	01.7232	21.81	450259	01.2053	17.44	450431	01.6621	17.30	450630	01.6460	20.60	450733	01.3642	16.91
450137	01.5052	24.28	450264	00.8888	11.94	450438	01.1814	14.39	450631	01.7443	18.24	450735	00.8814	12.70
450140	00.8514	16.46	450269	01.1527	12.62	450446	00.8552	13.07	450632	01.0135	11.17	450742	01.3392	21.43
450142	01.4322	19.50	450270	01.1746	10.16	450447	01.3578	17.69	450633	01.5955	19.99	450743	01.4512	18.56
450143	01.0933	12.23	450271	01.2705	14.41	450450	01.0892	16.43	450634	01.6915	21.57	450746	01.0348	13.39
450144	01.1100	16.23	450272	01.2918	16.29	450451	01.1189	20.23	450637	01.3801	18.24	450747	01.3596	16.51
450145	00.8715	12.46	450276	01.1012	10.44	450457	01.7888	17.14	450638	01.5960	22.52	450749	01.0066	12.35
450146	01.0002	16.53	450278	00.8518	18.12	450460	01.0391	12.06	450639	01.4075	21.41	450750	01.0207	11.86
450147	01.4238	17.66	450280	01.5267	20.58	450462	01.8388	19.89	450641	01.0270	12.60	450751	01.3180	21.80
450148	01.3128	19.02	450283	01.0534	12.09	450464	00.9829	13.41	450643	01.2616	17.57	450754	00.8914	13.19
450149	01.3535	19.71	450286	01.0404	14.54	450465	01.3156	14.66	450644	01.4772	20.30	450755	01.1576	13.66
450150	00.8833	13.62	450288	01.2198	12.58	450467	00.9614	14.39	450646	01.6091	19.59	450757	00.9791	13.32
450151	01.1042	13.27	450289	01.4806	17.37	450469	01.3754	16.94	450647	02.0177	20.35	450758	01.2161	13.21

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
450760	01.1995	16.97	460047	01.7910	19.49	490067	01.2066	14.95	500028	01.0863	14.76	500139	01.4752	21.33
450761	01.0624	09.63	460049	01.9373	17.36	490069	01.4041	15.74	500029	00.9240	14.30	500141	01.3369	21.93
450763	01.0137	16.27	460050	01.3229	20.35	490071	01.4437	17.56	500030	01.4741	22.13	500143	00.7548	14.92
450766	02.3026	21.39	460051	01.1889	.....	490073	01.3572	21.49	500031	01.2908	20.19	500146	01.0356	.....
450769	01.0302	13.28	470001	01.2042	17.11	490074	01.3267	16.06	500033	01.2023	18.05	510001	01.7170	17.08
450770	00.9569	13.59	470003	01.8185	20.22	490075	01.3350	16.62	500036	01.3243	19.11	510002	01.2698	16.31
450771	01.9684	19.76	470004	01.1082	14.18	490077	01.1612	16.87	500037	01.1182	17.63	510004	00.9340	12.62
450774	00.9029	23.99	470005	01.2621	18.71	490079	01.3172	14.30	500039	01.3816	21.32	510005	00.9906	13.71
450775	01.2195	19.26	470006	01.1890	17.05	490083	00.6451	14.63	500041	01.2847	22.09	510006	01.2547	17.08
450776	00.9203	.....	470008	01.2515	15.41	490084	01.2474	15.96	500042	01.3841	20.95	510007	01.4719	17.81
450777	01.0133	15.01	470010	01.1785	18.58	490085	01.2069	13.36	500043	01.2790	16.56	510008	01.1392	15.33
450779	01.3433	20.59	470011	01.1576	19.30	490088	01.2040	13.97	500044	01.8929	20.56	510012	01.0689	14.26
450780	01.6395	19.78	470012	01.2641	17.52	490089	01.0777	14.37	500045	01.1206	20.65	510013	01.1401	15.10
450781	01.5121	16.23	470013	01.1730	18.38	490090	01.1910	14.25	500048	00.9121	16.01	510015	00.9645	12.51
450785	01.0081	26.08	470015	01.0821	16.29	490091	01.2048	20.14	500049	01.4662	19.34	510016	00.9894	11.27
450788	01.4240	.....	470018	01.1960	17.37	490092	01.2073	14.32	500050	01.4048	20.41	510018	01.1325	14.40
450793	01.6623	.....	470020	00.9790	14.50	490093	01.2886	15.31	500051	01.6400	22.71	510020	01.0439	10.16
450794	01.4607	.....	470023	01.3025	17.20	490094	01.0703	14.57	500052	01.2844	.....	510022	01.8032	19.52
450795	00.8583	.....	470024	01.1065	17.08	490095	01.4704	16.32	500053	01.2764	20.10	510023	01.1453	15.14
450797	00.6907	.....	490001	01.0855	19.41	490097	01.1309	13.69	500054	01.8765	20.41	510024	01.4123	17.94
450798	00.8914	.....	490002	01.0634	13.61	490098	01.3117	11.69	500055	01.0919	20.32	510026	00.9431	12.19
450799	01.4105	.....	490003	00.6013	17.55	490099	00.9354	15.29	500057	01.3473	16.24	510027	00.9624	13.86
450800	01.3490	.....	490004	01.2275	16.67	490100	01.3718	16.69	500058	01.5008	19.82	510028	01.0722	14.90
450801	01.4785	.....	490005	01.5365	16.10	490101	01.1892	23.64	500059	01.1568	20.02	510029	01.2911	16.69
450802	01.0743	.....	490006	01.1550	13.27	490104	00.8927	14.46	500060	01.4852	20.70	510030	01.1024	14.87
450803	00.8537	.....	490007	02.0173	17.19	490105	00.7368	16.55	500061	00.9874	17.95	510031	01.3462	16.27
450804	01.5317	.....	490009	01.8300	18.08	490106	00.8894	14.86	500062	01.0881	17.16	510033	01.2683	14.42
450805	01.1690	.....	490010	01.0896	17.08	490107	01.3168	22.65	500064	01.5317	21.69	510035	01.1333	16.46
450807	00.9104	.....	490011	01.4141	17.03	490108	00.8692	13.78	500065	01.2988	17.67	510036	01.0124	09.34
450809	01.6695	.....	490012	01.2074	15.55	490109	00.9193	14.09	500068	01.0249	17.17	510038	01.1602	13.71
460001	01.7915	19.82	490013	01.2459	14.82	490110	01.3951	15.90	500069	01.1604	18.62	510039	01.3713	15.02
460003	01.7205	18.38	490014	01.3674	21.04	490111	01.2384	16.79	500071	01.3704	19.46	510043	00.9246	11.33
460004	01.7759	20.68	490015	01.4613	17.30	490112	01.7317	19.07	500072	01.1955	21.19	510046	01.2634	15.26
460005	01.5560	18.80	490017	01.3610	16.58	490113	01.2998	20.96	500073	01.0893	16.85	510047	01.2119	17.26
460006	01.4316	18.71	490018	01.2531	16.88	490114	01.1055	15.00	500074	01.1764	14.80	510048	01.0836	17.39
460007	01.5439	19.27	490019	01.2029	15.60	490115	01.2378	14.25	500075	03.7376	20.25	510050	01.4644	15.34
460008	01.3622	16.02	490020	01.1532	14.16	490116	01.2262	15.61	500077	01.3928	21.63	510053	01.0373	13.50
460009	01.8858	18.11	490021	01.1440	17.12	490117	01.1727	13.62	500079	01.4051	19.87	510055	01.2326	19.41
460010	01.9311	20.15	490022	01.4164	17.59	490118	01.7640	21.32	500080	00.8347	11.56	510058	01.1980	16.23
460011	01.3873	16.16	490023	01.2222	17.03	490119	01.3430	16.41	500084	01.1384	20.05	510059	01.2369	13.65
460013	01.5121	18.54	490024	01.7777	17.06	490120	01.3210	16.90	500085	01.0600	17.19	510060	01.1653	15.36
460014	01.0302	15.38	490027	01.1366	13.11	490122	01.5068	20.86	500086	01.4233	18.48	510061	01.0684	12.59
460015	01.2578	19.75	490028	01.3505	18.42	490123	01.1433	14.80	500088	01.3681	22.86	510062	01.2001	15.38
460016	00.8956	13.54	490030	01.0966	11.16	490124	01.1494	16.99	500089	00.9699	13.99	510063	01.0086	10.63
460017	01.4587	16.52	490031	01.1399	12.61	490126	01.3829	14.72	500090	00.9942	12.60	510065	01.0057	12.04
460018	00.9760	13.59	490032	01.7447	19.08	490127	01.0153	14.44	500092	01.0866	15.65	510066	01.1328	12.02
460019	01.1474	12.90	490033	01.1930	15.58	490129	01.4271	17.98	500094	00.9216	15.53	510067	01.2442	15.91
460020	01.0550	14.21	490035	01.2134	09.64	490130	01.3112	16.58	500096	01.0818	17.13	510068	01.1194	14.01
460021	01.3930	19.20	490037	01.1236	13.27	490131	01.0313	14.06	500097	01.1361	16.12	510070	01.2176	16.05
460022	00.9379	19.41	490038	01.2160	12.54	500001	01.3320	20.92	500098	00.9259	13.66	510071	01.2805	14.49
460023	01.1852	20.75	490040	01.4126	21.19	500002	01.4806	18.75	500101	01.0231	17.84	510072	01.0631	13.50
460024	00.8925	13.88	490041	01.3528	16.82	500003	01.4107	21.28	500102	00.9438	18.43	510077	01.1112	14.36
460025	00.8072	12.63	490042	01.3424	15.18	500005	01.8423	22.52	500104	01.2581	18.71	510080	01.1526	09.35
460026	01.0894	16.98	490043	01.3567	16.74	500007	01.4103	20.14	500106	00.9357	15.53	510081	01.0273	13.19
460027	00.9427	18.71	490044	01.3652	16.65	500008	01.8538	22.88	500107	01.1326	15.58	510082	01.0492	12.08
460029	01.0225	15.71	490045	01.1326	18.60	500009	01.2784	21.07	500108	01.6728	21.40	510084	00.9917	13.25
460030	01.2159	15.78	490046	01.4684	17.24	500011	01.3857	21.44	500110	01.2764	18.75	510085	01.2369	17.99
460032	01.0099	19.00	490047	01.0719	16.34	500012	01.5255	20.94	500118	01.1356	20.88	510086	01.0561	15.65
460033	00.9544	18.22	490048	01.4849	17.53	500014	01.5705	22.36	500119	01.3328	20.48	520002	01.2922	17.24
460035	00.9610	11.43	490050	01.4304	20.06	500015	01.3611	20.92	500122	01.1907	20.27	520003	01.1620	15.19
460036	00.9397	19.41	490052	01.6110	15.34	500016	01.4832	22.76	500123	00.8533	14.78	520004	01.1559	16.53
460037	01.0591	15.92	490053	01.2500	14.14	500019	01.3350	19.82	500124	01.3275	22.39	520006	01.0574	18.05
460039	01.0976	21.08	490054	01.1202	13.91	500021	01.5313	20.77	500125	00.9883	10.72	520007	01.2421	14.14
460041	01.2170	18.29	490057	01.5395	17.05	500023	01.1880	19.09	500129	01.7287	22.41	520008	01.5505	20.54
460042	01.4763	16.14	490059	01.5677	18.24	500024	01.6344	21.06	500132	00.9951	19.79	520009	01.5958	16.88
460043	00.9968	20.44	490060	01.0692	16.72	500025	01.8629	21.69	500134	00.8092	15.75	520010	01.1719	19.34
460044	01.2081	19.41	490063	01.6593	22.34	500026	01.4296	22.42	500137	00.7050	19.99	520011	01.2046	16.46
460046	00.7432	10.23	490066	01.2205	17.58	500027	01.5358	23.68	500138	03.4209	.....	520013	01.2869	17.88

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
520014	01.2027	15.55	520103	01.3253	17.70	530025	01.3617	17.99						
520015	01.1208	16.65	520107	01.2590	17.46	530026	01.0549	14.63						
520016	01.0905	12.75	520109	00.9991	17.25	530027	00.8298	09.56						
520017	01.1856	16.87	520110	01.1737	16.47	530029	00.9607	13.49						
520018	01.0817	15.88	520111	00.9881	14.44	530031	00.8790	10.95						
520019	01.2831	16.65	520112	01.0774	18.15	530032	01.1497	17.34						
520021	01.3589	19.16	520113	01.1649	17.80									
520024	01.0340	13.33	520114	01.1065	12.61									
520025	01.1366	15.19	520115	01.3241	15.89									
520026	01.0973	17.48	520116	01.2614	17.66									
520027	01.2310	19.22	520117	01.0328	15.40									
520028	01.3213	17.60	520118	00.9426	10.95									
520029	00.9672	16.70	520120	00.8716	11.95									
520030	01.6756	20.19	520121	00.9752	14.18									
520031	01.1149	16.11	520122	00.9991	13.96									
520032	01.1627	14.56	520123	01.1304	16.55									
520033	01.1838	15.91	520124	01.1231	14.34									
520034	01.1326	17.17	520130	01.0848	12.60									
520035	01.2520	14.67	520131	01.0608	15.82									
520037	01.6526	18.23	520132	01.1759	14.31									
520038	01.4892	17.14	520134	01.0288	15.14									
520039	01.0077	16.24	520135	00.9463	13.84									
520040	01.4307	20.05	520136	01.4791	18.87									
520041	01.1426	14.54	520138	01.8806	18.18									
520042	01.0710	16.25	520139	01.2886	18.50									
520044	01.3714	16.09	520140	01.6140	19.31									
520045	01.6919	17.97	520141	01.1169	15.63									
520047	01.0188	14.50	520142	00.9147	12.48									
520048	01.4400	17.67	520144	01.0393	16.10									
520049	01.9950	17.97	520145	00.9143	16.57									
520051	02.0353	19.41	520146	01.0746	13.71									
520053	01.0992	14.78	520148	01.1623	15.34									
520054	01.0858	16.40	520149	00.9555	13.31									
520056	01.3107	17.77	520151	01.0897	14.43									
520057	01.1288	16.08	520152	01.1331	16.38									
520058	01.0509	17.87	520153	00.9798	13.19									
520059	01.3228	18.17	520154	01.1472	16.15									
520060	01.2997	15.15	520156	01.1203	16.37									
520062	01.2655	16.18	520157	00.9424	13.70									
520063	01.2607	17.61	520159	00.9388	16.25									
520064	01.7082	18.60	520160	01.7678	17.77									
520066	01.4098	17.73	520161	01.0250	14.76									
520068	00.8915	15.82	520170	01.2443	18.51									
520069	01.1870	16.75	520171	00.9943	13.69									
520070	01.5908	16.93	520173	01.1567	17.36									
520071	01.1171	17.71	520174	01.4333	20.57									
520074	01.0987	14.96	520177	01.6449	20.33									
520075	01.4698	17.44	520178	01.0559	14.61									
520076	01.1236	14.40	520186	02.5906	.....									
520077	01.0257	14.50	530002	01.1980	18.07									
520078	01.5135	17.89	530003	00.9289	12.59									
520082	01.3440	15.25	530004	01.0252	13.17									
520083	01.5917	21.59	530005	01.1380	13.19									
520084	01.0815	15.73	530006	01.1263	16.83									
520087	01.6157	17.16	530007	01.0519	11.52									
520088	01.2441	17.56	530008	01.2819	17.75									
520089	01.5181	18.76	530009	00.9693	20.60									
520090	01.2798	16.16	530010	01.2110	16.30									
520091	01.3653	17.25	530011	01.0901	15.27									
520092	01.1109	15.11	530012	01.5887	17.25									
520094	01.0028	16.07	530014	01.3344	15.01									
520095	01.3845	18.56	530015	01.1465	19.22									
520096	01.4966	17.78	530016	01.2083	11.87									
520097	01.3301	17.90	530017	00.9927	16.09									
520098	01.7373	19.40	530018	01.0650	14.57									
520100	01.2315	15.91	530019	00.9451	14.32									
520101	01.1002	15.75	530022	01.1165	15.94									
520102	01.2175	19.00	530023	00.8533	17.76									

Note: Case mix indexes do not include discharges from PPS-exempt units. Case mix indexes include cases received in HCFA central office through June 1996.

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index	GAF
0040 Abilene, TX	0.8147	0.8691
Taylor, TX		
0060 Aguadilla, PR	0.4237	0.5554
Aguada, PR		
Aguadilla, PR		
Moca, PR		
0080 Akron, OH	0.9853	0.9899
Portage, OH		
Summit, OH		
0120 Albany, GA	0.8597	0.9017
Dougherty, GA		
Lee, GA		
0160 Albany-Schenectady-Troy, NY	0.8624	0.9036
Albany, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Schoharie, NY		
0200 Albuquerque, NM	0.9350	0.9550
Bernalillo, NM		
Sandoval, NM		
Valencia, NM		
0220 Alexandria, LA	0.8194	0.8725
Rapides, LA		
0240 Allentown-Bethlehem-Easton, PA	0.9992	0.9995
Carbon, PA		
Lehigh, PA		
Northampton, PA		
0280 Altoona, PA	0.9510	0.9662
Blair, PA		
0320 Amarillo, TX.		
Potter, TX	0.8730	0.9112
Randall, TX		
0380 Anchorage, AK	1.3255	1.2128
Anchorage, AK		
0440 Ann Arbor, MI	1.1662	1.1110
Lenawee, MI		
Livingston, MI		
Washtenaw, MI		
0450 Anniston, AL	0.8023	0.8600
Calhoun, AL		
0460 Appleton-Oshkosh-Neenah, WI	0.8890	0.9226
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
0470 Arecibo, PR	0.4397	0.5697
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
0480 Asheville, NC	0.9344	0.9546
Buncombe, NC		
Madison, NC		
0500 Athens, GA	0.9408	0.9591
Clarke, GA		
Madison, GA		
Oconee, GA		
0520 *Atlanta, GA	1.0033	1.0023
Barrow, GA		
Bartow, GA		
Carroll, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		
DeKalb, GA		
Douglas, GA		
Fayette, GA		
Forsyth, GA		
Fulton, GA		
Gwinnett, GA		
Henry, GA		
Newton, GA		
Paulding, GA		
Pickens, GA		
Rockdale, GA		
Spalding, GA		
Walton, GA		
0560 Atlantic-Cape May, NJ	1.1077	1.0726
Atlantic, NJ		
Cape May, NJ		
0600 Augusta-Aiken, GA–SC	0.8836	0.9187
Columbia, GA		
McDuffie, GA		
Richmond, GA		
Aiken, SC		
Edgefield, SC		
0640 Austin-San Marcos, TX	0.9254	0.9483
Bastrop, TX		
Caldwell, TX		
Hays, TX		
Travis, TX		
Williamson, TX		
0680 Bakersfield, CA	1.0189	1.0129
Kern, CA		
0720 *Baltimore, MD	0.9798	0.9861
Anne Arundel, MD		
Baltimore, MD		
Baltimore City, MD		
Carroll, MD		
Harford, MD		
Howard, MD		
Queen Anne's, MD		
0733 Bangor, ME	0.9391	0.9579
Penobscot, ME		
0743 Barnstable-Yarmouth, MA	1.3651	1.2375
Barnstable, MA		
0760 Baton Rouge, LA	0.8433	0.8898
Ascension, LA		
East Baton Rouge, LA		
Livingston, LA		
West Baton Rouge, LA		
0840 Beaumont-Port Arthur, TX	0.8576	0.9001
Hardin, TX		
Jefferson, TX		
Orange, TX		
0860 Bellingham, WA	1.1317	1.0884
Whatcom, WA		
0870 Benton Harbor, MI	0.8550	0.8983
Berrien, MI		
0875 *Bergen-Passaic, NJ	1.1785	1.1190
Bergen, NJ		
Passaic, NJ		
0880 Billings, MT	0.9086	0.9365
Yellowstone, MT		
0920 Biloxi-Gulfport-Pascagoula, MS	0.8554	0.8986
Hancock, MS		
Harrison, MS		
Jackson, MS		
0960 Binghamton, NY	0.8822	0.9178
Broome, NY		
Tioga, NY		
1000 Birmingham, AL	0.9036	0.9329
Blount, AL		
Jefferson, AL		
St. Clair, AL		
Shelby, AL		
1010 Bismarck, ND	0.8074	0.8637
Burleigh, ND		
Morton, ND		
1020 Bloomington, IN	0.8652	0.9056
Monroe, IN		
1040 Bloomington-Normal, IL	0.8990	0.9297
McLean, IL		
1080 Boise City, ID	0.9383	0.9573
Ada, ID		
Canyon, ID		
1123 *Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1613	1.1078
Bristol, MA		
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Worcester, MA		
Hillsborough, NH		
Merrimack, NH		
Rockingham, NH		
Strafford, NH		
1125 Boulder-Longmont, CO	0.9522	0.9670
Boulder, CO		
1145 Brazoria, TX	0.8845	0.9194
Brazoria, TX		
1150 Bremerton, WA	1.0901	1.0609
Kitsap, WA		
1240 Brownsville-Harlingen-San Benito, TX	0.8542	0.8977
Cameron, TX		
1260 Bryan-College Station, TX	0.8851	0.9198
Brazos, TX		
1280 *Buffalo-Niagara Falls, NY	0.9107	0.9380
Erie, NY		
Niagara, NY		
1303 Burlington, VT	1.0068	1.0047
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
1310 Caguas, PR	0.4589	0.5866
Caguas, PR		
Cayey, PR		
Cidra, PR		
Gurabo, PR		
San Lorenzo, PR		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
1320 Canton-Massillon, OH	0.8648	0.9053
Carroll, OH		
Stark, OH		
1350 Casper, WY	0.8821	0.9177
Natrona, WY		
1360 Cedar Rapids, IA	0.8458	0.8916
Linn, IA		
1400 Champaign-Urbana, IL	0.9391	0.9579
Champaign, IL		
1440 Charleston-North Charleston, SC	0.8963	0.9278
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
1480 Charleston, WV	0.9526	0.9673
Kanawha, WV		
Putnam, WV		
1520 *Charlotte-Gastonia-Rock Hill, NC–SC	0.9620	0.9738
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		
Mecklenburg, NC		
Rowan, NC		
Union, NC		
York, SC		
1540 Charlottesville, VA	0.9155	0.9413
Albemarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		
1560 Chattanooga, TN–GA	0.8847	0.9195
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		
Marion, TN		
1580 Cheyenne, WY	0.7678	0.8345
Laramie, WY		
1600 *Chicago, IL	1.0760	1.0514
Cook, IL		
DeKalb, IL		
DuPage, IL		
Grundy, IL		
Kane, IL		
Kendall, IL		
Lake, IL		
McHenry, IL		
Will, IL		
1620 Chico-Paradise, CA	1.0417	1.0284
Butte, CA		
1640 *Cincinnati, OH–KY–IN	0.9568	0.9702
Dearborn, IN		
Ohio, IN		
Boone, KY		
Campbell, KY		
Gallatin, KY		
Grant, KY		
Kenton, KY		
Pendleton, KY		
Brown, OH		
Clermont, OH		
Hamilton, OH		
Warren, OH		
1660 Clarksville-Hopkinsville, TN–KY	0.7716	0.8373
Christian, KY		
Montgomery, TN		
1680 *Cleveland-Lorain-Elyria, OH	0.9886	0.9922
Ashtabula, OH		
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Lorain, OH		
Medina, OH		
1720 Colorado Springs, CO	0.9341	0.9544
El Paso, CO		
1740 Columbia, MO	0.8904	0.9236
Boone, MO		
1760 Columbia, SC	0.9160	0.9417
Lexington, SC		
Richland, SC		
1800 Columbus, GA–AL.		
Russell, AL	0.7779	0.8420
Chattanoochee, GA		
Harris, GA		
Muscogee, GA		
1840 *Columbus, OH	0.9681	0.9780
Delaware, OH		
Fairfield, OH		
Franklin, OH		
Licking, OH		
Madison, OH		
Pickaway, OH		
1880 Corpus Christi, TX	0.8881	0.9219
Nueces, TX		
San Patricio, TX		
1900 Cumberland, MD–WV	0.8671	0.9070
Allegany, MD		
Mineral, WV		
1920 *Dallas, TX	0.9729	0.9814
Collin, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Henderson, TX		
Hunt, TX		
Kaufman, TX		
Rockwall, TX		
1950 Danville, VA	0.8497	0.8945
Danville City, VA		
Pittsylvania, VA		
1960 Davenport-Moline-Rock Island, IA–IL	0.8388	0.8866
Scott, IA		
Henry, IL		
Rock Island, IL		
2000 Dayton-Springfield, OH	0.9559	0.9696
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
2020 Daytona Beach, FL	0.8871	0.9212
Flagler, FL		
Volusia, FL		
2030 Decatur, AL	0.8384	0.8863
Lawrence, AL		
Morgan, AL		
2040 Decatur, IL	0.7848	0.8471
Macon, IL		
2080 *Denver, CO	1.0166	1.0113
Adams, CO		
Arapahoe, CO		
Denver, CO		
Douglas, CO		
Jefferson, CO		
2120 Des Moines, IA	0.8815	0.9173
Dallas, IA		
Polk, IA		
Warren, IA		
2160 *Detroit, MI	1.0724	1.0490
Lapeer, MI		
Macomb, MI		
Monroe, MI		
Oakland, MI		
St. Clair, MI		
Wayne, MI		
2180 Dothan, AL	0.7740	0.8391
Dale, AL		
Houston, AL		
2190 Dover, DE	0.8997	0.9302
Kent, DE		
2200 Dubuque, IA	0.8112	0.8665
Dubuque, IA		
2240 Duluth-Superior, MN–WI	0.9416	0.9596
St. Louis, MN		
Douglas, WI		
2281 Dutchess County, NY	1.0589	1.0400
Dutchess, NY		
2290 Eau Claire, WI	0.8678	0.9075
Chippewa, WI		
Eau Claire, WI		
2320 El Paso, TX	0.9464	0.9630
El Paso, TX		
2330 Elkhart-Goshen, IN	0.8801	0.9163
Elkhart, IN		
2335 Elmira, NY	0.8417	0.8887
Chemung, NY		
2340 Enid, OK	0.7862	0.8481
Garfield, OK		
2360 Erie, PA	0.9159	0.9416
Erie, PA		
2400 Eugene-Springfield, OR	1.1477	1.0989
Lane, OR		
2440 Evansville-Henderson, IN–KY	0.8983	0.9292
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
2520 Fargo-Moorhead, ND–MN	0.9045	0.9336

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Clay, MN		
Cass, ND		
2560 Fayetteville, NC	0.9007	0.9309
Cumberland, NC		
2580 Fayetteville-Springdale-Rogers, AR	0.7220	0.8001
Benton, AR		
Washington, AR		
2620 Flagstaff, AZ–UT	0.9019	0.9317
Coconino, AZ		
Kane, UT		
2640 Flint, MI	1.1248	1.0839
Genesee, MI		
2650 Florence, AL	0.8111	0.8664
Colbert, AL		
Lauderdale, AL		
2655 Florence, SC	0.8594	0.9014
Florence, SC		
2670 Fort Collins-Loveland, CO	1.0562	1.0382
Larimer, CO		
2680 *Ft. Lauderdale, FL	1.0586	1.0398
Broward, FL		
2700 Fort Myers-Cape Coral, FL	0.9032	0.9327
Lee, FL		
2710 Fort Pierce-Port St. Lucie, FL	1.0169	1.0115
Martin, FL		
St. Lucie, FL		
2720 Fort Smith, AR–OK	0.7867	0.8485
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
2750 Fort Walton Beach, FL	0.9192	0.9439
Okaloosa, FL		
2760 Fort Wayne, IN	0.8800	0.9162
Adams, IN		
Allen, IN		
DeKalb, IN		
Huntington, IN		
Wells, IN		
Whitley, IN		
2800 *Forth Worth-Arlington, TX	1.0153	1.0105
Hood, TX		
Johnson, TX		
Parker, TX		
Tarrant, TX		
2840 Fresno, CA	1.1177	1.0792
Fresno, CA		
Madera, CA		
2880 Gadsden, AL	0.8881	0.9219
Etowah, AL		
2900 Gainesville, FL	0.9434	0.9609
Alachua, FL		
2920 Galveston-Texas City, TX	1.0997	1.0672
Galveston, TX		
2960 Gary, IN	0.9155	0.9413
Lake, IN		
Porter, IN		
2975 Glens Falls, NY	0.8562	0.8991
Warren, NY		
Washington, NY		
2980 Goldsboro, NC	0.8393	0.8869
Wayne, NC		
2985 Grand Forks, ND–MN	0.9207	0.9450
Polk, MN		
Grand Forks, ND		
2995 Grand Junction, CO	0.8825	0.9180
Mesa, CO		
3000 Grand Rapids-Muskegon-Holland, MI	1.0119	1.0081
Allegan, MI		
Kent, MI		
Muskegon, MI		
Ottawa, MI		
3040 Great Falls, MT	0.9015	0.9315
Cascade, MT		
3060 Greeley, CO	0.9690	0.9787
Weld, CO		
3080 Green Bay, WI	0.9366	0.9561
Brown, WI		
3120 *Greensboro-Winston-Salem-High Point, NC	0.9314	0.9525
Alamance, NC		
Davidson, NC		
Davie, NC		
Forsyth, NC		
Guilford, NC		
Randolph, NC		
Stokes, NC		
Yadkin, NC		
3150 Greenville, NC	0.9078	0.9359
Pitt, NC		
3160 Greenville-Spartanburg-Anderson, SC	0.8927	0.9252
Anderson, SC		
Cherokee, SC		
Greenville, SC		
Pickens, SC		
Spartanburg, SC		
3180 Hagerstown, MD	0.9175	0.9427
Washington, MD		
3200 Hamilton-Middletown, OH	0.9490	0.9648
Butler, OH		
3240 Harrisburg-Lebanon-Carlisle, PA	1.0158	1.0108
Cumberland, PA		
Dauphin, PA		
Lebanon, PA		
Perry, PA		
3283 *Hartford, CT	1.2367	1.1566
Hartford, CT		
Litchfield, CT		
Middlesex, CT		
Tolland, CT		
3285 Hattiesburg, MS	0.7252	0.8025
Forrest, MS		
Lamar, MS		
3290 Hickory-Morganton-Lenoir, NC	0.7953	0.8548
Alexander, NC		
Burke, NC		
Caldwell, NC		
Catawba, NC		
3320 Honolulu, HI	1.1461	1.0979
Honolulu, HI		
3350 Houma, LA	0.7853	0.8475
Lafourche, LA		
Terrebonne, LA		
3360 *Houston, TX	1.0000	1.0000
Chambers, TX		
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
3400 Huntington-Ashland, WV–KY–OH	0.9174	0.9427
Boyd, KY		
Carter, KY		
Greenup, KY		
Lawrence, OH		
Cabell, WV		
Wayne, WV		
3440 Huntsville, AL	0.8206	0.8734
Limestone, AL		
Madison, AL		
3480 *Indianapolis, IN	0.9903	0.9933
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Madison, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
3500 Iowa City, IA	0.9361	0.9558
Johnson, IA		
3520 Jackson, MI	0.9045	0.9336
Jackson, MI		
3560 Jackson, MS	0.7928	0.8530
Hinds, MS		
Madison, MS		
Rankin, MS		
3580 Jackson, TN	0.8288	0.8793
Chester, TN		
Madison, TN		
3600 Jacksonville, FL	0.9089	0.9367
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
3605 Jacksonville, NC	0.7055	0.7875
Onslow, NC		
3610 Jamestown, NY	0.7670	0.8339
Chautaqua, NY		
3620 Janesville-Beloit, WI	0.8645	0.9051
Rock, WI		
3640 Jersey City, NJ	1.1382	1.0927
Hudson, NJ		
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8901	0.9234
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
3680 Johnstown, PA	0.8398	0.8873
Cambria, PA		
Somerset, PA		
3700 Jonesboro, AR	0.7220	0.8001
Craighead, AR		
3710 Joplin, MO	0.7659	0.8331
Jasper, MO		
Newton, MO		
3720 Kalamazoo-Battlecreek, MI	1.0542	1.0368
Calhoun, MI		
Kalamazoo, MI		
Van Buren, MI		
3740 Kankakee, IL	0.9115	0.9385
Kankakee, IL		
3760 *Kansas City, KS–MO	0.9478	0.9640
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Clinton, MO		
Jackson, MO		
Lafayette, MO		
Platte, MO		
Ray, MO		
3800 Kenosha, WI	0.9145	0.9406
Kenosha, WI		
3810 Killeen-Temple, TX	1.0392	1.0267
Bell, TX		
Coryell, TX		
3840 Knoxville, TN	0.8502	0.8948
Anderson, TN		
Blount, TN		
Knox, TN		
Loudon, TN		
Sevier, TN		
Union, TN		
3850 Kokomo, IN	0.8590	0.9012
Howard, IN		
Tipton, IN		
3870 La Crosse, WI–MN	0.8618	0.9032
Houston, MN		
La Crosse, WI		
3880 Lafayette, LA	0.8165	0.8704
Acadia, LA		
Lafayette, LA		
St. Landry, LA		
St. Martin, LA		
3920 Lafayette, IN	0.8804	0.9165
Clinton, IN		
Tippecanoe, IN		
3960 Lake Charles, LA	0.8034	0.8608
Calcasieu, LA		
3980 Lakeland-Winter Haven, FL	0.8668	0.9067
Polk, FL		
4000 Lancaster, PA	0.9583	0.9713
Lancaster, PA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
4040 Lansing-East Lansing, MI	1.0010	1.0007
Clinton, MI		
Eaton, MI		
Ingham, MI		
4080 Laredo, TX	0.7073	0.7889
Webb, TX		
4100 Las Cruces, NM	0.8497	0.8945
Dona Ana, NM		
4120 *Las Vegas, NV–AZ	1.0870	1.0588
Mohave, AZ		
Clark, NV		
Nye, NV		
4150 Lawrence, KS	0.8597	0.9017
Douglas, KS		
4200 Lawton, OK	0.8365	0.8849
Comanche, OK		
4243 Lewiston-Auburn, ME	0.9410	0.9592
Androscoggin, ME		
4280 Lexington, KY	0.8303	0.8804
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Madison, KY		
Scott, KY		
Woodford, KY		
4320 Lima, OH	0.8732	0.9113
Allen, OH		
Auglaize, OH		
4360 Lincoln, NE	0.9161	0.9418
Lancaster, NE		
4400 Little Rock-North Little Rock, AR	0.8597	0.9017
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
4420 Longview-Marshall, TX	0.8645	0.9051
Gregg, TX		
Harrison, TX		
Upshur, TX		
4480 *Los Angeles-Long Beach, CA	1.2382	1.1576
Los Angeles, CA		
4520 Louisville, KY–IN	0.9447	0.9618
Clark, IN		
Floyd, IN		
Harrison, IN		
Scott, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
4600 Lubbock, TX	0.8510	0.8954
Lubbock, TX		
4640 Lynchburg, VA	0.8052	0.8621
Amherst, VA		
Bedford, VA		
Bedford City, VA		
Campbell, VA		
Lynchburg City, VA		
4680 Macon, GA	0.8824	0.9179
Bibb, GA		
Houston, GA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Jones, GA		
Peach, GA		
Twiggs, GA		
4720 Madison, WI	1.0021	1.0014
Dane, WI		
4800 Mansfield, OH	0.8524	0.8964
Crawford, OH		
Richland, OH		
4840 Mayaguez, PR	0.4215	0.5534
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
Sabana Grande, PR		
San German, PR		
4880 McAllen-Edinburg-Mission, TX	0.8485	0.8936
Hidalgo, TX		
4890 Medford-Ashland, OR	1.0082	1.0056
Jackson, OR		
4900 Melbourne-Titusville-Palm Bay, FL	0.9068	0.9352
Brevard, FL		
4920 *Memphis, TN–AR–MS	0.8166	0.8705
Crittenden, AR		
DeSoto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
4940 Merced, CA	1.0660	1.0447
Merced, CA		
5000 *Miami, FL	0.9938	0.9958
Dade, FL		
5015 *Middlesex-Somerset-Hunterdon, NJ	1.0688	1.0466
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
5080 *Milwaukee-Waukesha, WI	0.9645	0.9756
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
5120 *Minneapolis-St. Paul, MN–WI	1.0777	1.0526
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
5160 Mobile, AL	0.7981	0.8569
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA	1.0112	1.0077
Stanislaus, CA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
5190 *Monmouth-Ocean, NJ	1.0996	1.0672
Monmouth, NJ		
Ocean, NJ		
5200 Monroe, LA	0.8211	0.8737
Ouachita, LA		
5240 Montgomery, AL	0.7876	0.8492
Autauga, AL		
Elmore, AL		
Montgomery, AL		
5280 Muncie, IN	0.9714	0.9803
Delaware, IN		
5330 Myrtle Beach, SC	0.7790	0.8428
Horry, SC		
5345 Naples, FL	1.0199	1.0136
Collier, FL		
5360 *Nashville, TN	0.9081	0.9361
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford, TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
5380 *Nassau-Suffolk, NY	1.3547	1.2311
Nassau, NY		
Suffolk, NY		
5483 *New Haven-Bridgeport-Stamford-Waterbury-	1.2750	1.1810
Danbury, CT		
Fairfield, CT		
New Haven, CT		
5523 New London-Norwich, CT	1.2317	1.1534
New London, CT		
5560 *New Orleans, LA	0.9294	0.9511
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
5600 *New York, NY	1.4154	1.2686
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
5640 *Newark, NJ	1.1036	1.0698
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
5660 Newburgh, NY–PA	1.0803	1.0543
Orange, NY		
Pike, PA		
5720 *Norfolk-Virginia Beach-Newport News, VA–NC	0.8348	0.8837
Currituck, NC		
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
Isle of Wight, VA		
James City, VA		
Mathews, VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson City, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City, VA		
Williamsburg City, VA		
York, VA		
5775 *Oakland, CA	1.5069	1.3242
Alameda, CA		
Contra Costa, CA		
5790 Ocala, FL	0.9105	0.9378
Marion, FL		
5800 Odessa-Midland, TX	0.8566	0.8994
Ector, TX		
Midland, TX		
5880 *Oklahoma City, OK	0.8371	0.8854
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
5910 Olympia, WA	1.0689	1.0467
Thurston, WA		
5920 Omaha, NE–IA	0.9480	0.9641
Pottawattamie, IA		
Cass, NE		
Douglas, NE		
Sarpy, NE		
Washington, NE		
5945 *Orange County, CA	1.1902	1.1266
Orange, CA		
5960 *Orlando, FL	0.9470	0.9634
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
5990 Owensboro, KY	0.7575	0.8268
Daviess, KY		
6015 Panama City, FL	0.8061	0.8628
Bay, FL		
6020 Parkersburg-Marietta, WV–OH	0.7877	0.8492
Washington, OH		
Wood, WV		
6080 Pensacola, FL	0.8202	0.8731
Escambia, FL		
Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8905	0.9237
Peoria, IL		
Tazewell, IL		
Woodford, IL		
6160 *Philadelphia, PA–NJ	1.1237	1.0831
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Salem, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
6200 *Phoenix-Mesa, AZ	0.9810	0.9870
Maricopa, AZ		
Pinal, AZ		
6240 Pine Bluff, AR	0.7886	0.8499
Jefferson, AR		
6280 *Pittsburgh, PA	0.9701	0.9794
Allegheny, PA		
Beaver, PA		
Butler, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
6323 Pittsfield, MA	1.0552	1.0375
Berkshire, MA		
6340 Pocatello, ID	0.8784	0.9150
Bannock, ID		
6360 Ponce, PR	0.4685	0.5950
Guayanilla, PR		
Juana Diaz, PR		
Penuelas, PR		
Ponce, PR		
Villalba, PR		
Yauco, PR		
6403 Portland, ME	0.9619	0.9738
Cumberland, ME		
Sagadahoc, ME		
York, ME		
6440 *Portland-Vancouver, OR–WA	1.1235	1.0830
Clackamas, OR		
Columbia, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Clark, WA		
6483 Providence-Warwick-Pawtucket, RI	1.1092	1.0736
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
6520 Provo-Orem, UT	1.0116	1.0079
Utah, UT		
6560 Pueblo, CO	0.8284	0.8790
Pueblo, CO		
6580 Punta Gorda, FL	0.8353	0.8841
Charlotte, FL		
6600 Racine, WI	0.8835	0.9187
Racine, WI		
6640 Raleigh-Durham-Chapel Hill, NC	0.9728	0.9813

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Chatham, NC		
Durham, NC		
Franklin, NC		
Johnston, NC		
Orange, NC		
Wake, NC		
6660 Rapid City, SD	0.8458	0.8916
Pennington, SD		
6680 Reading, PA	0.9445	0.9617
Berks, PA		
6690 Redding, CA	1.1605	1.1073
Shasta, CA		
6720 Reno, NV	1.1018	1.0686
Washoe, NV		
6740 Richland-Kennewick-Pasco, WA	0.9970	0.9979
Benton, WA		
Franklin, WA		
6760 Richmond-Petersburg, VA	0.9194	0.9441
Charles City County, 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		
6780 *Riverside-San Bernardino, CA	1.1234	1.0829
Riverside, CA		
San Bernardino, CA		
6800 Roanoke, VA	0.8702	0.9092
Botetourt, VA		
Roanoke, VA		
Roanoke City, VA		
Salem City, VA		
6820 Rochester, MN	1.0428	1.0291
Olmsted, MN		
6840 *Rochester, NY	0.9649	0.9758
Genesee, NY		
Livingston, NY		
Monroe, NY		
Ontario, NY		
Orleans, NY		
Wayne, NY		
6880 Rockford, IL	0.8994	0.9300
Boone, IL		
Ogle, IL		
Winnebago, IL		
6895 Rocky Mount, NC	0.8955	0.9272
Edgecombe, NC		
Nash, NC		
6920 *Sacramento, CA	1.2351	1.1556
El Dorado, CA		
Placer, CA		
Sacramento, CA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
6960 Saginaw-Bay City-Midland, MI	0.9667	0.9771
Bay, MI		
Midland, MI		
Saginaw, MI		
6980 St. Cloud, MN	0.9457	0.9625
Benton, MN		
Stearns, MN		
7000 St. Joseph, MO	0.8551	0.8983
Andrews, MO		
Buchanan, MO		
7040 *St. Louis, MO–IL	0.9022	0.9319
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St. Clair, IL		
Franklin, MO		
Jefferson, MO		
Lincoln, MO		
St. Charles, MO		
St. Louis, MO		
St. Louis City, MO		
Warren, MO		
7080 Salem, OR	0.9728	0.9813
Marion, OR		
Polk, OR		
7120 Salinas, CA	1.3803	1.2470
Monterey, CA		
7160 *Salt Lake City-Ogden, UT	0.9677	0.9778
Davis, UT		
Salt Lake, UT		
Weber, UT		
7200 San Angelo, TX	0.7577	0.8270
Tom Green, TX		
7240 *San Antonio, TX	0.8390	0.8867
Bexar, TX		
Comal, TX		
Guadalupe, TX		
Wilson, TX		
7320 *San Diego, CA	1.2154	1.1429
San Diego, CA		
7360 *San Francisco, CA	1.4211	1.2721
Marin, CA		
San Francisco, CA		
San Mateo, CA		
7400 *San Jose, CA	1.4455	1.2870
Santa Clara, CA		
7440 *San Juan-Bayamon, PR	0.4506	0.5793
Aguas Buenas, PR		
Barceloneta, PR		
Bayamon, PR		
Canovanas, PR		
Carolina, PR		
Catano, PR		
Ceiba, PR		
Comerio, PR		
Corozal, PR		
Dorado, PR		
Fajardo, PR		
Florida, PR		
Guaynabo, PR		
Humacao, PR		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Juncos, PR		
Los Piedras, PR		
Loiza, PR		
Luguillo, PR		
Manati, PR		
Morovis, PR		
Naguabo, PR		
Naranjito, PR		
Rio Grande, PR		
San Juan, PR		
Toa Alta, PR		
Toa Baja, PR		
Trujillo Alto, PR		
Vega Alta, PR		
Vega Baja, PR		
Yabucoa, PR		
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1561	1.1044
San Luis Obispo, CA		
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.1242	1.0835
Santa Barbara, CA		
7485 Santa Cruz-Watsonville, CA	1.3520	1.2294
Santa Cruz, CA		
7490 Santa Fe, NM	1.0823	1.0557
Los Alamos, NM		
Santa Fe, NM		
7500 Santa Rosa, CA	1.2487	1.1643
Sonoma, CA		
7510 Sarasota-Bradenton, FL	0.9789	0.9855
Manatee, FL		
Sarasota, FL		
7520 Savannah, GA	0.9649	0.9758
Bryan, GA		
Chatham, GA		
Effingham, GA		
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8752	0.9128
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Wyoming, PA		
7600 *Seattle-Bellevue-Everett, WA	1.1384	1.0928
Island, WA		
King, WA		
Snohomish, WA		
7610 Sharon, PA	0.8885	0.9222
Mercer, PA		
7620 Sheboygan, WI	0.7764	0.8409
Sheboygan, WI		
7640 Sherman-Denison, TX	0.8631	0.9041
Grayson, TX		
7680 Shreveport-Bossier City, LA	0.9359	0.9556
Bossier, LA		
Caddo, LA		
Webster, LA		
7720 Sioux City, IA–NE	0.8313	0.8812
Woodbury, IA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Dakota, NE		
7760 Sioux Falls, SD	0.8620	0.9033
Lincoln, SD		
Minnehaha, SD		
7800 South Bend, IN	0.9934	0.9955
St. Joseph, IN		
7840 Spokane, WA	1.0524	1.0356
Spokane, WA		
7880 Springfield, IL	0.8671	0.9070
Menard, IL		
Sangamon, IL		
7920 Springfield, MO	0.7842	0.8466
Christian, MO		
Greene, MO		
Webster, MO		
8003 Springfield, MA	1.0586	1.0398
Hampden, MA		
Hampshire, MA		
8050 State College, PA	0.9538	0.9681
Centre, PA		
8080 Steubenville-Weirton, OH–WV	0.8266	0.8777
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8120 Stockton-Lodi, CA	1.1391	1.0933
San Joaquin, CA		
8140 Sumter, SC	0.7699	0.8360
Sumter, SC		
8160 Syracuse, NY	0.9396	0.9582
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
8200 Tacoma, WA	1.0866	1.0585
Pierce, WA		
8240 Tallahassee, FL	0.8313	0.8812
Gadsden, FL		
Leon, FL		
8280 *Tampa-St. Petersburg-Clearwater, FL	0.9302	0.9517
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
8320 Terre Haute, IN	0.8591	0.9012
Clay, IN		
Vermillion, IN		
Vigo, IN		
8360 Texarkana, AR-Texarkana, TX	0.8509	0.8953
Miller, AR		
Bowie, TX		
8400 Toledo, OH	1.0361	1.0246
Fulton, OH		
Lucas, OH		
Wood, OH		
8440 Topeka, KS	1.0086	1.0059
Shawnee, KS		
8480 Trenton, NJ	1.0549	1.0373
Mercer, NJ		
8520 Tucson, AZ	0.9075	0.9357
Pima, AZ		
8560 Tulsa, OK	0.8095	0.8653
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
8600 Tuscaloosa, AL	0.7784	0.8424
Tuscaloosa, AL		
8640 Tyler, TX	0.9996	0.9997
Smith, TX		
8680 Utica-Rome, NY	0.8413	0.8884
Herkimer, NY		
Oneida, NY		
8720 Vallejo-Fairfield-Napa, CA	1.3452	1.2252
Napa, CA		
Solano, CA		
8735 Ventura, CA	1.1052	1.0709
Ventura, CA		
8750 Victoria, TX	0.8393	0.8869
Victoria, TX		
8760 Vineland-Millville-Bridgeton, NJ	0.9993	0.9995
Cumberland, NJ		
8780 Visalia-Tulare-Porterville, CA	1.0151	1.0103
Tulare, CA		
8800 Waco, TX	0.7772	0.8415
McLennan, TX		
8840 *Washington, DC–MD–VA–WV	1.0823	1.0557
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Clarke, VA		
Culpepper, VA		
Fairfax, VA		
Fairfax City, VA		
Falls Church City, VA		
Fauquier, VA		
Fredericksburg City, VA		
King George, VA		
Loudoun, VA		
Manassas City, VA		
Manassas Park City, VA		
Prince William, VA		
Spotsylvania, VA		
Stafford, VA		
Warren, VA		
Berkeley, WV		
Jefferson, WV		
8920 Waterloo-Cedar Falls, IA	0.8705	0.9094
Black Hawk, IA		
8940 Wausau, WI	1.0323	1.0220
Marathon, WI		
8960 West Palm Beach-Boca Raton, FL	1.0002	1.0001
Palm Beach, FL		
9000 Wheeling, OH–WV	0.7563	0.8259
Belmont, OH		
Marshall, WV		
Ohio, WV		
9040 Wichita, KS	0.9369	0.9563
Butler, KS		
Harvey, KS		
Sedgwick, KS		
9080 Wichita Falls, TX	0.8041	0.8613
Archer, TX		
Wichita, TX		
9140 Williamsport, PA	0.8467	0.8923
Lycoming, PA		
9160 Wilmington-Newark, DE–MD	1.1315	1.0883
New Castle, DE		
Cecil, MD		
9200 Wilmington, NC	0.9046	0.9336
New Hanover, NC		
Brunswick, NC		
9260 Yakima, WA	1.0026	1.0018
Yakima, WA		
9270 Yolo, CA	1.1444	1.0968
Yolo, CA		
9280 York, PA	0.9104	0.9377
York, PA		
9320 Youngstown-Warren, OH	0.9742	0.9823
Columbiana, OH		
Mahoning, OH		
Trumbull, OH		
9340 Yuba City, CA	1.0414	1.0282
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ	0.9497	0.9653
Yuma, AZ		

*Large Urban Area

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7150	0.7947
Alaska	1.2444	1.1615
Arizona	0.7928	0.8530
Arkansas	0.6954	0.7798
California	1.0002	1.0001
Colorado	0.8092	0.8650
Connecticut	1.2759	1.1816
Delaware	0.9447	0.9618
Florida	0.8668	0.9067
Georgia	0.7653	0.8326
Hawaii	1.0245	1.0167
Idaho	0.8277	0.8785
Illinois	0.7553	0.8252
Indiana	0.8124	0.8674
Iowa	0.7366	0.8111
Kansas	0.7107	0.7915
Kentucky	0.7753	0.8401
Louisiana	0.7253	0.8026
Maine	0.8317	0.8814

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

Nonurban area	Wage index	GAF
Maryland	0.8427	0.8894
Massachusetts	1.0770	1.0521
Michigan	0.8836	0.9187
Minnesota	0.8144	0.8688
Mississippi	0.6793	0.7674
Missouri	0.7261	0.8032
Montana	0.8128	0.8677
Nebraska	0.7214	0.7996
Nevada	0.8775	0.9144
New Hampshire	0.9751	0.9829
New Jersey [1]	.....	.....
New Mexico	0.8000	0.8583
New York	0.8558	0.8989
North Carolina	0.7953	0.8548
North Dakota	0.7358	0.8105
Ohio	0.8332	0.8825
Oklahoma	0.6942	0.7788
Oregon	0.9664	0.9769
Pennsylvania	0.8459	0.8917
Puerto Rico	0.4026	0.5363
Rhode Island [1]	.....	.....
South Carolina	0.7668	0.8337
South Dakota	0.7063	0.7881
Tennessee	0.7341	0.8092
Texas	0.7462	0.8183
Utah	0.8848	0.9196
Vermont	0.8921	0.9248
Virginia	0.7729	0.8383
Washington	0.9933	0.9954
West Virginia	0.7923	0.8526
Wisconsin	0.8430	0.8896
Wyoming	0.8177	0.8713

[1] All counties within the State are classified as urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area reclassified to	Wage index	GAF
Abilene, TX	0.8147	0.8691
Albuquerque, NM	0.9350	0.9550
Alexandria, LA	0.8194	0.8725
Allentown-Bethlehem-Easton, PA	0.9992	0.9995
Amarillo, TX	0.8730	0.9112
Anchorage, AK	1.3255	1.2128
Asheville, NC	0.9344	0.9546
Atlanta, GA	1.0033	1.0023
Bangor, ME	0.9391	0.9579
Baton Rouge, LA	0.8433	0.8898
Benton Harbor, MI	0.8550	0.8983
Benton Harbor, MI (Rural Michigan Hosp.)	0.8836	0.9187
Billings, MT	0.9086	0.9365
Birmingham, AL	0.9036	0.9329
Bismarck, ND	0.8074	0.8637
Boise City, ID	0.9383	0.9573
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1613	1.1078
Caguas, PR	0.4589	0.5866

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area reclassified to	Wage index	GAF
Champaign-Urbana, IL	0.8978	0.9288
Charleston-North Charleston, SC	0.8963	0.9278
Charlotte-Gastonia-Rock Hill, NC–SC	0.9620	0.9738
Charlottesville, VA	0.8990	0.9297
Chattanooga, TN–GA	0.8847	0.9195
Chicago, IL	1.0658	1.0446
Cincinnati, OH–KY–IN	0.9568	0.9702
Cleveland-Lorain-Elyria, OH	0.9886	0.9922
Columbia, MO	0.8904	0.9236
Columbus, OH	0.9681	0.9780
Dallas, TX	0.9729	0.9814
Davenport-Moline-Rock Island, IA–IL	0.8388	0.8866
Denver, CO	1.0166	1.0113
Des Moines, IA	0.8714	0.9100
Duluth-Superior, MN–WI	0.9416	0.9596
Dutchess County, NY	1.0291	1.0198
Elkhart-Goshen, IN	0.8801	0.9163
Eugene-Springfield, OR	1.1477	1.0989
Fargo-Moorhead, ND–MN	0.8879	0.9218
Fayetteville, NC	0.8640	0.9047
Flagstaff, AR–UT	0.8828	0.9182
Flint, MI	1.1248	1.0839
Florence, AL	0.8111	0.8664
Florence, SC	0.8594	0.9014
Fort Lauderdale, FL	1.0586	1.0398
Fort Pierce-Port St. Lucie, FL	1.0027	1.0018
Fort Smith, AR–OK	0.7867	0.8485
Fort Walton Beach, FL	0.8980	0.9290
Fort Worth-Arlington, TX	1.0153	1.0105
Gadsden, AL	0.8881	0.9219
Gary, IN	0.9155	0.9413
Grand Forks, ND–MN	0.9207	0.9450
Grand Junction, CO	0.8825	0.9180
Grand Rapids-Muskegon-Holland, MI	1.0119	1.0081
Great Falls, MT	0.9015	0.9315
Greeley, CO	0.9388	0.9577
Green Bay, WI	0.9366	0.9561
Greensboro-Winston-Salem-High Point, NC	0.9314	0.9525
Greenville-Spartanburg-Anderson, SC	0.8927	0.9252
Hartford, CT	1.2191	1.1453
Honolulu, HI	1.1461	1.0979
Houston, TX	1.0000	1.0000
Huntington-Ashland, WV–KY–OH	0.9174	0.9427
Huntsville, AL	0.8081	0.8642
Indianapolis, IN	0.9796	0.9860
Jackson, MS	0.7928	0.8530
Jacksonville, FL	0.9089	0.9367
Johnson City-Kingsport-Bristol, TN–VA	0.8901	0.9234
Joplin, MO	0.7659	0.8331
Kalamazoo-Battlecreek, MI	1.0542	1.0368
Kansas City, KS–MO	0.9478	0.9640
Knoxville, TN	0.8502	0.8948
Lafayette, LA	0.8165	0.8704
Lansing-East Lansing, MI	1.0010	1.0007

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area reclassified to	Wage index	GAF
Las Vegas, NV–AZ	1.0870	1.0588
Lexington, KY	0.8303	0.8804
Lima, OH	0.8732	0.9113
Lincoln, NE	0.9030	0.9325
Little Rock-North Little Rock, AR	0.8597	0.9017
Longview-Marshall, TX	0.8504	0.8950
Los Angeles-Long Beach, CA	1.2382	1.1576
Louisville, KY–IN	0.9447	0.9618
Macon, GA	0.8468	0.8924
Madison, WI	1.0021	1.0014
Mansfield, OH	0.8524	0.8964
Medford-Ashland, OR	1.0082	1.0056
Memphis, TN–AR–MS	0.8166	0.8705
Middlesex-Somerset-Hunterdon, NJ	1.0688	1.0466
Milwaukee-Waukesha, WI	0.9645	0.9756
Minneapolis-St. Paul, MN–WI	1.0777	1.0526
Modesto, CA	1.0112	1.0077
Monmouth-Ocean, NJ	1.0764	1.0517
Montgomery, AL	0.7876	0.8492
Nashville, TN	0.9081	0.9361
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2750	1.1810
New London-Norwich, CT	1.2317	1.1534
New Orleans, LA	0.9294	0.9511
New York, NY	1.4010	1.2597
Newark, NJ	1.1036	1.0698
Oakland, CA	1.5069	1.3242
Odessa-Midland, TX	0.8566	0.8994
Oklahoma City, OK	0.8371	0.8854
Omaha, NE–IA	0.9480	0.9641
Orange County, CA	1.1902	1.1266
Peoria-Pekin, IL	0.8905	0.9237
Philadelphia, PA–NJ	1.1237	1.0831
Pittsburgh, PA	0.9539	0.9682
Portland, ME	0.9619	0.9738
Portland-Vancouver, OR–WA	1.1235	1.0830
Provo-Orem, UT	1.0116	1.0079
Raleigh-Durham-Chapel Hill, NC	0.9602	0.9726
Rapid City, SD	0.8458	0.8916
Roanoke, VA	0.8702	0.9092
Rochester, MN	1.0428	1.0291
Rockford, IL	0.8994	0.9300
Sacramento, CA	1.2351	1.1556
Saginaw-Bay City-Midland, MI	0.9667	0.9771
St. Cloud, MN	0.9457	0.9625
St. Louis, MO–IL	0.9022	0.9319
Salt Lake City-Ogden, UT	0.9677	0.9778
San Diego, CA	1.2154	1.1429
San Francisco, CA	1.4211	1.2721
San Jose, CA	1.4455	1.2870
Santa Rosa, CA	1.2363	1.1563
Sarasota-Bradenton, FL	0.9789	0.9855
Seattle-Bellevue-Everett, WA	1.1384	1.0928
Sharon, PA	0.8885	0.9222
Sherman-Denison, TX	0.8631	0.9041

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area reclassified to	Wage index	GAF
Sioux Falls, SD	0.8620	0.9033
South Bend, IN	0.9934	0.9955
Springfield, IL	0.8671	0.9070
Springfield, MO	0.7842	0.8466
Stockton-Lodi, CA	1.1391	1.0933
Syracuse, NY	0.9396	0.9582
Tacoma, WA	1.0866	1.0585
Tampa-St. Petersburg-Clearwater, FL	0.9302	0.9517
Texarkana, AR-Texarkana, TX	0.8509	0.8953
Toledo, OH	1.0361	1.0246
Topeka, KS	0.9795	0.9859
Tucson, AZ	0.9075	0.9357
Tulsa, OK	0.8095	0.8653
Tyler, TX	0.9605	0.9728
Victoria, TX	0.8185	0.8718
Washington, DC–MD–VA–WV	1.0823	1.0557
Waterloo-Cedar Falls, IA	0.8591	0.9012
Wausau, WI	0.9698	0.9792
Wichita, KS	0.9211	0.9453
Rural Alabama	0.7150	0.7947
Rural Florida	0.8668	0.9067
Rural Kentucky	0.7753	0.8401
Rural Louisiana	0.7253	0.8026
Rural Michigan	0.8836	0.9187
Rural Minnesota	0.8144	0.8688
Rural New Hampshire	0.9751	0.9829
Rural North Carolina	0.7953	0.8548
Rural Virginia	0.7729	0.8383
Rural Virginia (Rural Kentucky Hosp.)	0.7753	0.8401
Rural Washington	0.9933	0.9954
Rural West Virginia	0.7923	0.8526
Rural Wyoming	0.8177	0.8713

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS

Urban area	Average hourly wage
Abilene, TX	15.7361
Aguadilla, PR	8.2856
Akron, OH	19.2662
Albany, GA	16.8101
Albany-Schenectady-Troy, NY	16.8634
Albuquerque, NM	18.2712
Alexandria, LA	15.8746
Allentown-Bethlehem-Easton, PA	19.5376
Altoona, PA	18.5951
Amarillo, TX	17.0704
Anchorage, AK	25.8567
Ann Arbor, MI	22.8035
Anniston, AL	15.6871
Appleton-Oshkosh-Neenah, WI	17.3835
Arecibo, PR	8.5979
Asheville, NC	18.2517
Athens, GA	18.3967
Atlanta, GA	19.6186
Atlantic-Cape May, NJ	21.6594
Augusta-Aiken, GA–SC	17.2764
Austin-San Marcos, TX	18.0941
Bakersfield, CA	19.9230
Baltimore, MD	19.1581

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Bangor, ME	18.3630
Barnstable-Yarmouth, MA	26.6928
Baton Rouge, LA	16.4888
Beaumont-Port Arthur, TX	16.7698
Bellingham, WA	22.1285
Benton Harbor, MI	16.6319
Bergen-Passaic, NJ	23.0426
Billings, MT	17.7662
Biloxi-Gulfport-Pascagoula, MS	16.7252
Binghamton, NY	17.2505
Birmingham, AL	17.6684
Bismarck, ND	15.4928
Bloomington, IN	16.9184
Bloomington-Normal, IL	17.5793
Boise City, ID	18.3461
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	22.7074
Boulder-Longmont, CO	18.6194
Brazoria, TX	17.9908
Bremerton, WA	21.3152
Brownsville-Harlingen-San Benito, TX	16.7030
Bryan-College Station, TX	17.3076
Buffalo-Niagara Falls, NY	17.8073
Burlington, VT	19.6864
Caguas, PR	8.9423
Canton-Massillon, OH	16.9098
Casper, WY	17.2484
Cedar Rapids, IA	16.5386
Champaign-Urbana, IL	18.3634
Charleston-North Charleston, SC	17.5265
Charleston, WV	18.6261
Charlotte-Gastonia-Rock Hill, NC–SC	18.8112
Charlottesville, VA	17.9005
Chattanooga, TN–GA	17.2991
Cheyenne, WY	15.0126
Chicago, IL	21.0400
Chico-Paradise, CA	20.3689
Cincinnati, OH–KY–IN	18.7085
Clarksville-Hopkinsville, TN–KY	15.0873
Cleveland-Lorain-Elyria, OH	19.3308
Colorado Springs, CO	18.2642
Columbia, MO	17.4002
Columbia, SC	17.9118
Columbus, GA–AL	15.2114
Columbus, OH	18.9295
Corpus Christi, TX	17.3648
Cumberland, MD–WV	16.9547
Dallas, TX	19.0236
Danville, VA	16.6152
Davenport-Moline-Rock Island, IA–IL	16.4021
Dayton-Springfield, OH	18.6913
Daytona Beach, FL	17.3459
Decatur, AL	16.3934
Decatur, IL	15.3452
Denver, CO	19.8786
Des Moines, IA	17.2370
Detroit, MI	20.9694
Dothan, AL	15.1351
Dover, DE	17.5916
Dubuque, IA	15.8624
Duluth-Superior, MN–WI	18.4105
Dutchess County, NY	20.7053
Eau Claire, WI	16.9692
El Paso, TX	18.5059
Elkhart-Goshen, IN	17.2083
Elmira, NY	16.4576

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Enid, OK	15.3724
Erie, PA	17.9082
Eugene-Springfield, OR	22.0384
Evansville, Henderson, IN–KY	17.5644
Fargo-Moorhead, ND–MN	17.6861
Fayetteville, NC	17.6113
Fayetteville-Springdale-Rogers, AR	14.1177
Flagstaff, AZ–UT	17.6344
Flint, MI	21.9933
Florence, AL	15.5219
Florence, SC	16.8047
Fort Collins-Loveland, CO	20.6529
Fort Lauderdale, FL	20.6250
Fort Myers-Cape Coral, FL	17.6607
Fort Pierce-Port St. Lucie, FL	19.8836
Fort Smith, AR–OK	15.3772
Fort Walton Beach, FL	17.9727
Fort Wayne, IN	17.2067
Fort Worth-Arlington, TX	19.8533
Fresno, CA	21.8549
Gadsden, AL	17.3656
Gainesville, FL	18.4465
Galveston-Texas City, TX	21.5032
Gary, IN	18.8504
Glens Falls, NY	16.7411
Goldsboro, NC	16.4109
Grand Forks, ND–MN	17.6200
Grand Junction, CO	16.2997
Grand Rapids-Muskegon-Holland, MI	19.7853
Great Falls, MT	16.9748
Greeley, CO	18.9481
Green Bay, WI	17.6730
Greensboro-Winston-Salem-High Point, NC	18.2112
Greenville, NC	17.7503
Greenville-Spartanburg-Anderson, SC	17.4559
Hagerstown, MD	17.9394
Hamilton-Middletown, OH	18.5562
Harrisburg-Lebanon-Carlisle, PA	19.8630
Hartford, CT	24.1823
Hattiesburg, MS	14.1809
Hickory-Morganton-Lenoir, NC	16.8672
Honolulu, HI	22.4099
Houma, LA	15.3561
Houston, TX	19.5534
Huntington-Ashland, WV–KY–OH	17.9378
Huntsville, AL	16.0449
Indianapolis, IN	19.3630
Iowa City, IA	18.3037
Jackson, MI	17.6864
Jackson, MS	15.4167
Jackson, TN	16.2068
Jacksonville, FL	17.7663
Jacksonville, NC	13.7955
Jamestown, NY	14.9979
Janesville-Beloit, WI	16.9030
Jersey City, NJ	22.2562
Johnson City-Kingsport-Bristol, TN–VA	17.3717
Johnstown, PA	16.4213
Jonesboro, AR	14.1168
Joplin, MO	14.9353
Kalamazoo-Battlecreek, MI	20.6127
Kankakee, IL	17.8236
Kansas City, KS–MO	18.5333
Kenosha, WI	17.8819

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Killeen-Temple, TX	20.3189
Knoxville, TN	16.6250
Kokomo, IN	16.7962
La Crosse, WI–MN	16.8513
Lafayette, LA	15.9607
Lafayette, IN	17.1690
Lake Charles, LA	15.7084
Lakeland-Winter Haven, FL	17.1559
Lancaster, PA	18.7384
Lansing-East Lansing, MI	19.5719
Laredo, TX	13.8306
Las Cruces, NM	16.6145
Las Vegas, NV–AZ	21.2545
Lawrence, KS	16.8098
Lawton, OK	16.3566
Lewiston-Auburn, ME	18.3998
Lexington, KY	16.2159
Lima, OH	17.0746
Lincoln, NE	17.9136
Little Rock-North Little Rock, AR	16.8095
Longview-Marshall, TX	16.9037
Los Angeles-Long Beach, CA	24.1347
Louisville, KY–IN	18.4730
Lubbock, TX	16.6400
Lynchburg, VA	15.7441
Macon, GA	17.2534
Madison, WI	19.5953
Mansfield, OH	16.6677
Mayaguez, PR	8.2422
McAllen-Edinburg-Mission, TX	16.5901
Medford-Ashland, OR	19.6857
Melbourne-Titusville-Palm Bay, FL	17.7314
Memphis, TN–AR–MS	15.9681
Merced, CA	20.8439
Miami, FL	19.4323
Middlesex-Somerset-Hunterdon, NJ	21.2792
Milwaukee-Waukesha, WI	18.8591
Minneapolis-St. Paul, MN–WI	21.0727
Mobile, AL	15.6052
Modesto, CA	20.7262
Monmouth-Ocean, NJ	21.1825
Monroe, LA	16.0553
Montgomery, AL	15.4009
Muncie, IN	18.9936
Myrtle Beach, SC	15.2321
Naples, FL	19.9423
Nashville, TN	17.7573
Nassau-Suffolk, NY	26.4893
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	24.8405
New London-Norwich, CT	23.9754
New Orleans, LA	18.1738
New York, NY	27.6763
Newark, NJ	22.9987
Newburgh, NY–PA	21.1229
Norfolk-Virginia Beach-Newport News, VA–NC	16.3222
Oakland, CA	29.3127
Ocala, FL	17.8031
Odessa-Midland, TX	16.5854
Oklahoma City, OK	16.3683
Olympia, WA	20.9003
Omaha, NE–IA	18.5371
Orange County, CA	23.3969
Orlando, FL	18.5164
Owensboro, KY	14.8119
Panama City, FL	15.7629
Parkersburg-Marietta, WV–OH	15.4018

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Pensacola, FL	16.0371
Peoria-Pekin, IL	17.4120
Philadelphia, PA–NJ	21.9722
Phoenix-Mesa, AZ	19.1821
Pine Bluff, AR	15.4205
Pittsburgh, PA	18.9688
Pittsfield, MA	20.6334
Pocatello, ID	17.1752
Ponce, PR	9.1599
Portland, ME	18.8079
Portland-Vancouver, OR–WA	21.9679
Providence-Warwick, RI	21.6876
Provo-Orem, UT	19.7809
Pueblo, CO	16.1970
Punta Gorda, FL	16.3323
Racine, WI	17.2751
Raleigh-Durham-Chapel Hill, NC	19.0221
Rapid City, SD	16.5325
Reading, PA	18.4690
Redding, CA	22.6922
Reno, NV	21.5443
Richland-Kennewick-Pasco, WA	19.4956
Richmond-Petersburg, VA	17.9776
Riverside-San Bernardino, CA	22.2475
Roanoke, VA	17.0151
Rochester, MN	20.3908
Rochester, NY	18.8662
Rockford, IL	17.5872
Rocky Mount, NC	17.5097
Sacramento, CA	24.1510
Saginaw-Bay City-Midland, MI	18.7939
St. Cloud, MN	18.4907
St. Joseph, MO	16.7196
St. Louis, MO–IL	17.6400
Salem, OR	19.0205
Salinas, CA	26.9904
Salt Lake City-Ogden, UT	18.9211
San Angelo, TX	14.8158
San Antonio, TX	16.4044
San Diego, CA	23.7268
San Francisco, CA	27.8836
San Jose, CA	28.3887
San Juan-Bayamon, PR	8.8111
San Luis Obispo-Atascadero-Paso Robles, CA	22.6053
Santa Barbara-Santa Maria-Lompoc, CA	21.9816
Santa Cruz-Watsonville, CA	26.4364
Santa Fe, NM	21.1622
Santa Rosa, CA	24.4155
Sarasota-Bradenton, FL	19.1406
Savannah, GA	18.8663
Scranton-Wilkes Barre-Hazleton, PA	17.1121
Seattle-Bellevue-Everett, WA	22.2595
Sharon, PA	17.3726
Sheboygan, WI	15.1817
Sherman-Denison, TX	16.8423
Shreveport-Bossier City, LA	18.2999
Sioux City, IA–NE	16.2539
Sioux Falls, SD	16.8540
South Bend, IN	19.4248
Spokane, WA	20.5788
Springfield, IL	16.9538
Springfield, MO	15.2957
Springfield, MA	20.6983
State College, PA	18.6507
Steubenville-Weirton, OH–WV	16.1632
Stockton-Lodi, CA	22.1532

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Sumter, SC	15.0540
Syracuse, NY	18.3703
Tacoma, WA	21.2354
Tallahassee, FL	16.2555
Tampa-St. Petersburg-Clearwater, FL	18.0859
Terre Haute, IN	16.7989
Texarkana, AR-Texarkana, TX	16.6266
Toledo, OH	20.2601
Topeka, KS	19.7210
Trenton, NJ	20.6259
Tucson, AZ	17.7311
Tulsa, OK	15.8281
Tuscaloosa, AL	15.2197
Tyler, TX	19.5462
Utica-Rome, NY	16.4509
Vallejo-Fairfield-Napa, CA	27.2708
Ventura, CA	22.3964
Victoria, TX	16.4116
Vineland-Millville-Bridgeton, NJ	19.5394
Visalia-Tulare-Porterville, CA	19.8483
Waco, TX	15.1959
Washington, DC–MD–VA–WV	21.1632
Waterloo-Cedar Falls, IA	17.0208
Wausau, WI	20.1856
West Palm Beach-Boca Raton, FL	19.9482
Wheeling, OH–WV	14.7877
Wichita, KS	18.3188
Wichita Falls, TX	15.7237
Williamsport, PA	16.5567
Wilmington-Newark, DE–MD	22.1249
Wilmington, NC	17.6887
Yakima, WA	19.6049
Yolo, CA	22.3769
York, PA	17.8006
Youngstown-Warren, OH	19.0484
Yuba City, CA	20.3622
Yuma, AZ	18.5693

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS

Nonurban area	Average hourly wage
Alabama	13.9255
Alaska	24.3314
Arizona	15.5012
Arkansas	13.5966
California	19.5577
Colorado	15.8231
Connecticut	24.9480
Delaware	18.4711
Florida	16.9485
Georgia	14.9642
Hawaii	20.0330
Idaho	16.1848
Illinois	14.7683
Indiana	15.8851
Iowa	14.4039
Kansas	13.8962
Kentucky	15.1598
Louisiana	14.1417
Maine	16.2618
Maryland	16.4777
Massachusetts	21.0582
Michigan	17.2651

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
Minnesota	15.9249
Mississippi	13.2829
Missouri	14.1978
Montana	15.8928
Nebraska	14.1063
Nevada	17.1588
New Hampshire	19.0549
New Jersey [1]	.....
New Mexico	15.6424
New York	16.7329
North Carolina	15.5456

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
North Dakota	14.3865
Ohio	16.2910
Oklahoma	13.5735
Oregon	18.8958
Pennsylvania	16.5277
Puerto Rico	7.8716
Rhode Island [1]	.....
South Carolina	14.9937
South Dakota	13.8107
Tennessee	14.3532
Texas	14.5903

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
Utah	17.3014
Vermont	17.4440
Virginia	15.0809
Washington	19.4229
West Virginia	15.4544
Wisconsin	16.4842
Wyoming	15.9886

[1] All counties within the State are classified as urban.

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
1	01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.0486	7.7	11.1	32
2	01	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.0134	8.4	11.6	32
3	01	SURG	*CRANIOTOMY AGE 0–17	1.9167	12.7	12.7	37
4	01	SURG	SPINAL PROCEDURES	2.3399	5.9	9.1	30
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.5143	3.4	4.4	26
6	01	SURG	CARPAL TUNNEL RELEASE	.7419	2.4	3.4	26
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC.	2.4886	8.1	12.6	32
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC.	1.0962	2.6	3.9	27
9	01	MED	SPINAL DISORDERS & INJURIES	1.2677	5.4	7.8	29
10	01	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2196	5.7	8.1	30
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.8000	3.5	5.0	28
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9457	5.4	7.7	29
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.7770	5.0	6.2	29
14	01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA.	1.1999	5.5	7.5	30
15	01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS.	.7231	3.5	4.5	27
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.0371	4.9	6.6	29
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC.	.6331	3.0	4.0	26
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	.9319	4.8	6.4	29
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.6230	3.4	4.5	27
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS.	2.4854	8.6	11.6	33
21	01	MED	VIRAL MENINGITIS	1.4910	5.8	7.8	30
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	.8353	3.8	4.9	28
23	01	MED	NONTRAUMATIC STUPOR & COMA	.8089	3.6	5.1	28
24	01	MED	SEIZURE & HEADACHE AGE >17 W CC	.9694	4.2	5.8	28
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.5793	3.0	3.9	24
26	01	MED	SEIZURE & HEADACHE AGE 0–17	.7387	3.3	4.6	27
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3060	3.6	6.3	28
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC.	1.2033	4.8	7.1	29
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC.	.6371	3.0	4.1	27
30	01	MED	*TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	.3241	2.0	2.0	17
31	01	MED	CONCUSSION AGE >17 W CC	.8412	3.7	5.4	28
32	01	MED	CONCUSSION AGE >17 W/O CC	.4861	2.3	3.1	20
33	01	MED	*CONCUSSION AGE 0–17	.2037	1.6	1.6	9
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.0673	4.6	6.5	29
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.6149	3.2	4.3	27
36	02	SURG	RETINAL PROCEDURES	.6134	1.3	1.6	6
37	02	SURG	ORBITAL PROCEDURES	.9323	2.7	4.0	27
38	02	SURG	PRIMARY IRIS PROCEDURES	.4282	1.9	2.6	17
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5184	1.5	2.0	10
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17.	.7072	2.2	3.4	26
41	02	SURG	*EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17.	.3299	1.6	1.6	7

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS.	.5816	1.6	2.2	13
43	02	MED	HYPHEMA	.4520	3.3	4.2	27
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6237	4.7	5.7	29
45	02	MED	NEUROLOGICAL EYE DISORDERS	.6525	3.1	3.8	22
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.7656	4.0	5.6	28
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.4664	2.8	3.8	27
48	02	MED	*OTHER DISORDERS OF THE EYE AGE 0–17	.2907	2.9	2.9	27
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.7245	4.1	5.7	28
50	03	SURG	SIALOADENECTOMY	.7686	1.7	2.1	9
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY.	.7345	1.9	2.9	20
52	03	SURG	CLEFT LIP & PALATE REPAIR	1.0271	2.1	3.4	24
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	1.0128	2.2	3.6	26
54	03	SURG	*SINUS & MASTOID PROCEDURES AGE 0–17	.4712	3.2	3.2	22
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES.	.7880	2.0	3.0	22
56	03	SURG	RHINOPLASTY	.8283	2.1	2.7	18
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	.9325	2.8	4.1	27
58	03	SURG	*T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	.2676	1.5	1.5	4
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	.7439	2.3	3.6	26
60	03	SURG	*TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	.2038	1.5	1.5	4
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.1960	2.7	5.1	27
62	03	SURG	*MYRINGOTOMY W TUBE INSERTION AGE 0–17	.2885	1.3	1.3	5
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES.	1.2168	3.2	4.7	27
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.1737	4.8	7.6	29
65	03	MED	DYSEQUILIBRIUM	.5195	2.7	3.4	20
66	03	MED	EPISTAXIS	.5366	2.9	3.6	21
67	03	MED	EPIGLOTTITIS	.8397	3.4	4.2	24
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	.7098	3.9	4.8	27
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5239	3.1	3.8	20
70	03	MED	OTITIS MEDIA & URI AGE 0–17	.3727	2.4	2.9	15
71	03	MED	LARYNGOTRACHEITIS	.7702	3.1	4.0	27
72	03	MED	NASAL TRAUMA & DEFORMITY	.6532	3.1	4.4	27
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17.	.7505	3.7	5.0	28
74	03	MED	*OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17.	.3278	2.1	2.1	20
75	04	SURG	MAJOR CHEST PROCEDURES	3.1951	8.8	11.2	33
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.6036	9.1	12.5	33
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.1593	3.8	5.5	28
78	04	MED	PULMONARY EMBOLISM	1.4292	7.0	8.3	31
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC.	1.6300	7.2	9.3	31
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC.	.9436	5.3	6.6	29
81	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17.	1.4845	6.3	7.8	30
82	04	MED	RESPIRATORY NEOPLASMS	1.3319	5.7	7.9	30
83	04	MED	MAJOR CHEST TRAUMA W CC	.9782	4.9	6.4	29
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5319	2.9	3.7	23
85	04	MED	PLEURAL EFFUSION W CC	1.2200	5.6	7.4	30
86	04	MED	PLEURAL EFFUSION W/O CC	.7117	3.4	4.5	27
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3615	5.1	6.9	29
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.9846	4.9	6.1	29
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.1156	5.8	7.1	30
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.6978	4.3	5.1	24
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0–17	.7524	3.5	4.5	27
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.2029	5.6	7.3	30
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7498	4.0	4.9	28
94	04	MED	PNEUMOTHORAX W CC	1.1780	5.3	7.1	29
95	04	MED	PNEUMOTHORAX W/O CC	.5996	3.3	4.1	25
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	.8272	4.5	5.5	29
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.6035	3.6	4.3	22
98	04	MED	BRONCHITIS & ASTHMA AGE 0–17	.7807	2.9	4.3	27

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	.6869	2.7	3.5	22
100 ...	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5113	2.0	2.4	12
101 ...	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	.8748	3.9	5.2	28
102 ...	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC ...	.5335	2.4	3.1	20
103 ...	05	SURG	HEART TRANSPLANT	15.3358	28.4	40.0	52
104 ...	05	SURG	CARDIAC VALVE PROCEDURES W CARDIAC CATH	7.3199	12.0	14.6	36
105 ...	05	SURG	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH ...	5.5998	9.0	11.0	33
106 ...	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.5564	10.3	11.7	34
107 ...	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.0685	7.8	8.8	32
108 ...	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.9135	9.8	12.6	34
109 ...			NO LONGER VALID	.0000	.0	.0	0
110 ...	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.1589	8.2	10.9	32
111 ...	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.2875	5.9	6.7	30
112 ...	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2.0946	3.5	4.7	27
113 ...	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	2.6935	10.6	14.4	35
114 ...	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS.	1.5152	6.8	9.5	31
115 ...	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK.	3.6827	9.1	11.5	33
116 ...	05	SURG	OTH PERM CARDIAC PACEMAKER IMPLANT OR AICD LEAD OR GENERATOR PROC.	2.4150	3.9	5.4	28
117 ...	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT.	1.1764	2.7	4.1	27
118 ...	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5825	2.1	3.2	25
119 ...	05	SURG	VEIN LIGATION & STRIPPING	1.1435	3.3	5.5	27
120 ...	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.9318	5.4	9.2	29
121 ...	05	MED	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE.	1.6482	6.4	7.8	30
122 ...	05	MED	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE.	1.1617	4.4	5.3	28
123 ...	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.4555	2.7	4.7	27
124 ...	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.3258	3.8	5.0	28
125 ...	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	.9246	2.3	3.1	20
126 ...	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.5379	11.0	14.3	35
127 ...	05	MED	HEART FAILURE & SHOCK	1.0265	4.8	6.2	29
128 ...	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7861	5.9	6.7	27
129 ...	05	MED	CARDIAC ARREST, UNEXPLAINED	1.1316	2.0	3.5	26
130 ...	05	MED	PERIPHERAL VASCULAR DISORDERS W CC	.9352	5.3	6.7	29
131 ...	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.6038	4.3	5.2	28
132 ...	05	MED	ATHEROSCLEROSIS W CC	.6840	2.9	3.6	20
133 ...	05	MED	ATHEROSCLEROSIS W/O CC	.5537	2.3	2.9	16
134 ...	05	MED	HYPERTENSION	.5787	3.0	3.9	23
135 ...	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC.	.8838	3.7	5.0	28
136 ...	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC.	.5629	2.6	3.3	18
137 ...	05	MED	*CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17.	.7999	3.3	3.3	27
138 ...	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC.	.8008	3.5	4.6	27
139 ...	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC.	.4971	2.4	2.9	16
140 ...	05	MED	ANGINA PECTORIS	.6205	2.8	3.5	20
141 ...	05	MED	SYNCOPE & COLLAPSE W CC	.7128	3.4	4.5	27
142 ...	05	MED	SYNCOPE & COLLAPSE W/O CC	.5288	2.5	3.2	18
143 ...	05	MED	CHEST PAIN	.5223	2.1	2.6	14
144 ...	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.0857	4.1	5.7	28
145 ...	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC ...	.6208	2.5	3.2	20
146 ...	06	SURG	RECTAL RESECTION W CC	2.6363	9.8	11.2	34
147 ...	06	SURG	RECTAL RESECTION W/O CC	1.6018	6.7	7.3	27
148 ...	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.3710	11.2	13.5	35
149 ...	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC.	1.5999	7.0	7.7	25
150 ...	06	SURG	PERITONEAL ADHESIOLYSIS W CC	2.6828	9.5	11.7	34
151 ...	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.2910	5.2	6.5	29
152 ...	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.9311	7.6	9.0	32

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
153 ...	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC.	1.1568	5.6	6.2	24
154 ...	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.	4.1817	11.6	15.0	36
155 ...	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.4059	4.5	5.9	29
156 ...	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17.	.8238	6.0	6.0	30
157 ...	06	SURG	ANAL & STOMAL PROCEDURES W CC	1.1352	4.2	5.8	28
158 ...	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.6077	2.3	2.9	18
159 ...	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.2268	4.0	5.3	28
160 ...	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	.7026	2.4	3.0	16
161 ...	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC.	1.0066	3.0	4.4	27
162 ...	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC.	.5707	1.7	2.2	11
163 ...	06	SURG	*HERNIA PROCEDURES AGE 0–17	.7706	2.1	2.1	11
164 ...	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC.	2.3386	8.0	9.4	32
165 ...	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC.	1.2582	5.1	5.8	24
166 ...	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC.	1.4497	4.5	5.7	29
167 ...	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC.	.8431	2.8	3.2	15
168 ...	03	SURG	MOUTH PROCEDURES W CC	1.0929	3.2	5.0	27
169 ...	03	SURG	MOUTH PROCEDURES W/O CC	.6717	2.0	2.5	15
170 ...	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.7453	8.5	12.5	33
171 ...	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC.	1.1202	4.0	5.4	28
172 ...	06	MED	DIGESTIVE MALIGNANCY W CC	1.2920	5.7	8.2	30
173 ...	06	MED	DIGESTIVE MALIGNANCY W/O CC	.6769	3.0	4.4	27
174 ...	06	MED	G.I. HEMORRHAGE W CC	.9952	4.4	5.6	28
175 ...	06	MED	G.I. HEMORRHAGE W/O CC	.5485	2.9	3.5	17
176 ...	06	MED	COMPLICATED PEPTIC ULCER	1.0856	4.7	6.2	29
177 ...	06	MED	UNCOMPLICATED PEPTIC ULCER W CC	.8335	4.0	5.0	28
178 ...	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.6091	3.0	3.6	19
179 ...	06	MED	INFLAMMATORY BOWEL DISEASE	1.1188	5.5	7.2	30
180 ...	06	MED	G.I. OBSTRUCTION W CC	.9194	4.7	6.1	29
181 ...	06	MED	G.I. OBSTRUCTION W/O CC	.5338	3.3	4.0	22
182 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC.	.7789	3.8	5.0	28
183 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	.5553	2.8	3.4	20
184 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17.	.5414	2.8	3.9	27
185 ...	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	.8424	3.7	5.2	28
186 ...	03	MED	*DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17.	.3140	2.9	2.9	23
187 ...	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.7104	3.1	4.2	27
188 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC.	1.0591	4.5	6.1	28
189 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC.	.5640	2.7	3.7	27
190 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	.8769	3.9	5.1	28
191 ...	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.4543	12.1	16.3	36
192 ...	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.7889	6.2	7.9	30
193 ...	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	3.2878	11.4	13.9	35
194 ...	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.7549	6.8	8.5	31
195 ...	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC	2.6894	8.8	10.5	33
196 ...	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6127	5.8	6.7	30
197 ...	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC.	2.2679	7.5	9.2	31
198 ...	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.1738	4.3	4.9	23

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
199 ...	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY.	2.3728	8.4	11.2	32
200 ...	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	3.1772	7.9	12.4	32
201 ...	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES.	3.7669	12.1	16.8	36
202 ...	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3675	5.7	7.8	30
203 ...	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS.	1.2486	5.5	7.7	30
204 ...	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2004	5.1	6.8	29
205 ...	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W CC.	1.2194	5.3	7.3	29
206 ...	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC.	.7159	3.6	4.7	28
207 ...	07	MED	DISORDERS OF THE BILIARY TRACT W CC	1.0508	4.4	5.8	28
208 ...	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.6045	2.6	3.5	21
209 ...	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	2.2606	5.9	6.7	23
210 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC.	1.8460	7.2	8.6	31
211 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.2740	5.6	6.3	23
212 ...	08	SURG	*HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17.	1.1487	11.1	11.1	35
213 ...	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.7049	7.0	9.7	31
214 ...	08	SURG	BACK & NECK PROCEDURES W CC	1.9255	4.9	6.5	29
215 ...	08	SURG	BACK & NECK PROCEDURES W/O CC	1.1119	3.0	3.7	20
216 ...	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.0784	7.9	11.1	32
217 ...	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS.	2.8812	10.2	15.4	34
218 ...	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC.	1.4574	4.8	6.2	29
219 ...	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC.	.9553	3.1	3.8	19
220 ...	08	SURG	*LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17.	.5706	5.3	5.3	29
221 ...	08	SURG	KNEE PROCEDURES W CC	1.8340	5.8	8.1	30
222 ...	08	SURG	KNEE PROCEDURES W/O CC	1.0177	3.1	4.0	27
223 ...	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	.8720	2.2	2.9	16
224 ...	08	SURG	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC.	.7417	1.9	2.3	10
225 ...	08	SURG	FOOT PROCEDURES	1.0020	3.3	5.0	27
226 ...	08	SURG	SOFT TISSUE PROCEDURES W CC	1.3831	4.4	6.7	28
227 ...	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.7449	2.3	3.0	18
228 ...	08	SURG	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC.	.9349	2.3	3.5	26
229 ...	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC.	.6512	1.8	2.4	13
230 ...	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.0567	3.3	5.2	27
231 ...	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR.	1.2263	3.3	5.1	27
232 ...	08	SURG	ARTHROSCOPY	1.0884	2.6	4.5	27
233 ...	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC.	2.0170	6.4	9.1	30
234 ...	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC.	1.0675	3.1	4.1	27
235 ...	08	MED	FRACTURES OF FEMUR	.8395	4.7	6.9	29
236 ...	08	MED	FRACTURES OF HIP & PELVIS	.7620	4.7	6.4	29
237 ...	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH.	.5637	3.3	4.4	27
238 ...	08	MED	OSTEOMYELITIS	1.3796	7.6	10.1	32
239 ...	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	1.0115	5.8	7.6	30
240 ...	08	MED	CONNECTIVE TISSUE DISORDERS W CC	1.2112	5.5	7.5	30
241 ...	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.6029	3.5	4.6	28
242 ...	08	MED	SEPTIC ARTHRITIS	1.0492	5.8	7.7	30

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				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
243 ...	08	MED	MEDICAL BACK PROBLEMS	.7241	4.3	5.6	28
244 ...	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	.7279	4.3	5.8	28
245 ...	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC.	.4954	3.2	4.3	27
246 ...	08	MED	NON-SPECIFIC ARTHROPATHIES	.5887	3.6	4.6	28
247 ...	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	.5523	2.9	4.0	27
248 ...	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.7325	3.9	5.3	28
249 ...	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	.6522	2.9	4.3	27
250 ...	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC.	.6915	3.6	5.1	28
251 ...	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	.4640	2.5	3.3	22
252 ...	08	MED	*FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17.	.2479	1.8	1.8	15
253 ...	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC.	.7438	4.3	5.8	28
254 ...	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC.	.4451	2.9	3.9	25
255 ...	08	MED	*FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17.	.2886	2.9	2.9	27
256 ...	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	.7651	4.0	5.7	28
257 ...	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC	.9015	2.8	3.4	17
258 ...	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7087	2.2	2.5	10
259 ...	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	.8640	2.3	3.5	26
260 ...	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6083	1.6	1.9	8
261 ...	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	.8286	1.9	2.3	12
262 ...	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY.	.7695	2.7	3.9	27
263 ...	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKIN ULCER OR CELLULITIS W CC.	2.1226	9.9	13.9	34
264 ...	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKIN ULCER OR CELLULITIS W/O CC.	1.1270	6.0	8.3	30
265 ...	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.4993	4.8	7.7	29
266 ...	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	.7629	2.7	3.7	27
267 ...	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.8330	2.8	4.3	27
268 ...	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES.	.9916	2.5	4.1	27
269 ...	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.6416	6.3	9.3	30
270 ...	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	.7003	2.4	3.4	26
271 ...	09	MED	SKIN ULCERS	1.0816	6.6	8.5	31
272 ...	09	MED	MAJOR SKIN DISORDERS W CC	1.0158	5.6	7.5	30
273 ...	09	MED	MAJOR SKIN DISORDERS W/O CC	.6346	4.1	5.5	28
274 ...	09	MED	MALIGNANT BREAST DISORDERS W CC	1.0760	5.3	7.9	29
275 ...	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.5085	2.5	3.7	27
276 ...	09	MED	NON-MALIGNANT BREAST DISORDERS	.6374	3.9	5.0	28
277 ...	09	MED	CELLULITIS AGE >17 W CC	.8526	5.5	6.7	29
278 ...	09	MED	CELLULITIS AGE >17 W/O CC	.5774	4.3	5.2	25
279 ...	09	MED	*CELLULITIS AGE 0–17	.7190	4.2	4.2	24
280 ...	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC.	.6750	3.7	5.1	28
281 ...	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC.	.4560	2.7	3.6	24
282 ...	09	MED	*TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17.	.2509	2.2	2.2	19
283 ...	09	MED	MINOR SKIN DISORDERS W CC	.6990	4.1	5.5	28
284 ...	09	MED	MINOR SKIN DISORDERS W/O CC	.4340	2.9	3.8	26
285 ...	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS.	2.2015	9.5	13.7	34
286 ...	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.3775	6.6	8.7	31
287 ...	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.9765	9.4	13.4	33
288 ...	10	SURG	O.R. PROCEDURES FOR OBESITY	2.0104	5.2	6.9	29
289 ...	10	SURG	PARATHYROID PROCEDURES	1.0198	2.7	4.0	27
290 ...	10	SURG	THYROID PROCEDURES	.8798	2.1	2.8	15

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
291 ...	10	SURG	THYROGLOSSAL PROCEDURES	.5189	1.4	1.8	8
292 ...	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC.	2.6450	8.4	12.8	32
293 ...	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC.	1.2671	4.6	6.8	29
294 ...	10	MED	DIABETES AGE >35	.7594	4.3	5.7	28
295 ...	10	MED	DIABETES AGE 0–35	.7159	3.3	4.3	27
296 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC.	.8929	4.7	6.4	29
297 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC.	.5364	3.3	4.3	26
298 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17.	.5221	2.5	3.4	23
299 ...	10	MED	INBORN ERRORS OF METABOLISM	.8330	3.9	5.4	28
300 ...	10	MED	ENDOCRINE DISORDERS W CC	1.0950	5.5	7.3	30
301 ...	10	MED	ENDOCRINE DISORDERS W/O CC	.6182	3.4	4.4	27
302 ...	11	SURG	KIDNEY TRANSPLANT	3.9047	10.4	12.3	34
303 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.6409	8.4	10.2	32
304 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.	2.3716	7.5	10.3	31
305 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.1776	3.9	4.9	28
306 ...	11	SURG	PROSTATECTOMY W CC	1.2258	4.3	6.2	28
307 ...	11	SURG	PROSTATECTOMY W/O CC	.6708	2.4	3.0	15
308 ...	11	SURG	MINOR BLADDER PROCEDURES W CC	1.5252	4.7	7.0	29
309 ...	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.8860	2.3	3.0	18
310 ...	11	SURG	TRANSURETHRAL PROCEDURES W CC	1.0015	3.2	4.6	27
311 ...	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.5670	1.8	2.2	11
312 ...	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC	.9124	3.2	4.8	27
313 ...	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.5223	1.8	2.3	13
314 ...	11	SURG	*URETHRAL PROCEDURES, AGE 0–17	.4836	2.3	2.3	26
315 ...	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0574	5.3	9.3	29
316 ...	11	MED	RENAL FAILURE	1.3034	5.4	7.6	29
317 ...	11	MED	ADMIT FOR RENAL DIALYSIS	.4845	1.9	2.9	20
318 ...	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1296	5.0	7.2	29
319 ...	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.5772	2.3	3.2	24
320 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC.	.9048	5.1	6.4	29
321 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC.	.6077	3.9	4.7	24
322 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17	.5133	3.6	4.4	23
323 ...	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	.7496	2.7	3.6	24
324 ...	11	MED	URINARY STONES W/O CC	.4159	1.7	2.1	10
325 ...	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC.	.6377	3.4	4.6	27
326 ...	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC.	.4320	2.4	3.4	19
327 ...	11	MED	*KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17.	.2341	3.1	3.1	27
328 ...	11	MED	URETHRAL STRICTURE AGE >17 W CC	.6886	3.1	4.3	27
329 ...	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.4567	2.1	2.8	17
330 ...	11	MED	*URETHRAL STRICTURE AGE 0–17	.3115	1.6	1.6	9
331 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC.	.9914	4.6	6.2	29
332 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC.	.6070	2.8	3.9	27
333 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17.	.8562	4.3	5.8	28
334 ...	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.6653	5.3	6.1	23
335 ...	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.2610	4.2	4.6	17
336 ...	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC	.8848	3.2	4.1	24
337 ...	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6147	2.3	2.7	11
338 ...	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.0499	3.5	5.3	27
339 ...	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1.0194	3.1	5.3	27
340 ...	12	SURG	*TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	.2769	2.4	2.4	13
341 ...	12	SURG	PENIS PROCEDURES	1.0745	2.3	3.3	21
342 ...	12	SURG	CIRCUMCISION AGE >17	.7578	2.7	4.0	27
343 ...	12	SURG	*CIRCUMCISION AGE 0–17	.1504	1.7	1.7	6

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
344 ...	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.0083	2.3	3.5	25
345 ...	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	.8422	2.8	4.0	27
346 ...	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	.9559	4.8	6.8	29
347 ...	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC.	.5096	2.4	3.3	25
348 ...	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC	.7107	3.6	4.9	28
349 ...	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.3974	2.2	3.0	20
350 ...	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM.	.6611	3.9	4.8	24
351 ...	12	MED	*STERILIZATION, MALE	.2309	1.3	1.3	5
352 ...	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5877	2.8	3.9	27
353 ...	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.9174	6.7	8.3	31
354 ...	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.4643	5.2	6.3	28
355 ...	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	.9056	3.6	3.9	11
356 ...	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	.7376	2.6	3.0	12
357 ...	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	2.3824	8.0	9.8	32
358 ...	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC.	1.1713	4.1	4.8	19
359 ...	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC.	.8285	3.0	3.3	10
360 ...	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.8459	2.9	3.5	17
361 ...	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.1148	2.5	3.5	23
362 ...	13	SURG	*ENDOSCOPIC TUBAL INTERRUPTION	.2951	1.4	1.4	5
363 ...	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY.	.6911	2.6	3.5	21
364 ...	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.6739	2.6	3.6	27
365 ...	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES.	1.7237	5.3	8.1	29
366 ...	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.1941	5.3	7.8	29
367 ...	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC.	.5216	2.3	3.2	24
368 ...	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	1.0230	5.3	6.9	29
369 ...	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	.5454	2.6	3.7	27
370 ...	14	SURG	CESAREAN SECTION W CC	1.0401	4.3	5.6	26
371 ...	14	SURG	CESAREAN SECTION W/O CC	.6838	3.2	3.6	11
372 ...	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.5439	2.4	3.4	20
373 ...	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3602	1.7	1.9	7
374 ...	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.6775	2.0	2.6	11
375 ...	14	SURG	*VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C.	.6698	4.4	4.4	28
376 ...	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	.5638	2.3	3.4	25
377 ...	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	.8188	2.1	3.3	26
378 ...	14	MED	ECTOPIC PREGNANCY	.8054	2.4	2.9	15
379 ...	14	MED	THREATENED ABORTION	.3591	2.0	3.0	21
380 ...	14	MED	ABORTION W/O D&C	.4775	1.7	2.3	12
381 ...	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY.	.5151	1.7	2.3	14
382 ...	14	MED	FALSE LABOR	.2013	1.3	1.6	6
383 ...	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS.	.4655	2.8	4.1	27
384 ...	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS.	.3921	1.8	3.1	22
385 ...	15		*NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.3443	1.8	1.8	26
386 ...	15		*EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE.	4.4329	17.9	17.9	42
387 ...	15		*PREMATURITY W MAJOR PROBLEMS	3.0276	13.3	13.3	37
388 ...	15		*PREMATURITY W/O MAJOR PROBLEMS	1.8268	8.6	8.6	33
389 ...	15		FULL TERM NEONATE W MAJOR PROBLEMS	2.2451	7.9	10.7	32
390 ...	15		NEONATE W OTHER SIGNIFICANT PROBLEMS	1.2845	3.6	4.7	28

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
391 ...	15		*NORMAL NEWBORN	.1490	3.1	3.1	11
392 ...	16	SURG	SPLENECTOMY AGE >17	3.2443	8.9	11.7	33
393 ...	16	SURG	*SPLENECTOMY AGE 0–17	1.3168	9.1	9.1	33
394 ...	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.5994	4.5	8.0	28
395 ...	16	MED	RED BLOOD CELL DISORDERS AGE >17	.8362	3.9	5.4	28
396 ...	16	MED	RED BLOOD CELL DISORDERS AGE 0–17	.6966	2.7	3.8	27
397 ...	16	MED	COAGULATION DISORDERS	1.2612	4.4	6.1	28
398 ...	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC.	1.2106	5.2	6.6	29
399 ...	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC.	.7030	3.5	4.4	27
400 ...	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.5572	6.7	10.4	31
401 ...	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC.	2.4834	8.5	12.4	32
402 ...	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	1.0255	3.1	4.7	27
403 ...	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.6925	6.5	9.3	30
404 ...	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.8059	3.7	5.1	28
405 ...	17		*ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17.	1.8669	4.9	4.9	29
406 ...	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W CC.	2.6841	8.1	11.3	32
407 ...	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W/O CC.	1.1787	3.8	4.9	28
408 ...	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R. PROC.	1.7393	5.0	8.2	29
409 ...	17	MED	RADIOTHERAPY	.9763	4.7	6.7	29
410 ...	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	.7514	2.6	3.4	20
411 ...	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.3837	2.1	2.7	16
412 ...	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.4080	2.1	3.0	23
413 ...	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC.	1.3257	6.0	8.4	30
414 ...	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC.	.7337	3.7	5.2	28
415 ...	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES.	3.4430	11.4	15.8	35
416 ...	18	MED	SEPTICEMIA AGE >17	1.4838	6.2	8.3	30
417 ...	18	MED	SEPTICEMIA AGE 0–17	.8089	3.7	4.6	28
418 ...	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9697	5.4	6.8	29
419 ...	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	.8991	4.4	5.7	28
420 ...	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6264	3.5	4.3	24
421 ...	18	MED	VIRAL ILLNESS AGE >17	.7153	3.6	4.7	28
422 ...	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17.	.5347	2.9	3.8	25
423 ...	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES.	1.5947	6.3	8.8	30
424 ...	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS.	2.3637	10.9	18.0	35
425 ...	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION.	.7051	3.5	4.9	27
426 ...	19	MED	DEPRESSIVE NEUROSES	.5680	3.9	5.5	28
427 ...	19	MED	NEUROSES EXCEPT DEPRESSIVE	.5495	3.7	5.2	28
428 ...	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7303	5.2	8.4	29
429 ...	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.9075	5.9	9.0	30
430 ...	19	MED	PSYCHOSES	.8391	6.9	9.8	31
431 ...	19	MED	CHILDHOOD MENTAL DISORDERS	.6556	4.9	7.2	29
432 ...	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7363	3.9	6.5	28
433 ...	20		ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.2986	2.5	3.4	25
434 ...	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC.	.7141	4.3	5.8	28
435 ...	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC.	.4164	3.8	4.8	28
436 ...	20		ALC/DRUG DEPENDENCE W REHABILITATION THERAPY.	.8183	12.1	14.8	36
437 ...	20		ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY.	.7657	9.2	10.9	33
438 ...			NO LONGER VALID	.0000	.0	.0	0
439 ...	21	SURG	SKIN GRAFTS FOR INJURIES	1.6144	5.9	8.9	30

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
440 ...	21	SURG	W/OUND DEBRIDEMENTS FOR INJURIES	1.7725	6.3	9.9	30
441 ...	21	SURG	HAND PROCEDURES FOR INJURIES	.9294	2.4	4.4	26
442 ...	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.1653	5.6	8.7	30
443 ...	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.8849	2.5	3.6	26
444 ...	21	MED	TRAUMATIC INJURY AGE >17 W CC	.7312	4.0	5.3	28
445 ...	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	.4845	2.9	3.9	25
446 ...	21	MED	*TRAUMATIC INJURY AGE 0–17	.2894	2.4	2.4	22
447 ...	21	MED	ALLERGIC REACTIONS AGE >17	.4918	2.1	2.8	17
448 ...	21	MED	ALLERGIC REACTIONS AGE 0–17	.0777	1.0	1.0	1
449 ...	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC.	.7902	3.0	4.5	27
450 ...	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC.	.4274	1.8	2.3	13
451 ...	21	MED	*POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	.2570	2.1	2.1	17
452 ...	21	MED	COMPLICATIONS OF TREATMENT W CC	.9473	3.8	5.4	28
453 ...	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.4822	2.4	3.2	20
454 ...	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC.	.8575	3.4	5.1	27
455 ...	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC.	.4467	2.1	2.8	18
456 ...	22	MED	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.8327	4.1	8.4	28
457 ...	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE	1.4657	2.4	4.8	26
458 ...	22	SURG	NON-EXTENSIVE BURNS W SKIN GRAFT	3.4991	11.9	16.9	36
459 ...	22	SURG	NON-EXTENSIVE BURNS W W/OUND DEBRIDEMENT OR OTHER O.R. PROC.	1.6538	6.7	10.3	31
460 ...	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	.9547	4.6	6.6	29
461 ...	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	.9963	2.5	4.9	27
462 ...	23	MED	REHABILITATION	1.4298	11.0	13.9	35
463 ...	23	MED	SIGNS & SYMPTOMS W CC	.7101	3.8	5.2	28
464 ...	23	MED	SIGNS & SYMPTOMS W/O CC	.5028	2.8	3.8	24
465 ...	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.5571	2.3	3.9	26
466 ...	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.5905	2.5	4.8	27
467 ...	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4588	2.4	4.1	26
468 ...			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	3.6028	10.6	15.3	35
469 ...			**PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS.	.0000	.0	.0	0
470 ...			**UNGROUPABLE	.0000	.0	.0	0
471 ...	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.	3.5980	6.8	8.1	31
472 ...	22	SURG	EXTENSIVE BURNS W O.R. PROCEDURE	10.9989	17.0	30.2	41
473 ...	17		ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17.	3.5740	8.5	14.7	33
474 ...			NO LONGER VALID	.0000	.0	.0	0
475 ...	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT.	3.6765	8.6	12.3	33
476 ...		SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.2479	10.3	13.9	34
477 ...		SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.7266	5.9	9.3	30
478 ...	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.2883	5.6	8.3	30
479 ...	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.4080	3.5	4.6	27
480 ...		SURG	LIVER TRANSPLANT	13.9424	26.4	32.6	50
481 ...		SURG	BONE MARROW TRANSPLANT	11.2299	29.7	32.6	54
482 ...		SURG	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES.	3.6578	11.4	14.9	35
483 ...		SURG	TRACHEOSTOMY EXCEPT FOR FACE, MOUTH & NECK DIAGNOSES.	16.0413	36.0	46.4	60
484 ...	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.6821	10.6	15.9	35
485 ...	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR.	3.2058	9.2	11.7	33
486 ...	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA.	4.7915	9.0	13.6	33
487 ...	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	2.0305	6.2	9.1	30
488 ...	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.7905	14.3	20.5	38
489 ...	25	MED	HIV W MAJOR RELATED CONDITION	1.8141	7.2	10.7	31

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
490 ...	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.0116	4.4	6.6	28
491 ...	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.6308	3.6	4.3	19
492 ...	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	4.0299	11.2	17.4	35
493 ...	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC.	1.7100	4.2	5.9	28
494 ...	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC.	.9169	1.8	2.4	15
495 ...		SURG	LUNG TRANSPLANT	9.2870	18.0	22.7	42

*Medicare data have been supplemented by data from 19 States for low volume DRGS.
**DRGS 469 and 470 contain cases which could not be assigned to valid DRGS.
Note: Geometric mean is used only to determine payment for transfer cases.
Note: Arithmetic mean is used only to determine payment for outlier cases.
Note: Relative weights are based on Medicare patient data and may not be appropriate for other patients.

TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
079.6	Respiratory syncytial virus (RSV)	N	15	387,[1] 389[1]
			18	421, 422
291.81	Alcohol withdrawal	Y	20	434, 435, 436, 437
291.89	Other specified alcoholic psychosis, not elsewhere classified	Y	20	434, 435, 436, 437
293.84	Organic anxiety syndrome	Y	19	429
300.82	Undifferentiated somatoform disorder	N	19	427
315.32	Receptive language disorder (mixed)	N	19	431
414.04	Coronary atherosclerosis of artery bypass graft	N	5	132, 133
414.05	Coronary atherosclerosis of unspecified type of bypass graft	N	5	132, 133
466.11	Acute bronchiolitis due to respiratory syncytial virus (RSV)	N	4	96, 97, 98
466.19	Acute bronchiolitis due to other infectious organisms	N	4	96, 97, 98
483.1	Pneumonia due to Chlamydia	Y	4	89, 90, 91
			15	387,[1] 389[1]
574.60	Calculus of gallbladder and bile duct with acute cholecystitis without mention of obstruction.	Y	7	207, 208
574.61	Calculus of gallbladder and bile duct with acute cholecystitis with obstruction	Y	7	207, 208
574.70	Calculus of gallbladder and bile duct with other cholecystitis without mention of obstruction.	Y	7	207, 208
574.71	Calculus of gallbladder and bile duct with other cholecystitis with obstruction	Y	7	207, 208
574.80	Calculus of gallbladder and bile duct with acute and chronic cholecystitis without mention of obstruction.	Y	7	207, 208
574.81	Calculus of gallbladder and bile duct with acute and chronic cholecystitis with obstruction	Y	7	207, 208
574.90	Calculus of gallbladder and bile duct without cholecystitis without mention of obstruction	Y	7	207, 208
574.91	Calculus of gallbladder and bile duct without cholecystitis with obstruction	Y	7	207, 208
575.10	Cholecystitis, unspecified	N	7	207, 208
575.11	Chronic cholecystitis	N	7	207, 208
575.12	Acute and chronic cholecystitis	Y	7	207, 208
752.51	Undescended testis	N	12	352
			15	391[1]
752.52	Retractile testis	N	12	352
			15	391[1]
752.61	Hypospadias	N	12	352
752.62	Epispadias	N	12	352
752.63	Congenital chordee	N	12	352
752.64	Micropenis	N	12	352
752.65	Hidden penis	N	12	352
752.69	Other penile anomalies	N	12	352
753.20	Unspecified obstructive defect of renal pelvis and ureter	N	11	331, 332, 333
753.21	Congenital obstruction of ureteropelvic junction	N	11	331, 332, 333
753.22	Congenital obstruction of ureterovesical junction	N	11	331, 332, 333
753.23	Congenital ureterocele	N	11	331, 332, 333
753.29	Obstructive defects of renal pelvis and ureter, not elsewhere classifed	N	11	331, 332, 333
758.81	Other conditions due to sex chromosome anomalies	N	12	352
			13	358, 359, 369
758.89	Other conditions due to chromosome anomalies, not elsewhere classified	N	12	352
			13	358, 359, 369
922.31	Back contusion	N	9	280, 281, 282
			24	484, 485, 486, 487

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
922.32	Buttock contusion	N	9	280, 281, 282
			24	484, 485, 486, 487
922.33	Interscapular region contusion	N	9	280, 281, 282
			24	484, 485, 486, 487
995.50	Child abuse, unspecified	N	21	454, 455
995.51	Child emotional/psychological abuse	N	21	454, 455
995.52	Child neglect (nutritional)	N	21	454, 455
995.53	Child sexual abuse	N	21	454, 455
995.54	Child physical abuse	N	21	454, 455
995.55	Shaken infant syndrome	N	21	454, 455
995.59	Other child abuse and neglect	N	21	454, 455
995.80	Adult maltreatment, unspecified	N	21	454, 455
995.82	Adult emotional/psychological abuse	N	21	454, 455
995.83	Adult sexual abuse	N	21	454, 455
995.84	Adult neglect (nutritional)	N	21	454, 455
995.85	Other adult abuse and neglect	N	21	454, 455
998.11	Hemorrhage complicating a procedure	Y	15	387,[1] 389[1]
			21	452, 453
998.12	Hematoma complicating a procedure	Y	15	387,[1] 389[1]
			21	452, 453
998.13	Seroma complicating a procedure	Y	15	387,[1] 389[1]
			21	452, 453
998.51	Infected postoperative seroma	Y	15	387,[1] 389[1]
			18	418
998.59	Other postoperative infection	Y	15	387,[1] 389[1]
			18	418
998.83	Non-healing surgical wound	Y	21	452, 453
V15.41	History of physical abuse	N	23	467
V15.42	History of emotional abuse	N	23	467
V15.49	Psychological trauma, not elsewhere classified	N	23	467
V61.10	Counseling for marital and partner problems, unspecified	N	23	467
V61.11	Counseling for victim of spousal and partner abuse	N	23	467
V61.12	Counseling for perpetrator of spousal and partner abuse	N	23	467
V61.22	Counseling for perpetrator of parental child abuse	N	23	467
V62.83	Counseling for perpetrator of physical/sexual abuse	N	23	467
V66.7	Encounter for palliative care	N	23	467

[1] Diagnosis code is classified as a ''major problem'' in these DRGs.

TABLE 6B.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
36.17	Abdominal-coronary artery bypass	Y	5	106, 107
39.90	Insertion of non-coronary artery stent or stents	N	.....	
47.01	Laparoscopic appendectomy	Y	6	164, 165, 166, 167
47.09	Other appendectomy	Y	6	164, 165, 166, 167
47.11	Laparoscopic incidental appendectomy	Y	13	365
			21	442, 443
				24
				486
47.19	Other incidental appendectomy	Y	13	365
			21	442, 443
			24	486
51.21	Other partial cholecystectomy	Y	7	195, 196, 197, 198
			17	400, 406,
			17	407
			21	442, 443
			24	486
51.24	Laparoscopic partial cholecystectomy	Y	7	195, 196, 493, 494
			17	400, 406,
			17	407,
			21	442, 443
			24	486
52.84	Autotransplantation of cells of Islets of Langerhans	N	.....	
52.85	Allotransplantation of cells of Islets of Langerhans	N	.....	
52.86	Transplantation of cells of Islets of Langerhans, not otherwise specified	N	.....	
54.51	Laparoscopiclysis of peritoneal adhesions	Y	6	150, 151
			7	201
			13	365

TABLE 6B.—NEW PROCEDURE CODES—Continued

Procedure code	Description	OR	MDC	DRG
			21	442, 443
			24	486
54.59	Otherlys is of peritoneal adhesions	Y	6	150, 151
			7	201
			13	365
			21	442, 443
			24	486
59.03	Laparoscopic lysis of perirenal or periureteral adhesions	Y	11	303, 304, 305
			12	344, 345
			13	365
			17	400
			17	406, 407
			21	442, 443
			24	486
59.12	Laparoscopic lysis of perivesical adhesions	Y	11	308, 309
			12	344, 345
			13	365
			17	400
			17	406, 407
			21	442, 443
			24	486
65.01	Laparoscopic oophorotomy	Y	13	354, 355, 357, 358, 359
65.09	Other oophorotomy	Y	13	354, 355, 357, 358, 359
65.13	Laparoscopic biopsy of ovary	Y	13	354, 355, 357, 358, 359
65.14	Other laparoscopic diagnostic procedures on ovaries	Y	13	354, 355, 357,358, 359
65.23	Laparoscopic marsupialization of ovarian cyst	Y	13	354, 355, 357, 358, 359
65.24	Laparoscopic wedge resection of ovary	Y	10	292, 293
			13	354, 355, 357, 358, 359
65.25	Other laparoscopic local excision or destruction of ovary	Y	13	354, 355, 357, 358, 359
65.31	Laparoscopic unilateral oophorectomy	Y	13	354, 355, 357, 358, 359
65.39	Other unilateral oophorectomy	Y	13	354, 355, 357, 358, 359
65.41	Laparoscopic unilateral salpingo-oophorectomy	Y	13	354, 355, 357, 358, 359
65.49	Other unilateral salpingo-oophorectomy	Y	13	354, 355, 357, 358, 359
65.53	Laparoscopic removal of both ovaries at same operative episode	Y	9	269, 270
			13	354, 355
			13	357, 358, 359
65.54	Laparoscopic removal of remaining ovary	Y	9	269, 270
			13	354, 355,
			13	357, 358, 359
65.63	Laparoscopic removal of both ovaries and tubes at same operative episode	Y	9	269, 270
			13	354, 355,
			13	357, 358, 359
65.64	Laparoscopic removal of remaining ovary and tube	Y	13	354, 355, 357, 358, 359
65.74	Laparoscopic simple suture of ovary	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486
65.75	Laparoscopic reimplantation of ovary	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486
65.76	Laparoscopic salpingo-oophoroplasty	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486

TABLE 6B.—NEW PROCEDURE CODES—Continued

Procedure code	Description	OR	MDC	DRG
65.81	Laparoscopic lysis of adhesions of ovary and fallopian tube	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486
65.89	Other lysis of adhesions of ovary and fallopian tube	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486
68.23	Endometrial ablation	Y	13	354, 355, 357, 358, 359
68.51	Laparoscopically assisted vaginal hysterectomy (LAVH)	Y	13	354, 355,
				13
				357, 358,
				13
				359
			14	375
			22	477
68.59	Other vaginal hysterectomy	Y	13	354, 355,
			13	357, 358,
			13	359
			14	375
			22	477

TABLE 6C.—INVALID DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
291.8	Other specified alcoholic psychosis	Y	20	434, 435, 436, 437
466.1	Acute bronchiolitis	N	4	96, 97, 98
575.1	Other cholecystitis	N	7	207, 208
752.5	Undescended testicle	N	12	352
752.6	Hypospadias and epispadias	N	12	352
753.2	Obstructive defects of renal pelvis and ureter	N	11	331, 332, 333
758.8	Other conditions due to sex chromosome anomalies	N	12	352
			13	358, 359, 369
922.3	Contusion of back	N	9	280, 281,
			9	282
			24	484, 485, 486, 487
995.5	Child maltreatment syndrome	N	21	454, 455
998.1	Hemorrhage or hematoma complicating a procedure	Y	15	387,[1] 389[1]
			21	452, 453
998.5	Postoperative infection	Y	15	387,[1] 389[1]
			18	418
V15.4	Psychological trauma	N	23	467
V61.1	Marital problems	N	23	467

[1] Diagnosis code is classified as a ''major problem'' in these DRGs.

TABLE 6D.—INVALID PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
47.0	Appendectomy	Y	6	164, 165, 166, 167
47.1	Incidental appendectomy	Y	13	365,
			21	442, 443,
			24	486
54.5	Lysis of peritoneal adhesions	Y	6	150, 151,
			7	201
			13	365
			21	442, 443
			24	486
59.01	Ureterolysis with freeing or repositioning of ureter for retroperitoneal fibrosis	Y	11	303, 304,
			11	305
			12	344, 345
			13	365
			17	400, 406,

TABLE 6D.—INVALID PROCEDURE CODES—Continued

Procedure code	Description	OR	MDC	DRG
			17	407
			21	442, 443
			24	486
65.0	Oophorotomy	Y	13	354, 355 357, 358, 359
65.3	Unilateral oophorectomy	Y	13	354, 355 357, 358, 359
65.4	Unilateral salpingo-oophorectomy	Y	13	354, 355, 357, 358, 359
65.8	Lysis of adhesions of ovary and fallopian tube	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486
68.5	Vaginal hysterectomy	Y	13	354, 355,
			13	357, 358,
			13	359
			14	375
			22	477

TABLE 6E.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
414.00	Coronary atherosclerosis of unspecified type of vessel, native or graft	N	5	132, 133
995.81	Adult physical abuse	N	21	454, 455
997.60	Amputation stump complication, unspecified complication	N	8	256
997.61	Amputation stump complication, neuroma of amputation stump	N	8	256
997.62	Amputation stump complication, infection (chronic)	Y	8	256
997.69	Amputation stump complication, not elsewhere classified	N	8	256
V61.20	Counseling for parent-child problem, unspecified	N	23	467
V61.21	Counseling for victim of child abuse	N	23	467
V67.4	Follow-up examination, following treatment of healed fracture	N	23	465, 466

TABLE 6F.—REVISED PROCEDURE CODE TITLES

Procedure code	Description	OR	MDC	DRG
59.11	Other lysis of perivesical adhesions	Y	11	308, 309
			12	344, 345
			13	365
			17	400, 406,
			17	407
			21	442, 443
			24	486
65.51	Other removal of both ovaries at same operative episode	Y	9	269, 270
			13	354, 355
			13	357, 358, 359
65.52	Other removal of remaining ovary	Y	9	269, 270
			13	354, 355
			13	357, 358, 359
65.61	Other removal of both ovaries and tubes at same operative episode	Y	9	269, 270
			13	354, 355,
			13	357, 358, 359
65.62	Other removal of remaining ovary and tube	Y	13	354, 355, 357, 358, 359
65.71	Other simple suture of ovary	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486
65.72	Other reimplantation of ovary	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486
65.73	Other salpingo-oophoroplasty	Y	11	308, 309,
			12	344, 345
			13	365
			17	400, 406,
			17	407
			21	442, 443
			24	486

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST

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CCs that are added to the list are in Table 6G—Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*0011	00844	*00800	00844	*0085	00844	*01133	*01182
00841	00845	00841	00845	00841	00845	4831	4831
00842	00846	00842	00846	00842	00846	*01134	*01183
00843	00847	00843	00847	00843	00847	4831	4831
00844	*0061	00844	*00841	00844	*0088	*01135	*01184
00845	00841	00845	00841	00845	00841	4831	4831
00846	00842	00846	00842	00846	00842	*01136	*01185
00847	00843	00847	00843	00847	00843	4831	4831
*0020	00844	*00801	00844	*00861	00844	*01140	*01186
00841	00845	00841	00845	00841	00845	4831	4831
00842	00846	00842	00846	00842	00846	*01141	*01190
00843	00847	00843	00847	00843	00847	4831	4831
00844	*0062	00844	*00842	00844	*0090	*01142	*01191
00845	00841	00845	00841	00845	00841	4831	4831
00846	00842	00846	00842	00846	00842	*01143	*01192
00847	00843	00847	00843	00847	00843	4831	4831
*0029	00844	*00802	00844	*00862	00844	*01144	*01193
00841	00845	00841	00845	00841	00845	4831	4831
00842	00846	00842	00846	00842	00846	*01145	*01194
00843	00847	00843	00847	00843	00847	4831	4831
00844	*0069	00844	*00843	00844	*01100	*01146	*01195
00845	00841	00845	00841	00845	4831	4831	4831
00846	00842	00846	00842	00846	*01101	*01150	*01196
00847	00843	00847	00843	00847	4831	4831	4831
*0030	00844	*00803	00844	*00863	*01102	*01151	*01200
00841	00845	00841	00845	00841	4831	4831	4831
00842	00846	00842	00846	00842	*01103	*01152	*01201
00843	00847	00843	00847	00843	4831	4831	4831
00844	*0071	00844	*00844	00844	*01104	*01153	*01202
00845	00841	00845	00841	00845	4831	4831	4831
00846	00842	00846	00842	00846	*01105	*01154	*01203
00847	00843	00847	00843	00847	4831	4831	4831
*0049	00844	*00804	00844	*00864	*01106	*01155	*01204
00841	00845	00841	00845	00841	4831	4831	4831
00842	00846	00842	00846	00842	*01110	*01156	*01205
00843	00847	00843	00847	00843	4831	4831	4831
00844	*0072	00844	*00845	00844	*01111	*01160	*01206
00845	00841	00845	00841	00845	4831	4831	4831
00846	00842	00846	00842	00846	*01112	*01161	*01210
00847	00843	00847	00843	00847	4831	4831	4831
*0050	00844	*00809	00844	*00865	*01113	*01162	*01211
00841	00845	00841	00845	00841	4831	4831	4831
00842	00846	00842	00846	00842	*01114	*01163	*01212
00843	00847	00843	00847	00843	4831	4831	4831
00844	*0073	00844	*00846	00844	*01115	*01164	*01213
00845	00841	00845	00841	00845	4831	4831	4831
00846	00842	00846	00842	00846	*01116	*01165	*01214
00847	00843	00847	00843	00847	4831	4831	4831
*0051	00844	*0081	00844	*00866	*01120	*01166	*01215
00841	00845	00841	00845	00841	4831	4831	4831
00842	00846	00842	00846	00842	*01121	*01170	*01216
00843	00847	00843	00847	00843	4831	4831	4831
00844	*0078	00844	*00847	00844	*01122	*01171	*01280
00845	00841	00845	00841	00845	4831	4831	4831
00846	00842	00846	00842	00846	*01123	*01172	*01281
00847	00843	00847	00843	00847	4831	4831	4831
*0052	00844	*0082	00844	*00867	*01124	*01173	*01282
00841	00845	00841	00845	00841	4831	4831	4831
00842	00846	00842	00846	00842	*01125	*01174	*01283
00843	00847	00843	00847	00843	4831	4831	4831
00844	*0079	00844	*00849	00844	*01126	*01175	*01284
00845	00841	00845	00841	00845	4831	4831	4831
00846	00842	00846	00842	00846	*01130	*01176	*01285
00847	00843	00847	00843	00847	4831	4831	4831
*0060	00844	*0083	00844	*00869	*01131	*01180	*01286
00841	00845	00841	00845	00841	4831	4831	4831
00842	00846	00842	00846	00842	*01132	*01181	*01480
00843	00847	00843	00847	00843	4831	4831	00841

00842 4831 29382 29284 *29212 29383 29614 29181
00843 *11285 29383 29289 29181 29384 29634 29189
00844 00841 29384 2929 29189 7105 29644 29384
00845 00842 30300 29381 29384 *29389 29654 *30420
00846 00843 30301 29382 *2922 29181 29664 29181
00847 00844 30302 29383 29181 29189 2980 29189
*01481 00845 30390 29384 29189 29384 2983 29384
00841 00846 30391 30300 29384 *2939 2984 *30421
00842 00847 30392 30301 *29281 29181 29900 29181
00843 *11505 30400 30302 29181 29189 29910 29189
00844 4831 30401 30390 29189 29384 29980 29384
00845 *11515 30402 30391 29384 *2940 29990 *30422
00846 4831 30410 30392 *29282 29181 *30300 29181
00847 *11595 30411 30400 29181 29189 29181 29189
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*30463 29181 29189 29543 *48282 01186 *4841 4831
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*30471 29181 29189 29571 *4830 01200 *4847 4831
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29189 29384 29531 4831 01176 5071 *5061 99813

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99813	*53401	99811	00846	00847	57450	57411	57411
*53161	99811	99812	00847	*56202	57451	57421	57421
99811	99812	99813	*5565	99811	57460	57430	57430
99812	99813	*5550	00841	99812	57461	57431	57431
99813	*53420	00841	00842	99813	57470	57440	57440
*53200	99811	00842	00843	*56203	57471	57441	57441
99811	99812	00843	00844	99811	57490	57450	57450
99812	99813	00844	00845	99812	57491	57451	57451
99813	*53421	00845	00846	99813	5750	57470	57460
*53201	99811	00846	00847	*56212	*57461	57471	57461
99811	99812	00847	*5566	99811	57400	57480	57470
99812	99813	*5551	00841	99812	57401	57481	57471
99813	*53440	00841	00842	99813	57410	57490	57480
*53220	99811	00842	00843	*56213	57411	57491	57481
99811	99812	00843	00844	99811	57421	5750	57490
99812	99813	00844	00845	99812	57430	*57490	57491
99813	*53441	00845	00846	99813	57431	57430	5750
*53221	99811	00846	00847	*5641	57440	57431	57512
99811	99812	00847	*5568	00841	57441	57440	*57512
99812	99813	*5552	00841	00842	57450	57441	57400
99813	*53460	00841	00842	00843	57451	57450	57401
*53240	99811	00842	00843	00844	57460	57451	57410
99811	99812	00843	00844	00845	57461	57470	57411
99812	99813	00844	00845	00846	57470	57471	57421
99813	*53461	00845	00846	00847	57471	57490	57430
*53241	99811	00846	00847	*5693	57490	57491	57431
99811	99812	00847	*5569	99811	57491	*57491	57440
99812	99813	*5559	00841	99812	5750	57430	57441
99813	*53501	00841	00842	99813	*57470	57431	57450
*53260	99811	00842	00843	*56985	57430	57440	57451
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99813	*53531	00845	00846	57471	57430	57470	*5759
*53301	99811	00846	00847	57490	57431	57471	57460
99811	99812	00847	*5571	57491	57440	57480	57461
99812	99813	*5561	00841	*57440	57441	57481	57480
99813	*53541	00841	00842	57470	57450	57490	57481
*53320	99811	00842	00843	57471	57451	57491	57512
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99813	*53551	00845	00846	*57441	57490	57400	57461
*53321	99811	00846	00847	57470	57491	57401	57470
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99813	*53561	00841	00842	57491	57401	57421	57481
*53340	99811	00842	00843	*57450	57410	57430	57490
99811	99812	00843	00844	57470	57411	57431	57491
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99811	00842	00847	*5582	*57451	57440	57451	57461
99812	00843	*5563	00841	57470	57441	57460	57470
99813	00844	00841	00842	57471	57450	57461	57471
*53360	00845	00842	00843	57490	57451	57470	57480
99811	00846	00843	00844	57491	57470	57471	57481
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99813	*5368	00845	00846	57400	57480	57481	57491
*53361	00841	00846	00847	57401	57481	57490	57512
99811	00842	00847	*5589	57410	57490	57491	*5780
99812	00843	*5564	00841	57411	57491	5750	99811
99813	00844	00841	00842	57421	5750	57512	99812
*53400	00845	00842	00843	57430	*57481	*57511	99813

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TABLE 6H.—DELETIONS TO THE CC EXCLUSIONS LIST

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CCs that are deleted from the list are in Table 6H—Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*2910	30502	2918	2918	2918	9981	57421
2918	30530	*30303	*30471	*30563	*53261	57430
*2911	30531	2918	2918	2918	9981	57431
2918	30532	*30390	*30472	*30570	*53300	57440
*2912	30540	2918	2918	2918	9981	57441
2918	30541	*30391	*30473	*30571	*53301	57450
*2913	30542	2918	2918	2918	9981	57451
2918	30550	*30392	*30480	*30572	*53320	5750
*2914	30551	2918	2918	2918	9981	*5780
2918	30552	*30393	*30481	*30573	*53321	9981
*2915	30560	2918	2918	2918	9981	*5781
2918	30561	*30400	*30482	*30580	*53340	9981
*2918	30562	2918	2918	2918	9981	*5789
2910	30570	*30401	*30483	*30581	*53341	9981
2911	30571	2918	2918	2918	9981	*7526
2912	30572	*30402	*30490	*30582	*53360	5970
2913	30590	2918	2918	2918	9981	5981
2914	30591	*30403	*30491	*30583	*53361	5982
2918	30592	2918	2918	2918	9981	5994
2919	*2919	*30410	*30492	*30590	*53400	*7532
2920	2918	2918	2918	2918	9981	5845
29211	*2920	*30411	*30493	*30591	*53401	5846
29212	2918	2918	2918	2918	9981	5847
2922	*29211	*30412	*30500	*30592	*53420	5849
29281	2918	2918	2918	2918	9981	585
29282	*29212	*30413	*30501	*30593	*53421	5996
29283	2918	2918	2918	2918	9981	78820
29284	*2922	*30420	*30502	*4560	*53440	78829
29289	2918	2918	2918	9981	9981	*7724
2929	*29281	*30421	*30503	*45620	*53441	9981
29381	2918	2918	2918	9981	9981	*7903
29382	*29282	*30422	*30520	*53081	*53460	2918
29383	2918	2918	2918	9981	9981	*99791
30300	*29283	*30423	*30521	*53082	*53461	9981
30301	2918	2918	2918	9981	9981	9985
30302	*29284	*30430	*30522	*53083	*53501	*99799
30390	2918	2918	2918	9981	9981	9981
30391	*29289	*30431	*30523	*53089	*53511	9985
30392	2918	2918	2918	9981	9981	*9980
30400	*2929	*30432	*30530	*53100	*53521	9981
30401	2918	2918	2918	9981	9981	*9981
30402	*2930	*30433	*30531	*53101	*53531	9585
30410	2918	2918	2918	9981	9981	9954
30411	*2931	*30440	*30532	*53120	*53541	9980
30412	2918	2918	2918	9981	9981	9981
30420	*29381	*30441	*30533	*53121	*53551	*9985
30421	2918	2918	2918	9981	9981	9985
30422	*29382	*30442	*30540	*53140	*53561	*99881
30440	2918	2918	2918	9981	9981	9981
30441	*29383	*30443	*30541	*53141	*53783	9985
30442	2918	2918	2918	9981	9981	*99889
30450	*29389	*30450	*30542	*53160	*56202	9981
30451	2918	2918	2918	9981	9981	9985
30452	*2939	*30451	*30543	*53161	*56203	*9989
30460	2918	2918	2918	9981	9981	9981
30461	*2940	*30452	*30550	*53200	*56212	9985
30462	2918	2918	2918	9981	9981	
30470	*2941	30453	*30551	*53201	*56213	
30471	2918	2918	2918	9981	9981	
30472	*2948	*30460	*30552	*53220	*5693	
30480	2918	2918	2918	9981	9981	
30481	*2949	*30461	*30553	*53221	*56985	
30482	2918	2918	2918	9981	9981	
30490	*30300	*30462	*30560	*53240	*5751	
30491	2918	2918	2918	9981	57400	
30492	*30301	*30463	*30561	*53241	57401	
30500	2918	2918	2918	9981	57410	
30501	*30302	*30470	*30562	*53260	57411	

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY

[FY95 MEDPAR Update 06/96 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	34442	11.0870	3	4	8	14	23
2	6577	11.5545	3	5	8	14	23
3	1	10.0000	10	10	10	10	10
4	6221	9.1249	2	3	6	11	20
5	100697	4.4155	2	2	3	5	9
6	464	3.4030	1	1	2	4	7
7	11182	12.6678	3	5	8	14	25
8	2377	4.1586	1	1	3	5	9
9	1768	7.6697	2	3	5	9	16
10	20201	7.9723	2	3	6	10	16
11	3044	4.9152	1	2	4	6	10
12	24534	7.6319	2	3	5	9	14
13	6348	6.2098	2	4	5	7	11
14	368912	7.4277	2	3	6	9	14
15	145736	4.4476	1	2	3	5	8
16	12479	6.5732	2	3	5	8	12
17	3377	4.0269	1	2	3	5	7
18	22488	6.3283	2	3	5	8	12
19	7265	4.5076	1	2	4	6	8
20	8354	10.1263	2	4	8	13	20
21	1176	7.8180	2	3	6	10	16
22	2753	4.8554	2	2	4	6	9
23	6038	5.0600	1	2	4	6	10
24	56498	5.8137	2	3	4	7	11
25	23104	3.8625	1	2	3	5	7
26	48	4.5625	1	2	3	6	10
27	3729	6.3130	1	1	4	7	14
28	11872	7.0601	1	3	5	8	14
29	3959	4.0354	1	2	3	5	8
31	3381	5.4590	1	2	4	6	10
32	1848	3.1483	1	1	2	4	6
34	17083	6.4969	2	3	5	8	13
35	3832	4.3072	1	2	3	5	8
36	9404	1.6325	1	1	1	2	3
37	1995	4.0551	1	1	3	5	8
38	246	2.6098	1	1	2	3	5
39	3436	1.9744	1	1	1	2	4
40	2958	3.3966	1	1	2	4	7
42	7697	2.2076	1	1	1	2	5
43	105	4.1524	1	2	3	5	8
44	1705	5.7238	2	3	5	7	10
45	2545	3.8310	1	2	3	5	7
46	3116	5.5209	1	2	4	7	10
47	1417	3.7890	1	1	3	5	7
49	2260	5.6518	1	2	4	7	11
50	3511	2.1191	1	1	2	2	3
51	323	2.9195	1	1	1	2	7
52	84	3.5357	1	1	2	3	8
53	3546	3.5491	1	1	2	4	8
54	2	4.0000	1	1	7	7	7
55	2035	2.9666	1	1	2	3	6
56	766	2.7454	1	1	2	3	6
57	677	4.0694	1	1	3	5	8
59	94	3.6064	1	1	2	4	7
60	3	1.0000	1	1	1	1	1
61	226	5.1372	1	1	2	7	14
62	1	2.0000	2	2	2	2	2
63	4238	4.6487	1	2	3	5	10
64	3550	7.5346	1	2	5	9	16
65	30917	3.4293	1	2	3	4	6
66	6878	3.5650	1	2	3	4	6
67	532	4.1992	2	2	3	5	8
68	10392	4.7941	2	3	4	6	9
69	3353	3.7739	1	2	3	5	7
70	32	2.9375	1	2	3	3	5
71	96	4.0313	1	2	3	5	8
72	612	4.4167	1	2	3	5	9
73	6332	4.9588	1	2	4	6	9
75	41590	11.1419	4	6	8	14	22
76	40960	12.4911	3	6	10	15	24

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
77	2446	5.5200	1	2	4	8	12
78	30530	8.2292	4	5	7	10	13
79	220024	9.2606	3	5	7	11	17
80	9456	6.6214	2	4	5	8	12
81	10	7.4000	1	4	6	12	15
82	72211	7.8884	2	3	6	10	16
83	7541	6.3896	2	3	5	8	12
84	1582	3.6846	1	2	3	5	7
85	19391	7.3326	2	3	6	9	14
86	1444	4.5062	1	2	4	6	9
87	62143	6.8199	1	3	6	9	13
88	368008	6.0847	2	3	5	7	11
89	442736	7.0834	3	4	6	9	12
90	43190	5.1359	2	3	4	6	9
91	53	4.4151	1	2	3	6	8
92	12548	7.2620	2	4	6	9	13
93	1332	4.9234	1	3	4	6	9
94	13242	7.0497	2	3	5	9	14
95	1458	4.1221	1	2	3	5	8
96	65710	5.5228	2	3	5	7	10
97	27798	4.2826	2	2	4	5	7
98	20	4.3000	1	1	3	6	10
99	26552	3.4947	1	2	3	4	7
100	10746	2.4205	1	1	2	3	4
101	20899	5.1925	1	2	4	7	10
102	4669	3.1371	1	1	2	4	6
103	487	39.8973	10	15	29	54	82
104	24152	14.5670	6	8	12	18	26
105	20847	10.9617	5	7	9	13	19
106	101038	11.7331	6	8	10	14	19
107	64206	8.8424	5	6	7	10	14
108	6883	12.5720	4	7	10	15	23
110	62140	10.7845	3	6	9	13	20
111	6119	6.6568	3	5	7	8	10
112	201028	4.7049	1	2	4	6	9
113	47381	14.3687	4	6	10	17	28
114	9250	9.4685	2	4	7	12	18
115	11017	11.4341	4	6	9	14	20
116	85879	5.4281	1	2	4	7	11
117	4837	4.1211	1	1	2	5	8
118	7120	3.2142	1	1	2	4	7
119	1791	5.5366	1	1	3	7	13
120	42743	9.1977	1	2	6	12	21
121	167116	7.4255	2	4	6	9	13
122	91508	5.0063	1	3	5	7	9
123	48692	4.6628	1	1	2	6	11
124	145526	4.9010	1	2	4	6	9
125	62240	3.0708	1	1	2	4	6
126	4864	14.0113	4	7	11	17	29
127	705511	6.2183	2	3	5	8	12
128	20583	6.7301	3	4	6	8	11
129	4847	3.5251	1	1	1	4	8
130	96345	6.6835	2	4	6	8	12
131	26865	5.1799	1	3	5	7	8
132	133374	3.5805	1	2	3	4	6
133	6162	2.9761	1	1	2	4	5
134	30025	3.9084	1	2	3	5	7
135	7497	4.9941	1	2	4	6	9
136	1079	3.2586	1	2	3	4	6
138	205732	4.5589	1	2	3	6	9
139	70666	2.9401	1	1	2	4	5
140	184595	3.4847	1	2	3	4	6
141	80056	4.4979	1	2	3	5	8
142	37589	3.2040	1	2	3	4	6
143	138969	2.6105	1	1	2	3	5
144	70455	5.7021	1	2	4	7	11
145	7063	3.2390	1	1	2	4	6
146	9116	11.2399	6	7	9	13	18
147	1716	7.3462	4	6	7	9	11
148	147240	13.4390	6	8	11	16	24

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
149	16479	7.7172	4	6	7	9	11
150	23661	11.7462	4	7	10	14	21
151	4727	6.4637	2	4	6	8	11
152	4681	9.0305	4	6	8	10	15
153	1810	6.1663	3	4	6	8	9
154	37523	14.9701	5	8	12	18	28
155	4800	5.8863	2	3	5	8	10
156	4	15.7500	4	4	10	22	27
157	11976	5.8075	1	2	4	7	11
158	5338	2.9039	1	1	2	4	6
159	18014	5.3347	1	2	4	7	10
160	10461	2.9524	1	1	2	4	5
161	15500	4.3536	1	2	3	5	9
162	8397	2.1870	1	1	2	3	4
163	8	3.0000	1	1	3	4	5
164	5240	9.3945	4	6	8	11	16
165	1757	5.7518	3	4	5	7	9
166	3440	5.7122	2	3	4	7	10
167	2409	3.2333	1	2	3	4	6
168	1870	4.9610	1	2	3	6	10
169	1091	2.5371	1	1	2	3	5
170	13152	12.4993	2	5	9	15	25
171	1205	5.4008	1	2	4	7	11
172	32440	8.1497	2	3	6	10	16
173	2286	4.3994	1	2	3	5	9
174	243520	5.5478	2	3	4	7	10
175	24208	3.5122	1	2	3	4	6
176	16840	6.1428	2	3	5	7	11
177	12619	4.9756	2	3	4	6	9
178	4386	3.6147	1	2	3	5	7
179	11791	7.1640	2	4	6	9	14
180	82971	6.0508	2	3	5	7	11
181	23209	3.9601	1	2	3	5	7
182	237577	4.9658	2	2	4	6	9
183	75774	3.4541	1	2	3	4	6
184	77	3.8831	1	2	2	4	7
185	4037	5.1850	1	2	4	6	10
186	2	1.5000	1	1	2	2	2
187	944	4.2108	1	2	3	6	8
188	64209	6.1263	2	3	5	8	12
189	8146	3.6866	1	1	3	5	7
190	68	5.0882	1	2	4	7	10
191	11098	16.2616	5	8	12	20	32
192	930	7.9161	2	4	7	10	14
193	8975	13.9348	5	8	11	17	25
194	847	8.4652	3	5	7	10	15
195	9686	10.4650	4	6	9	12	18
196	845	6.7136	3	4	6	8	11
197	29491	9.1586	4	5	7	11	16
198	8311	4.9344	2	3	4	6	8
199	2348	11.1661	3	5	9	14	22
200	1655	12.3329	2	4	8	15	26
201	1557	16.7534	4	7	13	21	34
202	26477	7.7437	2	3	6	10	15
203	30205	7.6570	2	3	6	10	15
204	51448	6.7152	2	3	5	8	13
205	22675	7.2389	2	3	5	9	14
206	1783	4.7196	1	2	4	6	10
207	37006	5.7262	2	3	4	7	11
208	10751	3.5105	1	2	3	4	6
209	344259	6.6642	3	4	6	7	10
210	138205	8.5738	4	5	7	10	14
211	26619	6.2716	3	4	6	7	10
212	9	5.0000	2	3	4	5	8
213	7164	9.7067	3	4	7	12	19
214	53836	6.4605	2	3	5	8	12
215	43190	3.6846	1	2	3	5	7
216	6760	11.0719	2	5	8	14	22
217	20436	15.3636	3	6	10	18	31
218	23224	6.2155	2	3	5	7	11

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
219	19076	3.7567	1	2	3	5	6
220	2	5.5000	5	5	6	6	6
221	5227	8.1037	2	4	6	10	16
222	3750	4.0496	1	2	3	5	8
223	19410	2.8704	1	1	2	3	5
224	8378	2.2731	1	1	2	3	4
225	6594	5.0059	1	2	3	6	11
226	5651	6.7383	1	2	4	8	14
227	4846	2.9610	1	1	2	4	6
228	3199	3.5261	1	1	2	4	7
229	1427	2.4043	1	1	2	3	5
230	2578	5.2002	1	2	3	6	11
231	10890	5.0626	1	2	3	6	11
232	602	4.4651	1	1	2	5	10
233	4808	9.0422	2	4	7	11	18
234	2363	4.1727	1	2	3	5	8
235	5827	6.7833	1	3	4	7	13
236	39844	6.2907	2	3	5	7	12
237	1586	4.4067	1	2	3	5	8
238	7925	10.0430	3	5	7	12	19
239	62430	7.6248	2	4	6	9	14
240	12701	7.5282	2	3	5	9	15
241	3183	4.5922	1	2	4	5	9
242	2644	7.6539	2	4	6	9	15
243	84034	5.6150	2	3	4	7	10
244	12036	5.8284	2	3	4	7	11
245	4477	4.3044	1	2	3	5	8
246	1391	4.6161	1	2	4	6	9
247	11132	3.9656	1	2	3	5	8
248	7135	5.2685	1	2	4	6	10
249	10593	4.2878	1	1	3	5	9
250	3359	5.0473	1	2	4	6	9
251	2228	3.3039	1	1	3	4	6
252	1	1.0000	1	1	1	1	1
253	18452	5.8248	2	3	4	7	11
254	9735	3.8817	1	2	3	5	7
255	1	2.0000	2	2	2	2	2
256	4819	5.6921	1	2	4	7	11
257	24829	3.4343	1	2	3	4	6
258	19718	2.4910	1	2	2	3	4
259	4225	3.5089	1	1	2	3	7
260	5083	1.8702	1	1	2	2	3
261	2489	2.3403	1	1	2	3	4
262	749	3.9439	1	1	2	5	8
263	30581	13.9228	4	6	10	16	28
264	3723	8.3503	2	4	6	10	17
265	4517	7.6810	1	3	5	9	16
266	2850	3.7140	1	1	3	5	8
267	238	4.3361	1	1	3	5	9
268	983	4.0651	1	1	2	4	9
269	10745	9.2352	2	4	7	12	19
270	3643	3.4161	1	1	2	4	8
271	22531	8.5207	3	4	7	10	15
272	6142	7.4650	2	3	6	9	14
273	1500	5.4860	2	2	4	7	11
274	2654	7.7939	2	3	5	9	16
275	258	3.6705	1	1	2	4	8
276	928	5.0151	1	2	4	6	9
277	82879	6.7243	3	4	5	8	12
278	27272	5.1610	2	3	4	6	9
279	6	4.1667	1	2	3	4	4
280	13880	5.0710	1	2	4	6	9
281	6277	3.6108	1	2	3	4	7
283	5522	5.4681	2	2	4	7	10
284	1841	3.8403	1	2	3	5	7
285	5132	13.6613	3	6	10	16	26
286	2035	8.6993	3	4	6	9	16
287	6605	13.3889	3	6	9	16	26
288	1020	6.8824	3	4	5	7	11
289	5276	3.9780	1	2	2	4	8

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
290	8909	2.8289	1	1	2	3	5
291	91	1.7692	1	1	1	2	3
292	5308	12.7491	2	5	9	16	25
293	310	6.7935	1	3	5	8	14
294	90532	5.6749	2	3	4	7	10
295	3894	4.2766	1	2	3	5	8
296	230295	6.3598	2	3	5	8	12
297	33134	4.2911	1	2	3	5	8
298	108	3.3796	1	1	2	4	6
299	927	5.4132	1	2	4	7	10
300	14815	7.2798	2	3	6	9	14
301	2247	4.3796	1	2	3	5	9
302	8314	12.3018	6	7	9	14	21
303	19404	10.2201	4	6	8	12	18
304	13543	10.2916	3	5	7	13	21
305	2681	4.9276	1	3	4	6	9
306	11853	6.2378	2	2	4	8	13
307	2696	2.9841	1	2	2	3	5
308	9573	7.0330	1	2	5	9	15
309	3563	3.0230	1	1	2	4	6
310	30025	4.6157	1	2	3	6	9
311	10221	2.1764	1	1	2	3	4
312	2120	4.8198	1	2	3	6	10
313	788	2.2855	1	1	2	3	5
314	1	5.0000	5	5	5	5	5
315	29516	9.3027	1	2	6	12	20
316	73804	7.4996	2	3	6	9	15
317	838	2.9033	1	1	2	3	6
318	6303	7.1525	2	3	5	9	14
319	522	3.2184	1	1	2	4	7
320	177322	6.4439	2	3	5	8	11
321	26732	4.7118	2	3	4	6	8
322	87	4.3333	2	2	4	5	8
323	18552	3.5564	1	2	3	4	7
324	9159	2.0887	1	1	2	3	4
325	7781	4.5729	1	2	3	5	9
326	2305	3.4265	1	1	2	4	6
327	9	3.3333	1	2	2	4	5
328	853	4.2579	1	2	3	6	8
329	113	2.7965	1	1	2	3	5
330	1	1.0000	1	1	1	1	1
331	40267	6.1796	2	3	5	8	12
332	4973	3.8520	1	2	3	5	8
333	379	5.7968	1	3	4	7	13
334	19978	6.0539	3	4	5	7	9
335	10312	4.6223	2	3	4	6	7
336	63889	4.1249	1	2	3	5	8
337	40544	2.6722	1	2	2	3	4
338	5063	5.2558	1	2	3	6	11
339	2416	5.2562	1	2	3	6	11
340	2	3.0000	1	1	5	5	5
341	6766	3.2573	1	1	2	4	6
342	231	4.0649	1	1	2	5	8
344	4022	3.4510	1	1	2	4	7
345	1428	4.0210	1	2	3	5	9
346	5626	6.7600	1	3	5	8	14
347	443	3.2889	1	1	2	4	7
348	3187	4.8892	1	2	4	6	9
349	734	2.9646	1	1	2	4	6
350	7234	4.7432	2	3	4	6	8
352	603	3.9005	1	1	3	5	8
353	2743	8.3252	3	4	6	9	15
354	10187	6.3342	3	4	5	7	11
355	5884	3.8600	2	3	4	4	6
356	30093	3.0252	1	2	3	4	5
357	6842	9.8297	4	5	8	12	18
358	28152	4.7532	2	3	4	5	8
359	28825	3.2709	2	3	3	4	5
360	17592	3.5444	1	2	3	4	6
361	655	3.4580	1	1	2	4	7

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
363	4555	3.5139	1	2	2	3	6
364	1879	3.6003	1	1	2	4	8
365	2522	8.1257	2	3	5	10	18
366	4694	7.6877	2	3	5	10	16
367	571	3.3135	1	1	2	4	7
368	2408	6.9049	2	3	5	8	13
369	2531	3.7246	1	1	3	5	7
370	1201	5.5679	3	3	4	5	9
371	1044	3.6236	2	3	3	4	5
372	872	3.3601	1	2	2	3	6
373	3961	1.9258	1	1	2	2	3
374	141	2.5957	1	2	2	3	4
375	5	2.2000	1	1	2	3	4
376	164	3.3537	1	1	2	4	7
377	27	3.2963	1	1	2	3	8
378	172	2.9186	1	2	3	3	5
379	332	3.0361	1	1	2	3	5
380	75	2.2800	1	1	2	2	4
381	209	2.2967	1	1	1	2	5
382	54	1.5741	1	1	1	1	3
383	1557	4.0873	1	2	3	5	8
384	135	3.1481	1	1	1	2	7
385	4	13.5000	1	1	1	3	49
386	1	36.0000	36	36	36	36	36
389	23	10.7391	3	4	8	10	18
390	11	4.7273	1	2	3	5	9
392	2622	11.6484	4	6	8	14	24
394	1734	7.9862	1	2	5	9	16
395	69281	5.3835	1	2	4	7	10
396	19	3.7895	1	1	3	5	8
397	16238	6.0846	2	3	5	7	12
398	17490	6.5883	2	3	5	8	12
399	1505	4.4399	1	2	4	6	8
400	7877	10.4160	2	4	7	13	23
401	6683	12.3822	2	5	9	16	25
402	1621	4.7218	1	1	3	6	10
403	36569	9.2960	2	4	7	12	19
404	4137	5.1047	1	2	4	7	10
406	3407	11.2548	3	5	8	14	23
407	761	4.9304	1	2	4	6	9
408	3100	8.1632	1	2	5	10	18
409	5931	6.7132	2	3	4	6	15
410	89997	3.3583	1	2	3	4	5
411	58	2.6724	1	1	2	3	7
412	37	2.9730	1	1	2	4	5
413	8878	8.3323	2	3	6	10	17
414	845	5.1361	1	2	4	7	11
415	40783	15.7224	4	7	12	19	31
416	201554	8.2165	2	4	7	10	15
417	54	4.5741	1	2	4	7	10
418	19614	6.7661	2	3	5	8	13
419	16484	5.6830	2	3	4	7	10
420	3023	4.3126	2	2	4	5	8
421	12216	4.6523	2	2	4	5	8
422	97	3.8041	1	2	3	4	7
423	9588	8.7110	2	4	6	10	18
424	2102	17.9139	3	6	12	20	35
425	16010	4.8731	1	2	3	6	10
426	4920	5.5150	1	2	4	7	11
427	1856	5.2333	1	2	4	6	11
428	956	8.3347	1	3	5	10	18
429	40733	8.9700	2	3	6	10	17
430	55753	9.7545	2	4	7	12	19
431	200	7.1500	1	3	5	9	13
432	457	6.5252	1	2	4	6	11
433	8283	3.4066	1	1	2	4	7
434	21933	5.8212	2	3	4	7	11
435	16378	4.8060	1	3	4	6	8
436	3128	14.3744	4	8	14	21	28
437	14927	10.8952	4	6	10	14	20

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
439	910	8.9264	2	3	6	11	18
440	5007	9.8354	2	3	6	12	21
441	648	4.4213	1	1	2	4	8
442	14653	8.7421	1	3	6	11	18
443	3469	3.5509	1	1	2	5	7
444	3543	5.2882	1	3	4	6	10
445	1415	3.9046	1	2	3	5	7
446	1	1.0000	1	1	1	1	1
447	3991	2.8013	1	1	2	3	5
448	88	1.0000	1	1	1	1	1
449	30264	4.4273	1	2	3	5	9
450	7178	2.3403	1	1	2	3	5
451	8	6.0000	2	3	4	5	7
452	20326	5.4275	1	2	4	6	11
453	3831	3.1929	1	1	2	4	6
454	5391	5.1330	1	2	3	6	10
455	1181	2.8442	1	1	2	3	5
456	213	8.3803	1	1	4	9	21
457	135	4.8222	1	1	2	5	12
458	1650	16.8358	3	7	13	22	35
459	582	10.2887	2	4	7	13	21
460	2437	6.6422	1	3	5	8	13
461	3230	4.8920	1	1	2	5	12
462	9786	13.7570	4	6	12	18	26
463	12587	5.1722	1	2	4	6	10
464	3225	3.7479	1	2	3	5	7
465	202	3.8762	1	1	2	4	7
466	1943	4.8101	1	1	2	4	10
467	1820	4.1264	1	1	2	4	8
468	62094	15.2184	3	7	12	19	30
471	9604	8.0717	4	5	6	9	14
472	159	30.1635	1	9	28	40	61
473	8650	14.3808	2	4	8	21	36
475	94974	12.1639	2	5	10	16	24
476	7275	13.8367	3	7	11	17	25
477	29790	8.9095	1	3	6	11	18
478	123960	8.3140	1	3	6	10	17
479	18606	4.5577	1	2	4	6	9
480	43	33.5581	12	16	24	39	61
481	122	36.2787	21	25	31	42	60
482	7121	14.8666	5	8	11	17	28
483	38597	45.9566	15	23	37	56	85
484	366	15.8115	2	6	12	22	32
485	3426	11.6985	4	6	9	14	22
486	2316	13.4473	1	6	11	18	28
487	4136	8.9350	1	3	7	11	18
488	1694	17.6251	5	8	13	22	35
489	18721	10.4348	2	4	7	13	22
490	5263	6.5565	1	2	4	8	14
491	9897	4.2698	2	3	3	5	7
492	2139	17.3703	3	5	10	28	37
493	54769	5.8892	1	2	5	8	11
494	28573	2.4247	1	1	2	3	5
495	131	22.7176	10	12	17	26	39
	11135858						

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY

[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	34442	11.0870	3	4	8	14	23
2	6577	11.5545	3	5	8	14	23
3	1	10.0000	10	10	10	10	10
4	6221	9.1249	2	3	6	11	20
5	100697	4.4155	2	2	3	5	9
6	464	3.4030	1	1	2	4	7

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
7	11326	12.5507	2	5	8	14	25
8	2651	3.8989	1	1	2	5	9
9	1768	7.6697	2	3	5	9	16
10	20201	7.9723	2	3	6	10	16
11	3044	4.9152	1	2	4	6	10
12	24534	7.6319	2	3	5	9	14
13	6348	6.2098	2	4	5	7	11
14	368912	7.4277	2	3	6	9	14
15	145736	4.4476	1	2	3	5	8
16	12480	6.5737	2	3	5	8	12
17	3376	4.0243	1	2	3	5	7
18	23963	6.3732	2	3	5	8	12
19	7792	4.5249	1	2	4	6	8
20	6352	11.2835	3	5	9	15	22
21	1176	7.8180	2	3	6	10	16
22	2753	4.8554	2	2	4	6	9
23	6038	5.0600	1	2	4	6	10
24	56509	5.8142	2	3	4	7	11
25	23093	3.8603	1	2	3	5	7
26	48	4.5625	1	2	3	6	10
27	3729	6.3130	1	1	4	7	14
28	11873	7.0603	1	3	5	8	14
29	3958	4.0341	1	2	3	5	8
31	3382	5.4595	1	2	4	6	10
32	1847	3.1462	1	1	2	4	6
34	17085	6.4968	2	3	5	8	13
35	3830	4.3065	1	2	3	5	8
36	9404	1.6325	1	1	1	2	3
37	1994	4.0341	1	1	3	5	8
38	246	2.6098	1	1	2	3	5
39	3436	1.9744	1	1	1	2	4
40	2958	3.3966	1	1	2	4	7
42	7697	2.2076	1	1	1	2	5
43	105	4.1524	1	2	3	5	8
44	1705	5.7238	2	3	5	7	10
45	2545	3.8310	1	2	3	5	7
46	3117	5.5201	1	2	4	7	10
47	1416	3.7895	1	1	3	5	7
49	2260	5.6518	1	2	4	7	11
50	3511	2.1191	1	1	2	2	3
51	323	2.9195	1	1	1	2	7
52	100	3.3600	1	1	2	3	7
53	3624	3.5566	1	1	2	4	8
54	2	4.0000	1	1	7	7	7
55	2035	2.9666	1	1	2	3	6
56	766	2.7454	1	1	2	3	6
57	637	4.1334	1	1	3	5	8
59	94	3.6064	1	1	2	4	7
60	3	1.0000	1	1	1	1	1
61	226	5.1372	1	1	2	7	14
62	1	2.0000	2	2	2	2	2
63	4238	4.6487	1	2	3	5	10
64	3550	7.5346	1	2	5	9	16
65	30917	3.4293	1	2	3	4	6
66	6878	3.5650	1	2	3	4	6
67	532	4.1992	2	2	3	5	8
68	10400	4.7953	2	3	4	6	9
69	3345	3.7677	1	2	3	5	7
70	32	2.9375	1	2	3	3	5
71	96	4.0313	1	2	3	5	8
72	612	4.4167	1	2	3	5	9
73	6332	4.9588	1	2	4	6	9
75	41590	11.1419	4	6	8	14	22
76	40962	12.4917	3	6	10	15	24
77	2444	5.5041	1	2	4	8	12
78	30530	8.2292	4	5	7	10	13
79	220099	9.2617	3	5	7	11	17
80	9381	6.5760	2	4	5	8	12
81	10	7.4000	1	4	6	12	15
82	72211	7.8884	2	3	6	10	16

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
83	7541	6.3896	2	3	5	8	12
84	1582	3.6846	1	2	3	5	7
85	19393	7.3333	2	3	6	9	14
86	1442	4.4938	1	2	4	6	9
87	62143	6.8199	1	3	6	9	13
88	368008	6.0847	2	3	5	7	11
89	442908	7.0843	3	4	6	9	12
90	43018	5.1184	2	3	4	6	9
91	53	4.4151	1	2	3	6	8
92	12552	7.2631	2	4	6	9	13
93	1328	4.9059	1	3	4	6	9
94	13243	7.0498	2	3	5	9	14
95	1457	4.1187	1	2	3	5	8
96	65750	5.5233	2	3	5	7	10
97	27758	4.2796	2	2	4	5	7
98	20	4.3000	1	1	3	6	10
99	26556	3.4948	1	2	3	4	7
100	10742	2.4197	1	1	2	3	4
101	20903	5.1927	1	2	4	7	10
102	4665	3.1346	1	1	2	4	6
103	487	39.8973	10	15	29	54	82
104	24152	14.5670	6	8	12	18	26
105	20847	10.9617	5	7	9	13	19
106	101038	11.7331	6	8	10	14	19
107	64206	8.8424	5	6	7	10	14
108	6883	12.5720	4	7	10	15	23
110	62161	10.7839	3	6	9	13	20
111	6098	6.6496	3	5	6	8	10
112	201028	4.7049	1	2	4	6	9
113	47381	14.3687	4	6	10	17	28
114	9250	9.4685	2	4	7	12	18
115	11017	11.4341	4	6	9	14	20
116	85879	5.4281	1	2	4	7	11
117	4837	4.1211	1	1	2	5	8
118	7120	3.2142	1	1	2	4	7
119	1791	5.5366	1	1	3	7	13
120	42743	9.1977	1	2	6	12	21
121	167116	7.4255	2	4	6	9	13
122	91508	5.0063	1	3	5	7	9
123	48692	4.6628	1	1	2	6	11
124	145526	4.9010	1	2	4	6	9
125	62240	3.0708	1	1	2	4	6
126	4864	14.0113	4	7	11	17	29
127	705511	6.2183	2	3	5	8	12
128	20583	6.7301	3	4	6	8	11
129	4847	3.5251	1	1	1	4	8
130	96377	6.6838	2	4	6	8	12
131	26833	5.1772	1	3	5	7	8
132	133378	3.5806	1	2	3	4	6
133	6158	2.9737	1	1	2	4	5
134	30025	3.9084	1	2	3	5	7
135	7497	4.9941	1	2	4	6	9
136	1079	3.2586	1	2	3	4	6
138	205779	4.5592	1	2	3	6	9
139	70619	2.9382	1	1	2	4	5
140	184595	3.4847	1	2	3	4	6
141	80072	4.4984	1	2	3	5	8
142	37573	3.2025	1	2	3	4	6
143	138969	2.6105	1	1	2	3	5
144	70462	5.7020	1	2	4	7	11
145	7056	3.2372	1	1	2	4	6
146	9120	11.2398	6	7	9	13	18
147	1712	7.3376	4	6	7	9	11
148	147283	13.4382	6	8	11	16	24
149	16436	7.7095	4	6	7	9	11
150	23670	11.7463	4	7	10	14	21
151	4718	6.4532	2	4	6	8	11
152	4688	9.0299	4	6	8	10	15
153	1803	6.1570	3	4	6	8	9
154	37530	14.9694	5	8	12	18	28

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
155	4793	5.8782	2	3	5	8	10
156	4	15.7500	4	4	10	22	27
157	11982	5.8109	1	2	4	7	11
158	5332	2.8931	1	1	2	4	6
159	18017	5.3350	1	2	4	7	10
160	10458	2.9512	1	1	2	4	5
161	15509	4.3541	1	2	3	5	9
162	8388	2.1838	1	1	2	3	4
163	8	3.0000	1	1	3	4	5
164	5242	9.3937	4	6	8	11	16
165	1755	5.7499	3	4	5	7	9
166	3444	5.7134	2	3	4	7	10
167	2405	3.2274	1	2	3	4	5
168	1837	4.9559	1	2	3	6	10
169	1070	2.5421	1	1	2	3	5
170	13155	12.5003	2	5	9	15	25
171	1202	5.3719	1	2	4	7	11
172	32447	8.1498	2	3	6	10	16
173	2279	4.3857	1	2	3	5	9
174	243715	5.5466	2	3	4	7	10
175	24013	3.5080	1	2	3	4	6
176	16840	6.1428	2	3	5	7	11
177	12681	4.9738	2	3	4	6	9
178	4324	3.6004	1	2	3	5	7
179	11791	7.1640	2	4	6	9	14
180	83016	6.0517	2	3	5	7	11
181	23164	3.9529	1	2	3	5	7
182	237845	4.9666	2	2	4	6	9
183	75506	3.4460	1	2	3	4	6
184	77	3.8831	1	2	2	4	7
185	4037	5.1850	1	2	4	6	10
186	2	1.5000	1	1	2	2	2
187	944	4.2108	1	2	3	6	8
188	64238	6.1261	2	3	5	8	12
189	8117	3.6789	1	1	3	5	7
190	68	5.0882	1	2	4	7	10
191	11104	16.2586	5	8	12	20	32
192	924	7.8983	2	4	7	9	14
193	8979	13.9328	5	8	11	17	25
194	843	8.4603	3	5	7	10	15
195	9690	10.4638	4	6	9	12	18
196	841	6.7099	3	4	6	8	11
197	29506	9.1575	4	5	7	11	16
198	8296	4.9306	2	3	4	6	8
199	2348	11.1661	3	5	9	14	22
200	1655	12.3329	2	4	8	15	26
201	1557	16.7534	4	7	13	21	34
202	26477	7.7437	2	3	6	10	15
203	30205	7.6570	2	3	6	10	15
204	51448	6.7152	2	3	5	8	13
205	22678	7.2389	2	3	5	9	14
206	1780	4.7163	1	2	4	6	10
207	37033	5.7267	2	3	4	7	11
208	10724	3.5030	1	2	3	4	6
209	344259	6.6642	3	4	6	7	10
210	138220	8.5746	4	5	7	10	14
211	26604	6.2664	3	4	6	7	10
212	9	5.0000	2	3	4	5	8
213	7164	9.7067	3	4	7	12	19
214	53845	6.4613	2	3	5	8	12
215	43181	3.6830	1	2	3	5	7
216	6760	11.0719	2	5	8	14	22
217	20436	15.3636	3	6	10	18	31
218	23230	6.2178	2	3	5	7	11
219	19070	3.7531	1	2	3	5	6
220	2	5.5000	5	5	6	6	6
221	5230	8.1076	2	4	6	10	16
222	3747	4.0408	1	2	3	5	8
223	19412	2.8709	1	1	2	3	5
224	8377	2.2724	1	1	2	3	4

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
225	6594	5.0059	1	2	3	6	11
226	5654	6.7386	1	2	4	8	14
227	4843	2.9583	1	1	2	4	6
228	3200	3.5291	1	1	2	4	7
229	1426	2.3969	1	1	2	3	5
230	2578	5.2002	1	2	3	6	11
231	10890	5.0626	1	2	3	6	11
232	601	4.4609	1	1	2	4	10
233	4811	9.0518	2	4	7	11	18
234	2360	4.1470	1	2	3	5	8
235	5827	6.7833	1	3	4	7	13
236	39844	6.2907	2	3	5	7	12
237	1586	4.4067	1	2	3	5	8
238	7925	10.0430	3	5	7	12	19
239	62429	7.6246	2	4	6	9	14
240	12705	7.5277	2	3	5	9	15
241	3179	4.5908	1	2	4	5	9
242	2644	7.6539	2	4	6	9	15
243	84034	5.6150	2	3	4	7	10
244	12041	5.8294	2	3	4	7	11
245	4472	4.3001	1	2	3	5	8
246	1391	4.6161	1	2	4	6	9
247	11132	3.9656	1	2	3	5	8
248	7135	5.2685	1	2	4	6	10
249	10593	4.2878	1	1	3	5	9
250	3360	5.0461	1	2	3	6	9
251	2227	3.3049	1	1	3	4	6
252	1	1.0000	1	1	1	1	1
253	18457	5.8264	2	3	4	7	11
254	9730	3.8776	1	2	3	5	7
255	1	2.0000	2	2	2	2	2
256	4819	5.6921	1	2	4	7	11
257	24832	3.4341	1	2	3	4	6
258	19715	2.4910	1	2	2	3	4
259	4225	3.5089	1	1	2	3	7
260	5083	1.8702	1	1	2	2	3
261	2489	2.3403	1	1	2	3	4
262	749	3.9439	1	1	2	5	8
263	30590	13.9231	4	6	10	16	28
264	3714	8.3341	2	4	6	10	16
265	4518	7.6835	1	3	5	9	16
266	2849	3.7087	1	1	3	5	8
267	238	4.3361	1	1	3	5	9
268	983	4.0651	1	1	2	4	9
269	10750	9.2391	2	4	7	12	19
270	3638	3.3966	1	1	2	4	8
271	22531	8.5207	3	4	7	10	15
272	6144	7.4653	2	3	6	9	14
273	1498	5.4820	2	2	4	7	11
274	2654	7.7939	2	3	5	9	16
275	258	3.6705	1	1	2	4	8
276	928	5.0151	1	2	4	6	9
277	82941	6.7266	3	4	5	8	12
278	27210	5.1505	2	3	4	6	9
279	6	4.1667	1	2	3	4	4
280	13881	5.0709	1	2	4	6	9
281	6276	3.6109	1	2	3	4	7
283	5523	5.4677	2	2	4	7	10
284	1840	3.8408	1	2	3	5	7
285	5132	13.6613	3	6	10	16	26
286	2035	8.6993	3	4	6	9	16
287	6605	13.3889	3	6	9	16	26
288	1020	6.8824	3	4	5	7	11
289	5276	3.9780	1	2	2	4	8
290	8909	2.8289	1	1	2	3	5
291	91	1.7692	1	1	1	2	3
292	5308	12.7491	2	5	9	16	25
293	310	6.7935	1	3	5	8	14
294	90532	5.6749	2	3	4	7	10
295	3894	4.2766	1	2	3	5	8

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
296	230483	6.3598	2	3	5	8	12
297	32946	4.2799	1	2	3	5	8
298	108	3.3796	1	1	2	4	6
299	927	5.4132	1	2	4	7	10
300	14816	7.2798	2	3	6	9	14
301	2246	4.3780	1	2	3	5	9
302	8314	12.3018	6	7	9	14	21
303	19404	10.2201	4	6	8	12	18
304	13549	10.2932	3	5	7	13	21
305	2675	4.9073	1	3	4	6	9
306	11854	6.2386	2	2	4	8	13
307	2695	2.9796	1	2	2	3	5
308	9574	7.0326	1	2	5	9	15
309	3562	3.0230	1	1	2	4	6
310	30028	4.6161	1	2	3	6	9
311	10218	2.1747	1	1	2	3	4
312	2120	4.8198	1	2	3	6	10
313	788	2.2855	1	1	2	3	5
314	1	5.0000	5	5	5	5	5
315	29516	9.3027	1	2	6	12	20
316	73804	7.4996	2	3	6	9	15
317	838	2.9033	1	1	2	3	6
318	6305	7.1543	2	3	5	9	14
319	520	3.1808	1	1	2	4	7
320	177433	6.4459	2	3	5	8	11
321	26621	4.6916	2	3	4	6	8
322	87	4.3333	2	2	4	5	8
323	18556	3.5566	1	2	3	4	7
324	9155	2.0877	1	1	2	3	4
325	7785	4.5742	1	2	3	5	9
326	2301	3.4203	1	1	2	4	6
327	9	3.3333	1	2	2	4	5
328	853	4.2579	1	2	3	6	8
329	113	2.7965	1	1	2	3	5
330	1	1.0000	1	1	1	1	1
331	40274	6.1795	2	3	5	8	12
332	4966	3.8494	1	2	3	5	8
333	379	5.7968	1	3	4	7	13
334	19982	6.0546	3	4	5	7	9
335	10308	4.6203	2	3	4	6	7
336	63893	4.1251	1	2	3	5	8
337	40540	2.6719	1	2	2	3	4
338	5063	5.2558	1	2	3	6	11
339	2416	5.2562	1	2	3	6	11
340	2	3.0000	1	1	5	5	5
341	6766	3.2573	1	1	2	4	6
342	231	4.0649	1	1	2	5	8
344	4022	3.4510	1	1	2	4	7
345	1428	4.0210	1	2	3	5	9
346	5626	6.7600	1	3	5	8	14
347	443	3.2889	1	1	2	4	7
348	3188	4.8943	1	2	4	6	9
349	733	2.9400	1	1	2	4	6
350	7234	4.7432	2	3	4	6	8
352	603	3.9005	1	1	3	5	8
353	2743	8.3252	3	4	6	9	15
354	10191	6.3351	3	4	5	7	11
355	5880	3.8566	2	3	4	4	6
356	30093	3.0252	1	2	3	4	5
357	6842	9.8297	4	5	8	12	18
358	28157	4.7538	2	3	4	5	8
359	28820	3.2702	2	3	3	4	5
360	17592	3.5444	1	2	3	4	6
361	655	3.4580	1	1	2	4	7
363	4555	3.5139	1	2	2	3	6
364	1879	3.6003	1	1	2	4	8
365	2522	8.1257	2	3	5	10	18
366	4697	7.6915	2	3	5	10	16
367	568	3.2588	1	1	2	4	7
368	2408	6.9049	2	3	5	8	13

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
369	2531	3.7246	1	1	3	5	7
370	1201	5.5679	3	3	4	5	9
371	1044	3.6236	2	3	3	4	5
372	872	3.3601	1	2	2	3	6
373	3961	1.9258	1	1	2	2	3
374	141	2.5957	1	2	2	3	4
375	5	2.2000	1	1	2	3	4
376	164	3.3537	1	1	2	4	7
377	27	3.2963	1	1	2	3	8
378	172	2.9186	1	2	3	3	5
379	332	3.0361	1	1	2	3	5
380	75	2.2800	1	1	2	2	4
381	209	2.2967	1	1	1	2	5
382	54	1.5741	1	1	1	1	3
383	1557	4.0873	1	2	3	5	8
384	135	3.1481	1	1	1	2	7
385	4	13.5000	1	1	1	3	49
386	1	36.0000	36	36	36	36	36
389	23	10.7391	3	4	8	10	18
390	11	4.7273	1	2	3	5	9
392	2622	11.6484	4	6	8	14	24
394	1734	7.9862	1	2	5	9	16
395	69281	5.3835	1	2	4	7	10
396	19	3.7895	1	1	3	5	8
397	16238	6.0846	2	3	5	7	12
398	17498	6.5878	2	3	5	8	12
399	1496	4.4285	1	2	4	6	8
400	7875	10.4036	2	4	7	13	23
401	6682	12.3664	2	5	9	16	25
402	1619	4.7140	1	1	3	6	10
403	36528	9.2740	2	4	7	12	19
404	4124	5.0902	1	2	4	7	10
406	3407	11.2548	3	5	8	14	23
407	761	4.9304	1	2	4	6	9
408	3100	8.1632	1	2	5	10	18
409	5931	6.7132	2	3	4	6	15
410	89995	3.3580	1	2	3	4	5
411	58	2.6724	1	1	2	3	7
412	37	2.9730	1	1	2	4	5
413	8878	8.3323	2	3	6	10	17
414	845	5.1361	1	2	4	7	11
415	40783	15.7224	4	7	12	19	31
416	201554	8.2165	2	4	7	10	15
417	54	4.5741	1	2	4	7	10
418	19614	6.7661	2	3	5	8	13
419	16497	5.6833	2	3	4	7	10
420	3010	4.3050	2	2	4	5	8
421	12216	4.6523	2	2	4	5	8
422	97	3.8041	1	2	3	4	7
423	9588	8.7110	2	4	6	10	18
424	2102	17.9139	3	6	12	20	35
425	16010	4.8731	1	2	3	6	10
426	4920	5.5150	1	2	4	7	11
427	1856	5.2333	1	2	4	6	11
428	956	8.3347	1	3	5	10	18
429	40733	8.9700	2	3	6	10	17
430	55753	9.7545	2	4	7	12	19
431	200	7.1500	1	3	5	9	13
432	457	6.5252	1	2	4	6	11
433	8283	3.4066	1	1	2	4	7
434	21935	5.8210	2	3	4	7	11
435	16376	4.8062	1	3	4	6	8
436	3128	14.3744	4	8	14	21	28
437	14927	10.8952	4	6	10	14	20
439	910	8.9264	2	3	6	11	18
440	5007	9.8354	2	3	6	12	21
441	648	4.4213	1	1	2	4	8
442	14657	8.7406	1	3	6	11	18
443	3465	3.5512	1	1	2	5	7
444	3543	5.2882	1	3	4	6	10

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
445	1415	3.9046	1	2	3	5	7
446	1	1.0000	1	1	1	1	1
447	3991	2.8013	1	1	2	3	5
448	88	1.0000	1	1	1	1	1
449	30267	4.4278	1	2	3	5	9
450	7175	2.3376	1	1	2	3	5
451	8	6.0000	2	3	4	5	7
452	20338	5.4282	1	2	4	6	11
453	3819	3.1825	1	1	2	4	6
454	5391	5.1330	1	2	3	6	10
455	1181	2.8442	1	1	2	3	5
456	213	8.3803	1	1	4	9	21
457	135	4.8222	1	1	2	5	12
458	1650	16.8358	3	7	13	22	35
459	582	10.2887	2	4	7	13	21
460	2437	6.6422	1	3	5	8	13
461	3230	4.8920	1	1	2	5	12
462	9786	13.7570	4	6	12	18	26
463	12591	5.1721	1	2	4	6	10
464	3221	3.7464	1	2	3	5	7
465	202	3.8762	1	1	2	4	7
466	1943	4.8101	1	1	2	4	10
467	1820	4.1264	1	1	2	4	8
468	59655	15.3127	3	7	12	19	30
471	9604	8.0717	4	5	6	9	14
472	159	30.1635	1	9	28	40	61
473	8643	14.3722	2	4	8	21	36
475	94974	12.1639	2	5	10	16	24
476	7280	13.8379	3	7	11	17	25
477	31806	9.3027	1	3	7	12	19
478	123973	8.3143	1	3	6	10	17
479	18593	4.5529	1	2	4	6	9
480	40	32.5750	12	16	24	34	55
481	193	32.6166	19	22	28	36	53
482	7121	14.8666	5	8	11	17	28
483	38600	45.9567	15	23	37	56	85
484	366	15.8115	2	6	12	22	32
485	3426	11.6985	4	6	9	14	22
486	2316	13.4473	1	6	11	18	28
487	4136	8.9350	1	3	7	11	18
488	843	20.4152	5	8	14	25	41
489	19523	10.6298	2	4	7	13	22
490	5312	6.5849	1	2	4	8	14
491	9897	4.2698	2	3	3	5	7
492	2139	17.3703	3	5	10	28	37
493	54799	5.8913	1	2	5	8	11
494	28543	2.4171	1	1	2	3	5
495	131	22.7176	10	12	17	26	39
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TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1996

State	Urban	Rural
ALABAMA	0.420	0.476
ALASKA	0.505	0.796
ARIZONA	0.423	0.568
ARKANSAS	0.540	0.495
CALIFORNIA	0.405	0.540
COLORADO	0.513	0.604
CONNECTICUT	0.553	0.551
DELAWARE	0.503	0.500
DISTRICT OF COLUMBIA	0.525	.....
FLORIDA	0.414	0.418

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1996—Continued

State	Urban	Rural
GEORGIA	0.527	0.532
HAWAII	0.484	0.567
IDAHO	0.580	0.635
ILLINOIS	0.478	0.599
INDIANA	0.564	0.613
IOWA	0.540	0.684
KANSAS	0.449	0.649
KENTUCKY	0.506	0.574

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1996—Continued

State	Urban	Rural
LOUISIANA	0.475	0.540
MAINE	0.593	0.570
MARYLAND	0.765	0.816
MASSACHUSETTS	0.574	0.600
MICHIGAN	0.489	0.594
MINNESOTA	0.563	0.641
MISSISSIPPI	0.525	0.527
MISSOURI	0.459	0.529

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1996—Continued

State	Urban	Rural
MONTANA	0.513	0.615
NEBRASKA	0.526	0.684
NEVADA	0.321	0.563
NEW HAMPSHIRE	0.591	0.611
NEW JERSEY	0.479	.....
NEW MEXICO	0.484	0.546
NEW YORK	0.584	0.679
NORTH CAROLINA	0.539	0.498
NORTH DAKOTA	0.651	0.694
OHIO	0.557	0.594
OKLAHOMA	0.489	0.558
OREGON	0.577	0.671
PENNSYLVANIA	0.436	0.580
PUERTO RICO	0.495	0.643
RHODE ISLAND	0.587	.....
SOUTH CAROLINA	0.477	0.501
SOUTH DAKOTA	0.559	0.648
TENNESSEE	0.536	0.572
TEXAS	0.462	0.565
UTAH	0.462	0.675
VERMONT	0.576	0.587
VIRGINIA	0.499	0.536
WASHINGTON	0.634	0.688
WEST VIRGINIA	0.578	0.542
WISCONSIN	0.604	0.665
WYOMING	0.495	0.734

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) AUGUST 1996

State	Ratio
ALABAMA	0.055
ALASKA	0.077
ARIZONA	0.050
ARKANSAS	0.056
CALIFORNIA	0.040
COLORADO	0.052
CONNECTICUT	0.037
DELAWARE	0.054
DISTRICT OF COLUMBIA	0.042
FLORIDA	0.051
GEORGIA	0.052
HAWAII	0.051
IDAHO	0.064
ILLINOIS	0.044
INDIANA	0.058
IOWA	0.056
KANSAS	0.055
KENTUCKY	0.056
LOUISIANA	0.069
MAINE	0.044
MARYLAND	0.013
MASSACHUSETTS	0.060
MICHIGAN	0.049
MINNESOTA	0.055
MISSISSIPPI	0.056
MISSOURI	0.053
MONTANA	0.061
NEBRASKA	0.058
NEVADA	0.034
NEW HAMPSHIRE	0.066
NEW JERSEY	0.045
NEW MEXICO	0.055
NEW YORK	0.056
NORTH CAROLINA	0.049
NORTH DAKOTA	0.074
OHIO	0.056
OKLAHOMA	0.056
OREGON	0.052
PENNSYLVANIA	0.045
PUERTO RICO	0.090
RHODE ISLAND	0.039
SOUTH CAROLINA	0.054
SOUTH DAKOTA	0.066
TENNESSEE	0.057
TEXAS	0.055
UTAH	0.055
VERMONT	0.049
VIRGINIA	0.057
WASHINGTON	0.063
WEST VIRGINIA	0.059
WISCONSIN	0.048
WYOMING	0.067

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) AUGUST 1996—Continued

State	Ratio

TABLE 10.—PERCENTAGE DIFFERENCE IN WAGE INDEXES FOR AREAS THAT QUALIFY FOR A WAGE INDEX EXCLUDED HOSPITALS AND UNITS

Area	1982–1993 difference	1984–1993 difference	1988–1993 difference	1990–1993 difference	1991–1993 difference	1992–1993 difference
Rural Connecticut	22.9642	25.4054	.....	.....	.....	.....
Rural Delaware	8.2430	11.4258	8.2051	9.1337	.....	.....
Rural Hawaii	.....	15.9050	.....	.....	.....	.....
Rural Massachusetts	20.2198	24.1342	.....	.....	.....	.....
Rural New Hampshire	.....	9.8512	.....	.....	.....	.....
Albany, GA	.....	10.3581	.....	.....	.....	.....
Anchorage, AK	.....	.....	.....	8.2863	.....	.....
Andreson, SC	.....	.....	9.1948	17.8927	.....	.....
Arecibo, PR	.....	.....	11.1448	18.6084	15.7978	.....
Athens, GA	15.1448	21.0519	13.7293	13.6463	.....	.....
Atlanta, GA	.....	8.6086	.....	.....	.....	.....
Atlantic City, NJ	.....	12.4784	.....	.....	.....	.....
Bergen-Passaic, NJ	10.5317	12.4189	14.3717	.....	.....	.....
Biloxi-Gulfport, MS	.....	11.1443	10.6209	12.4040	.....	.....
Boise City, ID	.....	.....	.....	8.3390	.....	.....
Boston-Lowell-Brockton-Lawrence-Salem, MA	.....	9.8215	.....	.....	.....	.....
Bremerton, WA	11.9762	13.8828	14.2288	14.3007	12.7288	.....
Bridgeport-Stamford-Norwalk-Danbury, CT	10.0485	14.3994	.....	.....	.....	.....
Burlington, NC	11.2298	14.5664	9.4207	.....	.....	.....
Burlington, VT	.....	8.8170	9.1074	.....	.....	10.3206
Caguas, PR	.....	15.1271	.....	.....	.....	.....
Charleston, WV	.....	.....	8.3229	.....	.....	.....
Charlotte-Gastonia-Rock Hill, NC–SC	.....	14.9051	.....	.....	.....	.....
Clarksville-Hopkinsville, TN–KY	.....	.....	12.9537	.....	.....	.....
Columbia, SC	.....	8.4912	.....	.....	.....	.....
Danville, VA	.....	11.3907	13.1106	.....	.....	.....
Decatur, AL	.....	13.3721	11.9044	.....	.....	.....
El Paso, TX	.....	8.5187	.....	.....	9.8283	.....
Eugene-Springfield, OR	.....	10.5206	10.8031	18.7777	.....	.....
Fayetteville, NC	9.0029	10.4192	8.4909	.....	.....	.....
Flint, MI	.....	.....	.....	.....	9.2030	.....
Florence, AL	.....	11.9746	.....	.....	.....	.....
Florence, SC	12.7213	11.5654	.....	.....	.....	.....

TABLE 10.—PERCENTAGE DIFFERENCE IN WAGE INDEXES FOR AREAS THAT QUALIFY FOR A WAGE INDEX EXCLUDED HOSPITALS AND UNITS—Continued

Area	1982–1993 difference	1984–1993 difference	1988–1993 difference	1990–1993 difference	1991–1993 difference	1992–1993 difference
Fort Walton Beach, FL	.....	12.3564	.....	.....	.....	.....
Fresno, CA	.....	.....	.....	10.8664	9.4732	8.0939
Gadsden, AL	.....	.....	8.2379	14.6656	9.8985	.....
Galveston-Texas City, TX	.....	.....	16.5166	11.3722	8.4081	.....
Greeley, CO	.....	.....	.....	11.0971	.....	.....
Greensboro-Winston-Salem-High Point, NC	9.2662	.....	.....	.....	.....	.....
Hamilton-Middleton, OH	.....	.....	.....	.....	8.1472	8.0733
Hartford-Middletown-New Britain, CT	8.7767	12.4966	3.7059	2.2400	−0.1050	−0.1775
Houma-Thibodaux, LA	.....	.....	9.3263	.....	.....	.....
Jackson, TN	.....	9.6429	.....	.....	.....	.....
Jersey City, NJ	.....	.....	8.0391	.....	.....	.....
Killeen-Temple, TX	18.3848	.....	.....	.....	.....	.....
Lima, OH	.....	.....	8.2156	.....	.....	.....
Macon-Warner Robins, GA	.....	13.0975	.....	.....	.....	.....
McAllen-Edinburg-Mission, TX	.....	10.4962	9.8809	.....	.....	.....
Medford, OR	.....	.....	.....	8.0133	.....	.....
Merced, CA	.....	.....	.....	.....	8.1676	.....
Middlesex-Somerset-Hunterdon, NJ	.....	9.6183	.....	.....	.....	.....
Monmouth-Ocean, NJ	10.0345	15.4149	9.3349	.....	.....	.....
Munice, IN	.....	.....	20.3096	13.5593	.....	.....
Nassau-Suffolk, NY	.....	11.9105	.....	.....	.....	.....
New Bedford-Fall River-Attleboro, MA	13.7683	16.6368	10.4385	.....	.....	.....
New Haven-West Haven-Waterbury, CT	11.8620	16.2147	.....	.....	.....	.....
New London-Norwich, CT	11.3300	14.9405	.....	.....	.....	.....
Newark, NJ	.....	8.8979	.....	.....	.....	.....
Ocala, FL	.....	11.8261	.....	.....	.....	.....
Orange County, NY	17.1382	21.4157	11.8518	.....	.....	.....
Portsmouth-Dover-Rochester, NH	9.0870	.....	.....	.....	.....	.....
Poughkeepsie, NY	.....	8.8610	.....	.....	.....	.....
Providence-Pawtucket-Woonsocket, RI	.....	13.9497	.....	.....	.....	.....
Provo-Orem, UT	.....	9.0782	.....	.....	.....	.....
Redding, CA	.....	17.2205	9.9157	.....	.....	.....
Richland-Kennewick, WA	.....	.....	.....	8.1102	.....	.....
Salinas-Seaside-Monterey, CA	10.6879	9.7202	.....	.....	.....	.....
Santa Cruz, CA	9.6319	9.7120	.....	.....	.....	.....
Santa Fe, NM	11.2207	14.0809	18.3339	8.2941	.....	.....
Sarasota, FL	.....	8.9573	.....	.....	.....	.....
Savannah, GA	9.0765	14.6762	15.7768	11.1239	.....	.....
Topeka, KS	.....	.....	8.3342	9.2849	.....	.....
Tyler, TX	.....	.....	.....	9.5202	.....	.....
Vallejo-Fairfield-Napa, CA	.....	13.6478	.....	11.7807	.....	.....
Wilmington, DE–NJ–MD	.....	8.9989	.....	.....	.....	.....
Wilmington, NC	.....	12.2020	.....	.....	.....	.....
Worcester-Fitchburg-Leomister, MA	10.9147	17.9463	.....	.....	.....	.....
Yuma, AZ	.....	.....	.....	.....	9.4870	.....

Appendix A—Regulatory Impact Analysis

I. Introduction

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 final rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Social Security Act (the Act) requires the Secretary to prepare a regulatory impact analysis for any final rule 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 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the prospective payment system, we classify these hospitals as urban hospitals.

It is clear that the changes in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this final rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

II. Changes in the Final Rule

Any differences in this final rule impact analysis compared to that in the proposed rule are the result of using more recent or more complete hospital data. For example, a more complete FY 1995 MedPAR file (June 1996 update) is

now available compared to the one available at the time of the proposed rule. In addition, more recent hospital-specific data, including cost reports, are used in this analysis.

Our most recent hospital market basket forecasts are: 2.5 percent for prospective payment system hospitals and 2.5 percent for hospitals excluded from the prospective payment system. The respective update factors in the proposed rule were both 2.7 percent. Beyond this change in the hospital market basket forecast, there are no operating or capital prospective payment policy changes from those discussed in the impact analysis in the proposed rule.

III. Limitations of Our Analysis

As has been the case in previously published regulatory impact analyses, the following quantitative analysis presents the projected effects of our final policy changes, as well as statutory changes effective for FY 1997, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per case while holding all other payment policies constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case mix.

We received no comments on the methodology used for the impact analysis in the proposed rule.

IV. Hospitals Included In and Excluded From the Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. There were 46 Indian Health Service hospitals in our data base, which we excluded from the analysis due to the special characteristics of the prospective payment method for these hospitals. Among other short-term, acute care hospitals, only the 50 such hospitals in Maryland remain excluded from the prospective payment system under the waiver at section 1814(b)(3) of the Act. Thus, we have included 5,129 hospitals in our analysis. This represents about 82 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

The remaining 18 percent are specialty hospitals that are excluded from the prospective payment system and continue to be paid on the basis of their reasonable costs (subject to a rate-of-increase ceiling on their inpatient operating costs per discharge). These hospitals include psychiatric, rehabilitation, long-term care, childrens', and cancer hospitals. The impacts of our policy changes on these hospitals are discussed below.

V. Impact on Excluded Hospitals and Units

As of August 1996, there were 1,125 specialty hospitals excluded from the prospective payment system and instead paid on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. In addition, there were 2,315 psychiatric and rehabilitation units in hospitals otherwise subject to the prospective payment system. These excluded units are also paid in accordance with § 413.40.

In accordance with section 1886(b)(3)(B)(ii)(V) of the Act, the update factor applicable to the rate-of-increase limit for excluded hospitals and units for FY 1997 is 1.5 percent (excluded hospital market basket minus 1.0 percentage points), adjusted to account for the relationship between the hospital's allowable operating cost per case and its target amounts.

The impact on excluded hospitals and units of the final update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital and excluded unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the percentage increases in the rate-of-increase limits since their base period, the major effect will be on the level of incentive payments these hospitals and units receive. Conversely, for excluded hospitals and units with per-case cost increases above the cumulative update in their rate-of-increase limit, the major effect will be the amount of excess costs that the hospitals would have to absorb.

In this context, we note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed the rate-of-increase limit is allowed to receive the lower of its rate-of-increase ceiling plus 50 percent of reasonable costs in excess of the ceiling, or 110 percent of its ceiling. In addition, under the various provisions set forth in § 413.40, excluded hospitals and units can obtain payment adjustments for significant and justifiable increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and units to restrain the growth in their spending for patient services.

VI. Quantitative Impact Analysis of the Final Policy Changes Under the Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this final rule, we are announcing policy changes and payment rate updates for the prospective payment systems for operating and capital-related costs. We have prepared separate analyses of the final changes to each system, beginning here with changes to the operating prospective payment system. Estimated payment impacts of final FY 1997 changes to the capital prospective payment system are discussed below in section VII of this Appendix.

The data used in developing the quantitative analyses presented below are taken from the FY 1995 MedPAR file and the most current provider-specific file that is used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not incorporate cost data, the most recently available hospital cost report data were used to create some of the variables by which hospitals are categorized. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using cases in the FY 1995 MedPAR file, we simulated payments under the operating prospective payment system given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the general prospective payment systems (Indian Health Service hospitals and hospitals in Maryland) are excluded from the simulations. Payments under the capital prospective payment system, or payments for costs other than inpatient operating costs, are not analyzed here.

The following changes are discussed separately below:

- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the diagnosis-related group (DRG) relative

weights required by section 1886(d)(4)(C) of the Act.

- The effects of changes in hospitals' wage index values reflecting the wage index update (FY 1993 data).
- The effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB) that will be effective in FY 1997.
- The effects of phasing out payments for extraordinarily lengthy cases (day outlier cases) with a corresponding increase in payments for extraordinarily costly cases (cost outliers), in accordance with section 1886(d)(5)(A)(v) of the Act.
- The total change in payments based on FY 1997 policies relative to payments based on FY 1996 policies.

To illustrate the impacts of the FY 1997 final changes, our analysis begins with an FY 1997 baseline simulation model using: the FY 1996 GROUPER (version 13.0); the FY 1996 wage indexes (based on FY 1992 data); no MGCRB reclassifications; and current outlier policy (50 percent phase-out of day outlier payments). Outlier payments are estimated to be 5.1 percent of total DRG payments.

Each policy change is then added incrementally to this baseline model, finally arriving at an FY 1997 model incorporating all of the final rule and statutory changes. This allows us to isolate the effects of each change.

Our final comparison illustrates the percent change in payments per case from FY 1996 to FY 1997. Four factors not displayed in the previous five columns have significant impacts here. First is the update to the standardized amounts for FY 1997. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are updating the large urban and the other areas average standardized amounts for FY 1997 using the most recently forecasted hospital market basket increase for FY 1997 of 2.5 percent, minus 0.5 percentage points. Thus, the update to the large urban and other areas standardized amounts is 2.0 percent. Similarly, section 1886(b)(3)(C)(ii) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals (SCHs) and essential access community hospitals (EACHs) (which are treated as SCHs for payment purposes) is also the market basket increase minus 0.5 percent, or 2.0 percent.

A second significant factor impacting changes in hospitals' payments per case from FY 1996 to FY 1997 is a change in MGCRB reclassification status from one year to the next. That is, hospitals reclassified in FY 1996 that are no longer reclassified in FY 1997 may have a negative payment impact going from FY 1996 to FY 1997; conversely, hospitals not reclassified in FY 1996 that are reclassified in FY 1997 may have a positive impact. In some cases, these impacts can be quite substantial, so that if a relatively small number of hospitals in a particular category lose their reclassification status, the percentage increase in payments for the category may be below the national mean.

A third significant factor is that we currently estimate that actual outlier payments during FY 1996 will be 4.0 percent of actual total DRG payments. When the FY 1996 final rule was published, we projected FY 1996 outlier payments would be 5.1 percent of total DRG payments, and the standardized amounts were reduced correspondingly. The effects of the lower than expected outlier payments during FY 1996 (as discussed in the Addendum to this final rule) are reflected in the analyses below comparing our current estimates of FY 1996 payments per case to estimated FY 1997 payments per case.

Finally, the regional floor provision (section 1886(d)(1)(A)(iii)(II) of the Act) expires effective with discharges occurring on or after October 1, 1996. Under this provision (applicable during FY 1996), hospitals within any census division having a regional standardized amount greater than the national standardized amount (large urban or other, depending on which amount was applicable) received a blend of 85 percent of the national amount and 15 percent of the regional amount. Hospitals in census divisions where the regional floor was applicable during FY 1996 will be negatively impacted by its expiration when comparing FY 1996 to FY 1997.

Table I demonstrates the results of our analysis. This table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 5,129 hospitals included in the analysis. This is 78 fewer hospitals than were included in the impact analysis in the FY 1996 final rule (60 FR 45924). Data for 108 hospitals that were included in last year's analysis were not available for analysis this year; however, data were available this year for 30 hospitals for which data were not available last year.

The next four rows of Table I contain hospitals categorized according to their geographic location (all urban, which is further divided into large urban and other urban, or rural). There are 2,881 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,596 hospitals located in large urban areas (populations over 1 million), and 1,285 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 2,248 hospitals in rural areas. The next two groupings are by bed size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 1997 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural, show the numbers of hospitals being paid based on these categorizations (after consideration of geographic reclassifications), are 2,981, 1,791, 1,190, and 2,148, respectively.

The next three groupings examine the impacts of the final changes on hospitals grouped by whether or not they have residency programs (teaching hospitals that receive an indirect medical education (IME) adjustment), receive disproportionate share (DSH) payments, or some combination of these two adjustments. There are 4,044 nonteaching hospitals in our analysis, 850 teaching hospitals with fewer than 100 residents, and 235 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural after MGCRB reclassifications. Hospitals in the rural DSH categories, therefore, represent hospitals that were not reclassified for purposes of the standardized amount. (They may, however, have been reclassified for purposes of the wage index.) The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next four rows examine the impacts of the final changes on rural hospitals by special payment groups (SCHs, rural referral centers (RRCs), and EACHs), as well as rural hospitals not receiving a special payment designation. Rural hospitals reclassified for FY 1997 for purposes of the standardized amount are not included here.

The RRCs (90), SCH/EACHs (645), and SCH/EACH and RRCs (38) shown here were not reclassified for purposes of the standardized amount. There are seven EACHs included in our analysis and four EACH/RRCs.

There are two RRCs and three SCHs that will be reclassified for the standardized amount in FY 1997 that, therefore, are not included in these rows. There are significantly fewer reclassifications among these groups than there were in FY 1996, owing to the new criterion under § 412.230(a)(5)(ii) that a hospital may not be reclassified for purposes of the standardized amount if the area to which the hospital seeks reclassification does not have a higher standardized amount than that currently received by the hospital. (See the September 1, 1995 final rule (60 FR 45799).) Before this change (effective with reclassifications for FY 1997), some rural hospitals reclassified to other urban areas in order to qualify for urban DSH payments. For other rural hospitals that already qualified for DSH payments, the urban designation enabled them to qualify for a higher DSH adjustment than they would receive as a rural hospital.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken primarily from the FY 1994 Medicare cost report files, if available (otherwise FY 1993 data are used). Cost report data needed to determine hospital ownership and to calculate Medicare utilization percentages were unavailable for 116 hospitals. For the most part, these are either new hospitals or hospitals filing manual cost reports that are not yet entered into the data base.

The next series of groupings concern the geographic reclassification status of hospitals. The first three groupings display hospitals that were reclassified by the MGCRB for either FY 1996 or FY 1997, or for both years, by urban/rural status. The next rows illustrate the overall number of FY 1997 reclassifications, as well as the numbers of reclassified hospitals grouped by urban and rural location. The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent changes in payments per case]

	Number of hospitals [1]	DRG recalibration [2]	New wage data [3]	Combined wage and recal [4]	MGCRB reclassification [5]	Day outlier policy changes [6]	All FY 97 changes [7]
	(0)	(1)	(2)	(3)	(4)	(5)	(6)
(By Geographic Location)							
All hospitals	5,129	0.1	0.1	0.0	0.0	0.0	2.9
Urban hospitals	2,881	0.1	0.1	0.0	−0.4	−0.1	2.9
Large urban	1,596	0.1	0.1	0.0	−0.4	−0.1	2.9
Other urban	1,285	0.1	0.1	0.0	−0.2	0.1	3.0
Rural hospitals	2,248	0.0	0.0	−0.1	2.3	0.1	2.4
Bed size (urban):							
0–99 beds	715	0.0	−0.1	−0.3	−0.5	0.1	2.7
100–199 beds	945	0.0	−0.1	−0.2	−0.4	0.1	2.6
200–299 beds	576	0.1	0.0	0.0	−0.4	0.0	2.9
300–499 beds	478	0.1	0.1	0.1	−0.4	−0.1	3.1
500 or more beds	167	0.1	0.1	0.1	−0.2	−0.2	3.1
Bed size (rural):							
0–49 beds	1,177	−0.1	0.1	−0.1	0.0	0.1	2.4
50–99 beds	657	−0.1	0.1	−0.1	1.0	0.1	2.4
100–149 beds	241	0.0	0.1	−0.1	3.1	0.1	2.6
150–199 beds	98	0.1	0.0	0.0	2.7	0.1	2.7
200 or more beds	75	0.1	−0.1	−0.1	4.9	0.1	1.9
Urban by census division:							
New England	160	0.1	0.0	0.0	−0.2	−0.1	2.0
Middle Atlantic	434	0.0	0.4	0.3	−0.2	−0.7	3.3
South Atlantic	419	0.1	−0.2	−0.2	−0.4	0.1	3.1
East North Central	483	0.1	0.4	0.4	−0.3	0.1	2.5
East South Central	163	0.1	−0.2	−0.2	−0.5	0.2	3.1
West North Central	193	0.1	0.0	0.0	−0.5	0.2	3.3
West South Central	376	0.1	0.1	0.0	−0.5	0.2	3.6
Mountain	127	0.2	−0.3	−0.3	−0.4	0.2	2.9
Pacific	478	0.1	−0.4	−0.4	−0.5	0.1	2.5
Puerto Rico	48	−0.1	−1.2	−1.4	−0.5	0.0	1.9
Rural by census division:							
New England	53	0.1	−0.9	−1.0	2.0	0.2	1.2
Middle Atlantic	85	0.0	−0.5	−0.6	0.9	−0.1	1.7
South Atlantic	297	−0.1	−0.4	−0.5	3.0	0.1	2.3
East North Central	304	0.1	0.3	0.3	2.0	0.1	2.6
East South Central	278	−0.1	0.3	0.1	2.4	0.1	1.9
West North Central	525	0.0	0.1	0.0	2.1	0.1	2.5
West South Central	349	−0.1	0.5	0.2	3.1	0.1	2.8
Mountain	211	0.1	−0.1	−0.1	0.8	0.1	2.6
Pacific	141	0.1	0.6	0.5	2.3	0.1	3.7
Puerto Rico	5	−0.2	−4.2	−4.5	3.3	0.0	1.7
(By Payment Categories)							
Urban hospitals	2,981	0.1	0.1	0.0	−0.3	0.0	2.9

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of hospitals [1]	DRG recalibration [2]	New wage data [3]	Combined wage and recal [4]	MGCRB reclassification [5]	Day outlier policy changes [6]	All FY 97 changes [7]
	(0)	(1)	(2)	(3)	(4)	(5)	(6)
Large urban	1,791	0.1	0.1	0.0	−0.2	−0.1	2.9
Other urban	1,190	0.1	0.0	0.0	−0.4	0.1	3.0
Rural hospitals	2,148	0.0	0.0	−0.1	1.9	0.1	2.2
Teaching status:							
Non-teaching	4,044	0.0	0.0	−0.1	0.3	0.1	2.8
Less than 100 residents	850	0.1	0.1	0.0	−0.3	0.0	3.0
100+ residents	235	0.1	0.2	0.2	−0.2	−0.4	2.8
Disproportionate Share Hospitals (DSH):							
Non-DSH	3,201	0.1	0.0	0.0	0.2	0.1	2.9
Urban DSH:							
100 beds or more	1,410	0.0	0.1	0.0	−0.3	−0.1	2.9
Fewer than 100 beds	101	−0.2	−0.3	−0.6	−0.3	0.2	2.2
Rural DSH:							
Sole community (SCH)	156	−0.1	0.0	−0.3	0.3	0.0	3.6
Referral centers (RRC)	27	0.0	0.1	−0.1	3.7	0.0	3.3
Other rural DSH hospitals:							
100 beds or more	83	0.0	−0.1	−0.2	2.4	0.2	0.3
Fewer than 100 beds	151	−0.2	0.0	−0.3	−0.3	0.1	2.0
Urban teaching and DSH:							
Both teaching and DSH	692	0.0	0.2	0.1	−0.4	−0.2	2.8
Teaching and no DSH	339	0.2	0.0	0.1	−0.1	0.0	3.0
No teaching and DSH	819	0.0	−0.1	−0.2	0.0	0.1	3.0
No teaching and no DSH	1,131	0.1	0.0	−0.1	−0.3	0.2	3.1
Rural hospital types Nonspecial status:							
Hospitals	1,375	0.0	0.0	−0.1	1.7	0.1	1.6
RRC	90	0.1	0.1	0.1	5.0	0.1	3.4
SCH/each	645	−0.1	0.0	−0.2	0.3	0.0	2.6
SCH/each and RRC	38	0.1	0.1	0.0	1.1	−0.1	2.7
Type of ownership:							
Voluntary	2,951	0.1	0.1	0.1	−0.1	−0.1	2.9
Proprietary	696	0.0	−0.2	−0.4	0.3	0.2	2.9
Government	1,366	0.0	0.0	−0.1	0.1	0.0	2.6
Unknown	116	−0.2	0.6	0.3	−0.4	−1.3	2.1
Medicare utilization as a percent of inpatient days:							
0–25	258	−0.1	−0.1	−0.3	−0.4	−0.2	2.0
25–50	1,284	0.1	0.0	0.0	−0.2	−0.1	2.9
50–65	2,097	0.1	0.1	0.0	0.2	0.0	2.9
Over 65	1,374	0.0	0.0	−0.1	0.2	0.1	2.9
Unknown	116	−0.2	0.6	0.3	−0.4	−1.3	2.1
Hospitals Reclassified by the Medicare Geographic Review Board							
Reclassification status during FY96 and FY97:							
Reclassified during both FY96 and FY97	379	0.1	0.2	0.2	5.9	0.0	2.7
Urban	130	0.1	0.4	0.4	3.5	−0.1	3.0
Rural	249	0.0	0.0	−0.1	8.9	0.1	2.5
Reclassified during FY97 only	98	0.2	0.3	0.3	3.8	−0.3	8.3
Urban	29	0.2	0.4	0.5	2.5	−0.5	7.6
Rural	69	0.0	−0.1	−0.1	7.1	0.1	10.2
Reclassified during FY96 only	253	0.1	−0.5	−0.5	−1.2	0.1	−0.5
Urban	91	0.1	−0.8	−0.8	−1.7	0.0	0.6
Rural	162	0.0	0.0	−0.1	−0.4	0.2	−2.2
FY 97 reclassifications:							
All reclassified hospitals	477	0.1	0.2	0.2	5.4	−0.1	3.8
Standard amount only	119	0.1	0.1	0.1	1.7	0.0	2.8
Wage index only	272	0.1	−0.2	−0.2	8.2	−0.1	3.3
Both	86	0.1	0.9	0.9	4.7	−0.2	5.5
Nonreclassified	4,625	0.1	0.0	0.0	−0.6	0.0	2.8
All urban reclassifed	159	0.1	0.4	0.4	3.3	−0.2	4.1
Standard amount only	62	0.1	0.2	0.1	0.9	0.0	2.9
Wage index only	27	0.2	−0.6	−0.5	7.2	−0.4	3.7
Both	70	0.1	1.0	1.0	3.4	−0.2	5.1

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of hospitals [1]	DRG recalibration [2]	New wage data [3]	Combined wage and recal [4]	MGCRB reclassification [5]	Day outlier policy changes [6]	All FY 97 changes [7]
	(0)	(1)	(2)	(3)	(4)	(5)	(6)
Nonreclassified	2,722	0.1	0.0	0.0	−0.6	0.0	2.9
All rural reclassified	318	0.0	0.0	−0.1	8.6	0.1	3.5
Standard amount only	57	0.1	−0.1	−0.1	4.4	0.2	2.5
Wage index only	245	0.0	0.0	−0.1	8.6	0.1	3.2
Both	16	0.1	−0.1	−0.1	18.5	0.2	9.2
Nonreclassified	1,903	0.0	0.1	−0.1	−0.4	0.1	1.9
Other reclassifed:							
Hospitals (section 1886(d)(8)(B))	27	0.1	0.2	0.1	1.2	0.1	2.7

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 1995, and hospital cost report data are from reporting periods beginning in FY 1993 and FY 1994.

[2] This column displays the payment impacts of the recalibration of the DRG weights, based on FY 1995 MedPAR data and the DRG classification changes, in accordance with section 1886(d)(4)(C) of the Act.

[3] This column shows the payment effects of updating the data used to calculate the wage index with data from the FY 1993 cost reports.

[4] This column displays the combined impacts of the reclassification and recalibration of the DRGs, the updated wage data used to calculate the wage index, and the budget neutrality adjustment factor for these two changes, in accordance with sections 1886(d)(4)(C)(iii) and 1886(d)(3)(E) of the Act. Thus, it represents the combined impacts shown in columns 1 and 2, and the FY 1997 budget neutrality factor of 0.998702.

[5] Shown here are the combined effects of geographic reclassification by the Medicare Geographic Classification Review Board (MGCRB). The effects shown here demonstrate the FY 1997 payment impacts of going from no reclassifications to the reclassifications scheduled to be in effect for FY 1997. Reclassification for prior years has no bearing on the payment impacts shown here.

[6] This column illustrates the payment impacts of phasing out day outlier payments and increasing cost outlier payments, in accordance with section 1886(d)(5) of the Act.

[7] This column shows changes in payments from FY 1996 to FY 1997. It incorporates all of the changes displayed in columns 3 through 5 (the changes displayed in columns 1 and 2 are included in column 3). It also displays the impacts of the updates to the FY 1997 standardized amounts, changes in hospitals' reclassification status in FY 1997 compared to FY 1996, the expiration of the regional floor provision at section 1886(d)(1)(A)(iii)(II) of the Act, and the difference in outlier payments from FY 1996 to FY 1997. The sum of the columns 3 through 5 plus these effects may be different from the percentage changes shown here due to changes in hospitals' geographic reclassification status from FY 1996 to FY 1997, rounding errors and interactive effects.

B. The Impact of the Final Changes to the DRG Classifications and Relative Weights (Column 1)

In column 1 of Table I, we present the combined effects of the DRG reclassifications and recalibration, as discussed in section II of the preamble to this final rule. Section 1886(d)(4)(C)(i) of the Act requires us each year to make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

Consistent with the minor changes we are proposing for the FY 1997 GROUPER, the redistributional impacts across hospital groups are very small (an increase of 0.1 for large and other urban hospitals). Among other hospital categories, the net effects are slightly negative changes for small (up to 99 beds) rural hospitals and slightly positive changes for larger rural (over 150 beds) and urban (over 200 beds) hospitals.

The largest negative effect on any of the hospital categories examined is a 0.2 percent decrease in payments for smaller urban (100 or fewer beds) and rural hospitals that receive DSH payments, as well as rural hospitals in Puerto Rico.

We attribute these negative changes to the increasing gap between the relative weights for medical, diagnostic, and less complicated surgical DRGs and the weights for the more complicated surgical DRGs. Since the cases associated with the former DRGs tend to be treated more often in smaller hospitals with fewer resources available, lowering the relative weights associated with those cases would disproportionately affect these hospitals. In general, small hospitals that serve a disproportionate share of low-income patients and hospitals in rural Puerto Rico fit this definition. We note, however, that these negative impacts are relatively minor and do not result solely from the limited DRG revisions we are making for FY 1997.

C. The Impact of Updating the Wage Data (Column 2)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the final wage index for FY 1997 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1992 and before October 1, 1993. As with the previous column, the impact of the new data on hospital payments is isolated by holding the other payment parameters constant in the two simulations. That is, column 2 shows the percentage changes in payments when going from a model using the FY 1996 wage index before geographic reclassifications based on FY 1992 wage data to a model using the FY 1997 prereclassification wage index based on FY 1993 wage data.

The results indicate that the new wage data do not have a significant overall impact on hospital payments. Thus, hospitals with significant changes in their wage indexes are not concentrated within any particular hospital group. Some of the largest changes are found among both urban and rural hospitals grouped by census division. Our review of the wage data (as described below) indicates that these changes were attributable to improved reporting, as well as relative changes in labor costs.

Among urban hospitals in the 50 States and the District of Columbia, the largest increases (0.4 percent) are in the Middle Atlantic and the East North Central census divisions. Significantly, New York City's wage index rises by over 2.4 percent (this also contributes to the 0.2 percent increase among major

teaching hospitals and the 0.6 percent increase in the Unknown category under the Type of Ownership and the Medicare Utilization rows, where a cluster of New York City hospitals that file manual cost reports are grouped). Last year, the Middle Atlantic experienced one of the largest decreases (0.6 percent), which contributed to the 0.4 percent decline among major teaching hospitals—New York City's wage index fell by nearly 2.0 percent in FY 1996 (60 FR 45929). The largest decrease among urban hospitals (outside of Puerto Rico, which is discussed separately below) occurs in the Pacific census division, with a decline of 0.4 percent.

Among the rural hospitals, the largest increases are in the Pacific census division (0.6 percent) and the West South Central census division (0.5 percent); the largest decreases are in the census divisions of New England (0.9 percent), the Middle Atlantic (0.5 percent) and the South Atlantic (0.4 percent). The decrease among rural New England hospitals is primarily due to a 2.7 percent decrease in the wage index for rural Connecticut and rural New Hampshire hospitals. Among rural hospitals last year, the Pacific rural hospitals experienced one of the greatest increases (0.6 percent), while the rural West South Central hospitals experienced one of the greatest decreases (0.4 percent).

In Puerto Rico, payments decline by 4.2 percent for the five rural hospitals and by 1.2 percent for the urban hospitals. The average hourly wages reported in FY 1993 by two rural Puerto Rico hospitals fell from those reported in FY 1992 by 22.4 percent and 18.1 percent, leading to the 4.2 percent overall decline. Also, all six urban areas in Puerto Rico experience decreases in their wage index values. Two of these six experience a decline of more than 5 percent. These MSAs have relatively few hospitals (two and five), thus the decreases appear to be the result of one hospital in each area having a decrease of more than 5 percent in its average hourly wage.

The final FY 1997 wage index represents the fourth annual update to the wage data, and will continue to include salaries, fringe benefits, home office salaries, and certain contract labor costs. In the past, updates to the wage data have resulted in significant payment shifts among hospitals. Since the wage index is now updated annually, we expect these payment fluctuations will continue to decrease.

This expectation is borne out by comparing the FY 1997 wage index (after reclassifications under sections 1886(d)(8)(B) and 1886(d)(10) of the Act) to the FY 1996 wage index. The following chart compares the shifts in wage index values (after reclassifications) for labor markets for FY 1997 with those from FY 1996. The majority of labor market areas (334) experience less than a 5 percent change. Only 19 labor market areas experience a change between 5 and 10 percent; 10 of those experience increases. Still fewer labor markets experience a change of more than 10 percent; one experiences an increase and three experience decreases. For FY 1996, by comparison, 10 labor market areas experienced an increase in their wage index value of more than 10 percent.

Percentage change in area wage index values	Number of labor market areas	
	FY 1997	FY 1996
Increase more than 10 percent	1	6
Increase between 5 and 10 percent, (inclusive)	10	19
Increase/decrease below 5 percent	334	323
Decrease between 5 and 10 percent, (inclusive)	9	6
Decrease more than 10 percent	3	0

Note: There are two new MSAs in FY 1997. Also, there are some MSAs that, after geographic reclassification have no providers remaining and, therefore, are not reflected in this table.

Under the final FY 1997 wage index, 96.6 percent of urban hospitals and 93.9 percent of rural hospitals would experience a change in their wage index of less than 5 percent. Approximately 2.6 percent of urban hospitals and 1.4 percent of rural hospitals would experience a change of between 5 and 10 percent, and 0.9 percent of urban hospitals and 4.6 percent of rural hospitals would experience a change of more than 10 percent. The following chart shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Percent of hospitals (by urban/rural)	
	Urban	Rural
Increase more than 10 percent	0.3	2.6
Increase between 5 and 10 percent (inclusive)	1.5	0.4
Increase or decrease less than 5 percent	96.6	93.9
Decrease between 5 and 10 percent (inclusive)	1.1	1.0
Decrease more than 10 percent	0.6	2.0

Note: The sum of the columns may not total to 100 due to rounding.

D. Combined Impact of DRG and Wage Index Changes—Including Budget Neutrality Adjustment (Column 3)

The impact of DRG reclassifications and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral. In addition, section 1886(d)(3)(E) of the Act specifies that any updates or adjustments to the wage index are budget neutral. As pointed out in the Addendum to this final rule, we compared aggregate payments using the FY 1996 DRG relative weights and wage index to aggregate payments using the FY 1997 DRG relative weights and wage index. Based on this comparison, we computed a wage and recalibration budget neutrality factor of 0.998509. In Table I, the combined overall impacts of the effects of both the DRG reclassifications and recalibration and the updated wage index are shown in column 3. The 0.0 percent impact for All Hospitals demonstrates that these changes, in combination with the budget neutrality factor, are budget neutral.

For the most part, the changes in this column are the sum of the changes in columns 1 and 2, minus the approximately 0.2 percent decrease attributable to the budget neutrality factor. In calculating the total changes shown in column 6, readers should begin with this column and add across, excluding the impacts shown in columns 1 and 2.

E. The Impact of MGCRB Reclassifications (Column 4)

Our impact analysis to this point has assumed hospitals are paid on the basis of their actual geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 4 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 1997. As noted below, these decisions affect hospitals' standardized amount and wage index area assignments. In addition, rural

hospitals reclassified for purposes of receiving the large urban standardized amount also qualify to be treated as urban for purposes of the DSH adjustment. However, effective FY 1997, rural hospitals can no longer be reclassified to an other urban area for purposes of the standardized amount in order to receive a higher DSH adjustment.

By March 30 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. The MGCRB may reclassify a hospital for the purpose of using the other area's standardized amount, wage index value, or both. (RRCs and SCHs are exempt from the proximity requirement.)

This impact analysis incorporates all of the MGCRB's reclassification decisions for FY 1997. It also reflects any decisions made by the HCFA Administrator through the appeals and review process. Additional changes that resulted from a request by a hospital to withdraw its application are also reflected in this final rule.

The overall effect of geographic reclassification is required to be budget neutral by section 1886(d)(8)(D) of the Act. Therefore, we applied an adjustment of 0.993511 to ensure that the effects of reclassification are budget neutral. (See section II.A.4 of the Addendum to this final rule).

As a group, rural hospitals benefit from geographic reclassification. Their payments rise 2.3 percent, while payments to urban hospitals decline 0.4 percent. Large urban hospitals lose 0.4 percent because, as a group, they have the smallest percentage of hospitals that are reclassified (fewer than 3 percent of large urban hospitals are reclassified). There are enough hospitals in other urban areas that are reclassified to limit the decrease in payments to these urban hospitals stemming from the budget neutrality offset to 0.2 percent. Among urban hospital groups generally (that is, bed size, census division, and special payment status), payments fall between 0.1 and 0.5 percent.

A positive impact is evident among all rural hospital groups except rural hospitals with up to 49 beds, which experience a 0.0 percent impact. The smallest effect among all rural census divisions is 0.8 percent for the Mountain division. This division has relatively few MGCRB reclassifications. Among urban census divisions, the New England and the Middle Atlantic display the smallest negative impact, 0.2 percent.

Among the 90 rural hospitals designated as RRCs, 50 hospitals are reclassified for purposes of the wage index only and experience a 9.5 percent increase in payments due to MGCRB reclassification. This group is not shown separately in the table, but this large increase is reflected in several of the rural hospital categories. For example, rural hospitals with 200 or more beds have a 4.9 percent increase in payments in column 4, largely due to this effect.

Rural hospitals reclassified for FY 1996 and FY 1997 experience an 8.9 percent increase in payments, the greatest of any group in the category. This may be due to the fact that these hospitals have the most to gain from reclassification and have been reclassified for a period of years. Rural hospitals reclassified for FY 1997 only experience a 7.1 percent increase in payments while rural hospitals reclassified for FY 1996 only experience a 0.4 decrease in payments. This is due to the budget neutrality adjustment, since the changes in this column reflect FY 1997 payments relative to no reclassifications, rather than to FY 1996 reclassifications. Urban hospitals reclassified for FY 1996 but not FY 1997 experience a 1.7 percent decline in payments overall. This appears to be due to the combined impacts of the budget neutrality adjustment and a number of hospitals in this category that experience a 6 percent drop in their wage index after reclassification. Urban hospitals reclassified for FY 1997 but not for FY 1996 experience a 2.5 percent increase in payments.

The FY 1997 Reclassification rows of Table I show the changes in payments per case for all FY 1997 reclassified and nonreclassified hospitals in urban and rural locations for each of the three reclassification categories (standardized amount only, wage index only, or both). The table illustrates that the largest impact for reclassified rural hospitals is for those hospitals reclassified for both the standardized amount and the wage index. These hospitals receive an 18.5 percent increase in payments. The number of hospitals in this category has declined from 42 in FY 1996 to 16 in FY 1997. In addition, 245 rural hospitals reclassified for the wage index receive an 8.6 percent payment increase. The overall impact on reclassified hospitals is to increase their payments per case by an average of 5.4 percent for FY 1997.

Among the 27 rural hospitals deemed to be urban under section 1886(d)(8)(B) of the Act, payments increase 1.2 percent due to MGCRB reclassification. This is because, although these hospitals are treated as being attached to an urban area in our baseline (their redesignation is ongoing, rather than subject to annual review, like the MGCRB reclassifications), they are still eligible for MGCRB reclassification. For FY 1997, one hospital in this category reclassified to a large urban area, resulting in a net increase due to reclassifications of 1.2 percent.

The reclassification of hospitals primarily affects payment to nonreclassified hospitals through changes in the wage index and the geographic reclassification budget neutrality adjustment required by section 1886(d)(8)(D) of the Act. Among hospitals that are not reclassified, the overall impact of hospital reclassifications is an average decrease in payments per case of 0.6 percent, which corresponds closely with the geographic reclassification budget neutrality factor. Rural nonreclassified hospitals decrease slightly less, a 0.4 percent decrease. This occurs because the wage index values in some rural areas increase after reclassified hospitals are excluded from the calculation of those index values.

The number of reclassifications for purposes of the standardized amount, or for both the standardized amount and the wage index, has declined from 358 in FY 1996 to 205 in FY 1997. This is not surprising because of the elimination of standardized amount reclassifications from rural to other urban areas for individual hospitals. Individual rural (and other urban) hospitals can continue to reclassify to large urban areas for purposes of the standardized amount. The number of wage index only reclassifications increased slightly from 260 in FY 1996 to 272 in FY 1997.

F. Outlier Changes (Column 5)

Medicare provides extra payment in addition to the basic DRG payment amount for extremely costly or extraordinarily lengthy cases (cost outliers and day outliers, respectively). Section 1886(d)(5)(A)(v) of the Act requires the Secretary to phase out payment for day outliers from FY 1994 day outlier levels in 25 percent increments beginning in FY 1995. Day outliers in FY 1997 should account for approximately 8 percent of total outlier payments (25 percent of FY 1994 levels). This reduction in day outlier payments will be offset by an increase in cost outlier payments.

As discussed in the Addendum, for FY 1997, the day outlier threshold will be equal to the geometric mean length of stay for each DRG plus the lesser of 24 days or 3.0 standard deviations. The marginal cost factor for day outliers is 33 percent. For FY 1997, a case would receive cost outlier payments if its costs exceed the DRG payment plus $9,700.

We are maintaining the marginal cost factor for cost outliers at 80 percent.

The payment impacts of these changes are minimal. Hospital categories negatively affected by phasing out day outliers are consistent with the categories negatively affected in previous years: urban New England (0.1 percent decline); urban and rural Middle Atlantic census divisions (0.7 percent and 0.1 percent declines, respectively); urban hospitals with 300–499 beds and those with 500 or more beds (0.1 and 0.2 percent declines, respectively); teaching hospitals with 100 or more residents (0.4 percent decline); and hospitals for which data were unavailable to calculate type of ownership or Medicare utilization rates (1.3 percent decline). As noted previously in the wage index discussion, this last category contains a number of New York City hospitals because they file manual cost reports. Because the changes to outlier policy result in a shift in payments from cases paid as day outliers to cases paid as cost outliers, this indicates that these categories have higher percentages of day outliers. The largest positive impact of 0.2 percent affected numerous hospital groups.

G. All Changes (Column 6)

Column 6 compares our estimate of payments per case incorporating all of our changes for FY 1997 to our estimate of payments per case in FY 1996. It also includes the effects of the 2.0 percent update to the standardized amounts and the hospital-specific rates for SCHs and EACHs, and the difference between the percentage of projected outlier payments in FY 1997 (5.1 percent) and the current estimate of the percentage of actual outlier payments in FY 1996 (4.0 percent), as described in the introduction to this Appendix and the Addendum.

Also, column 6 includes the impacts of FY 1997 MGCRB reclassifications compared to the payment impacts of FY 1996 reclassifications. Therefore, when comparing FY 1997 payments to FY 1996, the percent changes due to FY 1997 reclassifications shown in column 4 are offset by the effects of reclassification on hospitals' FY 1996 payments (column 4 of Table I, September 1, 1995 final rule; 60 FR 45926). That is, column 4 of Table I shows the impacts of going from no MGCRB reclassifications to the FY 1997 reclassifications. When comparing FY 1996 and FY 1997 payments, hospitals similarly reclassified during FY 1996 would not experience the full extent of the change shown in column 4. For example, the impact of MGCRB reclassifications on rural hospitals' FY 1996 payments was approximately a 2.3-percent increase, equal to the 2.3-percent increase for FY 1997. Therefore, the net increase in FY 1997 payments due to reclassification for rural hospitals is 0.0 percent.

The FY 1996 standardized amounts were adjusted by a budget neutrality factor of 0.997575, in accordance with section 1886(d)(5)(I) of the Act, so that the change to the transfer payment methodology we implemented last year (doubling the per diem payment for the first day of a transfer) would not affect aggregate payments. As we indicated in last year's final rule (60 FR 45854), this adjustment was applied on a one-time basis to the FY 1996 standardized amounts. In the proposed rule, we indicated that this was interpreted to mean that there was no transfer budget neutrality factor applied after FY 1996, and we estimated the impact of this to be a 0.2 percent increase in FY 1997 payments. As discussed in the Addendum to this final rule, we have corrected this interpretation so that we will continue to apply this budget neutrality factor of 0.997575 in FY 1997, and in the future.

In addition, eliminating the regional floor provision effective for discharges occurring on or after October 1, 1996, results in approximately a 0.2 percent lower average payment in FY 1997 than would occur otherwise. This effect is attributable to particular census divisions, as discussed below.

There may also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 6 may not equal the sum of columns 3 through 5 plus the other impacts that we are able to identify. The point should be repeated here, as well, that when comparing the percent changes in column 6 attributable to the isolated changes in the prior columns in this table, columns 1 and 2 are incorporated into column 3. Therefore, just the effect in column 3 should be added into the total change shown in column 6.

The overall payment increase from FY 1997 to FY 1996 for all hospitals is a 2.9 percent increase. This reflects the 0.0 percent net change in total payments due to the final changes for FY 1997 shown in columns 3 through 5, the 2.0 percent update for FY 1997, the 1.1 percent higher outlier payments in FY 1997 compared to FY 1996, and the 0.2 overall negative effect of eliminating the regional floor.

Hospitals in urban areas experience a 2.9 percent rise in payments per case over FY 1996. Similar to all hospitals nationally, this is primarily due to the factors discussed above: the 2.0 percent update; a 1.1 percent impact of the higher level of outlier payments estimated for FY 1997; and the effect of the expiration of the regional floor.

Hospitals in large and other urban areas experience 2.9 percent and 3.0 percent increases, respectively. The lower increase for hospitals in large urban areas appears to be attributable primarily to the 0.1 percent negative impact of the continuing phase-out of day outliers.

Hospitals in rural areas experience a 2.4 percent increase. Their FY 1997 payments are estimated to be 0.4 percent higher than for FY 1996 due to higher outlier payments, in contrast to the national average of 1.1 percent. Like urban hospitals, the impact of geographic reclassification in FY 1997 is offset by an identical 2.3 percent increase in FY 1996.

Among urban bed size groups, column 6 shows changes in payments are higher for the largest urban hospitals compared to smaller urban hospitals. The relatively smaller increases for the smaller urban hospitals appear to be due to the negative impacts of the new wage data, as shown in column 2. Among rural bed size groups, the impacts range from 2.4 percent to 2.7 percent, with the exception of rural hospitals with 200 or more beds. Payments per case for this group of hospitals are estimated to increase 1.9 percent during FY 1997. This below average increase appears to be attributable primarily to a smaller, though still significant, impact of MGCRB reclassifications for FY 1997 compared to FY 1996. In column 4, the FY 1997 impact of reclassification is shown to be 4.9 percent. For FY 1996, however, this impact was 5.4 percent. Thus, the increase is 0.5 percent less for FY 1997 due to a smaller reclassification impact.

As discussed previously, effective for discharges on or after October 1, 1996, the regional floor, which benefitted certain census divisions, expires. The regional floor provided that, in those census divisions where the regional standardized amount exceeded the national standardized amount, hospitals would be paid a blend of 85 percent of the national amount and 15 percent of the regional amount. The census divisions affected by the regional floor during FY 1996 are New England and East North Central. In New England, the impacts of eliminating the regional floor are a 0.7 percent decrease for urban hospitals and a 0.6 percent decrease among rural hospitals. In the East North Central census division, the impacts are a 1.0 percent reduction for urban

hospitals, and a 0.7 percent reduction for rural hospitals. The negative impacts of losing the regional floor for urban hospitals in the East North Central census division are largely offset by higher estimated outlier payments in FY 1997 compared to FY 1996, the 0.4 percent higher payments due to the FY 1993 wage data (column 2), and the 0.1 percent increase due to the phase-out of day outliers (column 5). Urban New England hospitals' higher outlier payments in FY 1997 are also offset by the negative impacts of the expiration of the regional floor. Rural New England hospitals also see a 0.9 percent decrease in payments stemming from the FY 1993 wage data.

Other census divisions below the average payment increase are urban Pacific, urban Puerto Rico, rural Middle Atlantic, rural East South Central, and rural Puerto Rico. With the exception of the rural East South Central, the below average overall payment impacts of these census divisions are related to negative impacts of introducing the FY 1993 wage data. In the rural Middle Atlantic, the negative impact of the new wage data is combined with a smaller impact stemming from MGCRB reclassifications in FY 1997 (0.9 percent compared to 1.5 percent in FY 1996). A smaller FY 1997 reclassification impact (2.4 percent compared to 3.7 percent in FY 1996) is also the reason for the relatively small (1.9 percent) rate of increase in the rural East South Central census division. In rural Puerto Rico, although hospitals experience the greatest negative impact due to the updated wage data, this group benefits from reclassifications by the MGCRB in FY 1997 (of the five rural Puerto Rico hospitals, one is reclassified), with a 3.3 percent increase compared to a 0.5 percent decrease in their FY 1996 payments due to the reclassification budget neutrality factor.

Conversely, the urban Middle Atlantic, urban West North Central, urban West South Central, and rural Pacific census divisions all have overall increases at least 0.4 percent above the national average. The urban West South Central gains from the continued phase-out of day outliers, as well as higher estimated FY 1997 outlier payments compared to FY 1996 (1.5 percent). As noted previously, the urban Middle Atlantic benefits significantly from the updated wage index data. These hospitals also have higher estimated FY 1997 outlier payments, which offset their 0.7 percent decrease due to the phase-out of day outliers. Rural Pacific hospitals benefit from geographic reclassification in FY 1997 (2.3 percent compared to 1.4 percent in FY 1996) and the new wage data (0.5 percent).

The only hospital groups with negative payment impacts from FY 1996 to FY 1997 are hospitals that were reclassified for FY 1996 and are not reclassified for FY 1997. Overall, these hospitals lose 0.5 percent. The urban hospitals in this category actually experience a slight payment increase over FY 1996 (0.6 percent), while the rural hospitals lose 2.2 percent. On the other hand, hospitals reclassified for FY 1997 that were not reclassified for FY 1996 experience the greatest payment increases: 10.2 percent for 69 rural hospitals in this category and 7.8 percent for 29 urban hospitals.

Reclassification appears to be a significant factor influencing the payment increases for a number of rural hospital groups with above average overall payment increases in column 6. For example, among hospital groups identified in the discussion of the impacts of MGCRB reclassifications for FY 1997 (column 4), all have overall increases above the national average. This outcome highlights the redistributive effects of reclassification decisions upon hospital payments. This impact is illustrated even more clearly when one examines the rows categorizing hospitals by their reclassification status for FY 1997. All nonreclassified hospitals have an average payment increase of 2.8 percent. The average payment increase for all reclassified hospitals is 3.8 percent.

Among SCH/EACHs, the payment increase is 2.6 percent. Because these hospital groups receive their hospital-specific rate if it exceeds the applicable Federal amount (including outliers), there is less of an impact due to changes in outlier payment levels, which are not applied to the hospital-specific rate. In addition, nonspecial status rural hospitals experience only a 1.6 percent increase. This below average increase is largely attributable to 123 hospitals in this category that lost their reclassification status from FY 1996 to FY 1997.

Another notably small increase appearing in this column is the 0.3 percent increase for rural DSH hospitals with 100 or more beds. This impact is primarily due to a number of hospitals in this category that lost their MGCRB reclassification from FY 1996 to FY 1997, stemming from the elimination of standardized amount reclassifications solely for higher DSH payments.

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per case]

	Number of hospitals	Average FY 1996 payment per case	Average FY 1997 payment per case	All changes
	(1)	(2) [1]	(3) [1]	(4)
(By Geographic Location)				
All hospitals	5,129	6,478	6,664	2.9
Urban hospitals	2,881	7,013	7,218	2.9
Large urban areas	1,596	7,544	7,762	2.9
Other urban areas	1,285	6,313	6,502	3.0
Rural areas	2,248	4,297	4,400	2.4
Bed size (urban):				
0–99 beds	715	4,705	4,832	2.7
100–199 beds	945	5,951	6,108	2.6
200–299 beds	576	6,527	6,715	2.9
300–499 beds	478	7,444	7,674	3.1
500 or more beds	167	9,147	9,426	3.1
Bed size (rural):				
0–49 Beds	1,177	3,538	3,622	2.4
50–99 beds	657	3,992	4,090	2.4

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per case]

	Number of hospitals	Average FY 1996 payment per case	Average FY 1997 payment per case	All changes
	(1)	(2) [1]	(3) [1]	(4)
100–149 beds	241	4,462	4,579	2.6
150–199 beds	98	4,594	4,716	2.7
200 or more beds	75	5,417	5,518	1.9
Urban by census div.:				
New England	160	7,525	7,672	2.0
Middle Atlantic	434	7,718	7,973	3.3
South Atlantic	419	6,682	6,889	3.1
East North Central	483	6,735	6,905	2.5
East South Central	163	6,181	6,374	3.1
West North Central	193	6,645	6,866	3.3
West South Central	376	6,508	6,743	3.6
Mountain	127	6,766	6,962	2.9
Pacific	478	8,102	8,304	2.5
Puerto Rico	48	2,595	2,644	1.9
Rural by census div.:				
New England	53	5,242	5,304	1.2
Middle Atlantic	85	4,691	4,769	1.7
South Atlantic	297	4,473	4,578	2.3
East North Central	304	4,321	4,434	2.6
East South Central	278	3,969	4,045	1.9
West North Central	525	4,004	4,105	2.5
West South Central	349	3,845	3,952	2.8
Mountain	211	4,569	4,689	2.6
Pacific	141	5,307	5,505	3.7
Puerto Rico	5	2,038	2,073	1.7
(By Payment Categories)				
Urban hospitals	2,981	6,968	7,174	2.9
Large urban areas	1,791	7,370	7,586	2.9
Other urban areas	1,190	6,317	6,504	3.0
Rural areas	2,148	4,263	4,358	2.2
Teaching status:				
Non-teaching	4,044	5,288	5,437	2.8
Fewer than 100 Residents	850	6,895	7,099	3.0
100 or More residents	235	10,565	10,865	2.8
Disproportionate share hospitals (DSH):				
Non-DSH	3,201	5,595	5,755	2.9
Urban DSH:				
100 beds or more	1,410	7,614	7,834	2.9
Fewer than 100 beds	101	4,806	4,911	2.2
Rural DSH:				
Sole community (SCH)	156	4,349	4,507	3.6
Referral centers (RRC)	27	5,179	5,352	3.3
Other Rural DSH hosp.:				
100 beds or more	83	4,198	4,211	0.3
Fewer than 100 beds	151	3,432	3,500	2.0
Urban teaching and DSH:				
Both teaching and DSH	692	8,587	8,832	2.8
Teaching and no DSH	339	7,095	7,310	3.0
No teaching and DSH	819	6,126	6,309	3.0
No teaching and no DSH	1,131	5,438	5,605	3.1
Rural hospital types:				
Nonspecial status hospitals	1,375	3,895	3,958	1.6
RRC	90	5,076	5,246	3.4
SCH/Each	645	4,405	4,519	2.6
SCH/Each and RRC	38	5,213	5,352	2.7
Type of ownership:				
Voluntary	2,951	6,629	6,823	2.9
Proprietary	696	5,948	6,120	2.9
Government	1,366	6,040	6,195	2.6
Unknown	116	7,564	7,724	2.1
Medicare Utilization as a percent of Inpatient days:				
0–25	258	8,741	8,917	2.0
25–50	1,284	7,878	8,103	2.9
50–65	2,097	5,947	6,122	2.9

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per case]

	Number of hospitals (1)	Average FY 1996 payment per case (2)[1]	Average FY 1997 payment per case (3)[1]	All changes (4)
Over 65	1,374	5,055	5,204	2.9
Unknown	116	7,564	7,724	2.1
Hospitals Reclassified by the Medicare Geographic Review Board				
Reclassification status during FY96 and FY97				
Reclassified during both FY96 and FY97	379	5,780	5,939	2.7
Urban	130	6,606	6,802	3.0
Rural	249	5,012	5,136	2.5
Reclassified during FY97 only	98	6,132	6,642	8.3
Urban	29	7,307	7,860	7.6
Rural	69	4,369	4,815	10.2
Reclassified during FY96 only	253	5,893	5,861	−0.5
Urban	91	7,497	7,543	0.6
Rural	162	4,503	4,403	−2.2
FY97 Reclassifications:				
All reclassified hosp.	477	5,845	6,069	3.8
Stand. amt. only	119	5,753	5,914	2.8
Wage index only	272	5,665	5,854	3.3
Both	86	6,254	6,600	5.5
Nonreclass	4,625	6,563	6,744	2.8
All urban reclass	159	6,760	7,035	4.1
Stand. amt. only	62	6,218	6,398	2.9
Wage index only	27	8,949	9,282	3.7
Both	70	6,446	6,777	5.1
Nonreclass	2,722	7,031	7,231	2.9
All Rural Reclass	318	4,916	5,088	3.5
Stand. amt. only	57	4,622	4,737	2.5
Wage index only	245	4,977	5,136	3.2
Both	16	4,904	5,354	9.2
Nonreclass	1,903	4,051	4,127	1.9
Other reclassifed:				
Hospitals (Section 1886(d)(8)(B))	27	4,620	4,743	2.7

[1] These payment amounts per case do not reflect any estimates of annual case-mix increase.

Table II presents the projected impact of the final changes for FY 1997 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the projected payments per case for FY 1997 with the average estimated per case payments for FY 1996, as calculated under our models. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table I equal the percentage changes in average payments from column 6 of Table I.

VII. Impact of Changes in the Capital Prospective Payment System

A. General Considerations

We now have data that were unavailable in previous impact analyses for the capital prospective payment system. Specifically, we have cost report data for the third year of the capital prospective payment system (cost reports beginning in FY 1994) available through the June 1996 update of the Hospital Cost Report Information System (HCRIS). We also have updated information on the projected aggregate amount of obligated capital approved by the fiscal intermediaries. However, our impact analysis of payment changes for capital-related costs is still limited by the lack of hospital-specific data on several items. These are the hospital's projected new capital costs for each year, its projected old capital costs for each year, and the actual amounts of obligated capital that will be put in use for patient care and recognized as Medicare old capital costs in each year.

The lack of such information affects our impact analysis in several ways. Specifically, major investment in hospital capital assets (for example in building and major fixed equipment) occurs at irregular intervals. As a result, there can be significant variation in the growth rates of Medicare capital-related costs per case among hospitals. We do not have the necessary hospital-specific budget data to project the hospital capital growth rate for individual hospitals. Moreover, our policy of recognizing certain obligated capital as old capital makes it difficult to project future capital-related costs for individual hospitals. Under § 412.302(c), a hospital is required to notify its intermediary that it has obligated capital by the later of October 1, 1992, or 90 days after the beginning of the hospital's first cost reporting period under the capital prospective payment system. The intermediary must then notify the hospital of its determination whether the criteria for recognition of obligated capital have been met by the later of the end of the hospital's first cost reporting period subject to the capital prospective payment system or 9 months after the receipt of the hospital's notification. The amount that is recognized as old capital is limited to the lesser of the actual allowable costs when the asset is

put in use for patient care or the estimated costs of the capital expenditure at the time it was obligated. We have substantial information regarding intermediary determinations of projected aggregate obligated capital amounts. However, we still do not know when these projects will actually be put into use for patient care, the actual amount that will be recognized as obligated capital when the project is put into use, or the Medicare share of the recognized costs. Therefore, we do not know actual obligated capital commitments for purposes of the FY 1997 capital cost projections. We discuss in Appendix B the assumptions and computations we employ to generate the amount of obligated capital commitments for use in the FY 1997 capital cost projections.

In Table III of this appendix, we present the redistributive effects that are expected to occur between ''hold-harmless'' hospitals and ''fully prospective'' hospitals in FY 1997. In addition, we have integrated sufficient hospital-specific information into our actuarial model to project the impact of the FY 1997 capital payment policies by the standard prospective payment system hospital groupings. We caution that while we now have actual information on the effects of the transition payment methodology and interim payments under the capital prospective payment system and cost report data for most hospitals, we need to randomly generate numbers for the change in old capital costs, new capital costs for each year, and obligated amounts that will be put in use for patient care services and recognized as old capital each year. We continue to be unable to predict accurately FY 1997 capital costs for individual hospitals, but with the more recent data on the experience to date under the capital prospective payment system, there is adequate information to estimate the aggregate impact on most hospital groupings.

We present the transition payment methodology by hospital grouping in Table IV. In Table V we present the results of the cross-sectional analysis using the results of our actuarial model. This table presents the aggregate impact of the FY 1997 payment policies.

B. Projected Impact Based on the FY 1997 Actuarial Model

1. Assumptions

In this impact analysis, we model dynamically the impact of the capital prospective payment system from FY 1996 to FY 1997 using a capital acquisition model. The FY 1997 model, described in Appendix B of this final rule, integrates actual data from individual hospitals with randomly generated capital cost amounts. We have capital cost data from cost reports beginning in FY 1989 through FY 1994 received through the June 1996 update of the Hospital Cost Reporting Information System (HCRIS), interim payment data for hospitals already receiving capital prospective payments through PRICER, and data reported by the intermediaries that include the hospital-specific rate determinations that have been made through July 1, 1996 in the Provider-Specific file. We used this data to determine the FY 1997 capital rates. However, we do not have individual hospital data on old capital changes, new capital formation, and actual obligated capital costs. We have data on costs for capital in use in FY 1994, and we age that capital by a formula described in Appendix B. We therefore need to randomly generate only new capital acquisitions for any year after FY 1994. All Federal rate payment parameters are assigned to the applicable hospital.

For purposes of this impact analysis, the FY 1997 actuarial model includes the following assumptions:

- Medicare inpatient capital costs per discharge will increase at the following rates during these periods:

AVERAGE PERCENTAGE INCREASE IN CAPITAL

Fiscal year	Costs per discharge
1995	−0.53
1996	5.06
1997	5.21

- The Medicare case-mix index will increase by 1.4 percent in FY 1996 and 1.6 percent in FY 1997.
- The Federal capital rate as well as the hospital-specific rate is updated in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs, and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The FY 1997 update factor is .7 percent. (see Addendum, Part III).

2. Results

We have used the actuarial model to estimate the change in payment for capital-related costs from FY 1996 to FY 1997. Table III shows the effect of the capital prospective payment system on low capital cost hospitals and high capital cost hospitals. We consider a hospital to be a low capital cost hospital if, based on a comparison of its initial hospital-specific rate and the applicable Federal rate, it will be paid under the fully prospective payment methodology. A high capital cost hospital is a hospital that, based on its initial hospital-specific rate, will be paid under the hold-harmless payment methodology. Based on our actuarial model, the breakdown of hospitals is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY

Type of hospital	Percent of hospitals	FY 1997 percent of discharges	FY 1997 percent of capital costs	FY 1997 percent of capital payments
Low Cost Hospital	66	62	52	56
High Cost Hospital	34	38	48	44

A low capital cost hospital may request to have its hospital-specific rate redetermined based on old capital costs in the current year, through the later of the hospital's cost reporting period beginning in FY 1994 or the first cost reporting period beginning after obligated capital comes into use (within the limits established in § 412.302(e) for putting obligated capital in use for patient care). If the redetermined hospital-specific rate is greater than the adjusted Federal rate, these hospitals will be paid under the hold-harmless payment methodology. Regardless of whether the hospital became a hold-harmless payment hospital as a result of a redetermination, we have continued to show these hospitals as low capital cost hospitals in Table III.

Assuming no behavioral changes in capital expenditures, Table III displays the percentage change in payments from

FY 1996 to FY 1997 using the above described actuarial model.

TABLE III.—IMPACT OF FINAL CHANGES FOR FY 1997 ON PAYMENTS PER DISCHARGE

FY 1996 payments per discharge

	Number of hospitals	Discharges	Adjusted federal payment	Average federal percent	Hospital specific payment	Hold harmless payment	Exceptions payment	Total payment
Low Cost Hospitals	3,363	6,868,405	$411.84	54.85	$200.68	$15.75	$18.28	$646.55
Fully Prospective	1,548	3,287,821	375.12	50.00	237.10	.....	11.40	623.62
Rebase—Fully Prospective	1,483	2,743,898	371.61	50.00	218.24	.....	27.88	617.74
Rebase—100% Federal Rate	228	643,922	793.64	100.00	.....	.....	0.25	793.89
Rebase—Hold Harmless	104	192,764	335.30	46.49	.....	561.32	59.11	955.72
High Cost Hospitals	1,741	4,288,642	668.50	86.23	.....	145.12	19.59	833.21
100% Federal Rate	1,135	3,010,570	785.30	100.00	.....	.....	2.23	787.53
Hold Harmless	606	1,278,072	393.38	52.33	.....	486.95	60.48	940.81
Total Hospitals	5,104	11,157,046	510.50	67.15	123.54	65.48	18.78	718.30

FY 1997 payments per discharge

	Number of hospitals	Discharges	Adjusted federal payment	Average federal percent	Hospital specific payment	Hold harmless payment	Exceptions payment	Total payment	Percent change
Low Cost Hospitals	3,363	7,056,653	$471.51	63.97	$157.25	$12.43	$40.25	$681.44	5.40
Fully Prospective	1,548	3,377,933	441.20	60.00	185.78	.....	30.53	657.51	5.43
Rebase—Fully Prospective	1,483	2,819,103	438.15	60.00	171.01	.....	54.23	663.39	7.39
Rebase—100% Federal Rate	238	677,500	778.75	100.00	.....	.....	2.63	781.38	−1.58
Rebase—Hold Harmless	94	182,117	407.13	56.47	.....	481.80	144.04	1,032.97	8.08
High Cost Hospitals	1,741	4,406,184	694.20	89.74	.....	117.32	49.69	861.21	3.36
100% Federal Rate	1,173	3,160,803	779.30	100.00	.....	.....	11.40	790.70	0.40
Hold Harmless	568	1,245,382	478.21	63.00	.....	415.08	146.89	1,040.17	10.56
Total Hospitals	5,104	11,462,838	557.11	74.17	96.80	52.75	43.88	750.54	4.49

Under section 1886(g)(1)(A) of the Act, aggregate payments under the capital prospective payment system for FY 1992 through 1995 respectively, were projected to equal 90 percent of payments that would have been payable on a reasonable cost basis in each year. With the expiration of the capital budget neutrality provision, we now estimate that there was an aggregate 27.50 percent increase in FY 1996 Medicare capital payments over the FY 1995 payments. We estimate aggregate Medicare capital payments will increase by 6.77 percent in FY 1997.

We project that low capital cost hospitals paid under the fully prospective payment methodology will experience an average increase in payments per case of 4.75 percent, and high capital cost hospitals will experience an average increase of 2.86 percent.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage will increase from 50 percent to 60 percent and the hospital-specific rate payment percentage will decrease from 50 to 40 percent in FY 1997. The Federal rate payment percentage for hospitals paid under the hold-harmless payment methodology is based on the hospital's ratio of new capital costs to total capital costs. The average Federal rate payment percentage for hospitals receiving a hold-harmless payment for old capital will increase from 52.33 percent to 62.81 percent. (We estimate the percentage of hold-harmless hospitals paid based on 100 percent of the Federal rate will increase from 65.8 percent to 67.8 percent.)

We expect that the average hospital-specific rate payment per discharge will decrease from $123.54 in FY 1996 to $96.10 in FY 1997. This is partly due to the 4.32 percent decrease in the FY 1997 hospital-specific rate compared to FY 1996.

We proposed no changes in our exceptions policies for FY 1997. As a result, the minimum payment levels will be:

- 90 percent for sole community hospitals;
- 80 percent for urban hospitals with 100 or more beds and a disproportionate share patient percentage of 20.2 percent or more; or,
- 70 percent for all other hospitals.

We estimate that exceptions payments will increase from 2.61 percent of total capital payments in FY 1996 to 5.97 percent of payments in FY 1997. The number and amount of exceptions payments is expected to increase throughout the transition period. The projected distribution of the payments is shown in the table below:

ESTIMATED FY 1997 EXCEPTIONS PAYMENTS

Type of hospital	Number of hospitals	Percent of exceptions payments
Low Capital Cost	464	57
High Capital Cost	348	43
Total	812	100

C. Cross-Sectional Comparison of Capital Prospective Payment Methodologies

Table IV presents a cross-sectional summary of hospital groupings by capital prospective payment methodology. This distribution is generated by our actuarial model.

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS

	(1) Total No. of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
By Geographic Location:				
All hospitals	5,104	13.0	27.6	59.4
Large urban areas (populations over 1 million)	1,584	15.3	34.8	49.9
Other urban areas (populations of 1 million or fewer)	1,275	15.8	32.9	51.3
Rural areas	2,245	9.7	19.6	70.7
Urban hospitals	2,859	15.5	34.0	50.5
0–99 beds	697	16.4	27.4	56.2
100–199 beds	941	19.2	36.9	43.9
200–299 beds	576	14.4	36.6	49.0
300–499 beds	478	10.3	34.5	55.2
500 or more beds	167	10.2	34.1	55.7
Rural hospitals	2,245	9.7	19.6	70.7
0–49 beds	1,175	7.0	14.6	78.5
50–99 beds	656	12.5	21.6	65.9
100–149 beds	241	13.7	30.7	55.6
150–199 beds	98	15.3	22.4	62.2
200 or more beds	75	8.0	41.3	50.7
By Region:				
Urban by Region	2,859	15.5	34.0	50.5
New England	160	6.9	25.0	68.1
Middle Atlantic	434	10.1	29.7	60.1
South Atlantic	418	20.1	40.2	39.7
East North Central	480	9.6	30.0	60.4
East South Central	162	22.8	34.6	42.6
West North Central	190	18.4	27.4	54.2
West South Central	367	27.8	46.0	26.2
Mountain	126	15.9	42.1	42.1
Pacific	474	12.7	31.2	56.1
Puerto Rico	48	10.4	25.0	64.6
Rural by Region	2,245	9.7	19.6	70.7
New England	53	7.5	15.1	77.4
Middle Atlantic	84	10.7	15.5	73.8
South Atlantic	297	11.8	25.6	62.6
East North Central	304	10.2	11.8	78.0
East South Central	278	9.7	31.3	59.0
West North Central	525	7.0	15.2	77.7
West South Central	347	9.2	24.8	66.0
Mountain	211	12.3	15.2	72.5
Pacific	141	11.3	15.6	73.0
Large urban areas (populations over 1 million)	1,779	15.2	34.5	50.4
Other urban areas (populations over 1 million or fewer)	1,180	15.8	32.2	51.9
Rural areas	2,145	9.6	19.5	71.0
Teaching Status:				
Non-teaching	4,019	13.5	26.6	59.8
Fewer than 100 Residents	850	11.3	32.4	56.4
100 or more Residents	235	9.4	27.7	63.0
Disproportionate share hospitals (DSH):				
Non-DSH	3,178	12.3	24.0	63.7
Urban DSH:				
100 or more beds	1,409	15.4	36.1	48.5
Less than 100 beds	100	17.0	23.0	60.0
Rural DSH:				
Sole Community (SCH/EACH)	156	11.5	18.6	69.9
Referral Center (RRC/EACH)	27	7.4	37.0	55.6
Other Rural:				
100 or more beds	83	8.4	45.8	45.8
Less than 100 beds	151	7.3	25.8	66.9
Urban teaching and DSH:				
Both teaching and DSH	692	11.1	32.2	56.6
Teaching and no DSH	339	11.2	29.8	59.0
No teaching and DSH	817	19.2	37.7	43.1
No teaching and no DSH	1,111	16.7	32.5	50.9
Rural Hospital Types:				
Non special status hospitals	1,372	7.7	19.5	72.8
RRC/EACH	90	10.0	34.4	55.6
SCH/EACH	645	13.3	17.2	69.5

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS—Continued

	(1) Total No. of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
SCH, RRC and EACH	38	13.2	21.1	65.8
Type of Ownership:				
Voluntary	2,951	12.3	27.6	60.1
Proprietary	696	23.4	46.7	29.9
Government	1,366	8.7	17.6	73.7
Medicare Utilization as a Percent of Inpatient Days:				
0–25	258	15.1	25.2	59.7
25–50	1,284	14.5	33.4	52.1
50–65	2,097	12.9	28.0	59.1
Over 65	1,374	10.8	21.6	67.5

As we explain in Appendix B, we were not able to determine a hospital-specific rate for 25 of the 5,129 hospitals in our data base. Consequently, the payment methodology distribution is based on 5,104 hospitals. This data should be fully representative of the payment methodologies that will be applicable to hospitals.

The cross-sectional distribution of hospital by payment methodology is presented by: (1) geographic location, (2) region, and (3) payment classification. This provides an indication of the percentage of hospitals within a particular hospital grouping that will be paid under the fully prospective payment methodology and under the hold-harmless methodology.

The percentage of hospitals paid fully Federal (100 percent of the Federal rate) as hold-harmless hospitals is expected to increase to 27.5 percent in FY 1997.

Table IV indicates that 59.4 percent of hospitals are paid under the fully prospective payment methodology. (This figure, unlike the figure of 66 percent for low cost capital hospitals in the previous section, takes account of the effects of redeterminations. In other words, this figure does not include low cost hospitals that, following a hospital-specific rate redetermination, are now paid under the hold-harmless methodology.) As expected, a relatively higher percentage of rural and governmental hospitals (70.7 percent and 73.7 percent, respectively by payment classification) are being paid under the fully prospective methodology. This is a reflection of their lower than average capital costs per case. In contrast, only 29.9 percent of proprietary hospitals are being paid under the fully prospective methodology. This is a reflection of their higher than average capital costs per case. (We found at the time of the August 30, 1991 final rule (56 FR 43430) that 62.7 percent of proprietary hospitals had a capital cost per case above the national average cost per case.)

D. Cross-Sectional Analysis of Changes in Aggregate Payments

We used our FY 1997 actuarial model to estimate the potential impact of our changes for FY 1997 on total capital payments per case, using a universe of 5,104 hospitals. The individual hospital payment parameters are taken from the best available data, including: the July 1, 1996 update to the Provider-Specific file, cost report data, and audit information supplied by intermediaries. Table V presents estimates of payments per case under our model for FY 1996 and FY 1997 (columns 2 and 3). Column 4 shows the total percentage change in payments from FY 1996 to FY 1997. Column 5 presents the percentage change in payments that can be attributed to Federal rate changes alone.

Federal rate changes represented in Column 5 include the 4.99 percent decrease in the Federal rate, a 1.6 percent increase in case mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the Medicare Geographic Classification Review Board. Column 4 includes the effects of the Federal rate changes represented in column 3. Column 4 also reflects the effects of all other changes, including: the change from 50 percent to 60 percent in the portion of the Federal rate for fully prospective hospitals, the hospital-specific rate update, changes in the proportion of new to total capital for hold-harmless hospitals, changes in old capital (for example, obligated capital put in use), hospital-specific rate redeterminations, and exceptions. The comparisons are provided by: (1) geographic location and (2) payment classification and payment region.

The simulation results show that, on average, capital payments per case can be expected to increase 3.9 percent in FY 1997. The results show that the effect of the Federal rate changes alone is to decrease payments by 1.3 percent. The decrease attributable to the Federal rate changes is more than offset by a 5.2 percent increase attributable to the effects of all other changes.

Our comparison by geographic location shows that overall, urban hospitals will gain slightly less than rural hospitals from the final rule changes (increases of 3.8 percent and 4.7 percent, respectively). Payments per case for urban hospitals will decrease at about the same rate as payments per case for rural hospitals (1.2 percent and 1.7 percent, respectively) from the Federal rate changes alone. Urban hospitals will gain slightly less than rural hospitals (5.0 percent compared to 6.4 percent) from the effects of all other changes.

By region, there is relatively little variation compared to some previous years. All regions are estimated to receive increases in total capital payments per case. Changes by region vary from a low of 2.1 percent increase (rural hospitals of the West South Central region) to a high of 15.2 percent increase (rural hospitals of the New England region).

By type of ownership, government hospitals are projected to have the largest rate of increase (5.1 percent, –1.5 percent due to Federal rate changes and a 6.6 percent positive offset from the effects of all other changes). Payments to voluntary hospitals will increase 3.8 percent (a 1.3 percent decrease due to Federal rate changes and a 5.1 percent

positive offset from the effects of all other changes) and payments to proprietary hospitals will increase 3.4 percent (a 0.9 percent decrease due to Federal rate changes and a 4.3 percent positive offset from the effects of all other changes).

Section 1886(d)(10) of the Act established the Medicare Geographic Classification Review Board (MGCRB). Hospitals may apply for reclassification for purposes of the standardized amount, wage index, or both. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes affects the geographic adjustment factor since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 1997 compared to the effects of reclassification for FY 1996, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 1997 reclassifications, we indicate those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both purposes. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified for FY 1997 as a whole are projected to experience a 4.5 percent increase in payments (a 0.8 percent decrease attributable to Federal rate changes and a 5.3 percent positive offset attributable to the effects of all other changes). Payments to nonreclassified hospitals will increase slightly less (3.9 percent) than reclassified hospitals (4.5 percent). Payments to nonreclassified hospitals will decrease slightly more than reclassified hospitals from the Federal rate changes (1.3 percent compared to 0.8 percent), but they will gain about the same from the effects of all other changes (5.2 percent compared to 5.3 percent).

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 1996 Payments Compared to FY 1997 Payments]

	Number of hospitals	Average FY 1996 payments/case	Average FY 1997 payments/case	All changes	Portion attributable to federal rate change
By Geographic Location:					
All hospitals	5,104	718	746	3.9	−1.3
Large urban areas (populations over 1 million)	1,584	823	852	3.6	−1.2
Other urban areas (populations of 1 million of fewer)	1,275	715	745	4.1	−1.1
Rural areas	2,245	478	501	4.7	−1.7
Urban hospitals	2,859	776	806	3.8	−1.2
0–99 beds	697	566	589	4.0	−1.3
100–199 beds	941	705	732	3.7	−1.3
200–299 beds	576	744	774	4.0	−1.3
300–499 beds	478	801	830	3.7	−1.2
500 or more beds	167	944	980	3.8	−0.9
Rural hospitals	2,245	478	501	4.7	−1.7
0–49 beds	1,175	367	385	5.0	−2.0
50–99 beds	656	447	468	4.8	−1.6
100–149 beds	241	511	532	4.2	−1.7
150–199 beds	98	511	540	5.6	−1.4
200 or more beds	75	612	638	4.3	−2.0
By Region:					
Urban by Region	2,859	776	806	3.8	−1.2
New England	160	784	817	4.3	−1.9
Middle Atlantic	434	813	848	4.2	−1.2
South Atlantic	418	780	814	4.3	−1.1
East North Central	480	727	749	3.1	−1.2
East South Central	162	707	733	3.7	−0.8
West North Central	190	772	809	4.8	−1.0
West South Central	367	796	823	3.4	−0.4
Mountain	126	775	797	2.7	−1.5
Pacific	474	855	883	3.3	−1.7
Puerto Rico	48	305	326	6.8	−0.4
Rural by Region	2,245	478	501	4.7	−1.7
New England	53	606	698	15.2	−2.3
Middle Atlantic	84	497	525	5.6	−2.7
South Atlantic	297	498	511	2.8	−2.0
East North Central	304	482	510	5.9	−1.3
East South Central	278	446	463	3.8	−1.8
West North Central	525	454	477	5.2	−1.7
West South Central	347	440	449	2.1	−1.3
Mountain	211	504	534	6.1	−0.8
Pacific	141	555	587	5.9	−1.3
By Payment Classification:					
All hospitals	5,104	718	746	3.9	−1.3
Large urban areas (populations over 1 million)	1,779	807	836	3.6	−1.2
Other urban areas (populations of 1 million of fewer)	1,180	715	746	4.2	−1.1
Rural areas	2,145	472	494	4.7	−1.8

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 1996 Payments Compared to FY 1997 Payments]

	Number of hospitals	Average FY 1996 payments/case	Average FY 1997 payments/case	All changes	Portion attibutable to federal rate change
Teaching Status:					
Non-teaching	4,019	622	645	3.8	−1.3
Fewer than 100 Residents	850	757	787	3.9	−1.2
100 or more Residents	235	1,034	1,079	4.3	−1.2
Urban DSH:					
100 or more beds	1,409	813	843	3.7	−1.2
Less than 100 beds	100	576	607	5.4	−1.2
Rural DSH:					
Sole Community (SCH/EACH)	156	449	486	8.1	−1.5
Referral Center (RRC/EACH)	27	533	541	1.5	−1.0
Other Rural:					
100 or more beds	83	488	504	3.3	−2.5
Less than 100 beds	151	367	379	3.3	−2.2
Urban teaching and DSH:					
Both teaching and DSH	692	879	911	3.6	−1.2
Teaching and no DHS	339	786	821	4.5	−1.1
No teaching and DSH	817	710	737	3.9	−1.2
No teaching and no DSH	1,111	673	697	3.6	−1.1
Rural Hospital Types:					
Non special status hospitals	1,372	439	458	4.2	−2.2
RRC/EACH	90	559	573	2.6	−1.1
SCH/EACH	645	470	502	6.8	−1.6
SCH, RRC and EACH	38	582	6.5	5.7	−1.4
Hospitals Reclassified by the Medicare Geographic Classification Review Board:					
Reclassification Status During FY96 and FY97:					
Reclassified During Both FY96 and FY97	379	662	685	3.5	−1.5
Reclassified During FY97 Only	98	673	732	8.7	2.0
Reclassified During FY96 Only	230	652	661	1.4	−3.9
FY 97 Reclassifications:					
All Reclassified Hospitals	477	664	694	4.5	−0.8
All Nonreclassified Hospitals	4,600	726	754	3.9	−1.3
All Urban Reclassified Hospitals	159	756	782	3.5	−1.0
Urban Nonreclassified Hospitals	2,700	778	808	3.8	−1.2
All Reclassified Rural Hospitals	318	570	604	5.9	−0.7
Rural Nonreclassified Hospitals	1,900	442	460	4.1	−2.2
Other Reclassified Hospitals (Section 1886 (D)(8)(B))	27	541	561	3.7	−1.8
Type of Ownership:					
Voluntary	2,951	731	760	3.8	−1.3
Proprietary	696	751	777	3.4	−0.9
Government	1,366	625	657	5.1	−1.5
Medicare Utilization as a Percent of Inpatient Days:					
0–25	258	797	830	4.1	−2.0
25–50	1,284	843	875	3.9	−1.2
50–60	2,097	676	703	4.0	−1.2
Over 65	1,374	603	627	4.0	−1.3

Appendix B: Technical Appendix on the Capital Acquisition Model and Required Adjustments

Under section 1886(g)(1)(A) of the Act, we set capital prospective payment rates for FY 1992 through FY 1995 so that aggregate prospective payments for capital costs were projected to be 10 percent lower than the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. To implement this requirement, we developed the capital acquisition model to determine the budget neutrality adjustment factor. Even though the budget neutrality requirement expires effective with FY 1996, we must continue to determine the recalibration and geographic reclassification budget neutrality adjustment factor, and the reduction in the Federal and hospital-specific rates for exceptions payments. We continue to use the capital acquisition model to determine these factors.

The following data are used in the capital acquisition model for FY 1997: the June 30, 1996 update of the cost reports for PPS-IX (cost reporting periods beginning in FY 1992), PPS-X (cost reporting periods beginning in FY 1993) and PPS-XI (cost reporting periods beginning in FY 1994), the July 1, 1996 update of the provider-specific file, and the March 1994 update of the intermediary audit file. The available data still lack certain items that were required for the determination of budget neutrality, including each hospital's projected new capital costs for each year, its projected old capital costs for each year, and the projected obligated capital amounts that will be put in use for patient care services and recognized as old capital each year.

Since hospitals under alternative payment system waivers (that is, hospitals in Maryland) are currently excluded from the capital prospective

payment system, we excluded these hospitals from our model.

We then developed FY 1992, FY 1993, FY 1994, FY 1995, and FY 1996 hospital-specific rates using the provider-specific file, the intermediary audit file, and, when available, cost reports. (We used the cumulative provider-specific file, which includes all updates to each hospital's records, and chose the latest record for each fiscal year.) We checked the consistency between the provider-specific file and the intermediary audit file. We also ensured that the FY 1993 increase in the hospital-specific rate was at least 0.62 percent (the net FY 1993 update), that the FY 1994 hospital-specific rate was at least as large as the FY 1993 hospital-specific rate decreased by 2.16 percent (the net FY 1994 update), that the FY 1995 increase in the hospital-specific rate was at least 0.05 percent (the net FY 1995 update), and that the FY 1996 increase in the hospital-specific rate was at least 21.10 percent (the net FY 1996 update). We were able to match hospitals to the files as shown in the following table.

Source	Number of hospitals
Provider-Specific File Only	99
Provider-Specific and Audit File	5029
Other	1
Total	5129

Sixty-six of these hospitals had unusable or missing data. We were able to backfill a hospital-specific rate for 41 of these hospitals from the cost reports as shown in the following table.

Source	Number of hospitals
PPS-VII Cost Reports	1
PPS-VIII Cost Reports	2
PPS-IX Cost Reports	3
PPS-X Cost Reports	7
PPS-XI Cost Reports	28
Total	41

We did not have data for 25 hospitals, and had to eliminate them from the capital analysis. These hospitals likely are new hospitals or hospitals with very few Medicare admissions. This leaves us with 5104 hospitals and should not affect the precision of the required adjustment factors.

Next, we determined old and new capital amounts for FY 1992 using the PPS-IX cost reports as the first source of data. For FY 1993 amounts, we used PPS-IX and PPS-X cost reports as the first source of data, weighting each cost report by the number of days in FY 1993. For FY 1994 amounts, we used PPS-X and PPS-XI cost reports as the first source of data, weighting each cost report by the number of days in FY 1994. We were able to match 5,049 PPS-IX cost reports, 5,064 PPS-X cost reports, and 4,924 PPS-XI cost reports. In cases where cost reports could not be matched, we used the provider-specific file for old capital information. Even in cases where a cost report was available, the breakout of old and new capital was not always available. In these cases, we used the old capital amounts and new capital ratios from the provider-specific file. If these were missing, we derived the old capital amount from the hospital-specific rate.

Finally, we used the intermediary audit file to develop obligated capital amounts. Since the obligated amounts are aggregate projected amounts, we computed a Medicare capital cost per admission associated with these amounts. We adjusted the aggregate amounts by the following factors:

(1) Medicare inpatient share of capital. This was derived from cost reports and was limited to the Medicare share of total inpatient days. It was necessary to limit the Medicare share because of data integrity problems. Medicare share of inpatient days is a reasonably good proxy for allocating capital. However, it may be understated if Medicare utilization is high, and may be overstated because it does not reflect the outpatient share of capital.

(2) Capitalization factor. This factor allocates the aggregate amount of obligated capital to depreciation and interest amounts. Consistent with the assumptions in the capital input price index, we used a 25-year life for fixed capital and a 10-year life for movable capital, and an average projected interest rate of 6.7 percent. We also assumed that fixed capital acquisitions are about one-half of total capital. In conjunction with the useful life and interest rate assumptions, the resulting capitalized fixed capital is about one-half of total capitalization. This is consistent with the allocations between fixed and movable capital found on the cost reports. The ratio we developed is 0.137, which produces the first year capitalization based on the aggregate amount.

(3) A divisor of Medicare admissions to derive the capital costs per discharge amount. Since we must project capital amounts for each hospital, we continued to use a Monte Carlo simulation to develop these amounts. (This model is described in detail in the August 30, 1991 final rule (56 FR 43517).) The Monte Carlo simulation is now used only to project capital costs per discharge amounts for each hospital. We analyzed the distributions of capital increases, and noted a slightly negative correlation between the dollar level of capital cost per admission, and the rate of increase in capital. To determine the rate of increase in capital cost per admission, we multiplied the lesser of $3,000 or the capital cost per admission by .00006 and subtracted this result from 1.2. (Increases for capital levels over $3,000 were not influenced by the level of capital, so this part of the calculation was capped at $3,000.) We selected a random number from the normal distribution, multiplied it by 0.17 (the standard deviation) and added it to −0.04 (the mean) and then added 1 to create a multiplier. This random result was multiplied by the previous result to assign a rate of increase factor which was multiplied by the prior year's capital per discharge amount to develop a capital per discharge amount for the projected year.

To model a projected year, we used the old and new capital for the prior year multiplied by 0.85 (aging factor). The 0.85 aging factor is the average of changes in capital over its life due to the gradual decrease in interest payments and the retirement of fully depreciated capital. The aged new and old capital is subtracted from the projected capital described in the previous paragraph. The difference represents newly acquired capital. If the hospital has obligated capital, any increase in ''old'' capital up to the total amount of obligated capital in FY 1993 and FY 1994 is assigned to obligated capital. Any remaining obligated capital is assigned to FY 1995 up to the amount of the modeled increase in capital for FY 1995. Even though obligated capital must be put in use for patient care by October 1, 1994, the use of the obligated capital may have started late in FY 1994 with only part of the ''first year'' depreciation and interest realized in FY 1994. The remainder of the ''first year'' depreciation and interest would be realized in FY 1995. With the exception of certain hospitals about whom we have information to the contrary, we assume that hospitals would meet the expiration dates provided under the obligated capital provision. Hence, no obligated capital is assigned to years FY 1996 and later. Once obligated capital is assigned, it is included with the ''old'' capital and is capitalized into future years as part of ''old'' capital. The on-line obligated amounts are added to old capital and subtracted from the newly acquired capital to yield residual newly acquired capital, which is then added to new capital. The residual newly

acquired capital is never permitted to be less than zero.

Next, we computed the average total capital cost per discharge from the capital costs that were generated by the model and compared the results to total capital costs per discharge that we had projected independently of the model. We adjusted the newly acquired capital amounts proportionately, so that the total capital costs per discharge generated by the model match the independently projected capital costs per discharge.

Once each hospital's capital-related costs are generated, the model projects capital payments. We use the actual payment parameters (for example, the case-mix index and the geographic adjustment factor) that are applicable to the specific hospital.

To project capital payments, the model first assigns the applicable payment methodology (fully prospective or hold-harmless) to the hospital. If available, the model uses the payment methodology indicated in the PPS–IX cost reports or the provider-specific file. Otherwise, the model determines the methodology by comparing the hospital's FY 1992 hospital-specific rate to the adjusted Federal rate applicable to the hospital. The model simulates Federal rate payments using the assigned payment parameters and hospital-specific estimated outlier payments. The case-mix index for a hospital is derived from the FY 1995 MedPAR file using the FY 1997 DRG relative weights published in this final rule. The case-mix index is increased each year after FY 1995 based on analysis of past experiences in case-mix increases.

We analyzed the case-mix increases for the recent past and found that case-mix increases have decelerated to about 1.53 percent in FY 1992, 0.80 percent in FY 1993, and 0.75 percent in FY 1994. It appears that the case-mix increase for FY 1995 accelerated to around 1.6 percent. Early indications show that FY 1996 case-mix is increasing at FY 1995 level, that is, approximately 1.6 percent. Thus, it appears that the deceleration of case-mix increases in FY 1993 and FY 1994 were anamolous, rather than the beginning of a trend. Therefore, in the model we are using the recent experience and have used a case-mix increase of 1.6 percent in FY 1995 and a projected case-mix increase of 1.6 percent in both FY 1996 and FY 1997. (Since we are using FY 1995 cases for our analysis, the FY 1995 increase in case mix has no effect on projected capital payments.)

Changes in geographic classification and revisions to the hospital wage data used to establish the hospital wage index affect the geographic adjustment factor. Changes in the DRG classification system and the relative weights affect the case-mix index.

Section 1886(g)(1)(A) of the Act requires that, for discharges occurring after September 30, 1993, the unadjusted standard Federal rate be reduced by 7.4 percent. Consequently, the model reduces the unadjusted standard Federal rate by 7.4 percent effective in FY 1994. Since budget neutrality expires effective with FY 1996, this adjustment affects the adjusted Federal rate starting in FY 1996.

Section 412.308(c)(4)(ii) requires that the estimated aggregate payments for the fiscal year, based on the Federal rate after any changes resulting from DRG reclassifications and recalibration and the geographic adjustment factor, equal the estimated aggregate payments based on the Federal rate that would have been made without such changes. For FY 1996, the budget neutrality adjustment factor was 1.0025. To determine the factor for FY 1997, we first determined the portion of the Federal rate that would be paid for each hospital in FY 1997 based on its applicable payment methodology. Using our model, we then compared estimated aggregate Federal rate payments based on the FY 1996 DRG relative weights and the FY 1996 geographic adjustment factor to estimated aggregate Federal rate payments based on the FY 1997 relative weights and the FY 1997 geographic adjustment factor. In making the comparison, we held the FY 1997 Federal rate portion constant and set the other budget neutrality adjustment factor and the exceptions reduction factor to 1.00. We determined that to achieve budget neutrality for the changes in the geographic adjustment factor and DRG classifications and relative weights, an incremental budget neutrality adjustment of 0.9987 for FY 1997 should be applied to the previous cumulative FY 1996 adjustment of 1.0025 (the product of the FY 1993 incremental adjustment of 0.9980, the FY 1994 incremental adjustment of 1.0053, the FY 1995 incremental adjustment of 0.9998, and the FY 1996 incremental adjustment of 0.9994), yielding a cumulative adjustment of 1.0012 through FY 1997.

The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG relative weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor for changes in the geographic adjustment factor (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low income patients or the large urban add-on.

In addition to computing the DRG/GAF budget neutrality adjustment factor, we used the model to simulate total payments under the prospective payment system.

Additional payments under the exceptions process are accounted for through a reduction in the Federal and hospital-specific rates. Therefore, we used the model to calculate the exceptions reduction factor. This exceptions reduction factor ensures that aggregate payments under the capital prospective payment system, including exceptions payments, are projected to equal the aggregate payments that would have been made under the capital prospective payment system without an exceptions process. Since changes in the level of the payment rates change the level of payments under the exceptions process, the exceptions reduction factor must be determined through iteration.

In the August 30, 1991 final rule (56 FR 43517), we indicated that we would publish each year the estimated payment factors generated by the model to determine payments for the next 5 years. The table below provides the actual factors for FY 1992, FY 1993, FY 1994, FY 1995, FY 1996, the final FY 1997 factor, and the estimated factors that would be applicable through FY 2001. We caution that, except with respect to FY 1992, FY 1993, FY 1994, FY 1995, FY 1996 and FY 1997, these are estimates only, and are subject to revisions resulting from continued methodological refinements, more recent data, and any payment policy changes that may occur. In this regard, we note that in making these projections we have assumed that the cumulative DRG/GAF adjustment factor will remain at 1.0012 for FY 1997 and later because we do not have sufficient information to estimate the change that will occur in the factor for years after FY 1997.

The projections are as follows:

Fiscal year	Update factor	Exceptions reduction factor	Budget neutrality factor	Federal rate (after outlier) reduction)
1992	N/A	0.9813	0.9602	415.59
1993	6.07	.9756	.9162	[1] 417.29
1994	3.04	.9485	.8947	[2] 378.34
1995	3.44	.9734	.8432	[3] 376.83
1996	1.20	.9849	N/A	[4] 461.96
1997	0.70	.9358	N/A	[5] 438.92
1998	1.20	.9121	N/A	432.94
1999	1.20	.9206	N/A	442.22
2000	1.30	9148	N/A	445.15
2001	1.30	[6] N/A	N/A	492.93

[1] NOTE: Includes the DRG/GAF adjustment factor of 0.9980 and the change in the outlier adjustment from 0.9497 in FY 1992 to 0.9496 in FY 1993.
[2] NOTE: Includes the 7.4 percent reduction in the unadjusted standard Federal rate. Also includes the DRG/GAF adjustment factor of 1.0033 and the change in the outlier adjustment from 0.9496 in FY 1993 to 0.9454 in FY 1994.
[3] NOTE: Includes the DRG/GAF adjustment factor of 1.0031 and the change in the outlier adjustment from 0.9454 in FY 1994 to 0.9414 in FY 1995.
[4] NOTE: Includes the transfer adjustment of .9972. Also includes the DRG/GAF adjustment factor of 1.0025 and the change in the outlier adjustment from 0.9414 in FY 1995 to 0.9536 in FY 1996.
[5] NOTE: Includes the DRG/GAF adjustment factor of 1.0012 and the change in the outlier adjustment from 0.9536 in FY 1996 to 0.9481 in FY 1997. Future adjustments are, for purposes of this projection, assumed to remain at the same level.
[6] NOTE: We are unable to estimate exceptions payments for the year under the special exceptions provision (§ 412.348(g) of the regulations) because the regular exceptions provision (§ 412.348(e)) expires.

Appendix C: Rebased Market Basket Data Sources

I. Data Sources Used to Determine the Market Basket Relative Weights and Choice of Price Proxy Variables for the Operating Hospital Input Price Indexes

As discussed in section IV of the preamble to this final rule, we are rebasing and revising the hospital market baskets. This appendix describes the technical features of the 1992-based indexes that we are implementing in this rule. For both the prospective payment and excluded hospital market baskets, the differences between the 1992-based market basket and the previous 1987-based market basket are noted. In the September 4, 1990 final rule (55 FR 36170), we discussed in detail the 1987-based hospital market baskets.

We present this description of the hospital operating market baskets in three steps:

- A synopsis of the structural differences between the 1987-based market baskets and the proposed 1992-based market baskets.
- A description of the methodology used to develop the cost category weights in the 1992-based market baskets, making note of the differences from the methodology used to develop the 1987-based market baskets.
- A description of the data sources used to measure price change for each component of the 1992-based market baskets, making note of the differences from the price proxies used in the 1987-based hospital market baskets.

A. Synopsis of Structural Changes Adopted in the Rebased 1992 Operating Hospital Market Baskets.

Three major structural differences exist between the 1987-based and the 1992-based operating hospital market baskets.

- The 1992-based hospital market baskets are based on more recent hospital expenditure data. The 1987-based market baskets contained skeletal cost shares that were derived from the 1987 cost data from the 1988 Annual Survey of the American Hospital Association (AHA). The 1992-based market baskets use data from the hospital cost reports for cost reporting periods beginning on or after October 1, 1991 and before October 1, 1992.
- Some cost categories have been combined, namely Fuel, Oil, Coal, and Other Fuel with Motor Gasoline, and Blood Services with Chemicals. These category mergers reflect the Bureau of Economic Analysis (BEA) reclassification decisions in the 1987 update of the BEA Input-Output Tables.
- In the 1992-based market basket, the sample of excluded hospitals is restricted to more closely reflect the average Medicare length of stay in excluded hospitals. We have used cost report data for excluded hospitals from only those hospitals in which the average length of stay of Medicare patients in the hospital is within 15 percent of the average length of stay of all patients in the hospital to more accurately reflect the structure of costs for Medicare cases. This is a change from the FY 1987-based market basket, for which data from all excluded hospitals were used.

B. Methodology for Developing the Cost Category Weights.

Cost category weights for the 1992-based market baskets were developed in four stages. First, base weights for three (Wages and Salaries, Employee Benefits, Pharmaceuticals) of the six main categories were derived from the 1992 Medicare cost reports for operating costs. Second, the weight for Nonmedical Professional Fees was developed by subtracting Medical Professional Fees reported in the Hospital Cost Report Information System (HCRIS) file from AHA Annual Survey Total Professional Fees to obtain Nonmedical Professional Fees, and the weight for Professional Liability Insurance was developed using 1989 HCRIS data trended forward to 1992, using the relative importance values in the previous market baskets. Third, the sum of Wages and Salaries, Employee Benefits, Pharmaceuticals, Nonmedical Professional Fees, and Professional Liability Insurance was subtracted from total expenses to obtain All Other Expenses. Finally, the weight for All Other Expenses was divided into subcategories using cost shares from the 1987 Input-Output Table for the hospital industry, produced by the U.S. Department of Commerce, Bureau of Economic Analysis, aged to 1992 using price changes. As of this writing the Department of Commerce has not released final 1992 cost data. Therefore we plan to incorporate these data into the FY 1998 proposed rule.

Below, we describe the source of the six main category weights and their subcategories in the 1992-based market

baskets. We make note of the differences between the methodologies used to develop the 1987-based and the 1992-based market baskets.

1. Wages and Salaries

The cost weight for the Wages and Salaries category was derived using the 1992 Medicare cost reports. Contract Labor, which is also derived from the 1992 Medicare cost reports, is split between the Wages and Salaries and Employee Benefits cost categories, using the relationship for employed workers. Examples of Contract Labor are registered nurses and workers in hospital food service or security who are employed and paid by firms that contract for their work with the hospital. The Wages and Salaries cost category was disaggregated into nine occupational subcategories (professional and technical, managers and administration, sales, clerical, craft and kindred, operatives excluding transport, transport equipment operatives, nonfarm laborers and service workers) to reflect the mix of occupational inputs used by hospitals. The Contract Labor wages and salaries component was allocated proportionally to Professional-Technical and Service occupations. The 1987-based weights were developed from the 1987 Current Population Survey, while the 1992-based weights were developed from the 1992 Current Population Survey.

2. Employee Benefits

The cost weight for the employee benefits category was derived from the 1992 cost reports. Like wages and salaries, the employee benefit weight in each 1992-based market basket is a composite of nine labor subcategories. The employee benefits categories in the 1987-based market baskets were developed from the 1987 AHA Annual Survey and used the 1987 Current Population Survey. In 1987 Contract Labor's implied fringe benefits were allocated proportionally to Professional and Technical occupations, while in 1992 they were allocated to Professional-Technical and Service occupations.

3. Nonmedical Professional Fees

The cost weight for the nonmedical professional fees category was derived from the 1992 Medicare Cost Reports and AHA Annual Survey data. Total professional fees were split into the subcategories medical and other (nonmedical) fees using AHA Total Professional Fees minus HCRIS Medical Professional Fees to equal Nonmedical Professional Fees. The 1987-based nonmedical professional fees cost category was derived from the 1987 AHA Annual Survey and American Medical Association (AMA) data. It was split into the subcategories medical and other fees using data derived from the American Medical Association. The medical professional fees category is excluded from the hospital market basket since it is paid under Medicare Part B.

4. Professional Liability Insurance

The 1987-based market baskets have weights for professional liability insurance that were derived from the June 30 and December 31, 1987 HAS/Monitrend surveys. The cost weight for the 1992-based professional liability insurance category was derived from 1989 HCRIS cost shares trended to 1992 using the change in the relative importance factor for professional liability insurance (malpractice) from the previous 1987-based prospective payment hospital and excluded hospital market baskets.

5. Utilities

For the 1987-based market baskets, the cost weight for utilities was derived by extrapolating the 1985 AHA Annual Survey utilities cost weight forward to 1987 using the rate of growth in the HAS/Monitrend cost weight for utilities between 1985 and 1987. The 1987 Utility subcategory weights were aged from their 1982-based index subcategory weights using price changes from 1982 to 1987. The 1992-based market basket cost weights for the subcategories (fuel, oil and gasoline; electricity; natural gas; and water and sewage) were derived from the Bureau of Economic Analysis' 1987 Input-Output table for the hospital industry, aged forward to 1992 by price changes and summed to a weight for utilities.

6. All Other Goods and Services

The all other goods and services category has more subcategories than any other market basket category. Goods found in this category include: direct service food, contract service food, pharmaceuticals, chemicals, medical instruments, photo supplies, rubber and plastics, paper products, apparel, machinery and equipment and miscellaneous products. Services found in this category include: business services, computer services, transportation and shipping, telephone, postage, other labor-intensive services, and other nonlabor-intensive services. The share for pharmaceuticals was derived from the 1992 Medicare cost reports. Relative shares for the other subcategories were derived from the 1987 Bureau of Economic Analysis' Input-Output table for the hospital industry and were aged forward to 1992 using price changes.

C. Price Proxies Used To Measure Cost Category Growth

1. Wages and Salaries

For measuring price growth in the 1992-based market basket, 10 price proxies are applied to the 9 occupational subcategories within the wages and salaries component. As in the 1987-based market basket, the professional and technical subcategory was split in half. An Employee Cost Index (ECI) for hourly wages paid to civilian hospital workers was applied to one half. An ECI of hourly wages and salaries paid to professional and technical workers in private industry was applied to the other half of the professional and technical component. The other eight occupations subcategories of the wages and salaries component were proxied using ECIs for wages and salaries for private industry workers in their respective occupational categories.

2. Employee Benefits

The 1992-based hospital market baskets use occupation-specific ECIs for employee benefits. The distribution of weights and price proxies is the same as for wages and salaries discussed above, but occupation-specific employee benefit ECIs replace occupation-specific wages and salaries ECIs. The components are summed into a composite index, just as was done for the 1987-based market basket.

3. Nonmedical Professional Fees

The ECI for compensation for professional and technical workers in private industry is applied to this category. This is a revision from the 1987-based market basket in which the ECI for wages and salaries for professional and technical workers in private industry was used.

4. Fuel, Oil, and Gasoline

The percentage change in the price of refined petroleum products as measured by the Producer Price Index (PPI) (Commodity Code #057) was applied to this component. This is a revision from the 1987-based indexes in which the PPIs for Light Fuel Oil (Commodity Code #0573) and Gasoline (Commodity Code #0571) were used.

5. Electricity

The percentage change in the price of commercial electric power as measured by the PPI (Commodity Code #0542) was applied to this component. This is a revision from the 1987-based indexes in

which the PPI for industrial power (Commodity Code #0543) was used.

6. Natural Gas

The percentage change in the price of gas fuels as measured by the PPI (Commodity Code #0552) was applied to this component. This is a revision from the 1987-based indexes in which the PPI for Natural Gas (Commodity Code #0531) was used.

7. Water and Sewerage

The percentage change in the price of water and sewerage maintenance as measured by the Consumer Price Index (CPI) for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

8. Professional Liability Insurance

The percentage change in the hospital professional liability insurance price as estimated by hospital industry professional liability insurance premium increase was applied to this component. The same price measure was used in the 1987-based market baskets.

9. Pharmaceuticals

The percentage change in the price of ethical preparations as measured by the PPI (Commodity Code #0635) was applied to this variable. The same price measure was used in the 1987-based market baskets.

10. Food, Direct Purchases

The percentage change in the price of processed foods and feeds as measured by the PPI (Commodity Code #02) was applied to this component. The same price measure was used in the 1987-based market baskets.

11. Food, Contract Services

The percentage change in the price of food purchased away from home as measured by the CPI for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

12. Chemicals

The percentage change in the price of industrial chemical products as measured by the PPI (Commodity Code #061) was applied to this component. The same price measure was used in the 1987-based market baskets.

13. Surgical and Medical Equipment

The percentage change in the price of medical and surgical instruments as measured by the PPI (Commodity Code #1562) was applied to this component. The same price measure was used in the 1987-based market baskets.

14. Photographic Supplies

The percentage change in the price of photographic supplies as measured by the PPI (Commodity Code #1542) was applied to this component. The same price measure was used in the 1987-based market baskets.

15. Rubber and Plastics

The percentage change in the price of rubber and plastic products as measured by the PPI (Commodity Code #07) was applied to this component. The same price measure was used in the 1987-based market baskets.

16. Paper Products

The percentage change in the price of converted paper and paperboard products as measured by the PPI (Commodity Code #0915) was used. This is a revision from the 1987-based indexes in which a weighted average of the percentage change in the price of converted paper and paperboard products and the percentage change in the price of paper excluding newsprint and packaging paper (Commodity Code #091301) was used.

17. Apparel

The percentage change in the price of apparel as measured by the PPI (Commodity Code #381) was applied to this component. This is a revision from the 1987-based indexes in which the PPI for textile house furnishings (Commodity Code #0382) was used.

18. Minor Machinery and Equipment

The percentage change in the price of machinery and equipment as measured by the PPI (Commodity Code #11) was applied to this component. The same price measure was used in the 1987-based market baskets.

19. Miscellaneous Products

The percentage change in the price of all finished goods as measured by the PPI was applied to this component. The same price measure was used in the 1987-based market baskets.

20. Business Services

The ECI for compensation for workers in the business services industry was applied to this component. This is a revision from the 1987-based indexes in which the percentage change in the AHE for wages and salaries for production and nonsupervisory workers in the business services industry as measured by the Bureau of Labor Statistics (SIC Code 73) was used.

21. Computer and Data Processing Services

The percentage change in the AHE of production and nonsupervisory workers engaged in firms furnishing computer data processing services (SIC Code 737) was applied to this component. The same price measure was used in the 1987-based market baskets.

22. Transportation and Shipping

The percentage change in the transportation component of the CPI for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

23. Telephone

The percentage change in the price of telephone services as measured by the CPI for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

24. Postage

The percentage change in the price of postage as measured by the CPI for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

25. All Other Services, Labor Intensive

The percentage change in the ECI for compensation paid to service workers employed in private industry was applied to this component. This is a revision from the 1987-based indexes in which the ECI for wages and salaries paid to service workers employed in private industry was used.

26. All Other Services, Nonlabor Intensive

The percentage change in the all-items component of the CPI for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

For further discussion of the rationale for choosing specific price proxies, we refer the reader to the September 3, 1986 final rule (51 FR 31582).

II. Data Sources Used to Determine the Cost Category Weights and Vintage Weights, and Choices of Price Proxy Variables for the Hospital Capital Input Price Index

In the preamble to this final rule, we discuss the rebasing of the capital input price index (CIPI). This appendix describes certain technical features of the 1992-based index, as well as differences between the 1992-based CIPI and the 1987-based CIPI. We discussed

the 1987-based CIPI in the September 1, 1995 final rule (60 FR 45817.)

This discussion has the following three parts:

- A synopsis of the differences between the 1987-based CIPI and the 1992-based CIPI.
- A description of the methodology used to develop the cost category weights and vintage weights in the 1992-based CIPI, making note of the differences from the methodology used to develop the 1987-based CIPI.
- A description of the data sources used to measure price change for each component of the 1992-based CIPI, making note of the differences from the price proxies used in the 1987-based CIPI.

A. Synopsis of Changes Adopted in the Rebased 1992 CIPI

We made no structural changes in the 1992-based CIPI. The only major change is the use of more recent hospital capital expenditure data. The 1987-based CIPI contained cost category weights that were derived from 1987 Medicare cost report data and the 1987 Annual Survey of the AHA. The 1992-based CIPI uses data from the hospital Medicare cost reports for cost periods beginning between October 1, 1991 and September 30, 1992. The 1992-based CIPI also uses data from the 1992 Annual Survey of the AHA.

The 1987-based CIPI contained vintage weights that were derived from 1987 Medicare cost report data, the 1963–1987 Panel Survey of the AHA, and the 1980–1989 Securities Data Corporation data on hospital bonds. The 1992-based CIPI uses data from the 1992 Medicare cost reports, the 1963–1992 Panel Survey of the AHA, and 1980–1992 Securities Data Corporation data on hospital bonds.

B. Methodology for Developing Cost Category Weights and Vintage Weights for the 1992-based CIPI

There are five cost categories in the CIPI: Building and fixed equipment depreciation, movable equipment depreciation, capital-related interest expense from government/nonprofit debt instruments, capital-related interest expense from for-profit debt instruments, and other capital-related expenses, such as taxes and insurance. The methodology for developing each of these cost category weights is described below:

1. Building and Fixed Equipment Depreciation

The 1992-based cost weight for building and fixed equipment depreciation was derived using the 1992 Medicare cost reports. The proportion of lease expenses attributable to building and fixed equipment was included in the cost weight based on the proportion of overall capital expenses allocated to building and fixed equipment depreciation. The 1987-based weight was developed from the 1987 Medicare cost reports and the 1987 AHA Annual Survey.

2. Movable Equipment Depreciation

The 1992-based cost weight for movable equipment depreciation was derived using the 1992 Medicare Cost Reports. The proportion of lease expenses attributable to movable equipment was included in the cost weight based on the proportion of overall capital expenses allocated to movable equipment depreciation. The 1987-based weight was developed from the 1987 Medicare cost reports and the 1987 AHA Annual Survey.

3. Government/Nonprofit Interest

The 1992-based cost weight for government/nonprofit interest was derived using the 1992 AHA Annual Survey data. The government/nonprofit interest is 85 percent of total interest, reflecting the relative debts of the government/nonprofit hospital sector and the for-profit hospital sector. The proportion of lease expenses attributable to government/nonprofit interest was included in the cost weight based on the proportion of overall capital expenses allocated to government/non-profit interest expense. The 1987-based weight was developed from the 1987 AHA Annual Survey.

4. For-Profit Interest

The 1992-based cost weight of for-profit interest was derived using the 1992 AHA Annual Survey data. The for-profit interest is 15 percent of total interest, reflecting the relative debts of the government/nonprofit hospital sector and the for-profit hospital sector. The proportion of lease expenses attributable to for-profit interest was included in the cost weight based on the proportion of overall capital expenses allocated to for-profit interest expense. The 1987-based weight was developed from the 1987 AHA Annual Survey.

5. Other Capital-Related Expenses

The 1992-based cost weight for other capital-related expenses was derived using 1992 Medicare cost reports. The proportion of lease expenses attributable to other capital-related expenses was included in the cost weight based on the proportion of overall capital expenses allocated to other capital-related expenses. The 1987-based weight was developed from the 1987 Medicare cost reports and the 1987 Capital Expenditure Survey.

6. There are three sets of vintage weights in the CIPI

Building and fixed equipment depreciation, movable equipment depreciation, and interest expense. The methodology for developing each of these vintage weights is described below.

a. Building and Fixed Equipment: The 1992-based building and fixed equipment vintage weights were derived from the 1992 Medicare cost reports and the 1963–1992 AHA Panel Survey. The 1987-based weights were developed from the 1987 Medicare cost reports and the 1963–1987 AHA Panel Survey.

b. Movable Equipment: The 1992-based movable equipment vintage weights were derived from the 1992 Medicare cost reports and the 1963–1992 AHA Panel Survey. The 1987-based weights were developed from the 1987 Medicare cost reports and the 1963–1987 AHA Panel Survey.

c. Capital-Related Interest: The 1992-based movable equipment vintage weights were derived from the 1980–1992 Securities Data Corporation data on hospital bonds and the 1963–1992 AHA Panel Survey. The 1987-based weights were developed from the 1980–1989 Securities Data Corporation data on hospital bonds and the 1963–1987 AHA Panel Survey.

C. Price Proxies Used to Measure Cost Category Growth in the CIPI

1. Building and Fixed Equipment Depreciation

The percentage change in the vintage-weighted price of building and fixed equipment depreciation as measured by the Boeckh institutional construction index was applied to this category in the 1992-based CIPI. The same price proxy was used in the 1987-based CIPI.

2. Movable Equipment Depreciation

The percentage change in the vintage-weighted price of movable equipment depreciation as measured by the Producer Price Index (PPI) for machinery and equipment was applied to this category in the 1992-based CIPI. The same price proxy was used in the 1987-based CIPI.

3. Government/Nonprofit Interest Expense

The percentage change in the vintage-weighted price of government/nonprofit interest expense as measured by the Average yield on Domestic Municipal Bonds from the Bond Buyer index of 20 bonds was applied to this category in

the 1992-based CIPI. The same price proxy was used in the 1987-based CIPI.

4. For-Profit Interest Expense

The percentage change in the vintage-weighted price of for-profit interest expense as measured by the Average yield on Moody's Aaa Bonds was applied to this category in the 1992-based CIPI. The same price proxy was used in the 1987-based CIPI.

5. Other Capital-Related Expenses

The percentage change in the price of other capital-related expenses as measured by the CPI for all urban consumers for residential rent was applied to this category in the 1992-based CIPI. The same price proxy was used in the 1987-based CIPI.

We provided more detailed discussion of the rationale for the choice of these price proxies in the June 2, 1995 proposed rule (60 FR 29227) and in the September 1, 1995 final rule (60 FR 45815).

Appendix D: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Several provisions of the Social Security Act (the Act) address the setting of update factors for inpatient services furnished in FY 1997 by hospitals subject to the prospective payment system and those excluded from the prospective payment system. Section 1886(b)(3)(B)(i)(XII) of the Act sets the FY 1997 percentage increase in the operating cost standardized amounts equal to the rate of increase in the hospital market basket minus 0.5 percentage points for prospective payment hospitals in all areas. Section 1886(b)(3)(B)(iv) of the Act sets the FY 1997 percentage increase in the hospital-specific rates applicable to sole community hospitals equal to the rate set forth in section 1886(b)(3)(B)(i) of the Act, that is, the same update factor as all other hospitals subject to the prospective payment system, or the rate of increase in the market basket minus 0.5 percentage points. Section 1886(b)(3)(B)(ii) of the Act sets the FY 1997 percentage increase in the rate of increase limits for hospitals excluded from the prospective payment system equal to the rate of increase in the excluded hospital market basket minus the applicable reduction or, in the case of a hospital in a fiscal year for which the hospital's update adjustment percentage is at least 10 percent, the excluded hospital market basket percentage increase. Under section 1886(b)(3)(B)(v) of the Act, a hospital's update adjustment percentage increase for FY 1997 is the percentage increase by which the hospital's allowable operating costs of inpatient hospital services recognized under this title for the cost reporting period beginning in FY 1990 exceed the hospital's target amount for such cost reporting period, increased for each fiscal year (beginning with FY 1994) by the sum of any of the hospital's applicable reductions for previous years. The applicable reduction with respect to a hospital for FY 1997 is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage for FY 1997.

In accordance with section 1886(d)(3)(A) of the Act, we are updating the standardized amounts, the hospital-specific rates, and the rate-of-increase limits for hospitals excluded for the prospective payment system as provided in section 1886(b)(3)(B) of the Act. Based on the second quarter 1996 forecast of the FY 1997 rebased market basket increase of 2.5 percent for hospitals subject to the prospective payment system, the updates in the standardized amounts are 2.0 percent for hospitals in both large urban and other areas. The update in the hospital-specific rate applicable to sole community hospitals is 2.0 percent (that is, the market basket rate of increase of 2.5 percent minus 0.5 percentage points). The update for hospitals excluded from the prospective payment system is based on the percentage increase in the excluded hospital market basket (currently estimated at 2.5 percent) minus the applicable reduction factor. The applicable reduction factor is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage. Therefore, for excluded hospitals, the hospital-specific update can vary between 1.5 and 2.5 percent.

Sections 1886(e)(2)(A) and (3)(A) of the Act require that the Prospective Payment Assessment Commission (ProPAC) recommend to the Congress by March 1 of each year an update factor that takes into account changes in the market basket rate of increase index, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services.

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of ProPAC, recommend update factors for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we published the FY 1996 update factors recommended under section 1886(e)(4) of the Act as Appendix E of the May 31, 1996 final rule (61 FR 27591).

II. Secretary's Final Recommendation for Updating the Prospective Payment System Standardized Amounts

We did not receive any public comments concerning our proposed recommendation. Therefore, our final recommendation will be the same as our proposed recommendation. That is, we are recommending that the standardized amounts be increased by an amount equal to the market basket rate of increase minus 1.5 percentage points for hospitals located in large urban and other areas. We are also recommending an update of the market basket rate of increase minus 1.5 percentage points to the hospital-specific rate for sole community hospitals. These figures are consistent with the President's budget recommendation.

In recommending these increases, we have followed section 1886(e)(4) of the Act, which requires that we take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. In addition, as required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of ProPAC. We believe our analyses, which measure changes in hospital productivity, scientific and technological advances, practice pattern changes, and changes in case mix, support our recommendations. These figures are consistent with the President's FY 1997 budget recommendation, which continues the reductions imposed by section 13501 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66), that is, reductions in the hospital market basket of 2.5 percentage points for FYs 1994 and 1995 and 2.0 percentage points for FY 1996. We believe these recommended changes in the update factor would ensure that Medicare acts as a prudent purchaser and provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund. When the President's budget was submitted, the market basket rate of increase was projected at 3.6 percent. As noted above, our final recommendation is based on the most recent forecast of the rebased market basket. (See section IV of the

preamble to this final rule for a detailed discussion of the market basket.)

III. Secretary's Final Recommendation for Updating the Rate-of-Increase Limits for Excluded Hospitals and Units

Our final recommendation is that hospitals and hospital units excluded from the prospective payment system receive an update equal to percentage increase in the rebased market basket that measures input price increases for services furnished by excluded hospitals minus 1.5 percentage points. Thus, given the current estimate of the change in the market basket rate of increase for excluded hospitals of 2.5 percent (compared with the earlier estimate of 2.7 percent used in the proposed rule), our final recommendation is for an update of 1.0 percent. This recommendation is consistent with the President's budget, acknowledging that the market basket rate of increase for these hospitals was forecast at 3.6 percent at the time the budget was submitted.

[FR Doc. 96–22145 Filed 8–28–96; 8:45 am]

BILLING CODE 4120–03–P

Federal Register

Friday
August 30, 1996

Part VI

Federal Emergency Management Agency

44 CFR Parts 65, 70, and 72

Flood Insurance Program: Identification and Mapping of Special Flood Hazard Areas, Procedures for Map Correction, and Procedures and Fees for Processing Map Changes; Interim Final Rule and Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 65, 70, and 72

RIN 3067–AC53

Identification and Mapping of Special Flood Hazard Areas, Procedures for Map Correction, and Procedures and Fees for Processing Map Changes

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule.

SUMMARY: This interim final rule will revise the National Flood Insurance Program (NFIP) regulations concerning the identification and mapping of Special Flood Hazard Areas (SFHAs) and revision of NFIP maps by revising the fee requirements and schedule for processing certain changes to NFIP maps. Under this interim final rule, the fees will be adjusted periodically, but no more than once annually, to provide for changes in the prevailing private-sector labor rate on which the fees are predicated. Revised fees will be published in the Federal Register.

DATES: This interim final rule is effective August 30, 1996. We invite your comments on this interim final rule. Please submit comments on or before October 1, 1996.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, or by facsimile at (202) 646–4536 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472; (202) 646–2756 or by facsimile at (202) 646–4596 (not toll-free calls).

SUPPLEMENTARY INFORMATION: This interim final rule will revise the National Flood Insurance Program (NFIP) regulations concerning the identification and mapping of Special Flood Hazard Areas (SFHAs) and revision of NFIP maps by revising the fee requirements and schedule for processing certain changes to NFIP maps. The current fee requirements and schedule were established under a final rule published in the Federal Register on June 30, 1992, 57 FR 29036.

This action will reduce expenses to the NFIP and will contribute to the NFIP's self-support by: (1) Establishing flat user fees for most requests for Conditional Letters of Map Amendment (CLOMAs), Letters of Map Revision Based on Fill (LOMR–Fs), Conditional Letters of Map Revision Based on Fill (CLOMR–Fs), Letters of Map Revision (LOMRs), Conditional Letters of Map Revision (CLOMRs), and Physical Map Revisions (PMRs); (2) reducing the number of user fee categories; (3) requiring payment of user fees in full before beginning work on a request; (4) changing the initial fee and hourly rate for LOMR, CLOMR, and PMR requests based on structural measures on alluvial fans; (5) limiting fee exemptions for requests involving LOMAs and requests to correct mapping or analysis errors; and (6) replacing the mechanism for recovering the cartographic production costs related to incorporating map changes made by letter in Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs).

This interim final rule supersedes the fee schedules that were established on June 30, 1992. It also expands the payment method to include credit card payments.

Under this interim final rule, the fees will be adjusted periodically, but no more than once annually, to provide for changes in the prevailing private-sector labor rate on which the fees are predicated. Revised fees will be published as a notice in the Federal Register.

These amendments to the NFIP criteria for identification and mapping of SFHAs are a result of the continuing reappraisal of the NFIP for the purposes of achieving greater administrative and fiscal effectiveness and encouraging sound floodplain management so that reductions in the loss of life and property and in disaster-related expenditures can be realized.

Establishment of Flat User Fees

The existing fee collection process is complex and its administration requires time-intensive efforts on the part of FEMA. It also increases the time required to provide requesters with the Letter of Map Change (LOMC) product or PMR they require. The current system requires requesters to submit an initial fee that is not intended to cover the full review and processing costs or the cartographic production costs. Requesters subsequently receive invoices for the balance. The current system is further complicated by the pre-authorized spending limits placed on each product. When FEMA determines that these limits will be exceeded, written authorization must be obtained before proceeding with their review. Processing the request is delayed until the written authorization is received.

Under this interim final rule, FEMA will charge a single flat user fee for most LOMC and PMR requests, thereby reducing the turnaround time for preparing and issuing determination letters and reducing FEMA costs of administering the fee-charge system. FEMA could recover more of the actual costs than are recovered by the current system and redistribute the overall cost of operations.

Requirement for Full Up-Front Payment

Under this interim final rule, the requester will be required to submit the full fee payment before any work is begun on most map change requests. This will minimize the need for follow-up invoicing and ensure FEMA collects appropriate fees for services rendered.

Consolidation of Product Categories

Under this interim final rule, LOMC services and PMRs with similar review and processing requirements will be consolidated into the same fee category. As a result, the number of fee categories is reduced from 19 to 10.

Limitation of Fee Exemptions

Under current standards, requesters are exempted from paying user fees when they submit requests for changes to (1) remove properties or structures from the SFHA shown on the FIRM that were inadvertently included in the SFHA because of map scale limitations. This is handled by the LOMA process detailed in part 70 of the NFIP regulations; (2) reflect more detailed information on flooding sources, floodways, or topographic data; (3) correct mapping errors or errors in the effective Flood Insurance Study analysis; or (4) reflect projects that are for public benefit and are primarily intended for flood loss reduction to insurable structures in identified flood hazard areas that were in existence prior to the commencement of the projects. Such exemptions preclude FEMA from recovering fees for a substantial volume of work.

Under this interim final rule, exemptions are maintained only for requests for LOMAs and requests to correct mapping or analysis errors.

Maintenance of Initial Fee for Requests Based on Structural Measures on Alluvial Fans

Under this interim final rule, the initial fee for LOMC requests based on structural measures on alluvial fans will be maintained because these requests are rare, the FEMA engineering review for these requests is usually very complex, and FEMA's costs for processing these requests can fluctuate

significantly. Based on a review of actual processing costs for Fiscal Year 1995, $5,000 will be established as the initial fee for such requests, with the remaining costs to be recovered before the LOMC is issued, consistent with current fee-reimbursement practices. Under this interim final rule, the hourly rate used to calculate the total fees that must be reimbursed is increased to $50.

National Environmental Policy Act

This interim final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this interim final rule does not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 610 *et seq.*, because it is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on small entities. A regulatory flexibility analysis has not been prepared.

Executive Order 12612, Federalism

This interim final rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This interim final rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778, Civil Justice Reform.

Executive Order 12866, Regulatory Planning and Review

Promulgation of this interim final rule is required by statute, 42 U.S.C. 4014(f), which also specifies the regulatory approach taken in the interim final rule. To the extent possible under the statutory requirements of 42 U.S.C. 4014(f), this interim final rule adheres to the principles of regulation as set forth in Executive Order 12866, Regulatory Planning and Review.

(Catalog of Federal Domestic Assistance No. 83.100, Flood Insurance)

List of Subjects in 44 CFR Parts 65, 70, and 72

Administrative practice and procedure, Flood insurance, Floodplains, and Reporting and recordkeeping requirements.

Accordingly, 44 CFR Parts 65, 70, and 72 are amended as follows:

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL FLOOD HAZARD AREAS

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 65.4(c) is revised to read as follows:

§ 65.4 Right to submit new technical data.

* * * * *

(c) Requests for changes to effective Flood Insurance Rate Maps and Flood Boundary and Floodway Maps are subject to the cost recovery procedures described in part 72 of this subchapter. As indicated in part 72, revisions requested to correct mapping errors or errors in the Flood Insurance Study analysis are not subject to cost-recovery procedures.

3. Section 65.5(d) is revised to read as follows:

§ 65.5 Revision to special hazard area boundaries with no change to base flood elevation determinations.

* * * * *

(d) *Submission procedures.* All requests shall be submitted to the FEMA Regional Office servicing the community's geographic area or to the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the appropriate payment, in accordance with part 72 of this subchapter.

4. Section 65.6(g) is revised to read as follows:

§ 65.6 Revision of base flood elevation determinations.

* * * * *

(g) *Submission procedures.* All requests shall be submitted to the FEMA Regional Office servicing the community's geographic area or the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the appropriate payment, in accordance with part 72 of this subchapter.

5. Section 65.8 is revised to read as follows:

§ 65.8 Review of proposed projects.

A community, or an individual through the community, may request FEMA's comments on whether a proposed project will justify a map revision, if built as proposed. FEMA's comments will be issued in the form of a letter, termed a Conditional Letter of Map Revision, in accordance with part 72 of this subchapter. The data required to support such requests are the same as those required for final revisions in accordance with §§ 65.5, 65.6, and 65.7, except as-built certification is not required. All such requests shall be submitted to the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the appropriate payment, in accordance with part 72 of this subchapter.

6. Section 65.9(h) is added to read as follows:

§ 65.9 Review and response by the Administrator.

* * * * *

(h) The required payment, in accordance with part 72 of this subchapter, has not been submitted, and no review will be conducted and no determination will be issued until payment is received.

PART 70—PROCEDURE FOR MAP CORRECTION

7. The authority citation for part 70 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

8. Section 70.9 is revised to read as follows:

§ 70.9 Review of proposed projects.

An individual who proposes to build one or more structures on a portion of property that may be inadvertently included in a Special Flood Hazard Area (SFHA) may request FEMA's comments on whether the proposed structure(s) will be in the SFHA if built as proposed. FEMA's comments will be issued in the form of a letter, termed a Conditional Letter of Map Amendment (CLMA). The data required to support such requests are the same as those required for final Letters of Map Amendment in accordance with § 70.3, except as-built certification is not required and the requests shall be accompanied by the appropriate payment, in accordance with part 72 of this subchapter. All such requests for CLOMAs shall be submitted to the FEMA Regional Office servicing the community's geographic area or the FEMA Headquarters Office in Washington, DC.

PART 72—PROCEDURES AND FEES FOR PROCESSING MAP CHANGES

9. The authority citation for part 72 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

10. Section 72.1 is revised to read as follows:

§ 72.1 Purpose of part.

The purpose of this part is to provide administrative and cost-recovery procedures for the engineering review and administrative processing associated with FEMA's response to requests for Conditional Letters of Map Amendment (CLOMAs), Conditional Letters of Map Revision (CLOMRs), Conditional Letters of Map Revision Based on Fill (CLOMR–Fs), Letters of Map Revision Based on Fill (LOMR–Fs), Letters of Map Revision (LOMRs), and Physical Map Revisions (PMRs). Such requests are based on proposed or actual manmade alterations within the floodplain, such as the placement of fill; modification of a channel; construction or modification of a bridge, culvert, levee, or similar measure; or construction of single or multiple residential or commercial structures on single or multiple lots.

11. Section 72.2 is revised to read as follows:

§ 72.2 Definitions.

Except as otherwise provided in this part, the definitions set forth in Part 59 of this subchapter are applicable to this part. For the purpose of this part, the products are defined as follows:

CLOMA. A CLOMA is FEMA's comment on a proposed structure or group of structures that upon construction, will be located on existing natural ground above the base (1-percent annual chance) flood elevation on a portion of a legally defined parcel of land that is partially inundated by the base flood.

CLOMR. A CLOMR is FEMA's comment on a proposed project that upon construction will affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing effective base flood elevations, the Special Flood Hazard Area (SFHA), or the regulatory floodway.

CLOMR–F. A CLOMR–F is FEMA's comment on a proposed project that upon construction will result in a modification of the SFHA through the placement of fill outside the regulatory floodway.

LOMR. A LOMR is FEMA's modification to an effective Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM), or both, based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the SFHA. The LOMR officially revises the FIRM or FBFM, and sometimes the Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report.

LOMR–F. A LOMR–F is FEMA's modification of the SFHA shown on the FIRM based on the placement of fill outside the regulatory floodway.

Physical Map Revision. A Physical Map Revision (PMR) is FEMA's revision and republication of an effective FIRM, FBFM, or FIS report based on physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the SFHA.

12. Section 72.3 is revised to read as follows:

§ 72.3 Fee schedule.

(a) For requests for CLOMRs, LOMRs, and Physical Map Revisions based on structural measures on alluvial fans, an initial fee subject to the provisions of § 72.4, shall be paid to FEMA before FEMA begins review of the request. The initial fee represents the minimum cost for reviewing these requests and is based on the prevailing private-sector labor rate. A revision to this initial fee, if necessary, will be published as a notice in the Federal Register.

(b) For requests for CLOMRs, LOMRs, and Physical Map Revisions based on structural measures on alluvial fans, the total fee is to be calculated based on the total hours expended by FEMA in reviewing and processing the request multiplied by an hourly rate based on the prevailing private-sector labor rate. The hourly rate is published as a notice in the Federal Register. A revision to the hourly rate, if necessary, will be published as a notice in the Federal Register.

(c) For conditional and final map revision requests for the following categories, flat user fees, subject to the provisions of § 72.4, shall be paid to FEMA before FEMA begins review of the request.

(1) Requests for CLOMAs, CLOMR–Fs, and LOMR–Fs for single structures or single lots;

(2) Requests for CLOMAs for multiple structures or multiple lots;

(3) Requests for CLOMR–Fs and LOMR–Fs for multiple structures or multiple lots;

(4) Requests for LOMRs and Physical Map Revisions based on projects involving bridges, culverts, or channels, or combinations thereof;

(5) Requests for LOMRs and Physical Map Revisions based on projects involving levees, berms, or other structural measures;

(6) Requests for LOMRs and Physical Map Revisions based on as-built information for projects for which CLOMRs were issued previously by FEMA;

(7) Requests for LOMRs and Physical Map Revisions based solely on more detailed data;

(8) Requests for CLOMRs based on projects involving new hydrologic information, bridges, culverts, or channels, or combinations thereof; and

(9) Requests for CLOMRs based on projects involving levees, berms, or other structural measures.

(d) The flat user fees for conditional and final map amendments and map revisions are based on the actual costs for reviewing and processing the requests. The fees for requests for LOMR–Fs, LOMRs, and PMRs also shall include FEMA's costs for physically revising affected FIRM and FBFM panels to reflect map changes at a later date.

(e) In addition to the flat user fees for Physical Map Revisions, payment of a fee for FEMA's cartographic production costs, based on actual per-panel costs, shall be required.

(f) Revisions to the fees, if necessary, will be published as a notice in the Federal Register.

13. Section 72. 4 is revised to read as follows:

§ 72.4 Submittal/payment procedures and FEMA response.

(a) The initial fee shall be submitted with a request for FEMA review and processing of CLOMRs, LOMRs, and Physical Map Revisions based on structural measures on alluvial fans; the appropriate flat user fee shall be submitted with all other requests for FEMA review and processing.

(b) FEMA must receive initial and flat user fees before it will begin any review. The fee is non-refundable when FEMA begins its review.

(c) Following completion of FEMA's review for any CLOMR, LOMR, or Physical Map Revision based on structural measures on alluvial fans, FEMA shall invoice the requester at the established hourly rate for any actual costs exceeding the initial fee incurred for review and processing. FEMA will

not issue a determination letter or revised map panels until the invoice amount is received.

(d) For all map revision requests, FEMA will bear the cost of reprinting and distributing the revised FIRM or FBFM panels, or combination.

(e) The entity that applies to FEMA through the local community for review is responsible for the cost of the review. The local community incurs no financial obligation under the reimbursement procedures set forth in this part as a result of transmitting the application by another party to FEMA.

(f) Requesters shall submit payments by check or money order or by credit card. Checks or money orders, in U.S. funds, shall be made payable to the National Flood Insurance Program.

(g) For CLOMA, CLOMR–F, LOMA, and LOMR–F requests, FEMA shall:

(1) Notify the requester and the community within 30 days as to the adequacy of the submittal, and

(2) Provide to the requester and the community, within 60 days of receipt of adequate information and fee, a determination letter or other written comment in response to the request.

(h) For CLOMR, LOMR, and PMR requests, FEMA shall:

(1) Notify the requester and the community within 60 days as to the adequacy of the submittal; and

(2) Provide to the requester and the community, within 90 days of receipt of adequate information and fee, a CLOMR, a LOMR, other written comment in response to the request, or preliminary copies of the revised FIRM panels, FBFM panels, or affected portions of the FIS report to the community and the requester for review and comment.

14. In § 72.5, paragraphs (a) and (b) are revised to read as follows:

§ 72.5 Exemptions.

(a) Requests for map changes based on mapping or analysis errors or the effects of natural changes within Special Flood Hazard Areas shall be exempt from fees.

(b) Requests for LOMAs shall be exempt from fees.

* * * * *

15. Section 72.6 is revised to read as follows:

§ 72.6 Unfavorable response.

(a) A request for a CLOMA, CLOMR, or CLOMR–F may be denied or the determination may contain specific comments, concerns, or conditions regarding a proposed project or design and its impacts on flood hazards in a community. A requester is not entitled to any refund of the fees paid if the determination contains such comments, concerns, or conditions, or if the request is denied. A requester is not entitled to any refund of the fees paid if the requester is unable to provide the appropriate scientific or technical documentation or to obtain required authorizations, permits, financing, etc., for which the CLOMA, CLOMR, or CLOMR–F was sought.

(b) A request for a LOMR, LOMR–F, or Physical Map Revision may be denied or the revisions to the FIRM, FBFM, or both, may not be in the manner or to the extent desired by the requester. A requester is not entitled to any refund of the fees paid if the revision request is denied or if the LOMR, LOMR–F, or Physical Map Revision action does not revise the map specifically as requested.

16. Section 72.7 is revised to read as follows:

§ 72.7 Resubmittals.

(a) Any resubmittal of a CLOMA, CLOMR, CLOMR–F, LOMR, LOMR–F, or Physical Map Revision request more than 90 days after FEMA notification that the request has been denied or after the review has been terminated because insufficient information was provided by the requester will be treated as an original submission and subject to all submittal/payment procedures described in § 72.4. The procedure in § 72.4 also applies to any resubmitted request (regardless of when it is submitted) if the project on which the request is based has been altered significantly in design or scope other than as necessary to respond to comments, concerns, or other findings made by FEMA regarding the original submission.

(b) When a LOMR, LOMR–F, or Physical Map Revision request is made following a CLOMR or CLOMR–F issued previously by FEMA, the procedures in § 72.4 and the appropriate fee, as referenced in § 72.3(c), apply when the as-built conditions differ from the proposed conditions on which the issuance of the CLOMR or CLOMR–F was based.

Dated: August 23, 1996.

Richard W. Krimm,

Acting Associate Director, Mitigation Directorate.

[FR Doc. 96–22077 Filed 8–29–96; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fee Schedule for Processing Requests for Map Changes and for Flood Insurance Study Backup Data for FY 1997

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice contains the revised fee schedules for processing certain requests for changes to National Flood Insurance Program (NFIP) maps and for processing requests for Flood Insurance Study (FIS) backup data. The changes in the fee schedules will allow FEMA to reduce further the expenses to the NFIP by recovering more fully the costs associated with (1) processing conditional and final map change requests and (2) retrieving, reproducing, and distributing technical and administrative support data related to FIS analyses and mapping.

DATES: The revised fee schedules are effective October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, 500 C Street SW., Washington, DC 20472; (202) 646–2756 or by facsimile at (202) 646–4596 (not toll-free calls).

SUPPLEMENTARY INFORMATION: This notice contains the revised fee schedules for processing certain requests for changes to National Flood Insurance Program (NFIP) maps and for processing requests for Flood Insurance Study (FIS) backup data. The revised fee schedule for map changes is effective October 1, 1996, in accordance with the rule for changes to 44 CFR parts 65, 70, and 72, published elsewhere in this edition of the Federal Register, and supersedes the current fee schedule established on June 30, 1992.

The revised fee schedule for requests for FIS backup data also is effective October 1, 1996, and supersedes the current fee schedule, also published in the Federal Register.

The basis for the initial fees, flat user fees, and hourly rates for requests for Conditional Letters of Map Amendment (CLOMAs), Conditional Letters of Map Revision Based on Fill (CLOMR–Fs), Conditional Letters of Map Revision (CLOMRs), Letters of Map Revision Based on Fill (LOMR–Fs), Letters of Map Revision (LOMRs), and Physical Map Revisions and requests for FIS backup data received by FEMA on or after October 1, 1996 are provided in the separately published rule.

A primary component of the fees is the prevailing private-sector rates charged to FEMA for labor and materials. Because these rates and the actual review and processing costs may vary from year to year, FEMA will publish revised fee schedules periodically, when needed, as notices in the Federal Register.

Simplification of Fee Schedule for Conditional and Final Map Changes

The existing fee collection process is complex and its administration requires time-intensive efforts on the part of FEMA. It also increases the time required to provide requesters with the product they require. The current system requires requesters to submit an initial fee that is not intended to cover the full review and processing costs or the cartographic production costs. Requesters subsequently receive invoices for the balance. The current system is complicated further by the pre-authorized spending limits placed on each product. When FEMA determines that these limits will be exceeded, written authorization must be obtained before proceeding with their review. Processing the request is delayed until the written authorization is received.

FEMA has streamlined the process by (1) charging flat user fees for most map change products and services; (2) requiring full payment of fees before work is begun on most map change requests; (3) consolidating similar products or services into a limited number of user fee categories; and (4) limiting the number of products for which requesters may receive exemptions from payment of fees. As a result, requesters and FEMA know the cost of providing a product or service before any work is begun.

The initial fee for requests for LOMRs and CLOMRs based on structural measures on alluvial fans has been maintained because (1) such requests are rare, (2) the FEMA review for these requests is usually very complex, and (3) the costs involved in processing the requests can fluctuate significantly.

Fees for Conditional and Final Map Revisions Based on Structural Measures on Alluvial Fans

Based on a review of actual cost data for Fiscal Year 1995, FEMA established $5,000 as the initial fee for requests for LOMRs and CLOMRs based on structural measures on alluvial fans. The remainder of the review and costs is to be recovered by invoicing the requester before FEMA issues a determination letter, consistent with current practice. The prevailing private-sector labor rate charged to FEMA ($50/hour) shall be used to calculate the total fees that must be reimbursed.

Fee Schedule for Conditional Letters of Map Amendment and Conditional and Final Letters of Map Revision Based on Fill

Based on a review of actual cost data for Fiscal Year 1995, FEMA established the following flat user fees, which are to be submitted by requesters with requests received by FEMA on and after October 1, 1996:

Single-lot/single-structure CLOMA, CLOMR–F, and LOMR–F	$400
Multiple-lot/multiple-structure CLOMA	$700
Multiple-lot/multiple-structure CLOMR–F and LOMR–F	$800

Fee Schedule for Map Revisions

Unless the request is otherwise exempted under 44 CFR 72.5, the flat user fees shown below are to be submitted by requesters with requests for LOMRs and Physical Map Revisions that are not based on structural measures on alluvial fans that are received by FEMA on and after October 1, 1996. These fees are based on a review of actual cost data for Fiscal Year 1995.

Request based on bridge, culvert, channel, or combination thereof	$3,700
Request based on levee, berm, or other structural measure	$4,300
Request submitted as followup to CLOMR.	
Request based solely on submission of more detailed data	$2,300

Fee Schedule for Conditional Map Revisions

Unless the request is otherwise exempted under 44 CFR 72.5, the flat user fees shown below are to be submitted by requesters with requests for CLOMRs that are not based on structural measures on alluvial fans that are received by FEMA on and after October 1, 1996. These fees are based on a review of actual cost data for Fiscal Year 1995.

Request based on new hydrology, bridge, culvert, channel, or combination	$3,100
Request based on levee, berm, or other structural measure	$3,300

Fee Schedule for Requests for Flood Insurance Study Backup Data

The user fees shown below are to be submitted by requesters with requests for FIS backup data that are received by FEMA on and after October 1, 1996. These fees are based on a review of actual cost data for Fiscal Year 1995. They are based on the complete recovery of FEMA's costs for retrieving, reproducing, and distributing the data, as well as a pro rata share of the costs

for maintaining the data and operating the fee reimbursement system.

As under the previous fee schedule, all entities except FEMA's Study Contractors, FEMA's Technical Evaluation Contractors, and the Federal agencies involved in performing FISs (i.e., U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, National Oceanic and Atmospheric Administration, and Tennessee Valley Authority) will be charged for requests for FIS backup data. The only exception is that one copy of the FIS backup data will be provided to a community free of charge if the data are requested during the statutory 90-day appeal period for an FIS.

FEMA has established seven categories into which requests for FIS backup data are separated. These categories are:

(1) Category 1—Paper copies or microfiche of hydrologic and hydraulic backup data for current FIS

(2) Category 2—Paper copies of topographic mapping developed during FIS process

(3) Category 3—Paper copies of survey notes developed during FIS process

(4) Category 4—Paper copies of individual Letters of Map Change

(5) Category 5—Paper copies of preliminary map panels

(6) Category 6—Computer tapes of Digital Line Graph files

(7) Category 7—Computer diskettes and user's manuals for FEMA programs

The costs of processing requests in Categories 1, 2, and 3 above will vary based on the complexity of the research involved in retrieving the data and the volume and medium of data to be reproduced and distributed. For these categories of requests, FEMA will require the payment of an initial minimum fee, shown below, to cover the preliminary costs of research and retrieval. This fee will then be applied against the total labor costs, and the requester will be invoiced for the remainder of the fees. No data will be provided to a requester until all required fees have been paid.

The costs for processing requests under Categories 4 through 7 above will not vary. Therefore, FEMA has established flat user fees for these categories of requests.

Initial Fee for Requests in Categories 1, 2, and 3 (per request)	$90
Labor Fee for Requests in Categories 1, 2, and 3 (per hour)	$33
Library Maintenance Fee for Requests in Categories 1, 2, and 3 (per request)	$28
Microfiche Production Fee for Requests in Categories 1, 2, and 3 (per request)	$22
Overhead Fee for Requests in Categories 1, 2, and 3 (per request)	$43
Total Fee for Category 4 Requests (per letter)	$40
Total Fee for Category 5 Requests (first panel)	$35
Total Fee for Category 5 Requests (additional panels)	$2
Total Fee for Category 6 Requests (per community)	$150
Total Fee for Category 7 Requests (per copy)	$25

Payment Submission Requirements

Fee payments must be made in advance of services being rendered. These payments are to be in the form of a check or money order or by credit card payment. Checks and money orders are to be made payable, in U.S. funds, to the National Flood Insurance Program. FEMA will provide receipts to requesters for their records or billing purposes.

The fees collected will be deposited to the National Flood Insurance Fund, which is the source of funding for providing these services.

Dated: August 23, 1996.

Richard W. Krimm,

Acting Associate Director, Mitigation Directorate.

[FR Doc. 96–22076 Filed 8–29–96; 8:45 am]

BILLING CODE 6718–04–P

Federal Register

Friday
August 30, 1996

Part VII

Department of Education

34 CFR Part 263

Indian Fellowship and Professional Development Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 263

RIN 1810–AA79

Indian Fellowship and Professional Development Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing grants for the Indian Fellowship Program. This program is authorized under Title IX of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Improving America's Schools Act of 1994, enacted October 20, 1994. These regulations identify eligible applicants for the program and the specific application and other program requirements that applicants must meet in order to be considered for funding. These regulations also provide certain general provisions and requirements for the new payback provisions that apply to both the Indian Fellowship Program and the Professional Development Program.

EFFECTIVE DATE: These regulations take effect September 29, 1996.

FOR FURTHER INFORMATION CONTACT: Cathie Martin, U.S. Department of Education, 600 Independence Avenue, SW., Room 4300 Portals Building, Washington, DC 20202–6335. Telephone: (202) 260–1683. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 20, 1994 the Professional Development Program and the Indian Fellowship Program were substantially revised and recodified, respectively, as sections 9122 and 9123 of Subpart 2 of Part A of Title IX of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 103–382. These regulations identify eligible applicants for the Indian Fellowship Program and address the specific program requirements, including application requirements and requirements concerning the new payback provisions that applicants must meet in order to be considered for funding for both new and continuation awards. The criteria for selecting participants for the Professional Development Program are not included in these regulations. The selection criteria in the Education Department General Administrative Regulations (EDGAR), 34 CFR part 75, are used for competitions under the Professional Development Program.

In addition, certain of these regulations govern the Professional Development Program (§ 263.3, (definitions), § 263.1 (b) and (c), and §§ 263.35 through 263.37 (the new payback provisions that also apply to this program)).

With regard to the payback provisions, the Indian Fellowship Program and Professional Development Program now require that an individual receiving financial assistance either (1) perform work related to the training for which assistance was received and that benefits Indian people; or (2) repay all or a prorated portion of the assistance.

These regulations apply to all FY 1996 awards, both new and continuation, and subsequent fiscal years' awards.

On July 26, 1996 the Secretary published a notice of proposed rulemaking (NPRM) for these programs in the Federal Register (61 FR 39246). Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

Public Comment

In the NPRM the Secretary invited comments on the proposed regulations. The Secretary did not receive any comments.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected sections of the regulations.

Intergovernmental Review

The Indian Fellowship Program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

The Professional Development Program, with the exception of assistance to federally recognized tribes, is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 263

Grant programs—education, Indians—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: August 27, 1996.

(Catalog of Federal Domestic Assistance Numbers: 84.087 Indian Education—Fellowships for Indian Students; and 84.299 Indian Education—Special Programs.)

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 263 to read as follows:

PART 263—INDIAN FELLOWSHIP AND PROFESSIONAL DEVELOPMENT PROGRAMS

Subpart A—General

Sec.

Subpart B—How Does the Secretary Select Fellows?

Subpart C—What Conditions Must be Met by Fellows?

Authority: 20 U.S.C. 7832 and 7833, unless otherwise noted.

Subpart A—General

§ 263.1 What are the Indian Fellowship and the Professional Development Programs?

(a) The Indian Fellowship Program provides fellowships to enable Indian students to pursue a course of study leading to—

(1) A postbaccalaureate degree in medicine, law, education, psychology, clinical psychology, or a related field; or

(2) An undergraduate or postbaccalaureate degree in business administration, engineering, natural resources, or a related field.

(b) The Professional Development Program provides grants to eligible entities to—

(1) Increase the number of qualified Indian individuals in professions that serve Indian people;

(2) Provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and

(3) Improve the skills of qualified Indian individuals who serve in the capacities described in paragraph (b)(2) of this section.

(c) The Indian Fellowship and the Professional Development Programs require individuals who receive training under either program to—

(1) Perform work that is related to the training received under either program and that benefits Indian people or to repay all or a prorated part of the assistance received under the program; and

(2) Report to the Secretary on the individual's compliance with the work requirement.

(Authority: 20 U.S.C. 7832 and 7833)

§ 263.2 Who is eligible to apply under the Indian Fellowship Program?

In order to be eligible for a fellowship, an applicant must be—

(a) An Indian as defined in § 263.3;

(b) A United States citizen;

(c) Currently in attendance or have been accepted for admission as a full-time undergraduate or graduate student at an accredited institution of higher education in one of the fields listed in § 263.4 or a related field;

(d) Recognized by the institution as a degree candidate; and

(e) Eligible under 34 CFR 75.60.

(Authority: 20 U.S.C. 7833; 20 U.S.C. 1221e–3(a)(1) and 3474)

§ 263.3 What definitions apply to the Indian Fellowship and Professional Development Programs?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Department
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Dependent allowance means costs for the care of minor children who reside with the fellow and for whom the fellow has responsibility.

Expenses means tuition and required fees; required university health insurance; room, personal living expenses, and board at or near the institution; dependent allowance; instructional supplies; and reasonable travel and research costs associated with doctoral dissertation completion.

Fellow means the recipient of a fellowship under the Indian Fellowship Program. The term ''fellow'' also includes individual project participants under the Professional Development Program with regard to the payback provisions contained in §§ 263.35 through 263.37.

Fellowship means an award under the Indian Fellowship Program.

Full course load means the number of credit hours that the institution requires of a full-time student.

Full-time student means a student who—

(1) Is a degree candidate;

(2) Carries a full course load; and

(3) Is not employed for more than 20 hours a week.

Good standing means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

Graduate degree means a postbaccalaureate degree awarded by an institution of higher education beyond the undergraduate level.

Indian means an individual who is—

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides; or

(2) A descendant, in the first or second degree, of an individual described in paragraph (1) of this definition; or

(3) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect on October 19, 1994.

Institution of higher education means an accredited college or university within the United States that offers a baccalaureate or postbaccalaureate degree.

Payback means work-related service or cash reimbursement to the Department of Education for the training received under the Indian Fellowship or the Professional Development Program.

Stipend means that portion of an award that is used for room and board and personal living expenses.

Undergraduate degree means a baccalaureate (bachelor's) degree awarded by an institution of higher education.

(Authority: 20 U.S.C. 7832, 7833, and 7881)

§ 263.4 What are the allowable fields of study in the Indian Fellowship Program?

(a) The following are allowable fields for an undergraduate degree under this program:

(1) Business administration.

(2) Engineering.

(3) Natural resources.

(b) The following are allowable fields for a graduate degree under this program:

(1) Medicine.

(2) Clinical psychology.

(3) Law.

(4) Education.

(5) Psychology.

(6) Engineering.

(7) Natural resources.

(8) Business administration.

(c) The Secretary considers under paragraphs (a) and (b) of this section, on a case-by-case basis, the eligibility of applications for fellowships in related fields of study.

(Authority: 20 U.S.C. 7833)

§ 263.5 What does a fellowship award include?

(a) The Secretary awards a fellowship in an amount up to, but not more than, the expenses as defined in this part. The assistance provided by the program either—

(1) Fully finances a student's educational expenses; or

(2) Supplements other sources of financial aid, including other Federal financial aid other than loans, for meeting educational expenses.

(b) The Secretary announces the expected maximum amounts for subsistence and other fellowship costs in the annual application notice published in the Federal Register.

(Authority: 20 U.S.C. 7833)

§ 263.6 What is the time period for a fellowship award?

(a) The Secretary awards a fellowship for a period of time not exceeding—

(1) Four academic years for an undergraduate or doctorate degree; and

(2) Two academic years for a master's degree.

(b) With prior approval from the Secretary, summer school may be allowed for eligible continuation students after completion of the first academic year.

(Authority: 20 U.S.C. 7833)

Subpart B—How Does the Secretary Select Fellows?

§ 263.20 What priority is given to certain applicants?

The Secretary awards not more than 10 percent of the fellowships, on a priority basis, to persons receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education.

(Authority: 20 U.S.C. 7833)

§ 263.21 What should the fellowship application contain?

In addition to the requirements specified in § 263.22, an applicant shall provide—

(a) Evidence that the applicant is an Indian as defined in § 263.3. Evidence may be in the form of—

(1)(i) A copy of the applicant's documentation of tribal enrollment or membership; or

(ii) A copy of the parent's or grandparent's documentation of tribal enrollment or membership, with supporting birth certificates or similar documents showing the applicant's descendance from the enrolled member;

(2) A letter of certification on official letterhead with the appropriate signature from a federally or State recognized tribe or band; or

(3) A certificate of degree of Indian blood (CDIB) issued by an authorized representative of the Bureau of Indian Affairs or an official of a federally recognized tribe;

(b)(1) Evidence that the applicant is currently in attendance or has been accepted for admission as a full-time student at an accredited institution of higher education in one of the eligible fields of study listed in § 263.4; or

(2) For an applicant who has not yet been accepted for admission, documentation of having been accepted by an accredited institution of higher education by a date to be specified by the Secretary;

(c)(1) The most current official high school and, if appropriate, undergraduate transcripts for undergraduate applicants; or

(2) The most current official undergraduate and, if appropriate, graduate transcripts for graduate applicants;

(d) The certification required under 34 CFR 75.61; and

(e) The certification contained within the application regarding agreement to fulfill the requirements of the payback provision that is signed and dated by the applicant.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833; 20 U.S.C. 1221e–3(a)(1) and 3474)

§ 263.22 How does the Secretary evaluate applications?

(a) The Secretary reviews and ranks an application with other applications for the same field and related fields of study.

(b) The following criteria, with the total number of points available in parenthesis, are used to evaluate an application for a new fellowship award:

(1) *Official academic record* (60 points). The Secretary considers the quality of the applicant's academic record by reviewing—

(i) The applicant's grade point average and, if applicable, scores from such standardized tests as the Scholastic Aptitude Test (SAT), American College Testing Assessment Program (ACT), Graduate Record Examination (GRE), Law School Admissions Test (LSAT), Medical College Admission Test (MCAT), and achievement tests; and

(ii) The applicant's official transcripts and any grade reports.

(2) *Letters of recommendation* (15 points). The Secretary considers the applicant's potential for success in completing the academic requirements for his or her field of study by reviewing one letter of recommendation from each of the following categories:

(i) A school principal, teacher, academic or non-academic instructor or counselor, a college professor, or academic advisor.

(ii) A member of the community or civic leader who has observed the applicant in educational, social, or civic activities.

(iii) A tribal representative or an Indian community member.

(3) *Commitment essay* (25 points). The Secretary considers the applicant's commitment by reviewing an essay, written by the applicant that addresses—

(i) The applicant's career goals and why the chosen field of study will benefit Indian people;

(ii) The applicant's life experiences and personal and family expectations that will enhance the applicant's anticipated career accomplishments; and

(iii) The applicant's anticipated commitment to providing service to Indian people.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

Subpart C—What Conditions Must be Met by Fellows?

§ 263.30 What are the basic requirements of a fellow?

A fellow shall—

(a) Start school during the first semester of the award at the institution named on the grant award document and complete at least one full academic term;

(b) Submit to the Secretary two copies of his or her official grade report at the close of each academic term and upon completion of the training program at that institution;

(c) Submit an annual continuation application, in the form and timeframes specified by the Secretary, to request funding for each remaining academic year approved under the initial application;

(d) Request from the Secretary a written leave of absence at least 30 days prior to withdrawal, unless an emergency situation has occurred, for any interruption in his or her program of academic studies; and

(e) Sign an agreement with the Department to meet the provisions of the payback requirement.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

§ 263.31 What information must be submitted after a fellowship is awarded?

To verify further the accuracy of the information provided in the application, the applicant shall provide all information and documents as requested by the Secretary, including information on other financial aid sources for educational purposes. The applicant's failure to provide the requested information and documents invalidates the application, and the Secretary will not consider it for funding.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

§ 263.32 What are the requirements for a leave of absence?

(a) The Secretary may approve a leave of absence for a period not longer than one academic year if a fellow has successfully completed at least one academic year.

(b) A written request for a leave of absence must be submitted to the Secretary not less than 30 days prior to withdrawal or completion of a grading period, unless an emergency situation has occurred and the Secretary waives the prior notification requirement.

(c) The Secretary permits a leave of absence only if the institution certifies that the fellow is eligible to resume his or her course of study at the end of the leave of absence.

(d) The Secretary withdraws any remaining funds of the fellow's award if a leave of absence occurs prior to the end of an academic term.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

§ 263.33 What is required for continued funding under a fellowship?

(a) The Secretary reviews the status of each fellow at the end of each year and continues support only if the fellow—

(1) Has complied with requirements under this part;

(2) Has remained a full-time student in good standing in the field in which the fellowship was awarded; and

(3) Has submitted a noncompeting continuation application requesting additional support.

(b) A fellowship terminates when the fellow receives the degree being sought or after the fellow has received the fellowship for the maximum number of years allowed as defined in § 263.6, whichever comes first.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

§ 263.34 When is a fellowship discontinued?

(a) The Secretary may discontinue the fellowship if the fellow—

(1) Fails to comply with the provisions under this part, including failure to obtain an approved leave of absence under § 263.32, or with the terms and conditions of the fellowship award; or

(2) Fails to report any change in his or her academic status.

(b) The Secretary discontinues a fellowship only after providing reasonable notice and an opportunity for the fellow to rebut, in writing or in an informal meeting with the responsible official in the Department of Education, the basis for the decision.

(Authority: 20 U.S.C. 7833)

§ 263.35 What are the payback requirements?

(a) Individuals receiving assistance under the Indian Fellowship Program or the Professional Development Program are required to—

(1) Perform work related to the training received and that benefits Indian people; or

(2) Repay all or a prorated part of the assistance received.

(b) The period of time required for a work-related payback is equivalent to the total period of time for which training was actually received under the Indian Fellowship Program or the Professional Development Program.

(c) The cash payback required must be equivalent to the total amount of funds received and expended for training received under either of these programs and may be prorated based on any approved work-related service the participant performs.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7832 and 7833)

§ 263.36 When does payback begin?

(a) For all fellows who complete their training under the Indian Fellowship Program or the Professional Development Program, except for medical degree and doctoral degree candidates, payback must begin within six months from the date of completion of the training.

(b) For fellows in a doctoral degree program requiring a dissertation, payback must begin not later than two years after the program's academic course work has been completed or the institution determines the student is no longer eligible to participate in the training program, whichever occurs first.

(1) After academic course work has been completed, fellows in a doctoral degree program shall submit an annual written report to the Secretary on the status of the dissertation.

(2) Within 30 days of completion of the dissertation, fellows in a doctoral degree program shall provide written notification to the Secretary of completion of the dissertation and of the participant's plans for completing a work-related or cash payback.

(c) For fellows in a doctoral degree program with clinical or internship requirements, payback must begin within six months after the clinical or internship requirements have been met or the institution determines the student is no longer eligible to participate in the training program, whichever occurs first.

(1) After academic course work has been completed, fellows in a doctoral degree program with clinical or internship requirements shall submit an annual written report to the Secretary on the status of completion of the clinical or internship requirements.

(2) Within 30 days of completion of the clinical or internship requirements, fellows shall provide written notification to the Secretary of completion of those requirements and the participant's plans for completing a work-related or cash payback.

(d) For fellows in a medical degree program, payback must begin six months from the date that all residency requirements of the program have been met or the institution determines the student is no longer eligible to participate in the training program, whichever occurs first.

(1) After academic course work has been completed, fellows in a medical degree program shall submit an annual written report to the Secretary on the status of completion of the residency requirements of the program.

(2) Within 30 days of completion of the residency requirements, fellows in a medical degree program shall provide written notification to the Secretary of completion of the residency requirements and of the participant's plans for completing a work-related or cash payback.

(e) For fellows who do not complete their training under the Indian Fellowship Program or the Professional Development Program, payback must begin within six months from the date the fellow leaves the Indian Fellowship Program or the Professional Development Program, unless he or she continues as a full-time student, without interruption, in a program leading to a degree in an accredited institution of higher education.

(1) If the fellow leaves the Indian Fellowship Program or the Professional Development Program, but plans to continue his or her education as a full-time student, the Secretary may defer the payback requirement until the participant has completed his or her educational program. Written requests for deferment must be submitted to the Secretary within 30 days of leaving the Indian Fellowship Program or the Professional Development Program and must provide the following information:

(i) The name of the accredited institution the student will be attending.

(ii) A copy of the letter of admission from the institution.

(iii) The degree being sought.

(iv) The projected date of completion.

(2) After approval by the Secretary of the deferment of the payback provision

on the basis of continuing as a full-time student, former fellows are required to submit to the Secretary, after every grading period, a status report from an academic advisor or other authorized representative of the institution of higher education showing verification of enrollment and status.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7832 and 7833)

§ 263.37 What are the payback reporting requirements?

(a) *Written notice*. Participants shall submit to the Secretary, within 30 days of completion of their training program, a written notice of intent to complete a work-related or cash payback or to continue in a degree program as a full-time student.

(b) *Work-related payback*. If the participant proposes a work-related payback, the written notice of intent must include information explaining how the work-related service is related to the training received and benefits Indian people.

(1) For work-related service, the Secretary reviews each participant's payback plan to determine if the work-related service is related to the training received and benefits Indian people. The Secretary approves the payback plan if a determination is made that the work-related service to be performed is related to the training received and benefits Indian people, meets all applicable statutory and regulatory requirements, and is otherwise appropriate.

(2) The payback plan for work-related service must identify where, when, the type of service, and for whom the work will be performed.

(3) A participant shall notify the Secretary in writing of any change in the work-related service being performed within 30 days of such a change.

(4) For work-related payback, individuals shall submit a status report every six months beginning from the date the work-related service is to begin. The reports must include a certification from the participant's employer that the service or services have been performed without interruption.

(5) Upon written request, and if appropriate, the Secretary may extend the period for completing a work-related payback by a total of 18 months.

(6) For participants who initiate, but cannot complete, a work-related payback, the payback reverts to a cash payback.

(c) *Cash payback*. If a cash payback is to be made, the Department will contact the participant to establish an appropriate schedule for payments.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7832 and 7833)

Subpart D—How Are Fellowship Payments Made?

§ 263.40 How are payments made?

(a) Fellowship payments are made directly to the institution of higher education where a fellow is enrolled, with stipends provided to the fellow in installments by the institution. No fewer than two installments per academic year may be made.

(b) If a fellow transfers to another institution, the fellowship may also be transferred provided the fellow maintains basic eligibility for the award.

(c) A fellow who officially or unofficially withdraws or is expelled from an institution before completion of a term shall refund a prorated portion of the stipends received, as determined by the Secretary. The Secretary requires the institution to return any unexpended funds.

(Authority: 20 U.S.C. 7833)

[FR Doc. 96–22216 Filed 8–29–96; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Friday
August 30, 1996

Part VIII

Department of Housing and Urban Development

24 CFR Parts 913 and 950

Office of the Assistant Secretary for Public and Indian Housing: Optional Earned Income Exclusions; Interim Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 913 and 950

[Docket No. FR–4080–I–01]

RIN 2577–AB66

Office of the Assistant Secretary for Public and Indian Housing; Optional Earned Income Exclusions

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This rule amends HUD's regulations for the definition of ''annual income'' applicable to Public Housing Agencies and Indian Housing Authorities (collectively called Housing Agencies or HAs) in the operation of public housing and Indian housing programs. The change is not applicable to the Section 8 Housing Assistance Payments program. The rule is necessary to encourage HAs to take action to further the efforts of applicants and tenants to seek employment and to increase their earned income. The intended effect is to permit HAs to adopt an exclusion for earned income, tailored to their own circumstances, to support the efforts of working families.

DATES: Effective date: September 30, 1996.

Comment due date: October 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: For the public housing program, contact Linda Campbell, Director, Marketing and Leasing Management Division, Office of Public and Assisted Housing Operations, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (voice): (202) 708–0744, extension 4020. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1–800–877–8339.

For the Indian housing programs, contact Deborah Lalancette, Director, Housing Management Division, Office of Native American Programs, Department of Housing and Urban Development, Room B–133, 451 Seventh Street, SW., Washington, DC 20410, telephone (voice): (202) 755–0088, extension 122. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. General

This rule amends HUD's regulations for the public housing and Indian housing programs that govern the definition of annual income, which the Secretary is authorized to define. Since income eligibility for the public and Indian housing programs is determined based on this term, and rents are based on annual income, as modified by statutorily prescribed adjustments, changes in this definition influence who lives in these types of housing and how much they are required to pay. (The change is not applicable to the Section 8 Housing Assistance Payments program.)

The rule is necessary to encourage public housing agencies and Indian Housing Authorities (collectively called housing authorities or HAs) to take action to further the efforts of applicants and tenants to seek employment and to increase their earned income. The intended effect is to permit HAs to adopt an exclusion for earned income, tailored to their own circumstances, to support the efforts of working families.

The Department believes that, in light of the shortfall in funding full HA eligibility for the Performance Funding System (PFS) expected over the next two years and the possibility that an HA can develop a higher income base by use of this type of exclusion, it is in the best interests of the program to encourage occupancy in these programs by working families.

II. The Nature of Special Treatment for Earned Income

The Balanced Budget Downpayment Act I, enacted on January 26, 1996 (Pub. L. No. 104–99), also known as the Continuing Resolution or ''CR'', specifically authorized housing agencies to allow earned income adjustments, as long as HUD's operating subsidy obligation was not affected. That provision and others were implemented by HUD by issuance of a Notice to HAs (PIH 96–6) on February 13, 1996, which expires on September 30, 1996, based on the expiration of the CR on that date.

The CR enacted by Congress, effective for Federal Fiscal Year 1996, permitted housing agencies to take actions to attract and retain working families in occupancy such as the adoption of ceiling rents and the adoption of earned income adjustments that would ease the impact on working tenants. The Act also repealed Federal admissions preferences, permitting HAs to use working preferences to greater advantage. This rule codifies for Federal Fiscal Years 1997 and 1998 a provision permitting housing agencies to provide for special treatment of earned income.

The rationale for making this provision effective via a rule is to ensure some degree of consistency in Departmental policy, on which HAs can rely. The Department believes that this measure can contribute to improving the stability of HAs by permitting them to improve the income mix in their developments, thus increasing dwelling rental income.

There is a difference between the special treatment of earned income specifically authorized by the CR and that authorized by this rule. There are two defined terms related to income under the United States Housing Act of 1937: ''annual income'' and ''adjusted income.'' The former is a gross income amount, which is used to determine the eligibility of a family for participation in the program based on whether that amount is less that 50% or 80% of median income for the area (adjusted by family size). The latter is a net amount after adjustments are made to the gross income, which is used to determine the amount of rent a family pays under the affected programs because rent is generally based on a percentage of ''adjusted income.'' The CR authorized an ''adjustment'' to income affecting the amount of ''adjusted income'', while this rule authorizes an ''exclusion'' from income, which affects income at an earlier stage—the definition of ''annual income.''

The reason that this rule authorizes an exclusion rather than an adjustment is that the scope of the Department's authority does not clearly include authorizing ''adjustments'' without specific Congressional action. The statute prescribes the definition of ''adjusted income'' but leaves to the Secretary of HUD the authority (under section 3 of the United States Housing Act of 1937, 42 U.S.C. 1437a) to define the term ''income,'' as it is used for purposes of determining eligibility and rental payment in the public and Indian housing programs. The term HUD uses

that corresponds to this statutory term is ''annual income.''

Although the CR provision expires at the end of the current fiscal year (September 30, 1996), a change made by the Secretary in the definition of income permitting an exclusion for earned income can have longer lasting effect. The Secretary is exercising this authority in this rule.

Under this rule, HAs have the authority to establish their own earned income exclusion, as a means of attracting and retaining more tenants with earned income. The ''exclusion'' an HA adopts may be similar or identical to the ''adjustment'' it had adopted under the CR.

The adoption of an earned income exclusion under this rule will have the same effect on an HA's operating subsidy as the adoption of an earned income adjustment under the previously issued HUD Notice. (See discussion below.) In general, HAs that opt to adopt earned income exclusions will increase their total income if they are successful in obtaining more and/or higher income working tenants but will lose income if their policies do not produce a net increase in rent revenues.

III. Specific Changes in Existing Rules

For the public housing program, this change to permit a new exclusion is accomplished by adding a new paragraph (d) to § 913.106, which states the definition of ''annual income.'' The change to the Indian housing program occurs in § 950.102, in the definition of ''annual income,'' where a new paragraph (3) is added. The new paragraphs authorize an HA to adopt a written earned income exclusion, after considering certain enumerated possibilities. No HUD approval is required for adoption of such an exclusion. However, if the HA experiences a decrease in dwelling rental income as a result, it will have to absorb the cost.

IV. Effect on Operating Subsidy

In addition to the HUD Notice to housing agencies described above, HUD issued a second Notice (PIH 96–24) in the spring of 1996, implementing the CR with respect to its impact on the Performance Funding System of determining operating subsidy eligibility. Specifically, that Notice permitted HAs to offset PFS funding shortfalls by retaining increases in dwelling rental income that result from increases in residents' earned incomes and non-dwelling rental income earned by the HAs through entrepreneurial activities. That Notice made the changes effective for the shorter period through Federal Fiscal Year 1998 or the time by which HUD no longer has a shortfall in the availability of funds to pay full operating subsidy eligibility to all HAs.

Under this rule, as under that Notice, the special treatment given earned income by an HA will not affect its PFS subsidy eligibility. That eligibility will be calculated without respect to either decreases in rental income resulting from the exclusion, or increases resulting from higher rents received from households with earned income. Another pending rulemaking (FR–4072) codifies those changes.

V. Scope of rule

The CR authorized the earned income adjustment only for the public and Indian housing programs and only based on the premise that operating subsidy obligations of the Department would not be affected. This rule follows those limits on the scope of the optional special treatment of earned income. Therefore, the change is not applied to other programs usually governed by the same definition of ''annual income,'' such as the Section 8, Section 236, and Rent Supplement programs.

Findings and Certifications

Justification for Interim Rule

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1).

The change made by this interim rule merely adds an optional exclusion to the definition of income used by Housing Agencies, which supports the policy of obtaining a broad range of income levels in public housing and Indian housing developments and the Secretary's policy of encouraging HAs to increase the number of working families residing in these developments. As noted earlier, the Department has already authorized the use of such income exclusions for a limited period of time, based on the Balanced Budget Downpayment Act I, in a Notice. Authorization of such an optional exclusion in this rule is expected to increase the number of HAs using it, helping to encourage the participation of working families in these programs.

Implementation of the rule's provisions is needed as soon as possible to facilitate the adoption of this type of exclusion to realize the benefits of increasing the incentives for working families to participate and to prevent HAs that are now deducting earned income from having to change their policy starting on October 1, 1996, only to institute earned income exclusions later. Therefore, the Department has determined that good cause exists to omit prior public procedure for this interim rule because such delay would be contrary to the public interest and unnecessary.

In the interest of obtaining the fullest participation possible in determining the factors that should be considered in an HA's determination to adopt an earned income exclusion, the Department does invite public comment on the rule. The comments received within the 60-day comment period will be considered during development of a final rule that will supersede this interim rule.

Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions since the provisions of this interim rule simply add an option for housing agencies to adopt. To the extent there is an impact, it is advantageous to the HAs, which are creatures of State or local government.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. Therefore, the rule is not subject to review under the Order. The rule merely broadens the options for housing agencies in managing their public housing or Indian housing programs to encourage families to obtain employment and to increase their earnings.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it makes available additional options for housing agencies but does not impose mandatory obligations.

Catalog

The Catalog of Federal Domestic Assistance number for the programs affected by this rule is 14.850.

List of Subjects

24 CFR Part 913

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 950

Aged, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

Accordingly, parts 913 and 950 of title 24 of the Code of Federal Regulations are amended as follows:

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING PROGRAM

1. The authority citation for part 913 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437d, 1437n and 3535(d).

2. In § 913.106, paragraphs (d) and (e) are redesignated as paragraphs (e) and (f), and a new paragraph (d) is added, to read as follows:

§ 913.106 Annual income.

* * * * *

(d) In addition to the exclusions from annual income covered in paragraph (c) of this section, a housing agency may adopt additional exclusions for earned income pursuant to an established written policy.

(1) In establishing such a policy, a housing agency must adopt one or more of the following types of earned income exclusions, including variations thereof:

(i) Exclude all or part of the family's earned income;

(ii) Apply the exclusion only to new sources of earned income or only to increases in earned income;

(iii) Apply the exclusion to the earned income of the head, the spouse, or any other family member age 18 or older;

(iv) Apply the exclusion only to the earned income of persons other than the primary earner;

(v) Apply the exclusion to applicants, newly admitted families, existing tenants, or persons joining the family;

(vi) Make the exclusion temporary or permanent, for the HA, the family, or the affected family member;

(vii) Make the exclusion graduated, so that more earned income is excluded at first and less earned income is excluded after a period of time;

(viii) Exclude any or all of the costs that are incurred in order to go to work but are not compensated, such as the cost of special tools, equipment, or clothing;

(ix) Exclude any or all of the costs that result from earning income, such as social security taxes or other items that are withheld in payroll deductions;

(x) Exclude any portion of the earned income that is not available to meet the family's own needs, such as amounts that are paid to someone outside the family for alimony or child support; and

(xi) Exclude any portion of the earned income that is necessary to replace benefits lost because a family member becomes employed, such as amounts that the family pays for medical costs or to obtain medical insurance.

(2) Any amounts that are excluded from annual income under this paragraph (d) may not also be deducted in determining adjusted income, as defined in § 913.102.

(3) Housing agencies do not need HUD approval to adopt optional earned income exclusions.

(4) In the calculation of Performance Funding System operating subsidy eligibility, housing agencies will have to absorb any loss in rental income that results from the adoption of any of the optional earned income exclusions discussed in paragraph (d)(1) of this section, including any variations of the listed options.

PART 950—INDIAN HOUSING PROGRAMS

3. The authority citation for part 950 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa–1437ee and 3535(d).

4. In the definition of ''Annual income'' in § 950.102, paragraphs (3) and (4) are redesignated as paragraphs (4) and (5), and a new paragraph (3) is added, to read as follows:

§ 950.102 Definitions.

* * * * *

Annual income. * * *

(3) In addition to the exclusions from annual income covered in paragraph (2) of this definition, an IHA may adopt additional exclusions for earned income pursuant to an established written policy.

(i) In establishing such a policy, an IHA must adopt one or more of the following types of earned income exclusions, including variations thereof:

(A) Exclude all or part of the family's earned income;

(B) Apply the exclusion only to new sources of earned income or only to increases in earned income;

(C) Apply the exclusion to the earned income of the head, the spouse, or any other family member age 18 or older;

(D) Apply the exclusion only to the earned income of persons other than the primary earner;

(E) Apply the exclusion to applicants, newly admitted families, existing residents, or persons joining the family;

(F) Make the exclusion temporary or permanent, for the IHA, the family, or the affected family member;

(G) Make the exclusion graduated, so that more earned income is excluded at first and less earned income is excluded after a period of time;

(H) Exclude any or all of the costs that are incurred in order to go to work but are not compensated, such as the cost of special tools, equipment, or clothing;

(I) Exclude any or all of the costs that result from earning income, such as social security taxes or other items that are withheld in payroll deductions;

(J) Exclude any portion of the earned income that is not available to meet the family's own needs, such as amounts that are paid to someone outside the family for alimony or child support; and

(K) Exclude any portion of the earned income that is necessary to replace benefits lost because a family member becomes employed, such as amounts that the family pays for medical costs or to obtain medical insurance.

(ii) Any amounts that are excluded from annual income under paragraph (3) of this definition may not also be deducted in determining adjusted income, as defined in this section.

(iii) IHAs do not need HUD approval to adopt optional earned income exclusions.

(iv) In the calculation of Performance Funding System operating subsidy eligibility, IHAs will have to absorb any loss in rental income that results from the adoption of any of the optional earned income exclusions discussed in paragraph (3)(i) of this definition, including any variations of the listed options.

* * * * *

Dated: August 6, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–22214 Filed 8–29–96; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Friday
August 30, 1996

Part IX

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Harvest Information Program; Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands; Early Seasons and Bag and Possession Limits; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AD08

Migratory Bird Harvest Information Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) and State wildlife agencies (States) are cooperatively establishing a national Migratory Bird Harvest Information Program (Program). The Program requires licensed migratory game bird hunters to supply their names, addresses, and other necessary information to the hunting licensing authority of the State in which they hunt. The Program improves the quality and extent of information about the harvests of migratory game birds to better manage these populations. The Program requires hunters to have evidence of current Program participation (Program validation) on their person while hunting migratory game birds in participating States. Hunters' names and addresses will provide a sample frame for voluntary hunter surveys needed to improve harvest estimates for all migratory game birds. States will gather migratory bird hunters' names and addresses and the Service will conduct the harvest surveys. This specific action adds 7 States to the list of those participating in the Program, bringing the total to 17.

EFFECTIVE DATE: This rule takes effect on September 1, 1996.

FOR FURTHER INFORMATION CONTACT: Larry J. Hindman, Migratory Bird Harvest Information Program Coordinator, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (410) 827–8612, FAX (410) 827–5186.

SUPPLEMENTARY INFORMATION: This final rule facilitates the collection of needed information about migratory game birds harvests. A proposed rule was published in the April 29, 1996, Federal Register (61 FR 18936). This final rule amends Section 20.20 of 50 CFR by adding Alabama, Georgia, Idaho, Illinois, Maine, Minnesota, Mississippi, Pennsylvania, Tennessee, and Vermont to the list of participating States. Licensed hunters, as a condition for hunting migratory game birds in these States, would be required to annually provide their names, addresses, and other necessary information to the licensing authority of the State in which they hunt. This information will provide a nationwide sampling frame of migratory bird hunters, from which representative samples of hunters will be selected and asked to participate in voluntary harvest surveys that the Service will conduct annually.

The Service and States are currently implementing this Program over a 5-year period, starting with the 1994–95 hunting season. During this implementation, the Program's participation requirement will not apply on Federal Indian Reservations or to tribal members hunting on ceded lands. Participating States will provide the sample frame by annually collecting the name, address, and date of birth of each State licensed migratory bird hunter. To reduce survey costs and to identify hunters who hunt less commonly-hunted species, States will also request that each migratory bird hunter provide a brief summary of his or her migratory bird hunting activity for the previous year. States will send this information to the Service, and the Service will sample hunters and conduct national hunter activity and harvest surveys.

A notice of intent to establish the Program was published in the June 24, 1991, Federal Register (56 FR 28812). A final rule establishing the Program and initiating a 2-year pilot phase in three volunteer States (California, Missouri, and South Dakota) was published in the March 19, 1993, Federal Register (58 FR 15093). The pilot phase was completed following the 1993–94 migratory bird hunting seasons in California, Missouri, and South Dakota.

A State/Federal group was formed to evaluate Program requirements, the different approaches used by the pilot States, and the Service's survey procedures during the pilot phase. Their evaluation resulted in Program changes specified in a final rule, published in the October 21, 1994, Federal Register (59 FR 53334), initiating the implementation phase of the Program.

Currently, all licensed migratory game bird hunters in participating States are required to have a Program validation, indicating that they have identified themselves as migratory bird hunters and have provided the required information to the State wildlife agency. Hunters must provide the required information to each State in which they hunt migratory birds. Validations are printed on or attached to the annual State hunting license or on a State-specific supplementary permit.

The State/Federal technical group continues evaluating the Program to determine the adequacy and timeliness of the sample frame, time burden, cost, and other impacts on hunters, State license agents, State wildlife agencies, and the Service. Current emphasis is on the time requirement for the sample frame and alternative survey methods for special groups of unlicensed hunters (e.g., junior and senior hunters).

Names, addresses, and other information are needed in time to distribute hunting record forms to selected hunters before they forget the details of their hunts. Previously, the Service's survey design required participating States to send the required information to the Service within 5 business days of the hunting license or permit issuance (10 business days if the information is in electronic form). Several States expressed concern that they could not meet this time requirement. The Service conducted an experiment during the 1994–95 hunting season to determine whether extending the time requirement would adversely affect the accuracy of survey results. Based on the results of that experiment, the Service now requires participating States to forward hunter information to the Service within 30 calendar days from the date of license or permit issuance.

The Service does not require hunters exempted from State permit and licensing requirements to participate in the Program. This would include junior hunters, senior hunters, landowners, and other special categories. Exemptions vary on a State-by-State basis. Excluding these hunters from the Program also excludes their harvest from the estimates which may result in serious bias. Thus States may require exempted hunters to participate; and the Service encourages States to provide any available information about these groups (for example, junior hunter safety course participant lists, names and addresses of landowners, State harvest estimates for exempted categories) to the Service for use in improving harvest estimates. Methodology may vary by State and will be incorporated into individual Memoranda of Agreement with the Service.

The Service will use the names and addresses only for conducting hunter surveys. Names and addresses will be deleted after the surveys. State uses of these names and addresses will be governed by State laws.

Under 5 U.S.C. 553(d)(3) at least 30 days is required for a rule to become effective unless an agency has good cause to make it sooner. The Service and the States are currently implementing this Program over a five-year period at the request of the International Association of Fish and

Wildlife Agencies. The States added by this rule to the list of participating States, Alabama, Georgia, Idaho, Illinois, Maine, Minnesota, Mississippi, Pennsylvania, Tennessee, and Vermont, have all prepared for a September 1 implementation date of the Program. Generally, migratory game bird hunting seasons may begin as early as September 1, 1996, and since migratory game bird hunters are required to have a Program validation on their person while hunting migratory game birds in these States, the Service believes this rule should be effective on September 1, 1996.

Review of Comments and the Service's Response

The Service received comments on the proposed rule from six States. All supported the Program, but requested a delay in their implementation date.

1. Implementation Phase—Schedule of State Participation

Comment: North Carolina requested implementation be delayed to 1997. North Carolina is considering a major license system change in 1997 and wants to implement the Harvest Information Program with this change. Arkansas, Colorado, Virginia, and Wisconsin requested implementation be delayed to 1998, due to anticipated changes in their licensing systems. South Carolina requested implementation be delayed to 1998 to obtain approval from their State legislature to implement the Program.

Service Response: The Service has consistently encouraged States to advance in the implementation schedule, and discourage any delays. However, the proposed delays by Arkansas, Colorado, North Carolina, Virginia, and Wisconsin are premised on improved license procedures that will better accommodate the Program. South Carolina's proposed delay is based on implementing the Program with the endorsement of their State legislature which will help ensure successful implementation. Thus, the Service agrees to North Carolina's Program implementation and implementation in 1998 for Arkansas, Colorado, South Carolina, Virginia, and Wisconsin.

NEPA Consideration

The Service considered the establishment of this Harvest Information Program and options in the ''Environmental Assessment: Migratory Bird Harvest Information Program.'' Copies of this document are available from the Service at the address indicated under the caption **FOR FURTHER INFORMATION CONTACT.**

Regulatory Flexibility Act and the Paperwork Reduction Act

On June 14, 1991, the Assistant Secretary for Fish and Wildlife and Parks concluded the rule would not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act 5 USC 601 *et seq.* This rule will eventually affect about 3–5 million migratory game bird hunters when it is fully implemented. It will require licensed migratory game bird hunters to identify themselves and to supply their names, addresses, and birth dates to the State licensing authority. Additional information will be requested in order that they can be efficiently sampled for a voluntary national harvest survey. Hunters will be required to have Program validation on their person while hunting migratory game birds.

The States may require a fee to cover their administrative costs. State hunting-license vendors range from small to very large entities. This rule should not economically impact any vendors/agents. Only migratory game bird hunters (individuals) must provide this information, so this rule should not adversely affect small entities.

The collection of information contained in this rule was approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0015. The Service requires information from licensed hunters before they can hunt migratory game birds.

The public reporting burden for this collection of information is estimated to average 0.015 hours per response. This includes the time needed to review instructions; search existing data sources; gather and maintain data; and complete and review the collection of information. Comments regarding the burden estimate or any other aspect of these reporting requirements should be directed to the Service Information Collection Clearance Officer, ms 224 ARLSQ, U.S. Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866.

Executive Order 12612—Federalism

The regulations do not have significant Federalism effects as provided in Executive Order 12612. Due to the migratory nature of certain bird species, the Federal Government was given responsibility for their management under the Migratory Bird Treaty Act. State harvest surveys presently cannot provide adequate national estimates of migratory game bird harvests for the following reasons: (1) Some States do not now conduct annual harvest surveys or maintain accessible lists of hunter names and addresses; (2) comparable information is not available from all States because States have different survey procedures; (3) many State license lists are not available in time to permit distribution of hunter records early in the hunting season; and (4) budget constraints often prevent States from conducting harvest surveys during certain years and may cause some States to eliminate them completely.

The regulations do not have a substantial direct effect on fiscal capacity; do not change the roles or responsibilities of Federal or State Governments; and do not intrude on State policy or administration. Therefore, these regulations have no significant Federalism effects and do not warrant the preparing of a Federalism Assessment. In fact, they promote Federal/State cooperation and reduce duplication of survey efforts.

These regulations do not constitute a significant regulatory action as defined by Executive Order 12866. Therefore an assessment of their effects on State governments, under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), is not required. The States may require a handling fee from licensed migratory bird hunters to cover the administrative costs of implementing the Program. Thus these regulations will not have a significant economic impact on the States.

Executive Order 12360—Taking of Individual Property Rights

Executive Order 12360 discussed guidelines for the taking of individual property rights. These regulations, authorized by the Migratory Bird Treaty Act, do not affect any constitutionally-protected property rights. They would not result in the physical occupancy, physical invasion, or regulatory taking of any property.

Authorship

The primary author of this rule is Larry J. Hindman, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and record keeping requirements, Transportation, Wildlife.

For the reasons set out in the preamble, 50 CFR Part 20 is amended as set forth below.

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

2. Section 20.20 is amended by revising paragraphs (b) and (e) to read as follows:

§ 20.20 Migratory Bird Harvest Information Program.

* * * * *

(b) General provisions. Each person hunting migratory game birds in Alabama, California, Georgia, Idaho, Illinois, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, and Vermont must identify himself or herself as a migratory bird hunter and give his or her name, address, and date of birth to the respective State hunting licensing authority and must have on his or her person evidence, provided by that State, of compliance with this requirement.

* * * * *

(e) Implementation schedule. The Service continues to implement the Program over the next 2-year period from 1997–1998. States must participate on or before the following schedule:

1997—Arizona, Florida, Kentucky, Ohio, North Carolina, and Texas.

1998—Alaska, Arkansas, Colorado, Connecticut, Delaware, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Rhode Island, South Carolina, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Dated: August 27, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–22245 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–55–F

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50 CFR Part 20

RIN 1018–AD69

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1996–97 Early Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

EFFECTIVE DATE: This rule takes effect on September 1, 1996.

ADDRESSES: The public may inspect comments received, if any, on the proposed special hunting regulations and tribal proposals during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. The public should send communications regarding the documents to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Room 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1714).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the August 16, 1996, Federal Register (61 FR 42730), the Service proposed special migratory bird hunting regulations for the 1996–97 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, Federal Register (50 FR 23467). The guidelines responds to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the March 22, 1996, Federal Register (61 FR 11986), the Service requested that tribes desiring special hunting regulations in the 1996–97 hunting season submit a proposal including details on:

(1) Requested season dates and other regulations to be observed;

(2) Harvest anticipated under the requested regulations;

(3) Methods that will be employed to measure or monitor harvest;

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and

(5) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. The Service has successfully used the guidelines since the 1985–86 hunting season. The Service finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, Federal Register [53 FR 31612]).

Although the proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the early-season proposals. Late-season hunting will be addressed in late-September. As

a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

Comments and Issues Concerning Tribal Proposals

For the 1996–97 migratory bird hunting season, the Service proposed regulations for 22 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with early-season proposals are included in this final rulemaking; 10 tribes have proposals with early seasons. Comments and revised proposals received to date are addressed in the following section. The comment period for the proposed rule, published on August 16, 1996, closed on August 26, 1996. Because of the necessary brief comment period, the Service will respond to any comments received on the proposed rule and/or these early-season regulations not responded to herein in the September late-season final rule.

Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

To date, the Service has received one comment letter. The Wisconsin Department of Natural Resources (WIDNR) July 5, 1996, letter to the Great Lakes Indian Fish and Wildlife Commission (GLIFWC), was copied to the Service. In this letter, the WIDNR communicated concerns regarding: (1) The suggested monitoring of harvest impacts on giant Canada geese; (2) the consistency between the length of other goose seasons and bag limits for the GLIFWC and the State of Wisconsin; (3) the initiation and completion of studies on the impacts of a September 15 duck season opening on local breeding populations; and (4) honoring the noon opening for shooting hours for the first day of the State's duck season and the State's open water hunting restrictions.

The Service believes it is necessary to place this GLIFWC proposal in the context of a tribal entity having court established legal rights on ceded lands. Further, the Service's policy is to recognize treaty rights wherever there is substantial proof that they occur, e.g., more recently in the Michigan 1836 Treaty area. Thus, the GLIFWC proposal has as its umbrella the recognition by the Federal Government of those reserved rights by bands to an unquantified amount of any harvestable migratory bird surpluses in the ceded areas. Our position derives from the special status that Native Americans have with regard to the Federal Government's trust responsibility, as well as precedent setting court decisions in Wisconsin and elsewhere when these reserved treaty rights have been at issue.

As to the details of the proposal comments, our response remains that the current populations of birds can support the bands' limited harvest. In past years, the GLIFWC's member bands have annually harvested about 2,000 and 500 ducks and geese, respectively. In 1995–96, under nearly identical regulations, 2,747 ducks and 319 geese were harvested. Under the proposed regulations, the GLIFWC anticipates an annual harvest of approximately 3,000 ducks and 900 geese. Further, the GLIFWC's proposed specific sex and species considerations are in line with current management concerns. If approved, the GLIFWC is obligated to monitor harvest to ensure that local breeding populations of ducks are not being adversely affected.

The September 15 opening date for the GLIFWC meets the Service's established framework for approval of tribal duck seasons. This date should provide ample time for even late broods and molting ducks to be flighted. Originally established by the Service's Region 3 Office in the Twin Cities, Minnesota, for use in the Great Lakes areas, these guidelines have been generally applied elsewhere in the States, as appropriate. The Service also requests that tribal members honor both the noon opening for shooting hours for the first day of the State's duck season and Wisconsin's open water hunting restrictions.

As the Service is approving these regulations in this early season final rule, it is incumbent upon the GLIFWC to continue to closely monitor both duck and goose harvests to ensure that local and/or regional breeding populations are not being negatively impacted by harvest.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, Federal Register (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations were conducted to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES**.

Regulatory Flexibility Act; Executive Order (E.O.) 12866 and the Paperwork Reduction Act

In the March 22, 1996, Federal Register, the Service reported measures it took to comply with requirements of the Regulatory Flexibility Act and E.O. 12866. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1995 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $258 and $586 million at small businesses. Copies of the Analysis are available upon request from the Office of Migratory Bird Management. The Service is currently updating and expanding the 1995 Analysis. This rule was not subject to review by the Office of Management and Budget under E.O. 12866.

The Department examined these proposed regulations under the Paperwork Reduction Act of 1995 and found no information collection requirements.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published,

the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the Federal Register a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1996–97 season.

The Service therefore finds that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

(Editorial Note: The following hunting regulations provided for by §20.110 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.)

2. Section 20.110 is revised to read as follows:

§20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Non-Tribal Hunters)

Doves

Season Dates: Open September 1, close September 15, 1996; then open November 16, close January 15, 1997.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required for all persons 14 years and older and must be in possession before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

Ducks

Minnesota 1854 Zone:

Season Dates: Open September 14, close November 24, 1996.

Daily Bag Limit: 20 ducks, including no more than 10 mallards; only 5 of which may be hen mallards; 4 black ducks; 4 redheads, 4 pintails and 2 canvasbacks.

Mergansers

Minnesota 1854 Zone:

Season Dates: Open September 14, close November 24, 1996.

Daily Bag Limit: 5 mergansers, including no more than 1 hooded merganser.

Geese

Minnesota 1854 Zone:

Season Dates: Open September 7, close November 24, 1996.

Daily Bag Limit: 10 geese.

Coots and Common Moorhens (Gallinule)

Minnesota 1854 Zone:

Season Dates: Open September 14, close November 24, 1996.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

Minnesota 1854 Zone:

Season Dates: Open September 7, close November 24, 1996.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. The possession limit is 25.

Common Snipe

Minnesota 1854 Zone:

Season Dates: Open September 1, close November 24, 1996.

Daily Bag Limit: 8 snipe.

Woodcock

Minnesota 1854 Zone:

Season Dates: Open September 1, close November 24, 1996.

Daily Bag Limit: 5 woodcock.

General Conditions:

(i) While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

(ii) Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. This Model Code was the subject of the stipulation in Lac Courte Oreilles v. State of Wisconsin regarding migratory bird hunting. Except as modified herein, these amended regulations parallel Federal requirements, 50 CFR Part 20, and shooting hour regulations in 50 CFR Part 20, subpart K, as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

(iii) Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

(iv) Minnesota—Duck Blinds and Decoys. Tribal members hunting in Minnesota will comply with tribal codes that contain provisions parallel to applicable State statutes.

(v) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise specified.

(vi) Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State

conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State statutes. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(c) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

Ducks

Michigan, 1836 Treaty Zone:
Season Dates: Open September 15, close November 30, 1996.
Daily Bag Limit: 7 ducks, which may include no more than 1 pintail, 1 canvasback, 1 black duck, 2 wood ducks, 2 redheads, and 2 hen mallards.

Canada Geese

Michigan, 1836 Treaty Zone:
Season Dates: Open September 1, close November 30, 1996, and open January 1, close February 7, 1997.
Daily Bag Limit: 5 geese.
General Conditions: A valid Grand Traverse Band Tribal license is required for all persons 12 years and older and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(d) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Ducks

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 15, close November 7, 1996.
Daily Bag Limit: 20 ducks, including no more than 10 mallards; only 5 of which may be hen mallards; 4 black ducks; 4 redheads, 4 pintails and 2 canvasbacks.

Mergansers

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 15, close November 7, 1996.
Daily Bag Limit: 5 mergansers, including no more than 1 hooded merganser.

Canada Geese

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 15, close December 1, 1996.
Daily Bag Limit: 10 geese, minus the number of blue, snow or white-fronted geese taken.
Michigan, 1842 Treaty Zone:
Season Dates: Open September 1, close September 10, 1996.
Daily Bag Limit: 5 geese.
Michigan, 1836 Treaty Zone:
Season Dates: Open September 1, close September 10, 1996, except for that small portion of the ceded territory which coincides with the State of Michigan's Southern Zone will open September 1 and close on September 15.
Daily Bag Limit: 5 geese.

Other Geese (Blue, Snow, and White-fronted)

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 15, close December 1, 1996.
Daily Bag Limit: 10 geese, minus the number of Canada geese taken.

Coots and Common Moorhens (Gallinules)

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 15, close November 7, 1996.
Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 15, close November 7, 1996.
Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. The possession limit is 25.
Michigan, 1842 and 1836 Zones:
Season Dates: Open September 15, close November 14, 1996.
Daily Bag and Possession Limits: 25 sora and Virginia rails, singly or in aggregate. The possession limit is 25.

Common Snipe

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 15, close November 7, 1996.
Daily Bag Limit: 8 snipe.
Michigan, 1842 and 1836 Zones:
Season Dates: Open September 15, close November 14, 1996.
Daily Bag Limit: 8 snipe.

Woodcock

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 3, close November 30, 1996.
Daily Bag Limit: 5 woodcock.
Michigan, 1842 and 1836 Zones:
Season Dates: Open September 15, close November 14, 1996.
Daily Bag Limit: 5 woodcock.
General Conditions:
(i) While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

(ii) Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. This Model Code was the subject of the stipulation in Lac Courte Oreilles v. State of Wisconsin regarding migratory bird hunting. Except as modified herein, these amended regulations parallel Federal requirements, 50 CFR Part 20, and shooting hour regulations in 50 CFR Part 20, subpart K, as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

(iii) Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

(iv) Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Minnesota will comply with tribal codes that contain provisions parallel to applicable State statutes. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(v) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise specified.

(vi) Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State statutes. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(e) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers)

Band-tailed Pigeons

Season Dates: Open September 1, close September 30, 1996.
Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 30, 1996.
Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(f) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members)

Ducks

Season Dates: Open September 15, close November 30, 1996.

Daily Bag and Possession Limits: 5 ducks, including no more than 3 mallards (only 1 of which can be a mallard hen), 4 wood ducks, 1 canvasback, 1 redhead, 2 pintails, and 1 hooded merganser. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, close November 30, 1996.

Daily Bag and Limits: 2 Canada geese, that must be tagged after harvest with tribal tags. The tribe will reissue tags upon registration of the daily bag limit. A season quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Mourning Dove

Season Dates: Open September 1, close November 30, 1996.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Woodcock

Season Dates: Open September 1, close November 30, 1996.

Daily Bag and Possession Limits: 6 and 12 woodcock, respectively.

General Conditions: Indians and non-Indians hunting on the Oneida Indian Reservation or on lands under the jurisdiction of the Oneida Nation will observe all basic Federal migratory bird hunting regulations found in 50 CFR. Indian hunters are exempt from the requirement to purchase a Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp) and the plugging of shotgun to limit capacity to 3 shells.

(g) Point No Point Treaty Tribes, Kingston, Washington (Tribal and Non-Tribal Hunters)

Mourning Doves

Season Dates: Open September 1, close September 15, 1996.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 1, close December 16, 1996.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

(h) Seminole Tribe of Florida, Big Cypress Seminole Reservation, Clewiston, Florida (Tribal and Non-Tribal Hunters)

Mourning Doves

Season Dates: Open September 22, 1996, close January 15, 1997.

Daily Bag and Possession Limits: 12 and 24 doves, respectively.

General Conditions: Hunting would be on Sundays only from 1:00 p.m. to sunset. All other Federal regulations contained in 50 CFR part 20 would apply.

(i) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members)

Ducks

Season Dates: Open September 15, 1996, close January 15, 1997.

Daily Bag and Possession Limits: 5 ducks, including no more than 1 canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 1996, close January 15, 1997.

Daily Bag and Possession Limits: 4 geese, and may include no more than 2 snow geese and 1 dusky Canada goose. The season on Aleutian and Cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 15, close December 31, 1996.

Daily Bag and Possession Limits: 2 and 4 brant, respectively.

Coots

Season Dates: Open September 15, 1996, close January 15, 1997.

Daily Bag Limits: 25 coots.

Snipe

Season Dates: Open September 15, 1996, and close January 15, 1997.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeons

Season Dates: Open September 15, close December 1, 1996.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington.

(j) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members)

Ducks/Coot

Season Dates: Open September 15, 1996, and close February 1, 1997.

Daily Bag and Possession Limits: 6 and 12 ducks, respectively; except that bag and possession limits are restricted for blue-winged teal, canvasback, harlequin, pintail and wood duck to those established for the Pacific Flyway by final Federal frameworks, to be announced.

Geese

Season Dates: Open September 15, 1996, and close February 1, 1997.

Daily Bag and Possession Limits: 6 and 12 geese, respectively; except that the bag limits for brant and cackling and dusky Canada geese are those established for the Pacific Flyway in accordance with final Federal frameworks, to be announced. The tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

Snipe

Season Dates: Open September 15, 1996, and close February 1, 1997.

Daily Bag and Possession Limits: 6 and 12 snipe, respectively.

General Conditions: All waterfowl hunters, members and non-members, must obtain and possess while hunting a valid hunting permit from the Tulalip tribes. Also, non-tribal members sixteen years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a validated Federal Migratory Bird Hunting and Conservation Stamp and a validated State of Washington Migratory Waterfowl Stamp. All Tulalip tribal members must have in their possession while hunting, or accompanying another, their valid tribal identification card. All hunters are required to adhere to a number of other special regulations

enforced by the tribes and available at the tribal office.

(k) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Non-tribal Hunters)

Band-Tailed Pigeons

Season Dates: Open September 6, close September 15, 1996.

Daily Bag and Possession Limits: 3 and 6 pigeons, respectively.

Mourning Doves

Season Dates: Open September 6, close September 15, 1996.

Daily Bag and Possession Limits: 8 and 16 doves, respectively.

General Conditions: All non-tribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all non-tribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

Dated: August 27, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–22249 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–55–F

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50 CFR Part 20

RIN 1018–AD69

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits taking of designated species during the 1996–97 season.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1996

On March 22, 1996, the Service published in the Federal Register (61 FR 11992) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under Sections 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 13, 1996, the Service published in the Federal Register (61 FR 30114) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. The June 13 supplement also provided detailed information on the 1996–97 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings. On June 14, 1996, the Service published in the Federal Register (61 FR 30490) a third document describing the Service's proposed 1996–97 regulatory alternatives for duck hunting and its intent to consider establishing a special youth waterfowl hunting day.

On June 27, 1996, the Service held a public hearing in Washington, DC, as announced in the March 22 and June 14 Federal Registers to review the status of migratory shore and upland game birds. The Service discussed hunting regulations for these species and for other early seasons. On July 22, 1996, the Service published in the Federal Register (61 FR 37994) a fourth document specifically dealing with proposed early-season frameworks for the 1996–97 season. This document also extended the public comment period to August 1, 1996, for early-season proposals.

On August 2, 1996, the Service held a public hearing in Washington, DC, as announced in the March 22, June 14, and July 22 Federal Registers to review the status of waterfowl. Proposed hunting regulations were discussed for late seasons. On August 15, 1996, (61 FR 42506), the Service published a fifth and sixth document on migratory bird hunting. The fifth document dealt specifically with proposed frameworks for the 1996–97 late-season migratory bird hunting regulations. The sixth document proposed establishing a youth waterfowl hunting day for the 1996–97 duck-hunting season. On August 29, 1996, the Service published a seventh document containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. The final rule described here is the eighth in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR 20. It sets hunting seasons, hours, areas, and limits for mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; mourning doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, Federal Register (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations were conducted to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are

included in a biological opinion and may have modified some regulatory measures previously proposed. The final frameworks here reflect any such modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and Office of Migratory Bird Management, at the address indicated under the caption **ADDRESSES.**

Regulatory Flexibility Act; Executive Order 12866 and the Paperwork Reduction Act

In the March 22, 1996, Federal Register, the Service reported measures it took to comply with requirements of the Regulatory Flexibility Act and E.O. 12866. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1996 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $254 and $592 million at small businesses. Copies of the Analysis are available upon request from the Office of Migratory Bird Management. This rule was not subject to review by the Office of Management and Budget under E.O. 12866.

The Department examined these proposed regulations under the Paperwork Reduction Act of 1995. The various information collection requirements are utilized in the formulation of migratory game bird hunting regulations. OMB has approved these information collection requirements and assigned clearance numbers 1018–0015 and 1018–0023.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the Federal Register a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1996–97 season.

The Service therefore finds that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: August 27, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

PART 20—[AMENDED]

For the reasons set out in the preamble, title 50, chapter I, subchapter B, Part 20, subpart K is amended as follows.

1. The authority citation for Part 20 is revised to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

BILLING CODE 4310–55–P

Note - The following annual hunting regulations provided for by §§20.101 through 20.106 and 20.109 of 50 CFR 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

§20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Puerto Rico

	Season Dates	Limits	
		Bag	Possession
Doves and Pigeons			
Zenaida, white-winged, and mourning doves	Sept. 7-Nov. 4	10	10
Scaly-naped pigeons	Sept. 7-Nov. 4	5	5
Ducks	Nov. 16-Dec. 23 &	5	10
	Jan. 11-Jan. 27	5	10
Common Moorhens	Nov. 16-Dec. 23 &	6	12
	Jan. 11-Jan. 27	6	12
Common Snipe	Nov. 16-Dec. 23 &	8	16
	Jan. 11-Jan. 27	8	16

Restrictions: In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, and Caribbean coot, white-crowned pigeon and plain pigeon.

Closed Areas: Closed areas are described in the August 29, 1996, Federal Register.

(b) Virgin Islands

	Season Dates	Limits	
		Bag	Possession
Zenaida doves	Sept. 1-Sept. 30	10	10
Ducks	CLOSED		

Restrictions: In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and purple gallinule.

Closed Areas: Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds.

3. Section 20.102 is revised to read as follows:

§20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the August 29, 1996, Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Area Seasons	Dates
North Zone	Sept. 1-Dec. 16
Gulf Coast Zone	Sept. 1-Dec. 16
Southeast Zone	Sept. 1-Dec. 16
Pribilof & Aleutian Islands Zone	Oct. 8-Jan. 22
Kodiak Zone	Oct. 8-Jan. 22

Area	Daily Bag and Possession Limits					
	Ducks(1)	Dark Geese(2)(3)	Light Geese (2)	Brant	Common Snipe	Sandhill Cranes(4)
North Zone	10-30	4-8	3-6	2-4	8-16	3-6
Gulf Coast Zone	8-24	4-8	3-6	2-4	8-16	2-4
Southeast Zone	7-21	4-8	3-6	2-4	8-16	2-4
Pribilof and Aleutian Islands Zone	7-21	4-8	3-6	2-4	8-16	2-4
Kodiak Zone	7-21	4-8	3-6	2-4	8-16	2-4

(1) In State Game Management Units (Units) 1-26 (Statewide), the basic bag limits may include not more than 1 canvasback daily, 3 in possession. In addition to the basic daily bag and possession limits, a daily bag limit of 15 and a possession limit of 30 is permitted singly or in the aggregate of the following species: scoter, king and common eider, oldsquaw, harlequin ducks, and common and red-breasted mergansers. The season is closed for Steller's and spectacled eiders. In Units 6(D) and 7, the season for harlequin ducks will be October 1 through December 16, and bag limits are 2 daily, 6 in possession. The season is closed Statewide for Stellar's and spectacled eiders.

(2) Dark geese include Canada and white-fronted geese. Light geese include snow geese and Ross' geese. Separate limits apply to brant and emperor geese. The season for emperor geese is closed Statewide.

(3) In Units 9(E) and 18, dark goose limits may include no more than 1 Canada goose daily, 2 in possession. In Units 5 and 6, the taking of Canada geese is only permitted from September 28 through December 16. In Units 8 and 10 (except Unimak Island), and the Middleton Island portion of Unit 6, the taking of Canada geese is prohibited. In Units 1-26 (Statewide), the taking of Aleutian Canada geese and emperor geese is prohibited.

(4) In Unit 17, the daily bag limit for sandhill cranes is 2 and the possession limit is 4.

Falconry: The total combined bag and possession limit for migratory game birds taken with the use of a falcon under a falconry permit is 3 per day, 6 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

Special Tundra Swan Season: In Unit 22, there will be a tundra swan season from September 1 through October 31 with a season limit of 1 tundra swan per hunter. This season is by registration permit only. Up to 300 permits may be issued. In Unit 18, there will be a tundra swan season from September 1 through October 31 with a limit of 1 tundra swan per permit. More than 1 permit per season may be issued to a hunter, with issuance one at a time upon filing a harvest report. Up to 500 permits may be issued.

4. Section 20.103 is revised to read as follows:

§20.103 Seasons, limits, and shooting hours for doves and pigeons.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 29, 1996, Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Doves

Note: Unless otherwise specified, the seasons listed below are for mourning doves only.

	Season Dates	Limits	
		Bag	Possession
EASTERN MANAGEMENT UNIT			
Alabama			
North Zone			
12 noon to sunset	Sept. 14 only &	15	15
	Dec. 26-Jan. 10	15	15
1/2 hour before sunrise to sunset	Sept. 15-Oct. 27	15	15
South Zone			
12 noon to sunset	Oct. 5-Nov. 22 &	12	12
	Dec. 26-Jan. 15	12	12
Delaware			
12 noon to sunset	Sept. 2-Sept. 28	12	24
1/2 hour before sunrise to sunset	Oct. 21-Nov. 2 &	12	24
	Dec. 13-Jan. 11	12	24
Florida (1)			
12 noon to sunset	Oct. 5-Oct. 28	12	24
1/2 hour before sunrise to sunset	Nov. 16-Dec. 1 &	12	24
	Dec. 14-Jan. 12	12	24

	Season Dates	Limits Bag	Possession
Georgia			
Zone 1			
12 noon to sunset	Sept. 7 only	12	24
1/2 hour before sunrise to sunset	Sept. 8-Oct. 6 &	12	24
	Nov. 28-Nov. 30 &	12	24
	Dec. 10-Jan. 15	12	24
Zone 2			
12 noon to sunset	Sept. 28 only	12	24
1/2 hour before sunrise to sunset	Sept. 29-Oct. 27 &	12	24
	Nov. 28-Nov. 30 &	12	24
	Dec. 10-Jan. 15	12	24
Illinois			
sunrise to sunset	Sept. 1-Oct. 14 &	15	30
	Nov. 2-Nov. 17	15	30
Indiana	Sept. 1-Oct. 16 &	15	30
	Nov. 8-Nov. 17 &	15	30
	Nov. 28-Dec. 1	15	30
Kentucky			
11 a.m. to sunset	Sept. 1-Sept. 30 &	15	30
	Oct. 5-Oct. 28	15	30
sunrise to sunset	Nov. 28-Dec. 3	15	30
Louisiana			
12 noon to sunset	Sept. 7-Sept. 8 &	15	30
	Oct. 19-Oct. 20 &	15	30
	Dec. 14-Dec. 15	15	30
1/2 hour before sunrise to sunset	Sept. 9-Sept. 15 &	15	30
	Oct. 21-Nov. 8 &	15	30
	Dec. 16-Jan. 12	15	30
Maryland			
12 noon to sunset	Sept. 2-Oct. 22	12	24
1/2 hour before sunrise to sunset	Nov. 18-Nov. 23 &	12	24
	Dec. 26-Jan. 7	12	24
Mississippi			
North Zone	Sept. 1-Sept. 22 &	15	30
	Oct. 12-Nov. 10 &	15	30
	Dec. 26-Jan. 2	15	30
Mississippi (cont)			
South Zone	Sept. 21-Oct. 12 &	15	30
	Nov. 16-Dec. 1 &	15	30
	Dec. 21-Jan. 11	15	30
North Carolina			
12 noon to sunset	Sept. 2-Sept. 7	12	24
1/2 hour before sunrise to sunset	Sept. 8-Oct. 5 &	12	24
	Nov. 25-Nov. 30 &		
	Dec. 13-Jan. 11	12	24
Ohio	Sept. 16-Oct. 15 &	15	30
	Nov. 1-Nov. 30	15	30
Pennsylvania			
12 noon to sunset	Sept. 2-Oct. 12	12	24
1/2 hour before sunrise to sunset	Nov. 2-Nov. 30	12	24
Rhode Island			
12 noon to sunset	Sept. 9-Sept. 22	12	24
1/2 hour before sunrise to sunset	Oct. 19-Nov. 17 &	12	24
	Dec. 21-Jan. 15	12	24
South Carolina			
12 noon to sunset	Sept. 2-Sept. 7	12	24
1/2 hour before sunrise to sunset	Sept. 8-Oct. 5 &	12	24
	Nov. 23-Nov. 30 &	12	24
	Dec. 19-Jan. 15	12	24
Tennessee			
12 noon to sunset	Sept. 1 only	15	30
1/2 hour before sunrise to sunset	Sept. 2-Sept. 27 &	15	30
	Oct. 12-Oct. 26 &	15	30
	Dec. 21-Jan. 7	15	30
Virginia			
12 noon to sunset	Sept. 2-Sept. 28	12	24
1/2 hour before sunrise to sunset	Oct. 4-Nov. 2 &	12	24
	Dec. 23-Jan. 4	12	24

	Season Dates	Limits Bag	Limits Possession
West Virginia			
12 noon to sunset	Sept. 2 only	12	24
1/2 hour before sunrise to sunset	Sept. 3-Oct. 5 &	12	24
	Oct. 28-Nov. 9 &	12	24
	Dec. 16-Jan. 7		
CENTRAL MANAGEMENT UNIT			
Arkansas	Sept. 1-Oct. 30	15	30
Colorado	Sept. 1-Oct. 30	15	30
Kansas	Sept. 1-Oct. 30	15	30
Missouri	Sept. 1-Oct. 30	15	30
Montana	Sept. 1-Oct. 30	15	30
Nebraska	Sept. 1-Oct. 30	15	30
New Mexico (2)	Sept. 1-Sept. 30 &	15	30
	Dec. 1-Dec. 30	15	30
North Dakota	Sept. 1-Oct. 30	15	30
Oklahoma	Sept. 1-Oct. 30	15	30
South Dakota (3)	Sept. 1-Oct. 18	15	30
Texas (4)			
North Zone	Sept. 1-Oct. 30	15	30
Central Zone	Sept. 1-Oct. 19 &	15	30
	Dec. 26-Jan. 5	15	30
South Zone			
Special Area	Sept. 20-Nov. 3 &	15	30
	Dec. 26-Jan. 5	15	30
(Special Season) 12 noon to sunset	Sept. 7-Sept. 8 &	10	20
	Sept. 14-Sept. 15	10	20
Remainder of the South Zone	Sept. 20-Nov. 7 &	15	30
	Dec. 26-Jan. 5	15	30
Wyoming	Sept. 1-Oct. 20	15	30
WESTERN MANAGEMENT UNIT			
Arizona (5)	Sept. 1-Sept. 10 &	10	20
	Nov. 24-Jan. 11	10	20
California (6)	Sept. 1-Sept. 15 &	10	20
	Nov. 9-Dec. 23	10	20
Idaho	Sept. 1-Sept. 30	10	20
Nevada (6)	Sept. 1-Sept. 30	10	20
Oregon	Sept. 1-Sept. 30	10	20
Utah	Sept. 2-Sept. 30	10	20
Washington	Sept. 1-Sept. 15	10	20
OTHER POPULATIONS			
Hawaii (7)	Nov. 2-Jan. 5 &	10	10
	Jan. 11-Jan. 12 &	10	10
	Jan. 18-Jan. 20	10	10

(1) In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is twice the daily bag limit.

(2) In New Mexico, the daily bag limit is 15 and the possession limit is 30 mourning and white-winged doves in the aggregate.

(3) In South Dakota, shooting hours are from sunrise to sunset.

(4) In Texas, the daily bag limit is 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 6 may be white-winged doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.

During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 10 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.

(5) In Arizona, during September 1 through 10, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During November 26 through January 14, the daily bag limit is 10 mourning doves. The possession limit is twice the daily bag limit. See State regulations for restrictive shooting hours in certain areas.

(6) In the areas of California and Nevada open to white-winged dove hunting, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves in the aggregate.

(7) In Hawaii, the season is only open on the island of Hawaii. The daily bag and possession limits are 10 mourning and lace-necked doves in the aggregate. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. Hunting is only permitted on weekends and holidays.

(b) Band-tailed Pigeons

Seasons in:	Season Dates	Limits	
		Bag	Possession
Arizona (1)	Oct. 16-Oct. 25	5	10
California			
North Zone	Sept. 21-Sept. 29	2	2
South Zone	Dec. 21-Dec. 29	2	2
Colorado (1)	Sept. 1-Sept. 30	5	10
New Mexico (1)			
North Zone	Sept. 1-Sept. 20	5	10
South Zone	Oct. 1-Oct. 20	5	10
Oregon	Sept. 15-Sept. 23	2	2
Utah (1)	Sept. 2-Sept. 30	5	10

(1) Each band-tailed pigeon hunter must have either a band-tailed pigeon hunting permit or a special bird permit stamp issued by the respective State.

5. Section 20.104 is revised to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 29, 1996, Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	5 (3)	8
Possession limit	25 (1)	30 (2)	10 (3)	16
ATLANTIC FLYWAY				
Connecticut (4)	Sept. 2-Nov. 10	Sept. 2-Nov. 10	Oct. 19-Dec. 2	Oct. 19-Dec. 2
Delaware	Sept. 2-Nov. 9	Sept. 2-Nov. 9	Oct. 21-Nov. 2 & Nov. 25-Dec. 26	Nov. 25-Jan. 31
Florida	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Dec. 14-Jan. 27	Nov. 1-Feb. 15
Georgia	Sept. 25-Dec. 3	Sept. 25-Dec. 3	Dec. 14-Jan. 27	Nov. 15-Feb. 28
Maine	Sept. 1-Nov. 9	Closed	Oct. 1-Nov. 14	Sept. 1-Dec. 16
Maryland	Sept. 2-Nov. 9	Sept. 2-Nov. 9	Oct. 22-Nov. 23 & Dec. 16-Dec. 27	Sept. 18-Nov. 29 & Dec. 18-Jan. 20
Massachusetts (5)	Sept. 2-Nov. 9	Closed	Deferred	Sept. 2-Dec. 17
New Hampshire	Closed	Closed	Oct. 1-Nov. 14	Sept. 15-Nov. 30
New Jersey (6)				
North Zone	Sept. 2-Nov. 9	Sept. 2-Nov. 9	Oct. 12-Nov. 15	Sept. 27-Jan. 11
South Zone	Sept. 2-Nov. 9	Sept. 2-Nov. 9	Nov. 4-Nov. 30 & Dec. 21-Dec. 28	Sept. 27-Jan. 11
New York (7)	Sept. 1-Nov. 9	Closed	Oct. 1-Nov. 14	Sept. 1-Dec. 16
North Carolina	Sept. 2-Nov. 9	Sept. 2-Nov. 9	Dec. 7-Jan. 20	Nov. 14-Feb. 28
Pennsylvania	Sept. 2-Nov. 2	Closed	Oct. 26-Nov. 9	Oct. 26-Nov. 30
Rhode Island (8)	Sept. 14-Nov. 22	Sept. 14-Nov. 22	Oct. 23-Dec. 6	Sept. 14-Dec. 6 & Dec. 21-Jan. 12
South Carolina	Sept. 23-Sept. 30 & Oct. 24-Dec. 24	Sept. 23-Sept. 30 & Oct. 24-Dec. 24	Nov. 28-Dec. 14 & Dec. 21-Jan. 17	Nov. 8-Feb. 22
Vermont	Deferred	Deferred	Deferred	Deferred
Virginia	Sept. 16-Oct. 17 & Oct. 24-Nov. 30	Sept. 16-Oct. 17 & Oct. 24-Nov. 30	Oct. 28-Nov. 23 & Dec. 18-Jan. 4	Oct. 9-Oct. 12 & Oct. 21-Jan. 31
West Virginia	Sept. 2-Nov. 9	Closed	Oct. 12-Nov. 23	Sept. 2-Dec. 17

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
MISSISSIPPI FLYWAY				
Alabama (9)	Sept. 7-Sept. 15 & Nov. 21-Jan. 20	Sept. 7-Sept. 15 & Nov. 21-Jan. 20	Nov. 25-Jan. 28	Nov. 14-Feb. 28
Arkansas	Sept. 1-Nov. 9	Closed	Nov. 2-Dec. 15 & Jan. 4-Jan. 24	Nov. 9-Feb. 23
Illinois (10)	Sept. 7-Nov. 15	Closed	Oct. 1-Dec. 4	Sept. 7-Dec. 22
Indiana (11)	Sept. 1-Nov. 9	Closed	Sept. 21-Nov. 24	Sept. 1-Dec. 16
Iowa (12)	Sept. 7-Nov. 15	Closed	Sept. 21-Nov. 24	Sept. 7-Nov. 30
Kentucky	Sept. 1-Nov. 9	Closed	Oct. 12-Dec. 15	Sept. 18-Nov. 3 & Nov. 28-Jan. 26
Louisiana	Sept. 21-Sept. 29 & Nov. 9-Jan. 8	Sept. 21-Sept. 29 & Nov. 9-Jan. 8	Nov. 28-Jan. 31	Nov. 9-Feb. 23
Michigan (13)	Sept. 15-Nov. 14	Closed	Sept. 15-Nov. 14	Sept. 15-Nov. 14
Minnesota	Sept. 1-Nov. 4	Closed	Sept. 1-Nov. 4	Sept. 1-Nov. 4
Mississippi	Oct. 12-Dec. 20	Oct. 12-Dec. 20	Nov. 28-Jan. 31	Nov. 14-Feb. 28
Missouri	Sept. 1-Nov. 9	Closed	Oct. 15-Dec. 18	Sept. 1-Dec. 16
Ohio	Sept. 2-Nov. 9	Closed	Sept. 27-Nov. 30	Sept. 2-Nov. 30 & Dec. 16-Jan. 1
Tennessee	Deferred	Closed	Oct. 12-Dec. 15	Nov. 14-Feb. 28
Wisconsin	Deferred	Closed	Sept. 14-Nov. 17	Deferred
CENTRAL FLYWAY				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Kansas	Sept. 1-Nov. 9	Closed	Oct. 5-Dec. 8	Sept. 1-Dec. 16
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nebraska (14)	Sept. 1-Nov. 9	Closed	Sept. 15-Nov. 18	Sept. 1-Dec. 16
New Mexico	Deferred	Deferred	Deferred	Deferred
North Dakota	Closed	Closed	Sept. 14-Nov. 17	Sept. 14-Dec. 1
Oklahoma	Sept. 1-Nov. 9	Closed	Nov. 1-Jan. 4	Oct. 1-Jan. 15
South Dakota (15)	Closed	Closed	Closed	Sept. 1-Oct. 31
Texas	Sept. 14-Sept. 22 & Nov. 9-Jan. 8	Sept. 14-Sept. 22 & Nov. 9-Jan. 8	Deferred	Deferred
Wyoming	Sept. 14-Nov. 17	Closed	Closed	Sept. 14-Dec. 15
PACIFIC FLYWAY				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Idaho	Closed	Closed	Closed	Oct. 5 - Jan. 17
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
New Mexico	Deferred	Deferred	Deferred	Deferred
Wyoming	Sept. 14-Nov. 17	Closed	Closed	Sept. 14-Dec. 15

NOTE: For all other States in the Pacific Flyway, snipe seasons have been deferred and no seasons are prescribed for woodcock and rails.

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, and New Jersey, the limits for clapper and king rails are 10 daily and 20 in possession.

(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.

(4) In Connecticut, the daily bag and possession limits may not contain more than 1 king rail.

(5) In Massachusetts, the sora bag limit is 5 daily and 10 in possession; the Virginia rail bag limit is 10 daily and 20 in possession.

(6) In New Jersey, the season for king rails is closed by State regulation.

(7) In New York, seasons for sora and Virginia rails and common snipe are closed on Long Island.

(8) In Rhode Island, the sora and Virginia rails bag limit is 5 daily and 10 in possession, singly or in the aggregate; the clapper and king rail bag limit is 5 daily and 10 in possession, singly or in the aggregate; the common snipe bag limit is 5 daily and 10 in possession.

(9) In Alabama, the rail limits are 15 daily and 15 in possession, singly or in the aggregate.

(10) In Illinois, shooting hours are from sunrise to sunset.

(11) In Indiana, the sora and Virginia rail limits are 15 daily and 15 in possession, singly or in the aggregate.

(12) In Iowa, the limits for sora and Virginia rails are 12 daily and 24 in possession.

(13) In Michigan, the season opens concurrently with the duck season in certain areas.

(14) In Nebraska, the rail limits are 10 daily and 20 in possession.

(15) In South Dakota, the snipe limits are 5 daily and 15 in possession.

6. Section 20.105 is amended by revising paragraphs (a) through (e) to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 29, 1996, Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-seasons regulations for further information.

(a) Common Moorhens and Purple Gallinules

	Season Dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
Delaware	Sept. 2-Nov. 9	15	30
Florida (1)	Sept. 1-Nov.9	15	30
Georgia	Deferred	--	--
Maine	Sept. 1-Nov. 9	15	30
New Jersey	Sept. 2-Nov. 9	15	30
New York			
Long Island	Closed	--	--
Remainder of State	Sept. 1-Nov. 9	15	30
North Carolina	Sept. 2-Nov. 9	15	30
Pennsylvania	Sept. 2-Nov. 2	15	30
South Carolina	Sept. 23-Sept. 30 &	15	30
	Oct. 24-Dec. 24	15	30
Virginia	Deferred	--	--
West Virginia	Deferred	--	--
MISSISSIPPI FLYWAY			
Alabama	Sept. 7-Sept. 15 &	15	15
	Nov. 21-Jan. 20	15	15
Arkansas	Sept. 1-Nov. 9	15	30
Indiana	Sept. 1-Nov. 9	10	20
Kentucky	Sept. 1-Nov. 9	15	30
Louisiana	Sept. 21-Sept. 29 &	15	30
	Nov. 9-Jan. 8	15	30
Michigan	Deferred	--	--
Minnesota	Deferred	--	--
Mississippi	Oct. 12-Dec. 20	15	30
Ohio	Sept. 2-Nov. 9	15	30
Tennessee	Deferred	--	--
Wisconsin	Deferred	--	--
CENTRAL FLYWAY			
New Mexico	Deferred	--	--

	Season Dates	Limits Bag	Possession
Oklahoma	Sept. 1-Nov. 9	15	30
Texas	Sept. 14-Sept. 22 & Nov. 9-Jan. 8	15 15	30 30
Wyoming	Deferred	--	--
PACIFIC FLYWAY			
All States	Deferred	--	--

(1) The season applies to common moorhens only.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway).

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Possession
Connecticut	Deferred	--	--
Delaware	Sept. 28-Jan. 11	7	14
Georgia	Deferred	--	--
Maine	Deferred	--	--
Maryland	Deferred	--	--
Massachusetts	Deferred	--	--
New Hampshire	Sept. 15-Dec. 30	7	14
New Jersey	Oct. 4-Jan. 18	7	14
New York	Oct. 6-Jan. 20	7	14
North Carolina	Deferred	--	--
Rhode Island	Oct. 11-Jan. 20	7	14
South Carolina	Deferred	--	--
Virginia	Deferred	--	--

NOTE: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(c) Early (September) Duck Seasons.

Note: Unless otherwise specified, the seasons listed below are for teal only.

	Season Dates	Limits Bag	Possession
ATLANTIC FLYWAY			
Florida (1)	Sept. 21-Sept. 25	4	8
MISSISSIPPI FLYWAY			
Alabama	Sept. 7-Sept. 15	4	8
Arkansas (2)	Sept. 14-Sept. 22	4	8
Illinois (2)	Sept. 7-Sept. 15	4	8
Indiana (2)	Sept. 1-Sept. 9	4	8
Iowa (3)			
North Zone	Sept. 21-Sept. 25	--	--
South Zone	Sept. 21-Sept. 23	--	--
Kentucky (4)	Sept. 18-Sept. 22	4	8
Louisiana	Sept. 21-Sept. 29	4	8
Mississippi	Sept. 21-Sept. 29	4	8
Missouri (2)	Sept. 7-Sept. 15	4	8
Ohio (2)	Sept. 7-Sept. 15	4	8

	Season Dates	Limits Bag	Possession
Tennessee (4)	Sept. 14-Sept. 18	4	8
CENTRAL FLYWAY			
Colorado	Sept. 7-Sept. 15	4	8
Kansas	Sept. 14-Sept. 22	4	8
New Mexico	Sept. 14-Sept. 22	4	8
Oklahoma	Sept. 14-Sept. 22	4	8
Texas	Sept. 14-Sept. 22	4	8

(1) In Florida, the daily bag limit is 4 wood ducks and teal in the aggregate. The possession limit is twice the daily bag limit.

(2) Shooting hours are from sunrise to sunset.

(3) In Iowa, the September season is part of the regular season, and limits will conform to those set for the regular season.

(4) In Kentucky and Tennessee, the daily bag limit is 4 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. The possession limit is twice the daily bag limit.

(d) Special Early Canada Goose Seasons.

	Season Dates	Limits Bag	Possession
ATLANTIC FLYWAY			
Connecticut			
North Zone	Sept. 3-Sept. 25	5	10
Delaware	Sept. 2-Sept. 14	5	10
Maine	Sept. 9-Sept. 25	5	10
Maryland			
Eastern Unit	Sept. 3-Sept. 14	5	10
Western Unit	Sept. 3-Sept. 25	5	10
Massachusetts (1)			
Central Zone	Sept. 3-Sept. 25	5	10
Coastal Zone	Sept. 3-Sept. 25	5	10
Western Zone	Sept. 3-Sept. 25	3	6
New Hampshire (1)			
Early-Season Hunt Unit	Sept. 3-Sept. 25	5	10
New Jersey	Sept. 3-Sept. 30	5	10
New York			
Lake Champlain Zone	Closed	--	--
Northeastern Zone	Sept. 1-Sept. 25	5	10
Western Zone	Sept. 1-Sept. 25	5	10
Montezuma Zone	Sept. 1-Sept. 15	5	10
Southeastern Zone	Sept. 1-Sept. 25	5	10
Long Island Zone (2)	Sept. 16-Sept. 25	5	10
North Carolina (1)(3)			
Northeast Hunt Unit	Sept. 3-Sept. 20	3	6
Rest of State	Sept. 3-Sept. 30	3	6
Pennsylvania	Sept. 2-Sept. 25	3	6
Rhode Island	Sept. 11-Sept. 25	5	10
South Carolina			
Early-Season Hunt Unit (1)	Sept. 14-Sept. 28	5	10
Virginia	Sept. 3-Sept. 21	5	10
West Virginia	Sept. 2-Sept. 11	3	6
MISSISSIPPI FLYWAY			
Illinois			
Northeast Zone	Sept. 7-Sept. 15	5	10
North Zone	Sept. 7-Sept. 15	2	10
Indiana	Sept. 1-Sept. 15	5	10
Iowa			
North Zone	Sept. 14-Sept. 15	2	4

	Season Dates	Limits Bag	Limits Possession
Michigan			
Upper Peninsula	Sept. 1-Sept. 10	5	10
Lower Peninsula (4)	Sept. 1-Sept. 15	5	10
Minnesota			
Twin Cities Metro Zone	Sept. 7-Sept. 15	5	10
Two Goose Zone	Sept. 7-Sept. 15	2	4
Four Goose Zone	Sept. 7-Sept. 15	4	8
Ohio (5)	Sept. 1-Sept. 15	4	8
Tennessee			
Middle Tennessee Zone	Sept. 7-Sept. 11	2	4
Cumberland Plateau Zone	Sept. 3-Sept. 15	5	10
East Tennessee Zone	Sept. 3-Sept. 15	5	10
Wisconsin			
Early-Season Subzone A	Sept. 3-Sept. 15	5	10
Early-Season Subzone B	Sept. 3-Sept. 15	3	6
CENTRAL FLYWAY			
South Dakota			
Unit A	Sept. 1-Sept. 15	1	2
Unit B	Sept. 1-Sept. 15	2	4
PACIFIC FLYWAY			
Idaho (1)			
East Canada Goose Zone	Sept. 1-2, 6, 8, 14 and 15	2	4
Nez Perce County	Sept. 7-Sept. 13	4	8
Oregon			
Northwest Zone	Sept. 1-Sept. 14	3	6
Southwest Zone	Sept. 7-Sept. 13	3	6
East Zone	Sept. 7-Sept. 13	3	6
Washington			
Southwest Zone	Sept. 1-Sept. 15	3	6
East Zone	Sept. 7-Sept. 13	3	6
Wyoming (1)(6)	Sept. 1-Sept. 8	2	6 per season

(1) State permit required.

(2) In areas located inland, the season opens Sept. 3. See State regulations for additional information.

(3) In North Carolina, the season is closed in Currituck and Dare Counties.

(4) In Michigan, the season is closed in Huron, Saginaw, and Tuscola Counties.

(5) Additional restrictions apply in some areas. See State regulations.

(6) Shooting hours are sunrise to sunset.

(e) Regular Goose Seasons.

Note: Bag and possession limits will conform to those set for the remainder of the regular season.

	Season Dates
MISSISSIPPI FLYWAY	
Wisconsin	Sept. 21-Sept. 30

7. Section 20.106 is revised to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 29, 1996 Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Season Dates	Limits Bag	Limits Possession
CENTRAL FLYWAY			
Colorado (1)	Oct. 5-Dec. 1	3	6
Kansas (1)(2)	Nov. 2-Dec. 29	2	4
Montana			
Regular Season Area (1)	Sept. 28-Nov. 24	3	6

	Season Dates	Limits	
		Bag	Possession
New Mexico			
Regular Season Area (1)	Oct. 31-Jan. 31	3	6
Middle Rio Grande Valley Area (3)(4)(5)	Oct. 26-Oct. 27 &	2	4
	Dec. 14-Dec. 15 &	2	4
	Jan. 4-Jan. 5	2	4
Southwest Area (3)(4)(5)	Dec. 21-Dec. 22	2	4
North Dakota (1)	Sept. 7-Nov. 3	3	6
Oklahoma (1)	Deferred	--	--
South Dakota (1)	Sept. 28-Nov. 24	3	6
Texas (1)	Deferred	--	--
Wyoming			
Regular Season Area (1)	Sept. 14-Nov. 10	3	6
Riverton-Boysen Unit (3)(5)	Sept. 21-Sept. 27	1 per permit	
Big Horn and Park Counties (3)(5)	Sept. 21-Sept. 23	1 per permit	
PACIFIC FLYWAY			
Arizona (3)	Oct. 28-Oct. 30	2 per season	
	Nov. 1-Nov. 3 &	2 per season	
	Nov. 5-Nov. 7 &	2 per season	
	Nov. 9-Nov. 11 &	2 per season	
	Nov. 13-Nov. 15	2 per season	
Idaho	Sept. 1-Sept. 8	1 per season	
Montana			
Special-season Area (3)	Sept. 14-Sept. 15 &	1 per season	
	Sept. 21-Sept. 22	1 per season	
Utah (3)(6)	Sept. 7-Sept. 15	1 per season	
Wyoming			
Bear River Area (3)(5)	Sept. 1-Sept. 8	1 per permit	
Salt River Area (3)(5)	Sept. 1-Sept. 8	1 per permit	
Eden-Farson Area (3)(5)	Sept. 1-Sept. 8	1 per permit	

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

(2) Shooting hours are sunrise to 2:00 p.m.

(3) Hunting is by State permit only.

(4) The seasonal bag limit is 4.

(5) Shooting hours are sunrise to sunset.

(6) In Utah, the season is open in Rich County only.

8. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 29, 1996, Federal Register. For those extended seasons for Ducks, Mergansers, and Coots, area descriptions were published in the September 27, 1995, Federal Register (60 FR 50042) and will be published again in a September 1996 Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Daily bag limit . . . . . 3 migratory birds, singly or in the aggregate.

Possession limit . . . . . 6 migratory birds, singly or in the aggregate.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

	Extended Falconry Dates
ATLANTIC FLYWAY	
Florida	
Mourning and white-winged doves	Oct. 29-Nov. 15 & Dec. 2-Dec. 13 & Jan. 13-Jan. 19
Rails and common moorhens	Nov. 10-Dec. 16
Woodcock	Nov. 24-Dec. 13 & Jan. 28-Mar. 10
Maryland	
Mourning doves	Oct. 23-Nov. 17 & Dec. 14-Dec. 24
Rails	Nov. 10-Dec. 17
Woodcock	Oct. 1-Oct. 21 & Nov. 24-Dec. 15 & Dec. 28-Jan. 15
Pennsylvania	
Mourning doves	Oct. 14-Nov. 1 & Dec. 2-Dec. 19
Virginia	
Doves	Sept. 29-Oct. 3 & Dec. 9-Dec. 22 & Jan. 5-Jan. 22
Rails	Oct. 18-Oct. 23 & Dec. 1 only & Dec. 21-Jan. 19
Woodcock	Nov. 24-Dec. 17 & Jan. 5-Jan. 31

	Extended Falconry Dates
MISSISSIPPI FLYWAY	
Illinois	
Mourning doves	Oct. 15-Nov. 1 & Nov. 18-Dec. 16
Rails	Nov. 16-Dec. 22
Woodcock	Sept. 1-Sept. 30
Indiana	
Mourning doves	Oct. 17-Nov. 7 & Jan. 1-Jan. 25
Woodcock	Sept. 1-Sept. 20 & Dec. 2-Dec. 23
Ducks, mergansers, and coots (1) North Zone	Sept. 22-Sept. 30
Michigan	
Rails, snipe, and woodcock	Sept. 7-Sept. 14 & Nov. 15-Dec. 12 & Mar. 1-Mar. 10
Ducks, mergansers, coots, and moorhens (1)	Sept. 7-Sept. 27
Minnesota	
Rails, snipe, and woodcock	Nov. 5-Dec. 16
Ducks, mergansers, coots, and moorhens (1)	Sept. 1-Sept. 27
Missouri	
Mourning doves	Oct. 31-Dec. 16
Ducks, mergansers, and coots	Sept. 7-Sept. 15
Tennessee	
Mourning doves	Sept. 28-Oct. 11 & Oct. 27-Nov. 26
Ducks (1)	Sept. 19-Sept. 30

	Extended Falconry Dates
Wisconsin	
Rails, snipe, moorhens, and gallinules (1)	Sept. 1-Sept. 30
Woodcock	Sept. 1-Sept. 13
Ducks, mergansers, and coots (1)	Sept. 14-Sept. 27
CENTRAL FLYWAY	
Colorado	
Ducks, mergansers and coots (1)	Sept. 16-Sept. 20
Montana (2)	
Ducks, mergansers, and coots (1)	Sept. 14-Sept. 27
New Mexico (2)	
Doves	Oct. 1-Nov. 3 & Nov. 24-Nov. 30 & Dec. 31-Jan. 5
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Sandhill cranes	
Regular Season Area	Oct. 17-Oct. 30
North Dakota	
Ducks, mergansers, and coots	Sept. 2-Sept. 25
Snipe	Sept. 1-Sept. 13
Oklahoma	
Ducks, mergansers, and coots (1)	
High Plains	Sept. 23-Sept. 30
South Dakota	
Ducks, mergansers, and coots (1)	Sept. 4-Sept. 26
Texas	
Mourning and white-winged doves	Nov. 13-Dec. 19
Rails and gallinules	Oct. 3-Nov. 8
Wyoming	
Rails and snipe	Sept. 1-Sept. 13
Ducks, mergansers, and coots (1)	Sept. 21-Oct. 4
PACIFIC FLYWAY	
Arizona	
Doves	Sept. 16-Nov. 1
Idaho	
Mourning doves	Nov. 1-Jan. 16
Ducks, mergansers, and coots	
Areas 1 & 2	Sept. 13-Sept. 18 & Sept. 28 only
Area 3	Sept. 21-Oct. 4
New Mexico	
Doves	Oct. 1-Nov. 3 & Nov. 24-Nov. 30 & Dec. 31-Jan. 5
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15

	Extended Falconry Dates
Oregon (3)	
Mourning doves	Oct. 1-Dec. 16
Band-tailed pigeons	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
Ducks and coots Zone 2	Sept. 23-Sept. 30
Utah	
Mourning doves and band-tailed pigeons	Oct. 1-Dec. 16
Washington	
Mourning doves	Oct. 1-Dec. 31
Wyoming	
Rails and snipe	Sept. 1-Sept. 13
Ducks, mergansers, and coots (1)	Sept. 21-Oct. 4

(1) Additional days occurring after September 30 will be published with the late-season selections.

(2) In Montana and New Mexico, the bag limit is 2 and the possession limit is 6.

(3) In Oregon, no more than 1 pigeon daily in bag or possession.

[FR Doc. 96–22244 Filed 8–29–96; 8:45 am]
BILLING CODE 4310–55–C

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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