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# Contents

**Federal Register**

Vol. 62, No. 168

Friday, August 29, 1997

## Agency for International Development

### RULES

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

## Agricultural Marketing Service

### NOTICES

Agency information collection activities:  
Proposed collection; comment request, 45787–45788

## Agriculture Department

See Agricultural Marketing Service

See Forest Service

See Natural Resources Conservation Service

### RULES

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947, 45947–45961

### PROPOSED RULES

Federal financial assistance or cost-type contracts; audit requirements for State, local, and Indian tribal governments; simplification (OMB-128); withdrawn, 45962

### NOTICES

Meetings:

National Nutrition Monitoring Advisory Council, 45786  
Small Farms National Commission, 45786–45787

## Army Department

See Engineers Corps

### NOTICES

Grant and cooperative agreement awards:

KDI Precision Products, Inc.; proximity sensor technology; research and development, 45799

Patent licenses; non-exclusive, exclusive, or partially exclusive:

Device and method for estimating a mental decision, etc., 45799

## Arts and Humanities, National Foundation

See National Foundation on the Arts and the Humanities

## Blind or Severely Disabled, Committee for Purchase From People Who Are

See Committee for Purchase From People Who Are Blind or Severely Disabled

## Census Bureau

### NOTICES

Agency information collection activities:

Proposed collection; comment request, 45792–45793

## Centers for Disease Control and Prevention

### NOTICES

Clinical Laboratories Improvement Act:

Laboratories regulations—

Fee schedule revision, 45815–45821

Meetings:

Diabetes Prevention and Control Programs Translation Advisory Committee, 45821–45822

## Children and Families Administration

### NOTICES

Agency information collection activities:

Proposed collection; comment request, 45822

## Coast Guard

### RULES

Ports and waterways safety:

Martha's Vineyard, MA; presidential visit; safety and security zones, 45720–45723

St. Clair River; temporary speed limits reduction, 45719–45720

Regattas and marine parades:

Hampton Bay Days Festival, 45718

Hampton Offshore Challenge, 45717–45718

### PROPOSED RULES

Deepwater ports:

Regulations revision; comment request, 45774–45775

Ports and waterways safety:

Mississippi River, LA; regulated navigation area, 45775–45777

### NOTICES

Meetings:

Lower Mississippi River Waterway Safety Advisory Committee, 45907

Towing Safety Advisory Committee, 45908

Vessels in distress; emergency response:

Olympic Coast National Marine Sanctuary and Strait of Juan de Fuca; international private sector tug-of-opportunity system plan, 45908

## Commerce Department

See Census Bureau

See Foreign-Trade Zones Board

See International Trade Administration

See National Oceanic and Atmospheric Administration

### RULES

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

## Committee for Purchase From People Who Are Blind or Severely Disabled

### NOTICES

Procurement list; additions and deletions, 45791–45792

## Corporation for National and Community Service

### RULES

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

## Defense Department

See Army Department

See Engineers Corps

### RULES

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

### NOTICES

Agency information collection activities:

Proposed collection; comment request, 45797–45799

## Meetings:

Science Board task forces, 45799

**Delaware River Basin Commission****PROPOSED RULES**

## Practice and procedure rules:

Administrative manual—

Comprehensive plan, basin and water quality regulations; clarification and removal of obsolete provisions; public hearing, 45766–45767

**Education Department****RULES**

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

**NOTICES**

## Agency information collection activities:

Submission for OMB review; comment request, 45800

## Elementary and secondary education:

Waiver requests submission; deadlines establishment, 45800–45801

## Meetings:

National Assessment Governing Board, 45801

**Energy Department**

See Federal Energy Regulatory Commission

**RULES**

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

**Engineers Corps****NOTICES**

## Environmental statements; availability, etc.:

Maricopa County, AZ; Tres Rios feasibility study, 45799–45800

**Environmental Protection Agency****RULES**

Air programs: approval and promulgation; State plans for designated facilities and pollutants:

Louisiana, 45730–45732

## Clean Air Act:

State operating permits programs—

Interim approval extensions, 45732–45735

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Cyromazine, 45735–45741

Desmedipham, 45741–45747

Paraquat, 45748–45754

## Water pollution control:

Ocean dumping; site designations—

Mud Dump Site, NJ and NY, 46142–46150

**PROPOSED RULES**

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Louisiana, 45777–45778

**NOTICES**

## Clean Air Act:

Air pollution control; motor vehicle emission factors; model (MOBILE6) revisions and improvements; workshop, 45802–45803

## Environmental statements; availability, etc.:

Agency statements—

Comment availability, 45804

Weekly receipts, 45803–45804

## Pesticide, food, and feed additive petitions:

American Cyanamid Co. et al., 45804–45810

Superfund; response and remedial actions, proposed settlements, etc.:

Tulalip Landfill Site, WA, 45811–45812

## Superfund program:

Emergency Planning and Community Right-to-Know Act—

Reporting requirements (Section 313); training courses, 45810–45811

## Water pollution control:

Clean Water Act—

Class II administrative penalty assessments, 45812

**Executive Office of the President**

See Management and Budget Office

See National Drug Control Policy Office

**Federal Aviation Administration****RULES**

## Airworthiness directives:

Airbus Industrie, 45710–45712

Raytheon, 45709–45710

## Airworthiness standards:

Rotorcraft; normal and transport category—

Technical amendments, 46172–46173

Class E airspace; correction, 45918

**Federal Bureau of Investigation****NOTICES**

## Meetings:

DNA Advisory Board, 45878

**Federal Communications Commission****RULES**

## Common carrier services:

International settlement rate benchmarks, 45758–45763

## Radio stations; table of assignments:

Kentucky, 45763–45764

Louisiana, 45763

Missouri, 45763

**PROPOSED RULES**

## Radio stations; table of assignments:

Illinois, 45784

Kansas, 45785

Mississippi, 45784–45785

Vermont et al., 45784

**NOTICES**

Reporting and recordkeeping requirements, 45812–45813

Rulemaking proceedings; petitions filed, granted, denied, etc., 45813

**Federal Emergency Management Agency****RULES**

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

**Federal Energy Regulatory Commission****NOTICES**

*Applications, hearings, determinations, etc.:*

Zond Systems, Inc., 45801

Zond Windssystem Partners, Ltd., 45802

**Federal Housing Finance Board****NOTICES**

Meetings; Sunshine Act, 45813–45814

**Federal Maritime Commission****NOTICES**

Freight forwarder licenses:

Bacallao, Isabel C., et al., 45814

**Federal Mediation and Conciliation Service****RULES**

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

**Federal Reserve System****NOTICES**

Federal Open Market Committee:

Domestic policy directives, 45814

**Federal Retirement Thrift Investment Board****NOTICES**

Meetings; Sunshine Act, 45814

**Fish and Wildlife Service****RULES**

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Fish and wildlife; subsistence taking

Correction, 45723-45727

Migratory bird hunting:

Seasons, limits, and shooting hours; establishment, etc., 46152-46169

**NOTICES**

Endangered and threatened species permit applications, 45864

**Food and Drug Administration****PROPOSED RULES**

Human drugs:

Labeling of drug products (OTC)—

Diphenhydramine, 45767-45774

**NOTICES**

Meetings:

Medical Devices Advisory Committee, 45822-45823

**Foreign-Trade Zones Board****NOTICES**

*Applications, hearings, determinations, etc.:*

Colorado

Zylec Corp.; electrical power supply manufacturing plant, 45793-45794

Minnesota

Zylec Corp.; electric power supply manufacturing facilities, 45794

**Forest Service****RULES**

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Fish and wildlife; subsistence taking

Correction, 45723-45727

**NOTICES**

Environmental statements; notice of intent:

Chippewa and Superior National Forests, MN, 45788-45790

Tongass National Forest, AK, 45790-45791

**General Services Administration****RULES**

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

**Health and Human Services Department**

See Centers for Disease Control and Prevention

See Children and Families Administration

See Food and Drug Administration

See Health Care Financing Administration

See Health Resources and Services Administration

**RULES**

Block grants:

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45963

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

**Health Care Financing Administration****RULES**

Medicare:

Hospital inpatient prospective payment systems and 1998 FY rates, 45966-46140

**NOTICES**

Clinical Laboratories Improvement Act:

Laboratories regulations—

Fee schedule revision, 45815-45821

Meetings:

Practicing Physicians Advisory Council, 45823

**Health Resources and Services Administration****NOTICES**

Veterans Health Care Act:

Limitation on prices of drugs purchased by covered entities—

Rebate process for State AIDS drug assistance programs, 45823-45824

**Housing and Urban Development Department****NOTICES**

Grants and cooperative agreements; availability, etc.:

Facilities to assist homeless—

Excess and surplus Federal property, 45824-45863

**Immigration and Naturalization Service****NOTICES**

Agency information collection activities:

Submission for OMB review; comment request, 45878-45879

**Indian Affairs Bureau****NOTICES**

Indian tribes, acknowledgment of existence determinations, etc:

Snoqualmie Tribal Organization, 45864-45866

Law enforcement facilities; 1995 facilities needs assessments for repair and improvement prioritized, 45866-45867

Tribal-State Compacts approval; Class III (casino) gambling; Mescalero Apache Tribe et al., NM, 45867

**Interior Department**

See Fish and Wildlife Service

See Indian Affairs Bureau

See Land Management Bureau

See National Park Service

See Surface Mining Reclamation and Enforcement Office

**RULES**

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

**NOTICES**

Central Utah Water Conservancy District:  
 Bonneville Unit, Central Utah Project; and South Utah  
 Valley Municipal Water Association; repayment  
 contract negotiation, 45863  
 Bonneville Unit, Central Utah Project; contract  
 negotiation, 45863-45864

**International Development Cooperation Agency**

See Agency for International Development

**International Trade Administration****NOTICES**

Antidumping:  
 Antifriction bearings (other than tapered roller bearings)  
 and parts from—  
 Japan et al., 45795-45796  
 Antidumping and countervailing duties:  
 Administrative review requests, 45794-45795

**Justice Department**

See Federal Bureau of Investigation  
 See Immigration and Naturalization Service

**RULES**

Grants and cooperative agreements to State and local  
 governments, universities, hospitals, and other non-  
 profit organizations, 45947

**PROPOSED RULES**

Radiation Exposure Compensation Act; claims:  
 Evidentiary requirements; definitions and number of  
 claims filed, 45774

**NOTICES**

Pollution control; consent judgments:  
 Consolidated Rail Corp., 45877  
 Thomas, Richard, 45877-45878

**Labor Department****RULES**

Grants and cooperative agreements to State and local  
 governments, universities, hospitals, and other non-  
 profit organizations, 45947

**Land Management Bureau****NOTICES**

Agency information collection activities:  
 Proposed collection; comment request, 45867-45868  
 Closure of public lands:  
 Nevada, 45868  
 Coal leases, exploration licenses, etc.:  
 Wyoming, 45868-45869  
 Meetings:  
 Resource advisory councils—  
 Front Range, 45870  
 Sierra Front/Northwest Great Basin, 45869-45870  
 Southeast New Mexico Playa Lakes Coordinating  
 Committee, 45870  
 Motor vehicle use restrictions:  
 Wyoming, 45870-45871  
 Oil and gas leases:  
 New Mexico, 45871  
 Pipeline right-of-way applications:  
 New Mexico, 45871  
 Public land orders:  
 Oregon, 45871-45872  
 Realty actions; sales, leases, etc.:  
 Arizona; correction, 45872  
 Colorado, 45872

Recreation management restrictions, etc.:  
 Mosier Gulch Picnic Area, WY; one-day camping limit,  
 45872

**Legal Services Corporation****RULES**

Aliens; legal assistance restrictions, 45755-45757  
 Freedom of Information Act; implementation, 45754-45755

**PROPOSED RULES**

Cost standards and procedures, 45778-45783

**Management and Budget Office****NOTICES**

Government grants management requirements (Circulars A-  
 21, A-87, A-102, A-110, and A-122), 45934-45936

**National Aeronautics and Space Administration****RULES**

Grants and cooperative agreements to State and local  
 governments, universities, hospitals, and other non-  
 profit organizations, 45947

**NOTICES**

Environmental statements; availability, etc.:  
 Cassini mission to Saturn and its moons; implementation,  
 45879  
 Meetings:  
 Advisory Council, 45879-45880  
 International Space Station Advisory Committee, 45880  
 Space Science Advisory Committee, 45880

**National Archives and Records Administration****RULES**

Grants and cooperative agreements to State and local  
 governments, universities, hospitals, and other non-  
 profit organizations, 45947

**National Drug Control Policy Office****RULES**

Grants and cooperative agreements to State and local  
 governments, universities, hospitals, and other non-  
 profit organizations, 45947

**National Foundation on the Arts and the Humanities****RULES**

Grants and cooperative agreements to State and local  
 governments, universities, hospitals, and other non-  
 profit organizations, 45947

**National Highway Traffic Safety Administration****NOTICES**

Functional Capacity Index:  
 Motor vehicle crashes; pediatric injuries; consequences  
 based on adjusted life-years, 45908-45916

**National Oceanic and Atmospheric Administration****RULES**

Tuna, Atlantic bluefin fisheries, 45764-45765

**NOTICES**

Permits:  
 Marine mammals, 45796

**National Park Service****NOTICES**

Meetings:  
 Delta Region Preservation Commission, 45872-45873  
 Joshua Tree National Park Advisory Commission, 45873

Native American human remains and associated funerary objects:

California State Office, Land Management Bureau, Sacramento, CA; inventory, 45873-45874  
Engineers Corps, Tulsa, OK; inventory, 45874-45875  
Southern Methodist University, TX; Fort Burgwin Research Center; inventory from New Mexico, 45875-45876

Realty actions; sales, leases, etc.:  
Utah, 45876-45877

#### National Science Foundation

##### RULES

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

##### NOTICES

Antarctic Conservation Act of 1978; permit applications, etc., 45880-45882

#### Natural Resources Conservation Service

##### NOTICES

Field office technical guides; changes:  
Mississippi, 45791

#### Nuclear Regulatory Commission

##### NOTICES

Environmental statements; availability, etc.:  
Wisconsin Electric Power Co., 45882-45884

#### Office of Management and Budget

See Management and Budget Office

#### Postal Rate Commission

##### RULES

Practice and procedure:  
Market research evidence; foundational requirements clarified, 45727-45730

#### Public Health Service

See Centers for Disease Control and Prevention  
See Food and Drug Administration  
See Health Resources and Services Administration

#### Railroad Retirement Board

##### RULES

Railroad Retirement Act:  
Retirement annuities; finality of decisions, 45712-45714

#### Securities and Exchange Commission

##### NOTICES

Self-regulatory organizations; proposed rule changes:  
Chicago Board Options Exchange, Inc., 45890-45892  
Cincinnati Stock Exchange, Inc., 45893-45894  
Depository Trust Co., 45894-45895  
National Association of Securities Dealers, Inc., 45895-45899  
New York Stock Exchange, Inc., 45900-45901  
Options Clearing Corp., 45901-45902  
Pacific Exchange, Inc., 45902-45904  
Philadelphia Stock Exchange, Inc., 45904-45907  
*Applications, hearings, determinations, etc.:*  
First American Investment Funds, Inc., et al., 45884-45886  
New England Funds Trust I et al., 45886-45888  
Tele-Communications International, Inc., 45888-45890

#### Small Business Administration

##### RULES

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

#### State Department

##### RULES

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

##### NOTICES

Arms Export Control Act; determinations, 45907

#### Surface Mining Reclamation and Enforcement Office

##### RULES

Abandoned mine land reclamation:  
Reclamation fund list; fee collection and coal production reporting—  
Coal excess moisture allowance, 45920-45931  
Permanent program and abandoned mine land reclamation plan submissions:  
Kentucky, 45714-45717

#### Surface Transportation Board

##### NOTICES

Railroad services abandonment:  
Boston & Maine Corp., 45916-45917  
Wheeling & Lake Erie Railway Co., 45917

#### Transportation Department

See Coast Guard

See Federal Aviation Administration

See National Highway Traffic Safety Administration

See Surface Transportation Board

##### RULES

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

#### United States Information Agency

##### RULES

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

#### Veterans Affairs Department

##### RULES

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 45947

#### Separate Parts In This Issue

##### Part II

Department of the Interior, Surface Mining Reclamation and Enforcement Office, 45920-45931

##### Part III

Office of Management and Budget, and Department of Agriculture, and Department of Health and Human Services, 45934-45963

##### Part IV

Department of Health and Human Services, Health Care Financing Administration, 45966-46140

**Part V**

Environmental Protection Agency, 46142–46150

**Part VI**

Department of Interior, Fish and Wildlife Service, 46152–46169

**Part VII**Department of Transportation, Federal Aviation Administration, 46172–46173

---

**Reader Aids**Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

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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.

<b>7 CFR</b>		<b>36 CFR</b>	
Ch. XXX.....	45937	242.....	45723
3015.....	45937	1207.....	45937
3016.....	45937	1210.....	45937
3019.....	45937	<b>38 CFR</b>	
3051.....	45937	43.....	45937
3052.....	45937	<b>39 CFR</b>	
<b>Proposed Rules:</b>		3001.....	45727
3015.....	45963	<b>40 CFR</b>	
3016.....	45963	30.....	45937
3050.....	45963	31.....	45937
<b>10 CFR</b>		62.....	45730
600.....	45937	70.....	45732
<b>13 CFR</b>		180 (3 documents).....	45735, 45741, 45748
143.....	45937	185.....	45748
<b>14 CFR</b>		186.....	45748
27.....	46172	228.....	46142
29.....	46172	<b>Proposed Rules:</b>	
39 (2 documents).....	45709, 45710	62.....	45777
71.....	45918	<b>41 CFR</b>	
1260.....	45937	105-71.....	45937
1273.....	45937	105-72.....	45937
<b>15 CFR</b>		<b>42 CFR</b>	
24.....	45937	400.....	45966
<b>18 CFR</b>		409.....	45966
<b>Proposed Rules:</b>		410.....	45966
401.....	45766	411.....	45966
<b>20 CFR</b>		412.....	45966
261.....	45712	413.....	45966
<b>21 CFR</b>		424.....	45966
1403.....	45937	440.....	45966
<b>Proposed Rules:</b>		485.....	45966
336.....	45767	488.....	45966
338.....	45767	489.....	45966
341.....	45767	498.....	45966
348.....	45767	<b>43 CFR</b>	
<b>22 CFR</b>		12.....	45937
135.....	45937	<b>44 CFR</b>	
145.....	45937	13.....	45937
226.....	45937	<b>45 CFR</b>	
518.....	45937	74.....	45937
<b>28 CFR</b>		92.....	45962
66.....	45937	96.....	45937
70.....	45937	602.....	45937
<b>Proposed Rules:</b>		1157.....	45937
79.....	45774	1174.....	45937
<b>29 CFR</b>		1183.....	45937
95.....	45937	1602.....	45754
97.....	45937	1626.....	45755
1470.....	45937	2541.....	45937
<b>30 CFR</b>		2543.....	45937
870.....	45922	<b>Proposed Rules:</b>	
917.....	45714	1630.....	45778
<b>32 CFR</b>		<b>47 CFR</b>	
33.....	45937	63.....	45758
<b>33 CFR</b>		73 (3 documents).....	45763
100 (2 documents).....	45717, 45718	<b>Proposed Rules:</b>	
162.....	45719	73 (4 documents).....	45784, 45785
165 (2 documents).....	45720, 45721	<b>49 CFR</b>	
<b>Proposed Rules:</b>		18.....	45937
148-150.....	45774	19.....	45937
149.....	45774	<b>50 CFR</b>	
150.....	45774	20.....	46152
165.....	45775	100.....	45723
<b>34 CFR</b>		285.....	45764
74.....	45937		
80.....	45937		

# Rules and Regulations

Federal Register

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 96-NM-228-AD; Amendment 39-10117; AD 97-18-07]

RIN 2120-AA64

#### **Airworthiness Directives; Raytheon Model BAe 125-800A Series Airplanes, and Model Hawker 800 and Hawker 800XP Series Airplanes**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model BAe 125-800A series airplanes, and Model Hawker 800 and 800XP series airplanes, that requires modification of the rudder. This amendment is prompted by a report indicating that, due to the existing design of the rudder, overbias or overbalance of the rudder occurs during single engine handling. The actions specified by this AD are intended to prevent overbias or overbalance of the rudder, which could result in reduced controllability of the airplane.

**DATES:** Effective October 3, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 3, 1997.

**ADDRESSES:** The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201-0085. 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 FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### **FOR FURTHER INFORMATION CONTACT:**

Larry Engler, Aerospace Engineer, Airframe Branch, ACE-118W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4122; fax (316) 946-4407.

#### **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 Raytheon Model BAe 125-800A series airplanes, and Model Hawker 800 and 800XP series airplanes was published in the **Federal Register** on April 24, 1997 (62 FR 19950). That action proposed to require modification of the rudder.

No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

#### **Conclusion**

The FAA has determined that air safety and the public interest require the adoption of this rule as proposed.

#### **Cost Impact**

There are approximately 295 Beech (Raytheon) Model BAe 125-800A series airplanes, and Model Hawker 800 and Hawker 800XP series airplanes of the affected design in the worldwide fleet. The FAA estimates that 190 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$300 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$148,200, or \$780 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:

**97-18-07 Raytheon Aircraft Company** (Formerly Beech, Raytheon Corporate Jets, British Aerospace, Hawker Siddley, et al.): Amendment 39-10117. Docket 96-NM-228-AD.

*Applicability:* Model BAe 125-800A, and Model Hawker 800 and Hawker 800XP series airplanes; on which Raytheon Modification

25F017A&B (reference Raytheon Service Bulletin SB.55-36-25F017A&B) 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 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 (b) 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.

**Note 2:** Raytheon Model BAe 125-800B series airplanes are similar in design to the airplanes that are subject to the requirements of this AD and, therefore, also may be subject to the unsafe condition addressed by this AD. However, as of the effective date of this AD, those models are not type certificated for operation in the United States. Airworthiness authorities of countries in which the Model BAe 125-800B series airplanes are approved for operation should consider adopting corrective action, applicable to those models, that is similar to the corrective action required by this AD.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent overbias or overbalance of the rudder, which could result in reduced controllability of the airplane, accomplish the following:

- (a) Within 100 hours time-in-service or within 6 months after the effective date of this AD, whichever occurs first, modify the rudder in accordance with Raytheon Service Bulletin SB.55-36-25F017A&B, dated April 15, 1996.
- (b) 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, Wichita Aircraft Certification Office (ACO), FAA, Small 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, Wichita ACO.

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

(c) 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.

(d) The modification shall be done in accordance with Raytheon Service Bulletin SB.55-36-25F017A&B, dated April 15, 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 Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer

Support Department, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on October 3, 1997.

Issued in Renton, Washington, on August 25, 1997.

**John J. Hickey,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97-23102 Filed 8-28-97; 8:45 am]

BILLING CODE 4910-13-U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 97-NM-41-AD; Amendment 39-10119; AD 97-18-09]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A310 and A300-600 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Model A310 and A300-600 series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) that warns the flight crew of certain consequences associated with overriding the autopilot when it is in the pitch control axis. That AD also requires modification of certain flight control computers (FCC). That AD was prompted by the results of an FAA review of the requirements of an earlier AD. This amendment requires a modification to the autopilot that would enable the flight crew to disconnect the autopilot when direct force is applied to the control column, regardless of its mode and the altitude of the airplane; accomplishment of that modification terminates the current requirement to revise the AFM. This amendment also requires repetitive operational testing of the modified autopilot to determine if the disconnect function operates properly, and repair, if necessary. The actions specified by this AD are intended to prevent an out-of-trim condition between the trimmable horizontal stabilizer and the elevator,

which could severely reduce controllability of the airplane.

**DATES:** Effective October 3, 1997.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of October 3, 1997.

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as of May 23, 1996 (61 FR 16873, April 18, 1996).

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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:** Charles Huber, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2589; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96-08-07, amendment 39-9573 (61 FR 16873, April 18, 1996), which is applicable to all Airbus Model A310 and A300-600 series airplanes, was published in the **Federal Register** on April 9, 1997 (62 FR 17131). The action proposed to supersede AD 96-08-07 to continue to require a revision to the Limitations Section of the AFM that warns the flight crew of certain consequences associated with overriding the autopilot when it is in the pitch control axis, and modification of certain FCC's.

The action also proposed to require a modification to the autopilot that would enable the flight crew to manually disconnect it, regardless of the autopilot mode and the altitude of the airplane. After this modification has been accomplished, the action proposed to require removal of the revision to the AFM that is currently required by AD 96-08-07. In addition, the action proposed to require repetitive operational testing of the modified autopilot to determine if the disconnect function operates properly, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the two comments received.

Both commenters support the proposed rule.

#### Clarification of Requirements of the Final Rule

The FAA has revised paragraph (d)(2)(ii) of this final rule to clarify that the operational test applies to the autopilot disconnect feature.

#### 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 as proposed.

#### Cost Impact

There are approximately 77 Airbus Model A300-600 and A310 series airplanes of U.S. registry that will be affected by this proposed AD.

The modification of certain FCC's that is required by AD 96-08-07 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the currently required modification on U.S. operators is estimated to be \$4,620, or \$60 per airplane.

The AFM revision that is required by AD 96-08-07 takes 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 currently required AFM revision on U.S. operators is estimated to be \$4,620, or \$60 per airplane.

The modification of the autopilot that is currently required by this new AD will take approximately 25 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts will cost approximately \$1,578 per airplane. Based on these figures, the cost impact of the new modification requirement of this AD on U.S. operators is estimated to be \$237,006, or \$3,078 per airplane.

The operational test that is currently required by this new AD will take approximately 7 work hours per airplane, per test cycle, to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the operational test requirement of this AD on U.S. operators is estimated to be \$32,340 per test cycle, or \$420 per airplane, per test cycle.

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 amendment 39-9573 (61 FR 16873, April 18, 1996), and by adding a new airworthiness directive (AD), amendment 39-10119, to read as follows:

**97-18-09 Airbus Industrie:** Amendment 39-10119. Docket 97-NM-41-AD. Supersedes AD 96-08-07, Amendment 39-9573.

**Applicability:** All Model A300-600 and A310 series airplanes, 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 (e) 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 an out-of-trim condition between the trimmable horizontal stabilizer and the elevator, which could severely reduce controllability of the airplane, accomplish the following:

Restatement of actions required by AD 96-08-07, amendment 39-9573:

(a) Within 10 days after May 23, 1996 (the effective date of AD 96-08-07, amendment 39-9573), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the information contained in paragraph (a)(1) or (a)(2) of this AD, as applicable. This may be accomplished by inserting a copy of this AD in the AFM. The AFM limitation required by AD 94-21-07, amendment 39-9049, may be removed following accomplishment of the requirements of this paragraph.

(1) For airplanes on which the flight control computers (FCC) have not been modified in accordance with the requirements of paragraph (b) of this AD: "Overriding the autopilot (AP) in pitch axis does not cancel the AP autotrim when LAND TRACK mode [green LAND on both Flight Mode Annunciators (FMA)] or GO-AROUND mode is engaged. In these modes, if the pilot counteracts the AP, the autotrim will trim against pilot input. This could lead to a severe out-of-trim situation in a critical phase of flight."

(2) For airplanes on which the FCC's have been modified in accordance with requirements of paragraph (b) of this AD: "Overriding the autopilot (AP) in pitch axis does not cancel the AP autotrim when LAND TRACK mode (green LAND on both FMA's) is engaged, or GO-AROUND mode is engaged below 400 feet radio altitude (RA). In these modes, if the pilot counteracts the AP, the autotrim will trim against pilot input. This could lead to a severe out-of-trim situation in a critical phase of flight."

Restatement of actions required by ad 94-21-07, amendment 39-9049:

(b) For airplanes equipped with FCC's having either part number (P/N) B470ABM1 (for Model A310 series airplanes) or B470AAM1 (for Model A300-600 series airplanes): Within 60 days after November 2, 1994 (the effective date of AD 94-21-07, amendment 39-9049), modify the FCC's in accordance with Airbus Service Bulletin A310-22-2036, dated December 14, 1993 (for Model A310 series airplanes), or Airbus

Service Bulletin A300-22-6021, Revision 1, dated December 24, 1993 (for Model A300-600 series airplanes), as applicable.

(c) As of November 2, 1994, no person shall install a FCC having either P/N B470ABM1 or B470AAM1 on any airplane.

New actions required by this ad:

(d) For airplanes on which Modification No. 11454 [reference Airbus Service Bulletin A310-22-2044 (for Model A310 series airplanes) or Airbus Service Bulletin A300-22-6032 (for Model A300-600 series airplanes)] has not been installed: Accomplish paragraphs (d)(1), (d)(2)(i) and (d)(2)(ii) of this AD.

(1) Within 24 months after the effective date of this AD, modify the autopilot in accordance with Airbus Service Bulletin A310-22-2044, Revision 1, dated January 8, 1997 (for Model A310 series airplanes), or Service Bulletin A300-22-6032, Revision 1, dated January 8, 1997 (for Model A300-600 series airplanes), as applicable. The requirements of paragraph (a) of AD 95-25-09, amendment 39-9455, if applicable, must be accomplished prior to or at the same time the requirements of this paragraph are accomplished.

(2) Prior to further flight following accomplishment of paragraph (d)(1) of this AD:

(i) Remove the AFM revisions required by paragraph (b) of this AD; and

(ii) Perform an operational test of this autopilot disconnect feature to determine that it operates properly, in accordance with Airbus Service Bulletin A310-22-2047, dated July 16, 1996 (for Model A310 series airplanes), or Service Bulletin A300-22-6035, dated July 16, 1996 (for Model A300-600 series airplanes), as applicable. If any discrepancy is detected, prior to further flight, repair it in accordance with the applicable service bulletin. Repeat this test thereafter at intervals not to exceed 18 months.

(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, 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 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.

(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 airplane to a location where the requirements of this AD can be accomplished.

(g) The modification of the FCC's shall be done in accordance with Airbus Service Bulletin A310-22-2036, dated December 14, 1993, or Airbus Service Bulletin A300-22-6021, Revision 1, dated December 24, 1993, as applicable. The incorporation by reference of those documents was approved previously by the Director of the Federal Register, in

accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of May 23, 1996 (61 FR 16873, April 18, 1996). The modification and operational test of the autopilot shall be done in accordance with Airbus Service Bulletin A310-22-2044, Revision 1, dated January 8, 1997; Airbus Service Bulletin A300-22-6032, Revision 1, dated January 8, 1997; Airbus Service Bulletin A310-22-2047, dated July 16, 1996; or Airbus Service Bulletin A300-22-6035, dated July 16, 1996; as applicable. The incorporation by reference of those documents 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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.

(h) This amendment becomes effective on October 3, 1997.

Issued in Renton, Washington, on August 25, 1997.

**John J. Hickey,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97-23099 Filed 8-28-97; 8:45 am]

BILLING CODE 4910-13-U

## RAILROAD RETIREMENT BOARD

### 20 CFR Part 261

#### RIN 3220-AB15

#### Finality of Decisions Regarding Railroad Retirement Annuities

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** The Railroad Retirement Board (Board) hereby adopts regulations pertaining to the finality of decisions under the Railroad Retirement Act of 1974 (Act).

**EFFECTIVE DATE:** This rule will be effective September 29, 1997.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751-4513, TTD (312) 751-4701.

**SUPPLEMENTARY INFORMATION:** The Board's rules and procedures regarding the finality of decisions are presently contained in Board Orders, which are not readily available to the public. The Board Order regarding finality of decisions provides that finality of certain decisions is based on a number of factors; adjudication based on these

factors is difficult to administer. Also the Board Order does not contain any time limits on reopening.

The regulation addresses the finality of benefit decisions. This rule is similar to the regulation of the Social Security Administration (SSA) entitled "Reopening and Revising Determinations and Decisions" (20 CFR 404.987-404.996).

Section 261.1 describes who may open a final decision issued by the agency. Section 261.2 describes when a final decision may be reopened. All final decisions, except decisions awarding separation allowance lump sum payments, may be reopened within 12 months of the date of notice of such decision (see § 261.2(d)); within 4 years of the date of notice if new and material evidence is furnished or if there was an adjudicative error not consistent with the evidence of record at the time of adjudication; or at any time under the conditions set forth in § 261.2(c).

Section 261.3 provides that a change of legal interpretation or administrative ruling upon which a decision was based is not a basis for reopening.

Section 261.4 provides that the annuity beginning date will not be changed if the annuitant was later found to be engaged in compensated service for an employer, as defined in part 202 of the Board's regulations, and the annuitant had no basis for knowing that he was engaged in such service. This section also provides that the award of an annuity would not be withdrawn if based upon incorrect records of service where the erroneously credited service months do not exceed 6 months and the annuitant was not at fault in causing the error.

Section 261.5 provides that a decision may be reopened after the 1 year and 4 year time limits set forth in § 261.2 of this part if the Board had begun an investigation within those time limits. However, if the Board does not diligently pursue the investigation it will not reopen the decision if the decision was favorable to the annuitant.

Sections 261.6-261.8 are procedural and provide that if a decision is reopened, the annuitant will be given notice and will have a right to reconsideration and/or a hearing. Any hearing shall be conducted in accordance with part 260 of the Board's regulations (20 CFR 260).

Section 261.9 provides that if a decision on a claim is reopened it may also cause a reopening of a decision on a previous claim based upon the same compensation record, even though the time limits for reopening a decision on the first claim have passed.

Section 261.10 provides that where new evidence shows that the date of birth used in the initial decision was incorrect or where the record of compensation has been changed a decision may be revised even beyond the time limits of § 261.2 of this part if such reopening is favorable to the annuitant, but any increase in benefits payable as the result of the reopening shall be paid prospectively only.

Finally, § 261.11 provides that the three-member Board has the discretion to reopen or not to reopen any decision under these regulations.

On December 21, 1995, the Board published this rule as a proposed rule (60 FR 66203–66205). The Labor Member of the Board dissented from publication of the proposed rule. His reasons for doing so were set forth in the supplementary section of the proposed rule (60 FR 66204). One comment was received, indicating agreement with the views of the Labor Member. The views of the commentor were considered, but a majority of the Board does not agree with those views. In addition to the comment discussed above, the Board received letters from two individuals requesting that final action on this rule be deferred to allow rail labor and rail management to reach agreement on the substance of the rule. Based upon comments received by rail labor and management, to the effect that the Board should consider closely paralleling the Social Security Administration's regulations regarding reopening, the Board has added a new paragraph (7) to § 261.2(c). This paragraph provides that the Board will reopen an unfavorable decision to correct an error made by the Board which should have been obvious at the time the initial decision was made. This paragraph is identical to 20 CFR 404.988(c)(8) of the regulations of the Social Security Administration. Proposed § 261.2(c)(9) was modified and § 261.2(c)(10) was removed to make this regulation more consistent with Social Security regulations.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

#### List of Subjects in 20 CFR Part 261

Pensions, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is amended by adding part 261 to read as follows:

### PART 261—ADMINISTRATIVE FINALITY

Sec.

- 261.1 Reopening and revising decisions.
- 261.2 Conditions for reopening.
- 261.3 Change of legal interpretation or administrative ruling.
- 261.4 Decisions which shall not be reopened.
- 261.5 Late completion of timely investigation.
- 261.6 Notice of revised decision.
- 261.7 Effect of revised decision.
- 261.8 Time and place to request review of a revised decision.
- 261.9 Finality of findings when later claim is filed on same earnings record.
- 261.10 Increase in future benefits where time period for reopening has expired.
- 261.11 Discretion of the three-member Board to reopen or not to reopen a final decision.

**Authority:** 45 U.S.C. 231f.

#### § 261.1 Reopening and revising decisions.

(a) This part sets forth the Board's rules governing finality of decisions. After the expiration of the time limits for review as set forth in part 260 of this chapter, decisions of the agency may be reopened and revised under the conditions described in this part, by the bureau, office, or entity that made the earlier decision or by a bureau, office, or other entity at a higher level, which has the claim properly before it.

(b) A *final decision* as that term is used in this part means any decision of the type listed in § 260.1 of this chapter where the time limits for review as set forth in part 260 of this chapter or in the Railroad Retirement Act have expired.

(c) *Reopening* a final decision under this part means a conscious determination on the part of the agency to reconsider an otherwise final decision for purposes of revising that decision.

(d) *New and material evidence* as that phrase is used in this part means evidence that may reasonably be expected to affect a final decision, which was unavailable to the agency at the time the decision was made, and which the claimant could not reasonably have been expected to have submitted at that time.

#### § 261.2 Conditions for reopening.

A final decision may be reopened:

- (a) Within 12 months of the date of the notice of such decision, for any reason;
- (b) Within four years of the date of the notice of such decision, if there is new and material evidence or there was adjudicative error not consistent with the evidence of record at the time of adjudication; or
- (c) At any time if:

(1) The decision was obtained by fraud or similar fault;

(2) Another person files a claim on the same record of compensation and allowance of the claim adversely affects the first claim;

(3) A person previously determined to be dead on whose earnings record a survivor annuity is based is found to be alive;

(4) A claim was denied because of the absence of proof of death of the employee, and the death is later established:

(i) By reason of an unexplained absence from his or her residence for a period of 7 years; or

(ii) By location or identification of his or her body;

(5) The Social Security Administration has awarded duplicate benefits on the same record of compensation;

(6) The decision was that the claimant did not have an insured status, and compensation has been credited to the employee's record of compensation in accordance with part 211 of this chapter:

(i) To enter items transferred by the Social Security Administration which were credited under the Social Security Act when they should have been credited to the employee's railroad retirement compensation record; or

(ii) To correct an error made in the allocation of earnings to an individual which, if properly allocated, would have given him or her an insured status at the time of the decision and the evidence of these earnings was in the possession of the Railroad Retirement Board or the Social Security Administration at the time of the decision;

(7) The decision is wholly or partially unfavorable to a party, but only to correct clerical error or an error that appears on the face of the evidence that was considered when the determination or decision was made;

(8) The decision found the claimant entitled to an annuity or to a lump sum payment based on the earnings record of a deceased person, and it is later established that:

(i) The claimant was convicted of a felony or an act in the nature of a felony for intentionally causing that person's death; or

(ii) If the claimant was subject to the juvenile justice system, he or she was found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony;

(9) The claimant shows that it is to his or her advantage to select a later annuity beginning date and refunds, by cash payment or setoff, past payments applying to the period prior to the later beginning date, subject, however, to the provisions of subpart D of part 217 and § 218.9 of this chapter;

(10) The decision is incorrect because of a failure to apply a reduction, or the proper reduction, to the tier I component of an annuity, but the Board shall apply the reduction only for the months following the month the Board first takes corrective action.

(d) Revision of the amount or payment of a separation allowance lump sum amount pursuant to section 6(e) of the Railroad Retirement Act is limited to 60 days from the date of notification of the award of the separation allowance lump sum payment.

**§ 261.3 Change of legal interpretation or administrative ruling.**

A change of legal interpretation or administrative ruling upon which a decision is based does not render a decision erroneous and does not provide a basis for reopening.

**§ 261.4 Decisions which shall not be reopened.**

The following decisions shall not be reopened:

(a) An award of an annuity beginning date to an applicant later found to have been in compensated service to an employer under part 202 of this chapter on that annuity beginning date and who is found not to be at fault in causing the erroneous award; provided, however, that this exception shall not operate to permit payment of benefits for any month in which the claimant is found to be engaged in compensated service.

(b) An award of an annuity based on a subsequently discovered erroneous crediting of months of service and compensation to a claimant where:

(1) The loss of such months of service and compensation will cause the applicant to lose his or her eligibility for an annuity previously awarded;

(2) The erroneously credited months of service do not exceed six months; and

(3) The annuitant is found not to be at fault in causing the erroneous crediting.

(c) An erroneous award of an annuity where the error is no greater than one dollar per month per annuity affected.

(d) An erroneous award of a lump sum or accrued annuity payment where the error is no greater than \$25.00.

**§ 261.5 Late completion of timely investigation.**

(a) A decision may be revised after the applicable time period in § 261.2(a) or

§ 261.2(b) of this part expires if the Railroad Retirement Board begins an investigation into whether to revise the decision before the applicable time period expires and the agency diligently pursues the investigation to the conclusion. The investigation may be based on a request by a claimant or on action by the Railroad Retirement Board.

(b) *Diligently pursued* for purposes of this section means that in view of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if the investigation is concluded and, if necessary, the decision is revised within 6 months from the date the investigation began.

(c) If the investigation is not diligently pursued to its conclusion, the decision will be revised if a revision is applicable and if it is favorable to the claimant. It will not be revised if it would be unfavorable to the claimant.

**§ 261.6 Notice of revised decision.**

(a) When a decision is revised, notice of the revision will be mailed to the parties to the decision at their last known address. The notice will state the basis for the revised decision and the effect of the revision. The notice will also inform the parties of the right to further review.

(b) If a hearings officer or the three-member Board proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, all parties will be notified in writing of the proposed action. If a revised decision is issued by a hearings officer, any party may request that it be reviewed by the three-member Board, or the three-member Board may review the decision on its own initiative.

**§ 261.7 Effect of revised decision.**

A revised decision is binding unless:

(a) The revised decision is reconsidered or appealed in accord with part 260 of this chapter;

(b) The three-member Board reviews the revised decision; or

(c) The revised decision is further revised consistent with this part.

**§ 261.8 Time and place to request review of a revised decision.**

A party to a revised decision may request, as appropriate, further review of the decision in accordance with the rules set forth in part 260 of this chapter.

**§ 261.9 Finality of findings when later claim is filed on same earnings record.**

If two claims for benefits are filed on the same record of compensation, findings of fact made in a decision in the first claim may be revised in determining or deciding the second claim, even though the time limit for revising the findings made in the first claim has passed. However, a finding in connection with a claim that a person was fully or currently insured at the time of filing an application, at the time of death, or any other pertinent time, may be revised only under the conditions stated in § 261.2 of this part.

**§ 261.10 Increase in future benefits where time period for reopening has expired.**

If, after the time period for reopening under § 261.2(b) of this part has expired, new evidence is furnished showing a different date of birth or new evidence is furnished which would cause a correction in a record of compensation as provided for in part 211 of this chapter and, as a result of the new evidence, increased benefits would be payable, the Board will pay increased benefits, but only for the months following the month the new evidence is received.

**§ 261.11 Discretion of the three-member Board to reopen or not to reopen a final decision.**

In any case in which the three-member Board may deem proper, the Board may direct that any decision, which is otherwise subject to reopening under this part, shall not be reopened or direct that any decision, which is otherwise not subject to reopening under this part, shall be reopened.

Dated: August 21, 1997.

By Authority of the Board.

For the Board,

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 97-23080 Filed 8-28-97; 8:45 am]

BILLING CODE 7905-01-P

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 917**

[KY-211-FOR]

**Kentucky Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

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**SUMMARY:** OSM is approving a proposed amendment to the Kentucky regulatory program (hereinafter referred to as the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky proposed revisions to the Kentucky Revised Statutes (KRS) pertaining to reclamation contracts, coal processing waste, and penalty assessment. The amendment is intended to revise the Kentucky program to be consistent with the Federal regulations and SMCRA.

**EFFECTIVE DATE:** August 29, 1997.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233-2896.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Kentucky Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

**I. Background on the Kentucky Program**

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982 **Federal Register** (47 FR 21404). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

**II. Submission of the Proposed Amendment**

By letter dated August 15, 1996, (Administrative Record No. KY-1371) Kentucky submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. Two bills were enacted in the regular session of the 1996 Kentucky General Assembly that amend KRS Chapter 350. Senate Bill (SB) 231 creates a new subsection (3) of KRS 350.131 and amends 350.150(1). Both subsections pertain to reclamation contracts. SB 231 also creates a new section of KRS Chapter 350 to address backstowing of coal processing waste. House Bill (HB) 764 amends KRS 350.0301(1) and 350.990(1). These subsections pertain to cessation orders.

OSM announced receipt of the proposed amendment in the September 4, 1996, **Federal Register** (61 FR 46577), and in the same document opened the public comment period and provided an

opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 4, 1996.

During its review of the amendment, OSM identified concerns relating to the issuance of cessation orders and the assessment of penalties. OSM notified Kentucky of these concerns by letter dated May 28, 1997 (Administrative Record No. KY-1389). By letter dated June 27, 1997 (Administrative Record No. KY-1392), Kentucky responded to OSM's concerns by submitting additional clarifying information. Because the information was explanatory in nature and did not constitute any major revision to the Kentucky program, OSM did not reopen the comment period.

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

**A. KRS 350.131(3)—Reclamation Contract**

Kentucky proposes to add new subsection (3) to allow the Natural Resources and Environmental Protection Cabinet (Cabinet) to negotiate and enter into a contract with a permit applicant to reclaim the disturbed area of a permit area in exchange for all or part of the forfeited bond funds if requested by the applicant. This applies to those situations where a bond is forfeited and a person subsequently applies for a permit overlapping all or part of the disturbed area. If the applicant proposes to overlap only a part of the disturbed area, the Cabinet may enter into a contract with the applicant to reclaim the overlap if it has retained a portion of the forfeited bond that is sufficient to reclaim the part of the disturbed area that is not overlapped. The applicant is not eligible if he/she has any ownership or control connection with the permittee. The Cabinet will determine the amount of forfeited bond fund to pay the applicant based upon the estimated cost to reclaim the overlap but the amount cannot exceed the forfeited bond amount collected. If the applicant obtains a permanent program permit overlapping a forfeited interim permit, any disturbances created in connection with the overlapping permit on areas that were disturbed under the forfeited permit may be covered under a contract and shall be reclaimed to permanent program standards. Areas where coal is not removed under the overlapping permit and the disturbances are for

reclamation of the interim permit shall be reclaimed to interim program standards. If the applicant obtains a permanent program permit overlapping a forfeited interim permit, any new disturbances shall not be covered by a contract and shall be reclaimed to permanent program standards. No person is exempt from the permitting, bonding, and reclamation requirements of Chapter 350 and the surety retains the right to reclaim any permit or increment thereof to avoid bond forfeiture.

While there is no Federal counterpart to the Kentucky proposal, the Director finds the proposed statute at KRS 350.131(3) not inconsistent with SMCRA and the Federal regulations.

**B. KRS 350.150(1)—Award of Contract**

Kentucky proposes to revise subsection (1) to exempt contracts negotiated under KRS 350.131(3) from the requirement that reclamation contracts be awarded to the lowest responsible bidder upon competitive bids after reasonable advertisement.

While there is no Federal counterpart to the Kentucky proposal, the Director finds the proposed statute at KRS 350.150(1) not inconsistent with SMCRA and the Federal regulations.

**C. KRS Chapter 350 Section 3—Backstowing**

Kentucky proposes to add a new section (3) in which the General Assembly affirms the authorization of backstowing of coal processing and coal underground development waste as a disposal method under appropriate conditions. The General Assembly directs the Cabinet to negotiate improved coordination of State and Federal agencies in the review of backstowing or reinjection of coal processing waste consistent with State and Federal laws.

The Director finds the proposed statute at KRS Chapter 350, Section 3, not inconsistent with SMCRA and the Federal regulations at 30 CFR 817.81(f).

**D. KRS 350.0301(1)—Administrative Hearings**

Kentucky proposes to revise subsection (1) to permit a petitioner to contest the validity of an underlying notice of noncompliance in a timely filed demand for hearing to contest the validity of a cessation order issued for failure to abate the violation contained in the notice of noncompliance.

While there is no Federal counterpart to the Kentucky proposal, the Director finds the proposed statute at KRS 350.0301(1) not inconsistent with SMCRA and the Federal regulations.



#### *E. KRS 350.990(1)—Civil Penalty Assessments*

Kentucky proposes to revise subsection (1) to require that a civil penalty of not more than \$5000 be assessed for each violation in a noncompliance underlying an imminent danger cessation order. No separate civil penalty shall be assessed for the order.

The Director finds that the proposed statute at 350.990(1) is no less stringent than section 518(a) of SMCRA and consistent with the Federal penalty assessment provisions at 30 CFR 845.14 and 845.15.

#### **IV. Summary and Disposition of Comments**

##### *Public Comments*

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment submitted on August 15, 1996. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

One public comment was received. The commenter generally supported the provisions of Senate Bill 231. However, the provisions of House Bill 764 are inconsistent with SMCRA and the Federal regulations according to the commenter. The change to KRS 350.0301(1) which permits a petitioner to contest the validity of an underlying notice of noncompliance in a timely filed demand for hearing may, in the commenter's opinion, encourage an operator to delay compliance. The commenter also expressed concern that the fact of the underlying violation could be raised for the first time in a hearing on a cessation order even when the time for appealing the underlying notice of violation had lapsed without an appeal. The Director notes that in *Harman Mining Corp. v. Office of Surface Mining Reclamation and Enforcement*, 114 IBLA 291,300 (May 10, 1990), the Interior Board of Land Appeals held that the fact of a violation set out in a notice of violation may be contested in a proceeding to review a cessation order issued for failure to abate the notice of violation, as well as in civil penalty proceedings.

The change to KRS 350.990(1) which requires that a civil penalty of not more than \$5000 be assessed for each violation in a noncompliance underlying an imminent danger cessation order has three distinct problems according to the commenter. The first is that the provision appears to prevent the imposition of a separate civil penalty for the issuance of an imminent danger cessation order. The second is that the provision appears to cap the amount of

penalty for underlying violations at \$5000 per violation but does not allow for imposition of penalties on a daily basis. The third is that there are instances in which an imminent harm cessation order is issued in which there is no underlying notice of noncompliance or violation issued in conjunction with the cessation order. The commenter contends that, in those cases, no civil penalty would result according to the revised statute. In response to the commenter's first two concerns, the Director notes that Kentucky stated in its June 27, 1997, letter that KRS 350.990(1) provides for the assessment of a civil penalty of up to \$5,000 for each violation cited in the underlying notice of noncompliance underlying the cessation order. The statute further provides that each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment. Kentucky may assess a "per violation/per day" penalty whenever an imminent danger cessation order is issued. The mandatory 2-day assessment for a violation which continues for two or more days and which is assigned more than 70 points is not affected by the amendment as provided by 405 KAR 7:095, Section 5. KRS 350.990(1) requires that a civil penalty of not less than \$750 be assessed for each day during which a violation is not abated within the time period prescribed in the failure to abate cessation order or notice of noncompliance. Kentucky does not interpret the language at KRS 350.990(1) to prohibit the imposition of a separate civil penalty for each day during which the violation continues. In response to the commenter's third concern, the Director notes that Kentucky affirmed in its June 27, 1997, letter that it always issues an underlying notice of noncompliance and order for remedial measures along with the related imminent danger cessation order (see 405 KAR 12:020, section 3(2)(b)). KRS 350.990(1), as amended by HB 764, links the penalty assessment for the cessation order to the underlying notice of noncompliance. KRS 350.130(1) and 405 KAR 12:020, Section 2, require that a notice of noncompliance be issued for any violation of the statutes, regulations, permit conditions, or any other applicable requirement. For these reasons, the Director finds the provisions of HB 764 to be no less stringent than SMCRA and consistent with the Federal regulations.

##### *Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(I), the Director solicited comments on the proposed amendment submitted on

August 15, 1996, and revised on January 11, 1995, from various Federal agencies with an actual or potential interest in the Kentucky program. No comments were received.

##### *Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Kentucky proposed to make in its amendment pertains to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

##### **V. Director's Decision**

Based on the above findings, the Director approves the proposed amendment as submitted by Kentucky on August 15, 1996.

The Federal regulations at 30 CFR part 917, codifying decisions concerning the Kentucky program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

##### **VI. Procedural Determinations**

###### *Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

###### *Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and

its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have

a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 30, 1997.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 917—KENTUCKY**

1. The authority citation for Part 917 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 917.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

**§917.15 Approval of Kentucky regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
August 15, 1996	August 29, 1997	KRS 350.131(3), 350.150(1), 350.990(1), Chapter 350 Section 3, KRS 350.0301(1), 350.990(1).

[FR Doc. 97-23106 Filed 8-28-97; 8:45 am]  
BILLING CODE 4310-05-M

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 100**

[CGD 05-97-065]

RIN 2115-AE46

**Special Local Regulations for Marine Events; Hampton Offshore Challenge, Chesapeake Bay, Hampton, Virginia**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Special local regulations are being adopted for the Hampton Offshore Challenge boat race to be held in the Chesapeake Bay, Hampton, Virginia. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

**EFFECTIVE DATES:** This regulation is effective from 10:30 a.m. to 6 p.m. EDT

(Eastern Daylight Time) on September 6 and September 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Chief Warrant Officer D. Merrill, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, Virginia 23703, (757) 483-8568.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The request to hold the event was not received until July 30, 1997. Publishing a notice of proposed rulemaking and delaying its effective date would be contrary to safety interests, since immediate action is needed to minimize potential danger to the public posed by the large number of racing vessels participating in this event.

**Discussion of Regulations**

On September 6 and September 7, 1997, the United States Offshore Racing Association will sponsor the Hampton Offshore Challenge race in the

Chesapeake Bay near Buckroe Beach, Hampton, Virginia. The event will consist of Offshore Performance Boats racing at high speeds along an 8 mile oval course. These regulations are necessary to control spectator craft and provide for the safety of life and property on navigable waters during the event.

**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 of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory procedures of DOT is unnecessary. Entry into the regulated area will only be prohibited while the race boats are actually competing. Because vessels will be allowed to transit the event area between heats, the

impacts on routine navigation are expected to be minimal.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule 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). The Coast Guard expects the economic impact of this rule to be minimal, and certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities, because the regulations will only be in effect for a short duration in a limited area.

### Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### Federalism

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

### Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.b.2.e(34)(h) of Commandant Instruction M16475.1b (as amended, 61 FR 13564; March 27, 1996), this rule is categorically excluded from further environmental documentation.

### List of Subjects in 33 CFR Part 100

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

### Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended 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 temporary Section 100.35T-05-065 is added to read as follows:

#### § 100.35T-05-065 Chesapeake Bay, Hampton, Virginia.

(a) *Definitions:* (1) *Regulated area:* The waters of the Chesapeake Bay adjacent to Buckroe Beach commencing at a point on the shoreline at latitude 37°03'40" North, longitude 76°16'55" West, thence east southeast to latitude 37°03'13" North, longitude 76°15'40" West, thence south southwest parallel to the shoreline to latitude 37°00'04" North, longitude 76°17'20" West, thence west northwest to the shoreline at latitude 37°00'15" North, longitude 76°18'13" West. All coordinates reference Datum: NAD 1983.

(2) *Coast Guard Patrol Commander:* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(b) *Special Local Regulations:* (1) Except for participants in the Hampton Offshore Challenge race and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) The Patrol Commander will allow vessel traffic to transit the event area between races.

(c) *Effective dates:* This regulation is effective from 10:30 a.m. to 6 p.m. EDT on September 6 and September 7, 1997.

Dated: August 14, 1997.

**Roger T. Rufe, Jr.,**

*Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. 97-23067 Filed 8-28-97; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 100

[CGD 05-97-067]

#### Special Local Regulations for Marine Events; Hampton Bay Days Festival; Hampton River, Hampton, Virginia

**AGENCY:** Coast Guard, DOT.

**ACTION:** Implementation of regulation.

**SUMMARY:** This notice implements the special local regulations at 33 CFR 100.508 for the Hampton Bay Days Festival, to be held on September 12-14, 1997 on the Hampton River, in Hampton, Virginia. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

**EFFECTIVE DATES:** 33 CFR 100.508 is effective from 7 a.m. EDT (Eastern Daylight Time), September 12, 1997 until 7 p.m. EDT, September 14, 1997.

#### FOR FURTHER INFORMATION CONTACT:

Chief Warrant Officer D. Merrill, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703-2199, (757) 483-8568.

#### SUPPLEMENTARY INFORMATION:

Hampton Bay Days, Inc. will sponsor the Hampton Bay Days Festival on September 12-14, 1997. The marine portion of the festival will consist of a parade of boats, water ski shows, a fireworks display and assorted boat races. A large number of spectator vessels is anticipated. Therefore, to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.508 will be in effect for the duration of the event. Under provisions of 33 CFR 100.508, a vessel may not enter the regulated area unless it receives permission from the Coast Guard patrol commander. 33 CFR 100.508 also implements special anchorage areas designated in that section for use by vessels during the event. Vessels less than 20 meters long may anchor in these areas without displaying the anchor lights and shapes required by Inland Navigation Rule 30 (33 U.S.C. 2030(g)). These restrictions will be in effect for a limited period and should not result in significant disruption of maritime traffic. The Coast Guard patrol commander will announce the specific periods during which the restrictions will be enforced.

Dated: August 14, 1997.

**Roger T. Rufe, Jr.,**

*Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 97-23073 Filed 8-28-97; 8:45 am]

BILLING CODE 4910-14-M

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 162**

[CGD 09-97-021]

RIN 2115-AE84

**Inland Waterways Navigation Regulations—Temporary Reduction in Speed Limits on the St. Clair River, Great Lakes****AGENCY:** Coast Guard, DOT.**ACTION:** Temporary Final Rule with Request for Comments.**SUMMARY:** The Coast Guard is making a temporary reduction in the speed limits on the St. Clair River in order to reduce the possibility of wake or surge damage due to unusually high water.**DATES:** This regulation becomes effective July 25, 1997, and terminates on December 15, 1997. Comments must be received on or before October 28, 1997.**ADDRESSES:** Comments and supporting materials should be mailed or delivered to Commander Eric Reeves, Chief, Marine Safety Analysis and Policy Branch, Ninth Coast Guard District, Room 2069, 1240 E. Ninth Street, Cleveland, Ohio, 44199-2060, emailed to EReeves@D9.uscg.mil, or telefaxed to (216) 902-6059. Please reference the name of the proposal and the docket number in the heading above. If you wish receipt of your mailed comment to be acknowledged, please include a stamped self-addressed envelope or postcard for that purpose. Comments and materials received will be available for public inspection at the above location from 9 a.m. to 3 p.m. Monday through Friday except federal holidays.**FOR FURTHER INFORMATION CONTACT:** Lieutenant Benjamin Smith, Port Operations Officer, Marine Safety Office Detroit, at (313) 568-9580, or Commander Eric Reeves, Chief, Marine Safety Analysis and Policy Branch, Ninth Coast Guard District, at (216) 902-6049.**SUPPLEMENTARY INFORMATION:****Notice**

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay in the effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to

property which could result from the wakes and surges generated along the St. Clair River during this period of unusually high water. Although this regulation is being published as a final rule without prior notice because of the emergency created by high water, public comment is desirable so that the Coast Guard may consider appropriate amendments to the regulation during the remainder of the 1997 navigation season. Persons wishing to comment may do so by submitting written comments to the office listed under **ADDRESSES** in this preamble. Commenters should include their names and addresses, phone numbers, fax numbers, and email addresses if available, identify the docket number for the regulations (CGD 09-97-021), and provide the reasons for their comments. Based on the comments received, the regulation may be changed.

**Background and Purpose**

The St. Clair River is the connecting channel between Lake Huron and Lake St. Clair, and is a relatively narrow commercial channel cut through areas of low and sensitive shoreline. The local communities have long been concerned about wake or surge damage caused by both recreational and commercial vessels, and there have been repeated requests for the U.S. Coast Guard to consider reductions in the commercial speed limits. The U.S. Coast Guard conducted two detailed reviews of the speed limits in 1983 and 1995. The last review in 1995 tentatively concluded that it was not necessary to make permanent reductions in the existing limit of 12 miles per hour, but that temporary reductions would be appropriate, especially for upbound vessels, during periods of unusually high water. At this time, water levels in Lake Huron and Lake St. Clair are approximately 18 and 24 inches above normal, and approximately 6 inches below all-time historic highs. These high water levels create a situation in which damaging and even dangerous waves can be produced by the surges from large commercial vessels which are operating within the established speed limit of 12 miles per hour. The U.S. Coast Guard Marine Safety Office in Detroit, which monitors navigation in this area, has received an unusually high number of complaints about wakes from residents along the river in recent months. Although high wakes are also created by recreational vessels not governed by these regulations operating at high speeds (a problem which is being addressed separately) it is clear that significant surges can be created by

large commercial vessels operating at relatively low speeds in the narrow channel simply because of the amount of water displaced, the confines of the channel, and the height of the water. These surges can cause property damage by impact on the shoreline and even personal injury by unexpected waves washing over seawalls and roadways. The residents have expressed a special concern about the danger to children who may be caught by waves on the seawalls. Information from the U.S. Army Corps of Engineers, which monitors lake levels, indicates that these high levels are likely to continue throughout the remainder of the 1997 navigation season. The U.S. Coast Guard has consulted with other authorities and interests in the local maritime community, including representatives of the Transport Canada Marine Safety Office Sarnia, which has jurisdiction over the Canadian waters of the St. Clair River, the Canadian Coast Guard Vessel Traffic Service Sarnia, the U.S. Army Corps of Engineers, the Lake Carriers' Association, Canadian shipping companies, U.S. and Canadian pilots associations, and the International Shipmasters Association. Based upon that consultation, the U.S. Coast Guard believes that there is a serious problem created by the current high water conditions, and that some temporary reduction in speeds for upbound commercial vessels in part of the river is required. The reduction will affect upbound vessels only, because vessel moving downbound with the current produce less disturbance. The reduction will be from 12 miles per hour to 10 miles per hour in the section from Harsens Island Rear Range Light to Buoy 42, a length of approximately 11.5 statute miles from the southern end of Harsens Island to Marine City, in the lower half of the St. Clair River (where shorelines are lowest and most sensitive). The delay imposed on upbound commercial vessels will be approximately 12 minutes. Any delay in the movement of a large commercial vessel is costly, but the relative effect of this 12 minute delay on both foreign and domestic vessels, which typically take days in transit between major ports in the Great Lakes, applied across the board to all vessels and their competitors, should have a minimal economic impact. This regulation was drafted in consultation with the Canadian authorities, and it is expected that they will make corresponding changes to speed limits on the Canadian side of the international line running along the river.

**Environment**

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation, and has so certified in the docket file.

**Federalism**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. As indicated by the permanent regulations being temporarily amended, the regulation of commercial vessel speed in this binational navigation channel is traditionally regulated by the U.S. Coast Guard.

**Regulatory Evaluation**

This regulation is considered to be nonsignificant under Executive Order 12866 on Regulatory Planning and Review and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034 of February 26, 1979), and is expected to have minimal, economic impact for the reasons given in the "Background and Purpose" section above.

**Collection of Information**

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

**Authority**

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231, as set out in the authority section for all of Part 162.

**List of Subjects in 33 CFR Part 162**

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

*Regulations:* In consideration of the foregoing, part 162 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 162 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 49 CFR 1.46.

2. Amend section 162.138 by temporarily suspending paragraph (a)(1)(i) from July 25 to December 15, 1997 and adding a new paragraph (a)(1)(iv) to read as follows:

**§ 162.138 Connecting waters from Lake Huron to Lake Erie; speed rules.**

(a) \* \* \*

(1) \* \* \*

(iv) 12 statute miles per hour (10.4 knots) between Fort Gratiot Light and St. Clair Canal Light 2, subject to a limit of 10 statute miles per hour (8.7 knots) for upbound vessels between Harsens Island Rear Range Light to the charted position of Buoy number 42 from July 25, 1997 to December 15, 1997 except when waived or terminated by the Coast Guard Captain of the Port Detroit or the Commander of the Ninth Coast Guard District;

\* \* \* \* \*

Dated: August 12, 1997.

**J.F. McGowan,**

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. 97-23068 Filed 8-28-97; 8:45 am]

BILLING CODE 4910-14-M

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

[CGD01-97-082]

RIN 2115-AA97

**Safety and Security Zones; Presidential Visit, Martha's Vineyard, MA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary moving safety and security zones, with identical boundaries, around the President of the United States during his vacation on Martha's Vineyard, Massachusetts. The security zone is needed to safeguard the President from sabotage or other subversive acts, accidents, or other causes of a similar nature. The safety zone is necessary to protect the spectators and the President's entourage. Entry into the zones is prohibited unless authorized by the Captain of the Port, Providence, Rhode Island or the Coast Guard Presidential Security Detail Senior Duty Officer.

**EFFECTIVE DATE:** This regulation is effective from August 17, 1997, to September 7, 1997, or for the duration of the President's visit, unless terminated sooner by the Captain of the Port.

**ADDRESSES:** Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Marine Safety Office Providence, 20 Risho Avenue, East Providence, RI 02914. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Lt. Ronald Cantin, Marine Safety Field Office, Cape Cod, MA, (508) 968-6556.

**SUPPLEMENTARY INFORMATION:**

*Drafting Information:* The principal person involved in drafting this document is Lt. R.J. Cantin, Project Manager.

**Regulatory History**

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the sensitive and unpredictable nature of the President's schedule, the Coast Guard received insufficient notice to publish proposed rules in advance of the event. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect the President.

**Background and Purpose**

From August 17, 1997, to September 7, 1997, President Clinton will be vacationing on Martha's Vineyard, MA. While vacationing, the President may be involved in a myriad of activities including boating or fishing trips, swimming, jogs along the beach, dinners at waterfront restaurants, golfing, etc.

This temporary rule establishes moving safety and security zones around the President which extend 500 yards in all directions. The zones are needed for the safety and security of the President, as well as spectators and the President's entourage.

It is not possible to predict the President's exact movements on Martha's Vineyard. Accordingly, the Coast Guard Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer will activate these 500 yard safety and security zones in all directions around the President when necessary to protect the President.

Notice of the exact location of the safety and security zones will be given via loudhailer, channels 16 and 22 VHF, or through Safety Marine Information Broadcasts, as appropriate. The zones will be activated when the President is on or near the waters of the United States and may be expanded or reduced as necessary to protect the President.

The safety and security zones have identical boundaries. Both are necessary since a civil penalty as authorized by 33 USC 1232(b)(1) cannot be assessed for security zone violations but can be for safety zone violations. All persons, other than those authorized by the Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty

Officer, will be prohibited from these zones. The activation and enforcement of these zones will be coordinated with the Secret Service.

### Regulatory Evaluation

This temporary 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 of this proposal to be so minimal that a Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The size of the zones are the minimum necessary to provide adequate protection for the President. The entities most likely to be affected are individuals wishing to view the President and pleasure craft engaged in recreational activities. These individuals and vessels have ample space outside of the safety and security zones to engage in these activities and therefore they will not be subject to undue hardship. The safety and security zones may be adjusted if it becomes impracticable to keep the public 500 yards from the President. The zones may impact ferries or other commercial vessels if the President is onboard a vessel. In this case, vessels may be allowed to transit through the zones as necessary so as not to place undue hardships on these vessels, provided there is adequate protection for the President. Any hardships experienced by persons or vessels due to these zones are considered minimal compared to the national interest in protecting the President.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this temporary rule 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 the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this

temporary rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

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

### Federalism

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

### Environment

This temporary rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B, as revised in 59 FR 38654, July 29, 1994. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket and is available for inspection and copying at the address listed under ADDRESSES.

### List of Subjects in 33 CFR Part 165

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

### Regulation

For the reasons discussed 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 section 165.T01–082 is added to read as follows:

#### § 165.T01–082 Safety and Security Zones: Presidential Visit; Martha's Vineyard, MA.

(a) *Location.* The following area is a moving safety and a moving security zone: A 500 yard radius around the President of the United States at all times designated by the Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer during the President's vacation on Martha's Vineyard. The size of these zones may be expanded or reduced as necessary to protect the President.

(b) *Effective Date.* This regulation is effective during the President's vacation from August 17, 1997, to September 7, 1997, or for the duration of the President's visit to Martha's Vineyard. The security and safety zones established by this regulation will be activated by the Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer as necessary to protect the President. As appropriate, notice of the activation of this zone may be made via loud hailer, Channels 16 and 22 VHF, or through Safety Marine Information Broadcasts.

(c) *Regulations.* The general regulations governing safety and security zones in 33 CFR 165.23 and 165.33 apply. Entry into the zones is prohibited unless authorized by the Captain of the Port Providence or the Coast Guard Presidential Security Detail Senior Duty Officer.

Dated: August 12, 1997.

**Peter A. Popko,**

*Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.*

[FR Doc. 97–23072 Filed 8–28–97; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD01 97–085]

RIN 2115–AA97

#### Safety and Security Zones; Presidential Visit, Martha's Vineyard, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary safety and security zones, with identical boundaries, off the south shore of Martha's Vineyard, Massachusetts, during the President of the United States' vacation at the Friedman residence on Oyster Pond, Martha's Vineyard, Massachusetts. The security zone is needed to safeguard the President from sabotage or other subversive acts, accidents, or other causes of a similar nature. The safety zone is needed to protect spectators and the President's entourage. Entry into these zones are prohibited unless authorized by the Captain of the Port, Providence Rhode Island or the Coast Guard Presidential Security Detail Senior Duty Officer.

**EFFECTIVE DATE:** This regulation is effective from August 17, 1997, to

September 7, 1997, or for the duration of the President's visit, unless terminated sooner by the Captain of the Port.

**ADDRESSES:** Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Marine Safety Office Providence, 20 Risho Avenue, East Providence, RI 02914. Normal office hours are between 8:00 A.M. and 4:00 P.M., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Lt. Ronald Cantin, Marine Safety Field Office, Cape Cod, MA (508) 968-6556.

**SUPPLEMENTARY INFORMATION:**

*Drafting Information:* The principal person involved in drafting this document is Lt. R. J. Cantin, Project Manager.

**Regulatory History**

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the sensitive and unpredictable nature of the President's schedule, the Coast Guard received insufficient notice to publish proposed rules in advance of the event. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect the President.

**Background and Purpose**

From August 17, 1997, to September 07, 1997, President Clinton will be vacationing on Martha's Vineyard, MA. While vacationing, he and his family will reside at the Friedman residence which is located on Oyster Pond, just inland of the south shore of Martha's Vineyard.

The safety and security zones are needed to protect the President from harmful or subversive acts in the vicinity of the Friedman residence.

The safety and security zones have identical boundaries. Both are necessary since a civil penalty as authorized by 33 U.S.C. 1232(b)(1) cannot be assessed for security zone violations but can be for safety zone violations. All persons, other than those authorized by the Captain of the Port or the Coast Guard Presidential Security Detail Senior Duty Officer, will be prohibited from these zones. They encompass a rectangular area of water extending approximately one-half mile along the beach and 500 yards out into the water. The safety and security zones will be marked by buoys indicating an exclusionary area.

**Regulatory Evaluation**

This temporary 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 of this proposal to be so minimal that a Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The size of the zones are the minimum necessary to provide adequate protection for the President. The entities most likely to be affected are individuals wishing to view the President and pleasure craft engaged in recreational activities. These individuals and vessels have ample space outside of the safety and security zones to engage in these activities and therefore they will not be subject to undue hardship. Commercial vessels do not normally transit the area of the safety and security zones. Any hardships experienced by persons or vessels due to these zones are considered minimal compared to the national interest in protecting the President.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this temporary rule 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 the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This temporary 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 temporary rule in accordance with the

principles and criteria contained in Executive Order 12612 and has determined that this temporary rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

This temporary rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B, as revised in 59 FR 38654, July 29, 1994. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket and is available for inspection and copying at the address listed under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

**Regulation**

For the reasons discussed 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 section 165.T01-085 is added to read as follows:

**§ 165.T01-085 Safety and Security Zones: Presidential Visit; Martha's Vineyard, MA.**

(a) *Location.* The following area is both a safety zone and a security zone: From a point on land at Latitude 41 degrees 20 minutes 54 seconds N and Longitude 070 degrees 36 minutes 34 seconds W; thence eastward along the shoreline to a point on land at Latitude 41 degrees 20 minutes 57 seconds N and Longitude 070 degrees 35 minutes 45 seconds W; thence south 500 yards to an offshore point at Latitude 41 degrees 20 minutes 42 seconds N and Longitude 070 degrees 35 minutes 47 seconds W; thence west to an offshore point at Latitude 41 degrees 20 minutes 42 seconds N and Longitude 070 degrees 36 minutes 30 seconds W; thence north to the beginning point. The aforementioned offshore points will be marked by buoys indicating the safety and security zone.

(b) *Effective Date.* This regulation is effective during the President's vacation from August 17, 1997, to September 7,



1997, or for the duration of the President's visit to Martha's Vineyard, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety and security zones in 33 CFR 165.23 and 165.33 apply. Entry into the zones is prohibited unless authorized by the Captain of the Port Providence or the Coast Guard Presidential Security Detail Senior Duty Officer.

Dated: August 12, 1997.

**Peter A. Popko,**

*Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.*

[FR Doc. 97-23071 Filed 8-28-97; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

RIN 1018-AD90

#### **Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—1997–1998 Subsistence Taking of Fish and Wildlife Regulations; Correcting Amendments**

**AGENCY:** Forest Service, USDA. Fish and Wildlife Service, Interior.

**ACTION:** Correcting amendments.

**SUMMARY:** These corrections amend the Subsistence Management Regulations for Public Lands in Alaska (50 CFR part 100 and 36 CFR part 242, published in the **Federal Register** on May 29, 1997 (62 FR 29016)) implementing the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act of 1980.

**DATES:** The amendments to Section \_\_.24 are effective July 1, 1997. The amendments to Section \_\_.25 are effective July 1, 1997, through June 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA—Forest

Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802-1628; telephone (907) 586-7921.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114-27170). Consistent with subparts A, B, and C of these regulations, a Federal Subsistence Board was established to administer the Federal subsistence management program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in development of regulations for subparts A, B, and C, and the annual Subpart D regulations. All Board members have reviewed this rule and agree with its

substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Proposed Subpart C regulations for customary and traditional use determinations and subpart D regulations for the 1997-1998 seasons and bag limits, and methods and means were published on August 7, 1996, in the **Federal Register** (61 FR 41060). A 60-day comment period providing for public review of the proposed rule was advertised by mail, radio, and newspaper. Subsequent to that 60-day review period, the Board prepared a booklet describing all proposals for change. The public then had an additional 30 days in which to comment on the proposals for changes to the regulations. The Federal Subsistence Regional Advisory Councils met in regional centers, received public comments, and formulated recommendations to the Board on proposals for their respective regions. The final regulations, published on May 29, 1997 (62 FR 29016) reflect Board review and consideration of Regional Council recommendations and public comments submitted to the Board during their April/May meeting.

These correcting amendments are a result of requests for Special Action as a result of resource concerns, a need for clearer wording in one section, errors in printing of the **Federal Register** document, and an error in the document as submitted to the **Federal Register**. Below are summaries of each action.

##### **Subpart C**

Unit 11, remainder—Sheep—Dot Lake was incorrectly included.

Unit 12, remainder—Moose; Unit 12—Sheep; and Unit 12—Wolf—The determinations for these three areas were scrambled in the printing process.

Unit 26(C)—Sheep—Anaktuvuk Pass was added by Board Special Action.

##### **Subpart D**

Units 6, 7, 11, 12, 13, 15, 20, and 25—Lynx—The Board acted on a request from the Alaska Department of Fish and Game (ADF&G) to open the trapping season in Unit 15(A) and to lengthen the season in Units 6, 7, 11, 12, 13, 15, 20, and 25. This follows the Board's previous agreement to follow a harvest tracking strategy where possible. The strategy calls for shortening or closing trapping seasons when lynx numbers are low and lengthening or opening seasons when lynx are abundant. The Regional Councils for the affected areas supported this action to additional



harvest of the lynx populations in those Units.

Unit 10, Unimak Island—Caribou—The Board acted on a request from the local residents to open a limited hunt on Unimak Island. This follows biological surveys which indicate that the herd in this area is large enough to support a limited harvest.

Units 22 and 23—Muskox—The regulations have been clarified to specify the number of permits that will be issued rather than the percentage of harvest that will be allowed.

Units 24 and 26—Sheep—These sections have been rewritten to clarify the harvest regime for Anaktuvuk Pass.

Only the items described above are being changed; but for clarity, the entire table section for the pertinent species in each Unit is reproduced. The above actions were supported by the Regional Councils in the affected areas. Notice of the Board meeting and the subjects to be considered were widely circulated and the public had an opportunity to comment and participate.

The Board finds that additional public notice and comment requirements under the Administrative Procedures Act (APA) for this final rule are impracticable, unnecessary, and contrary to the public interest. A lapse in regulatory control could seriously affect the continued viability of wildlife populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive the public notice and comment procedures prior to publication of this rule. The Board finds good cause under 5 U.S.C. 553(d)(3) to make this rule effective July 1, 1997.

#### **Conformance With Statutory and Regulatory Authorities**

##### *National Environmental Policy Act Compliance*

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

presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940-22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

##### *Compliance With Section 810 of ANILCA*

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appears in the April 6, 1992, ROD which found that the Federal Subsistence Management Program, under a modified Alternative IV with an annual process for setting hunting and fishing regulations, had no significant possibility of a significant restriction of subsistence uses.

##### *Paperwork Reduction Act*

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below have been approved by OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018-0075, which expires 5/31/2000.

The collection of information will be achieved through the use of the Federal Subsistence Hunt Permit Application. This collection information will establish whether the applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence hunts on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy wildlife populations. The annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 hours or less.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, D.C. 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B.

##### *Economic Effects*

This rule was not subject to OMB review under Executive Order 12866. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small

entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, it is estimated that 2 million pounds of meat are harvested State-wide by the local subsistence users annually and, if given a dollar value of \$3.00 per pound, would equate to \$6 million State wide.

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

The Service has determined and certifies pursuant to 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 governments or private entities.

The Service has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Drafting Information. These regulations were drafted by William Knauer under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Peggy Fox, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA—Forest Service.

**List of Subjects**

*36 CFR Part 242*

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

*50 CFR Part 100*

Administrative practice and procedure, Alaska, Fish, Public lands,

Reporting and recordkeeping requirements, Subsistence, Wildlife.

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are amended as set forth below.

**PART \_\_\_\_—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA**

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

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

2. Section \_\_\_\_\_.24(a)(1) is amended in the table by removing the entry for “Unit 11, remainder, Sheep” and adding a new entry in its place to read as follows:

**§ \_\_\_\_\_.24 Customary and traditional use determinations.**

- (a) \* \* \*
- (1) \* \* \*

Area	Species	Determination
11, remainder ....	Sheep .....	Residents of the communities and areas of Chisana, Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; residents along the Tok Cutoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—

3. Section \_\_\_\_\_.24(a)(1) is amended in the table by removing the entries for “Unit 12, remainder, Moose,” “Unit 12, Sheep,” and “Unit 12, Wolf” and adding three new entries in their place to read as follows:

- (a) \* \* \*
- (1) \* \* \*

Area	Species	Determination
12, remainder ....	Moose .....	Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12 .....	Sheep .....	Residents of Unit 12 and residents of Chistochina and Mentasta Lake.
12 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.

4. Section \_\_\_\_\_.24(a)(1) is amended in the table by removing the entry for “Unit 26(C), Sheep,” and adding a new entry in its place to read as follows:

- (a) \* \* \*
- (1) \* \* \*

Area	Species	Determination
26(C) .....	Sheep .....	Residents of Unit 26, Anaktuvuk Pass, Arctic Village, Chalkytsik, Fort Yukon, Point Hope, and Venetie.

\* \* \* \* \*

5. Section \_\_\_\_\_.25(k)(6)(iii) is amended in the table under “Trapping”

by revising the entry for Lynx to read as follows:

**§ \_\_\_\_\_.25 Subsistence taking of wildlife.**

- \* \* \* \* \*
- (k) \* \* \*

(6) \* \* \*  
(iii) \* \* \*

Harvest limits	Open season
* * *	* * *
Trapping	
* * *	* * *

Lynx:  
No limit ..... Jan. 1–Feb. 15.

\* \* \* \* \*

6. Section \_\_\_\_ .25(k)(7)(iii) is amended in the table under “Trapping” by revising the entry for Lynx to read as follows:

(k) \* \* \*  
(7) \* \* \*  
(iii) \* \* \*

Harvest limits	Open season
* * *	* * *
Trapping	
* * *	* * *

Lynx:  
No limit ..... Jan. 1–Feb. 15.

\* \* \* \* \*

7. Section \_\_\_\_ .25(k)(10)(ii) is amended in the table under “Hunting” by revising the entry for “Caribou” to read as follows:

(k) \* \* \*  
(10) \* \* \*  
(ii) \* \* \*

Harvest limits	Open season
* * *	* * *
Hunting	
* * *	* * *

Caribou:  
Unit 10—Unimak Island only. 1 bull by Federal registration permit only. Aug. 10–Mar. 31.  
Remainder of Unit 10—No limit. July 1–June 30.

\* \* \* \* \*

8. Section \_\_\_\_ .25(k)(11)(i) is amended in the table under “Trapping” by revising the entry for “Lynx” to read as follows:

(k) \* \* \*  
(11) \* \* \*  
(i) \* \* \*

Harvest limits	Open season
* * *	* * *
Trapping	
* * *	* * *

Lynx:  
No limit ..... Dec. 1–Feb. 15.

9. Section \_\_\_\_ .25(k)(12)(i) is amended in the table under “Trapping” by revising the entry for “Lynx” to read as follows:

(k) \* \* \*  
(12) \* \* \*  
(i) \* \* \*

Harvest limits	Open season
* * *	* * *
Trapping	
* * *	* * *

Lynx:  
No limit ..... Dec. 1–Feb. 15.

10. Section \_\_\_\_ .25(k)(13)(iii) is amended in the table under “Trapping” by revising the entry for “Lynx” to read as follows:

(k) \* \* \*  
(13) \* \* \*  
(iii) \* \* \*

Harvest limits	Open season
* * *	* * *
Trapping	
* * *	* * *

Lynx:  
No limit ..... Dec. 1–Feb. 15.

11. Section \_\_\_\_ .25(k)(15)(iii) is amended in the table under “Trapping” by revising the entry for Lynx to read as follows:

(k) \* \* \*  
(15) \* \* \*  
(iii) \* \* \*

Harvest limits	Open season
* * *	* * *
Trapping	
* * *	* * *

Lynx:  
No limit ..... Jan. 1–Feb. 15.

12. Section \_\_\_\_ .25(k)(20)(iii) is amended in the table under “Trapping”

by revising the entry for Lynx to read as follows:

(k) \* \* \*  
(20) \* \* \*  
(iii) \* \* \*

Harvest limits	Open season
* * *	* * *
Trapping	
* * *	* * *

Lynx:  
Unit 20(A), (B), (D), (E), and (C) east of the Teklanika River—No limit. Dec. 1–Feb. 15.  
Unit 20(F) and the remainder of 20(C)—No limit. Nov. 1–Feb. 28.

13. Section \_\_\_\_ .25(k)(22)(ii) is amended in the table under “Hunting” by revising the entry for Muskox to read as follows:

(k) \* \* \*  
(22) \* \* \*  
(ii) \* \* \*

Harvest limits	Open season
* * *	* * *
Hunting	
* * *	* * *

Muskox:  
Unit 22(D) and (E)—1 bull by Federal registration permit only. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. The hunt in Unit 22(D) will be closed when 8 bulls (one-half from National Park Service lands and one-half from Bureau of Land Management lands) have been taken. The hunt in Unit 22(E) will be closed when 9 bulls have been taken.

Remainder of Unit 22 ..... No open season.

Harvest limits	Open season
* * *	* * *
Hunting	
* * *	* * *

Remainder of Unit 22 ..... No open season.

14. Section \_\_\_\_ .25(k)(23)(iii) is amended in the table under “Hunting” by revising the entry for Muskox to read as follows:

(k) \* \* \*  
(23) \* \* \*  
(iii) \* \* \*

Harvest limits	Open season
* * *	* *
Hunting	* *
Muskox:	
Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage—1 bull by Federal registration permit only. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. The hunt will be closed when 6 bulls have been taken.	Sept. 1–Jan. 31.
Remainder of Unit 23	No open season.
* * *	* *
15. Section _____.25(k)(24)(iii) is amended in the table under "Hunting" by revising the entry for Sheep to read as follows:	
(k) * * *	
(24) * * *	
(iii) * * *	
Harvest limits	Open season
* * *	* *
Hunting	* *
Sheep:	
Unit 24 (Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 24 (excluding Anaktuvuk Pass residents)—that portion within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Unit 24—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.
* * *	* *

\* \* \* \* \*

16. Section \_\_\_\_\_.25(k)(25)(iii) is amended in the table under "Trapping" by revising the entry for Lynx to read as follows:

\* \* \* \* \*

(k) \* \* \*

(25) \* \* \*

(iii) \* \* \*

Harvest limits	Open season
* * *	* *
Trapping	* *
Lynx:	
No limit	Nov. 1–Feb. 28.
* * *	* *

\* \* \* \* \*

17. Section \_\_\_\_\_.25(k)(26)(iii) is amended in the table under "Hunting" by revising the entry for Sheep to read as follows:

\* \* \* \* \*

(k) \* \* \*

(26) \* \* \*

(iii) \* \* \*

Harvest limits	Open season
* * *	* *
Hunting	* *
Sheep:	
26 (A) and (B) (Anaktuvuk Pass residents only)—those portions within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 26(A) (excluding Anaktuvuk Pass residents)—that portion within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 26(A)—that portion west of Howard Pass and the Etivluk River.	No open season.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Units 26 (A) and (B)—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.

Harvest limits	Open season
Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season.	Aug. 10–Sept. 20. Oct. 1–Apr. 30.
* * *	* *

\* \* \* \* \*

Dated: August 14, 1997.

**Thomas H. Boyd,**  
*Acting Chair, Federal Subsistence Board.*

Dated: August 18, 1997.

**James A. Caplan,**  
*Acting Regional Forester, USDA—Forest Service.*

[FR Doc. 97–22751 Filed 8–28–97; 8:45 am]

BILLING CODE 3410–11–P, 4310–55–P

**POSTAL RATE COMMISSION**

**39 CFR Part 3001**

[Docket No. RM97–2; Order No. 1191]

**Amendment to Rules Concerning Evidence Based on Market Research**

**AGENCY:** Postal Rate Commission.  
**ACTION:** Final rule.

**SUMMARY:** The Commission amends Rule 31(k) of its rules of practice by expanding foundation requirements for market research and making several editorial improvements. The amendment's purpose is to provide participants with guidance on the type of supporting information that must accompany market research submissions. The amendment will improve participants' ability to review these submissions.

**DATES:** This rule is effective August 29, 1997.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001, (202) 789–6820.

**SUPPLEMENTARY INFORMATION:** On May 2, 1997, the Commission issued a Notice of Proposed Rulemaking (NPRM) proposing three substantive changes in rule 31(k) (39 CFR 3001.31(k)). The changes addressed market research submitted (or relied upon) in Commission proceedings. The NPRM also proposed several minor editorial improvements in the rule, including limited restructuring. See Docket No. RM97–2, Rule 31(k) Revisions Concerning Market Research, 62 FR 25578 (May 9, 1997). One substantive

change reworded some of the existing foundation requirements for market research and added several new ones. Id. at 25582. Another recognized statistical disclosure limitation (SDL) methods as a means of protecting confidential survey data and information. Id. at 25580. A third change clarified reviewers' rights to obtain survey data. This included defining "edited data file" as raw data after appropriate coding, editing for consistency checks and application of SDL methodology. Id. at 25581. The proposed editorial improvements eliminated citations to outdated software standards, updated or revised several terms and headings, and separated market research rules from rules for other sample surveys. Id. at 25581.

*Commenters' positions.* The Commission received comments on the NPRM from United Parcel Service (UPS), the Commission's Office of the Consumer Advocate (OCA), and the United States Postal Service (Postal Service or Service). See generally Comments of UPS in Response to NPRM, Comments of the OCA to the Postal Rate Commission, and Comments of the Postal Service (all filed June 9, 1997). The Newspaper Association of America (NAA) filed reply comments, along with a motion for late acceptance, on July 29, 1997.

The commenters generally support the Commission's effort to address issues related to the growing use of market research, but differ on the procedure and conditions under which data confidentiality should be assured and on the advisability of proposed changes relating to reviewers' access to microdata. Opposition to contested elements of the proposal is based primarily on due process concerns.

In brief, the Postal Service's position is that the Commission's substantive changes reflect appropriate standards, and should be adopted with only minor revision. Postal Service Comments at 1-2. UPS supports most of the proposed changes affecting foundation requirements, with minor modification. UPS Comments at 2 and 7. However, UPS urges that SDL techniques be authorized as an optional, rather than standard practice. It also asserts that the availability of SDL should not be used to deny full access to unedited raw data. Id. at 3-7.

The OCA also generally supports the foundation requirements; however, it opposes the use of SDL methods and the proposed changes affecting reviewers' access to data. OCA Comments at 5. Moreover, the OCA urges that the Commission reissue the rulemaking and

include all statistical studies within its scope. Id.

NAA generally agrees with the OCA's position. NAA Reply Comments at 1. Among other things, it specifically notes that given the size and scope of the Service's activities, the potential harm to private interests, and the Service's legal duty to operate in a non-discriminatory manner, it agrees with the OCA's conclusions that due process concerns require disclosure of Postal Service market research data, including access to data files necessary to permit replication of survey results. Id. at 2.

*Commission response.* The Commission is issuing a final rule that includes, with only minor changes, revisions to the foundation requirements for market research and the editorial improvements. The final rule does not adopt SDL methods or define edited data file. The comments from NAA, UPS and the OCA indicate that further consideration of these matters is needed before uniform standards can be developed for use in our proceedings. The Commission considered inviting a further round of comments, but has determined that the workload associated with the recent filing of an omnibus rate case forecloses pursuing these matters in an independent docket at this time. However, the Commission continues to believe that SDL methods may provide a useful avenue for resolving concerns about confidentiality and access. It also believes that recognizing distinctions between raw data and edited data files for market research purposes is a potentially useful means of addressing certain access issues.

### **Part I. Disposition of Proposed Substantive Changes**

#### *A. Revised and Expanded Support for Market Research in Proposed Rule*

31(k)(2)(i)(a)(1)-(7) (39 CFR 3001.31(k)(2)(i)(a)(1)-(7))

Commenters addressing proposed changes affecting the foundation for market research submissions generally support the Commission's approach. They also offer several observations and specific suggestions for improvements. For example, the Service contends there is a potential for uneven application of foundation item 4 (39 CFR 31(k)(2)(i)(a)(4)). Specifically, it claims that the reference to "the effects of benchmarking" may not reflect current industry practice. Postal Service Comments at 4. It also notes that item 4's reference to "data comparability over time" is appropriate only for surveys repeated on a regular basis, and not for one-time surveys. Id.

The Commission considers benchmarking an acceptable survey practice, but also recognizes that it may have limited relevance to the market research submitted in our proceedings. Since the added burden of submitting this material may outweigh its benefits, the phrase "and the effects of benchmarking and revisions" is not included in the final rule. In response to the Service's observation about the applicability of a data comparability requirement to a one-time survey, the Commission has decided against amending the rule to account for this distinction. Instead, the sponsor of a one-time survey can simply affirmatively indicate, when appropriate, that the requirement does not pertain.

The Postal Service also observes that the phrase "other potential sources of error" in item 5 is "perhaps necessarily, rather open-ended and vague," and acknowledges that consideration of other sources of error is appropriate at some level. However, it suggests that the phrase might foster motions to strike for failure to address a borderline "other source." Id. at 3. In response to the Service's comments, the Commission is deleting the reference to "other potential sources of error" in item 5, but revising item 3 to cover the same point. As a conforming change, item 5 in the final rule now ends after "imputation."

UPS, consistent with its suggestion that SDL methods be available as an option, also suggests that proposed (a)(5) be revised to read: "An assessment *and supporting explanation* of the effects of the application of any statistical disclosure limitation methods used pursuant to section 31(k)(2)(i)(c) and of editing and imputation and other potential sources of error on the quality of the survey estimates." UPS Comments at 7 (UPS's changes italicized).

The Commission is not including SDL provisions in the final rule, nor is it formally adopting them as an option. Thus, there appears no need to amend the rule in the manner suggested by UPS. However, if SDL methods or other means of protecting confidentiality are used, the Commission expects, at a minimum, that the type of supporting information and data UPS suggests would be produced under existing rules without the need for motion practice.

#### *B. Recognition of SDL Methods as a Means of Balancing Sponsors' Interests in Confidentiality and Reviewers' Interests in Access to Survey Data*

As indicated earlier, positions on the use of SDL techniques vary: the Postal Service strongly supports a central role

for them; UPS contends they should be used only on an optional basis; and the OCA sees little, if any, place for them in Commission proceedings. NAA indicates that it generally endorses the OCA's position. The Commission continues to believe that these techniques may provide a viable means of resolving concerns about confidentiality and survey reliability, without unduly interfering with participants' rights. However, commenters' widely-divergent positions on a rule that adequately provides for recognizing and preserving these rights indicates that a consensus is unlikely to be achieved without considerably more exploration of this technique and its ramifications. Thus, the Commission has determined to issue a final rule on those aspects of the NPRM that have broad support, and to exclude the SDL provisions (and related references) from the final rule. This does not reflect a decision on the merits of SDL procedures, but a conclusion related to efficient administration of the Commission's workload and management of its resources. Although SDL methods are not being formally adopted as a standard, the Commission encourages participants to familiarize themselves with these techniques, as they may provide, on occasion, an effective means of accommodating participants' requests. Moreover, additional experience with the use of these techniques on an ad hoc basis may facilitate the development of a satisfactory standard in some future rulemaking.

**C. Clarification of Reviewers' Rights to Survey Data and Computer Files**

Although the Postal Service supports the proposed revisions clarifying access to survey data, both UPS and the OCA oppose them. Consistent with its position on SDL methods, UPS proposes adding a provision specifically stating that a party is not precluded from obtaining unedited raw data. UPS Comments at 5. The OCA also suggests several revisions, including replacing the "upon request" language with a provision requiring the Service to produce all data at the time it files its request.

Although the Commission is not formally adopting the proposed definition, it recently has stated that the efforts of market research reviewers should be directed, in the first instance, at probing the overall reliability of the survey effort, instead of relying on techniques designed for microdata analysis. 62 FR 25581 (citing Docket No. RM81-1 Final Notice at 13 and PRC Op. MC95-1, Appendix C). The decision

against adopting a definition of input data at this time does not alter that position.

The Commission believes that the OCA's suggestion that relevant data be produced earlier than now required under the rule is an idea that warrants additional consideration. However, the NPRM indicated that the Commission chose a narrow focus for this rulemaking. A timing change affecting production deadlines falls outside the current docket's boundaries.

**Part II. Editorial Improvements**

The Postal Service is the only commenter specifically addressing the editorial improvements identified in the NPRM. 62 FR 25581. The Service agrees that specific references to software standards are no longer necessary, and supports omitting the footnote in which they now appear. However, instead of the Commission's proposed replacement of "magnetic tape" with "a compact disk" (which appears in the first sentence of the concluding paragraph (k)(3)(i)(j) (39 CFR 3001.31(k)(3)(i)(j)), the Service suggests the following alternative:

Paragraphs (k)(3)(i) (d) and (f) of this section shall be provided in the form of a compact disk or other media or method approved in advance by the Administrative Office of the Postal Rate Commission.

Postal Service Comments at 8.

As the NPRM indicates, the Commission had considered a more general reference. Since the Service's proposal preserves various options for complying with the rule, the Commission is including it in the final rule. The Commission further notes that it welcomes the Service's continued cooperation in this area.

No commenter objects to the minor restructuring of the rule or changing the heading of rule (k)(2)(ii) from "Sample surveys" to "Other sample surveys." Accordingly, the final rule is unchanged in these respects.

**List of Subjects in 39 CFR Part 3001**

Administrative practice and procedure, Confidential business information, Freedom of information, Postal Service, Sunshine Act.

For reasons set forth in the preamble, 39 CFR part 3001 is amended as follows:

**PART 3001—RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for part 3001 continues to read as follows:

**Authority:** 39 U.S.C. 404(b), 3603, 3622-3624, 3661, 3662.

2. 39 CFR 3001.31(k) is amended as follows:

3. Redesignate paragraphs (k)(2) (i) through (iv) as (k)(2) (ii) through (v).

4. Amend redesignated paragraph (k)(2)(ii) by changing the title from *Sample surveys* to *Other sample surveys*.

5. Add paragraph (k)(2)(i) to read as follows:

**§ 3001.31 Evidence.**

\* \* \* \* \*

(k) Introduction and reliance upon studies and analyses—(1) \* \* \*

(2) \* \* \*

(i) *Market research.* (a) The following data and information shall be provided: (1) A clear and detailed description of the sample, observational, and data preparation designs, including definitions of the target population, sampling frame, units of analysis, and survey variables;

(2) an explanation of methodology for the production and analysis of the major survey estimates and associated sampling errors;

(3) a presentation of response, coverage and editing rates, and any other potential sources of error associated with the survey's quality assurance procedures;

(4) a discussion of data comparability over time and with other data sources;

(5) an assessment of the effects of editing and imputation;

(6) identification of applicable statistical models, when model-based procedures are employed; and

(7) an explanation of all statistical tests performed and an appropriate set of summary statistics summarizing the results of each test.

\* \* \* \* \*

6. Revise paragraph (k)(3)(i)(e) to read as follows:

\* \* \* \* \*

(k) \* \* \*

(3) \* \* \*

(i) \* \* \*

(e) For all source codes, documentation sufficiently comprehensive and detailed to satisfy generally accepted softard documentation standards appropriate to the type of program and its intended use in the proceeding.

7. Revise the first sentence of the concluding text after paragraph (k)(3)(i)(j) to read as follows:

\* \* \* \* \*

(k) \* \* \*

(3) \* \* \*

(i) \* \* \*

(j) \* \* \*

Paragraphs (k)(3)(i)(d) and (f) of this section shall be provided in the form of a compact disk or other media or method approved in advance by the

Administrative Office of the Postal Rate Commission. \* \* \*

Dated: August 26, 1997.

**Margaret P. Crenshaw,**  
Secretary.

[FR Doc. 97-23066 Filed 8-28-97; 8:45 am]

BILLING CODE 7710-FW-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[LA-39-1-7332a; FRL-5876-3]

#### Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Louisiana; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** This document approves the Louisiana State Plan for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. The plan was submitted to fulfill the requirements of the Clean Air Act (the Act). The State Plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

**DATES:** This action is effective on October 28, 1997, unless notice is postmarked by September 29, 1997, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the State Plan and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency,  
Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700,  
Dallas, Texas 75202-2733.

Air and Radiation Docket and  
Information Center, Environmental  
Protection Agency, 401 M Street, SW,  
Washington, DC 20460.

Louisiana Department of Environmental  
Quality, Air Quality Program, 7290  
Bluebonnet Blvd., Baton Rouge,  
Louisiana 70810.

Anyone wishing to review this State Plan at the EPA office is asked to

contact the person below to schedule an appointment 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Lt. Mick Cote, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7219.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Act requires that States submit plans to EPA to implement and enforce the Emission Guidelines (EG) promulgated for MSW landfills pursuant to Section 111(d) of the Act. Section 111(d) requires that the State submit the State Plan not later than 9 months after EPA promulgates the EG. On March 12, 1996, EPA promulgated the EG as 40 CFR part 60, subpart Cc. Thus, the State Plans were due no later than December 12, 1996. The State of Louisiana submitted its State Plan to EPA on December 20, 1996.

Under section 111(d) of the Act, the EPA established procedures whereby States submit plans to control existing sources of designated pollutants. Designated pollutants are defined as pollutants which are not included on a list published under section 108(a) of the Act (i.e., National Ambient Air Quality Standard pollutants), but to which a standard of performance for new sources applies under section 111. Under section 111(d), emission standards are to be adopted by the States and submitted to EPA for approval. The standards limit the emissions of designated pollutants from existing facilities which, if new, would be subject to the New Source Performance Standards (NSPS). Such facilities are called designated facilities.

The procedures under which States submit these plans to control existing sources are defined in 40 CFR part 60, subpart B. According to subpart B, the States are required to develop plans within Federal guidelines for the control of designated pollutants. The EPA publishes guideline documents for development of State emission standards along with the promulgation of any NSPS for a designated pollutant. These guidelines apply to designated pollutants and include information such as a discussion of the pollutant's effects, description of control techniques and their effectiveness, costs and potential impacts. Also as guidance for the States, recommended emission limits and times for compliance are set forth, and control equipment which will achieve these emission limits are identified. The emission guidelines for landfill gas are promulgated in 40 CFR part 60. The

final section 111(d) emission standards and guidelines for landfill gas were promulgated on March 12, 1995 (61 FR 9905), and codified in the CFR at 40 CFR subparts WWW and Cc, respectively. The emission guideline's specified limits for landfill gas requires affected facilities to operate a control system designed to reduce collected non-methane organic compounds (NMOC) concentrations by 98 weight-percent, or reduce the outlet NMOC concentration to 20 parts per million or less, using the test methods specified under § 60.754(d).

##### II. Analysis of State Submittal

The official procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. The EPA promulgated the original provisions on November 17, 1975, and then amended them on December 19, 1995, to incorporate changes specific to solid waste incineration. These changes, which were necessary to conform with the solid waste incineration requirements under section 129 of the Act, are not relevant to MSW landfills. Thus, the procedures described in the original provisions for adopting and submitting State Plans still apply to MSW landfills and are reflected in 40 CFR part 60, subpart B, §§ 60.23 through 60.26. Subpart B addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, compliance assurance, and enforcement requirements, and cross-references to the MSW landfill EG.

The Louisiana State Plan includes documentation that all applicable subpart B requirements have been met. Please see the evaluation report for a detailed description of EPA's analysis of the Plan's compliance with the subpart B requirements.

The Louisiana Department of Environmental Quality (LDEQ) cross-referenced both the NSPS and EG to adopt the requirements of the Federal rule. The State has ensured, through this cross-reference process, that all the applicable requirements of the Federal rule have been adopted into the State Plan. The emission limits, reporting and recordkeeping requirements, and other aspects of the Federal rule have been adopted into LAC 33.III.3003B, Table 2, as part of the AQ 145 State Implementation Plan revision.

Subpart Cc requires affected existing landfills to be capable of attaining the specified level of emissions within 30 months after the State Plan is federally approved. For compliance schedules for MSW landfills extending more than 12

months beyond the date required for submittal of the plan (December 12, 1996), the compliance schedule must include legally enforceable increments of progress towards compliance for that MSW landfill. Each increment of progress in § 60.21(h) of subpart B must have a compliance date and must be included as an enforceable date in the State Plan. As an alternative, the State must negotiate specific dates for the increments of progress on a facility by facility basis, and submit them to the public participation process. A revision to Louisiana's State Plan must be submitted to EPA once the dates for the increments of progress are established. The State Plan may include such additional increments of progress as may be necessary to permit close and effective supervision of progress towards final compliance.

Louisiana must submit an updated source inventory once the affected facilities have reported their design capacities and NMOC emissions as required under 40 CFR part 60, subpart Cc (60.35c). In addition, Title V permit applications for the affected facilities are due within one year from the due date of the design capacity reports.

### III. Final Action

In this final action EPA is promulgating a revision to the Louisiana State Plan and the Code of Federal Regulations, part 62, to adopt the Louisiana State Plan for the control of landfill gas from MSW landfills. On December 20, 1996, the State of Louisiana submitted to EPA a plan identifying the existing MSW landfills in the State and establishing standards for the control of landfill gas emissions from these facilities. On January 7, 1997, the LDEQ transmitted the adopted rule associated with the earlier plan submission. The plan entitled: "Municipal Solid Waste Landfill Section 111(d) Plan" and LAC 33.III.3003B, Table 2, the cross-reference to 40 CFR part 60, subparts Cc and WWW, are the regulatory elements of the Louisiana 111(d) Plan.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Plan. Each request for revision to the State Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

### IV. Administrative Requirements

#### A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

#### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 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.

State Plan approvals under section 111 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal State Plan approval does not impose any new requirements, I certify that it 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 a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning State Plans on such grounds. See *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, 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 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.

The EPA has determined that the approval action promulgated 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. This Federal action approves preexisting requirements

under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 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 this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

#### 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 28, 1997. 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) of the Act.

#### List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: August 11, 1997.

**Jerry Clifford,**

*Acting Regional Administrator.*

40 CFR Part 62, Subpart T, is amended as follows:

#### PART 62—[AMENDED]

##### Subpart T—Louisiana

1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7642.

2. Section 62.4620 is amended by adding paragraph (b)(4) to read as follows:

#### § 62.4620 Identification of Plan.

\* \* \* \* \*

(b) \* \* \*



(4) Control of landfill gas emissions from existing municipal solid waste landfills, submitted on December 9, 1996, and the associated rule adopted by the State on December 20, 1996 (LAC 33.III.3003B, Table 2).

\* \* \* \* \*

3. A new center heading consisting of §§ 62.4631 and 62.4632 is added to read as follows:

**§ 62.4931 Identification of sources.**

The plan applies to all existing municipal solid waste landfills with design capacities greater than 2.5 million megagrams and non-methane organic emissions greater than 50 megagrams per year as described in 40 CFR part 60, subpart Cc.

**§ 62.4932 Effective date.**

The effective date of the portion of the plan applicable to existing municipal solid waste landfills is October 28, 1997.

[FR Doc. 97-21814 Filed 8-28-97; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 70**

[FRL-5884-6]

**Extension of Operating Permits Program Interim Approvals**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is promulgating revisions to Appendix A of the operating permits regulations codified in part 70 of chapter I of title 40 of the Code of Federal Regulations. Those regulations were originally promulgated on July 21, 1992. These revisions to Appendix A extend up to October 1, 1998 all operating permits program interim approvals that expire before that date. This action will allow the program revisions necessary to correct interim approval deficiencies to be combined with program revisions necessary to implement the revisions to part 70 that are anticipated to promulgated mid-summer of 1998.

**DATES:** The regulatory amendments announced herein take effect on September 29, 1997. For those programs whose interim approval dates are amended by today's action, interim approval will expire on October 1, 1998.

**ADDRESSES:** Supporting material used in developing the proposal and final regulatory revisions is contained in Docket Number A-93-50. This docket is

available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address listed below. A reasonable fee may be charged for copying. The address of the EPA air docket is: EPA Air Docket, Mail Code 2311, Attention: Docket Number A-93-50, Room M-1500, Waterside Mall, 401 M Street SW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Roger Powell (telephone 919-541-5331), Mail Drop 12, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 29, 1994 (59 FR 44460) and August 31, 1995 (60 FR 45530), EPA proposed revisions to the part 70 operating permits regulations. Primarily, the notices proposed changes to the system for revising permits. A number of other less detailed proposed changes were included in the notices. Altogether, State and local permitting authorities will have a complicated package of program revisions to prepare in response to these changes once promulgated. The part 70 revisions are anticipated to take place in mid-summer of 1998.

Contemporaneous with permitting authorities revising their programs to meet the revised part 70, many programs have been granted interim approval which will require permitting authorities to prepare program revisions to correct those deficiencies identified in the interim approval notice. The preamble to the August 31, 1995 proposal noted the concern of many permitting authorities over having to revise their programs twice; once to correct interim approval deficiencies, and again to address the revisions to part 70. In the August 1995 preamble, the Agency proposed that States with interim approval “\* \* \* should be allowed to delay the submittal of any program revisions to address program deficiencies previously listed in their notice of interim approval until the deadline to submit other changes required by the proposed revisions to part 70” (60 FR 45552). Comment was solicited on this action and on a legal rationale. The Agency also proposed “\* \* \* to exercise its discretion under proposed section 70.4(i)(1)(iv) to provide States 2 years to submit program revisions in response to the proposed part 70 revisions \* \* \*” (60 FR 45551).

In combination, these actions could extend all interim approvals such that permitting authorities would not have to submit program revisions addressing interim approval deficiencies until up to 2 years after part 70 is revised. Six comments were received on this subject during the public comment period on the August 1995 proposal. Five of these commenters supported either the extension or efforts to minimize the burden on permitting authorities, but none provided a reasonable legal rationale. One of the commenters indicated the action is not consistent with title V.

**II. Discussion**

On October 31, 1996 (61 FR 56368), EPA amended section 70.4(d)(2) to allow the Administrator to grant the proposed additional extension to interim approvals. The Agency does not believe, however, that the August 31, 1995 blanket proposal to extend all interim approval program revision submittal dates until up to 2 years after part 70 is revised is appropriate. Program deficiencies that caused granting of interim approval of permitting programs vary from a few problems that can be easily corrected to complex problems that will require regulatory changes and, in some cases, legislative action. Where an undue burden will be encountered by developing two program revisions, combining program revisions and thus granting a longer time period for submission of the program revision to correct interim approval deficiencies is warranted. Where no such burden will occur, the Agency encourages permitting authorities to proceed with correcting their interim approval program deficiencies and not wait for the revised part 70.

To encourage permitting authorities to proceed with program revisions within their interim approval timeframes, rather than wait for the revised part 70, all interim approvals granted prior to the date of issuance of a memorandum announcing EPA's position on this issue (memorandum from Lydia N. Wegman to Regional Division Directors, “Extension of Interim Approvals of Operating Permits Programs,” June 13, 1996) were extended in the October 1996 notice by 10 months. The June 1996 memorandum is in the docket for this action.

The reason for this automatic extension was that permitting authorities, upon reading the August 1995 proposed action, may have delayed their efforts to develop program revisions to address interim approval deficiencies because they believed the

proposed policy to extend interim approvals until revised part 70 program revisions are due would be adopted for all programs. The EPA has been informed that this was the case in many States. Approximately 10 months passed since the August 1995 proposal until issuance of the memorandum previously noted. The additional 10-month extension to all interim approvals offset any time lost in permitting authority efforts to develop program revisions addressing interim approval deficiencies. This 10-month extension was not applicable to application submittal dates for the second group of sources covered by a source-category limited interim approval.<sup>1</sup>

As noted in the June 1996 memorandum, where the permitting authority applies for it after part 70 is revised, EPA may grant a longer extension to an interim approval so that the program revision to correct interim approval program deficiencies may be combined with the program revision to meet the revised part 70. Such extensions will only be granted once per State and will not be of a duration which exceeds 2 years after promulgation of revisions to part 70. Such a request must be made within 30 days of promulgation of the part 70 revisions. This will make it possible for EPA to take a single rulemaking action (if such action is warranted) to adopt new interim approval deadlines. All programs with interim approval are eligible for this longer extension, even if interim approval was granted after the June 1996 memorandum.

As required by section 70.4(f)(2), program revisions addressing interim approval deficiencies must be submitted to EPA no later than 6 months prior to the expiration of the interim approval. The dates for permitting authorities to submit their combined program revisions to address the revised part 70 and the interim approval deficiencies will be 6 months prior to the interim approval expiration dates which will be set through a future rulemaking.

Any longer extension allowing combining of program revisions to meet

both the revised part 70 and interim approval deficiencies will occur only once for a permitting authority and will be based on the promulgation date of the revisions to part 70. If only regulatory changes to a program are needed to meet the revised part 70, the extension may be for up to 18 months after the part 70 revisions. If legislative changes are needed to a program to meet the revised part 70, the extension may be for up to 2 years. As previously noted, the program revision submittal date will be 6 months prior to expiration of the extended interim approval.

### III. Rulemaking Action

The June 13, 1996 memorandum and the October 31, 1996 notice anticipated promulgation of the part 70 revisions no later than early 1997. The EPA believes that the action in this rulemaking notice is necessary because of further delays in promulgation of the part 70 revisions. Due to these delays, a number of interim approvals will expire before part 70 is revised, thus denying these agencies the opportunity to combine program revisions. The EPA has been informed that States were relying on the October 31, 1996 notice, which anticipated a promulgation date of early 1997 for part 70 revisions, and expected to be able to combine their interim approval deficiencies with the program revisions to address the revised part 70. However, now that the EPA anticipates a mid-summer 1998 promulgation date for the part 70 revisions, the Agency estimates that it may take until October 1, 1998 to receive all State requests for combining program revisions and to take the necessary rulemaking action to grant the final extension to those interim approvals. The action in this notice, therefore, moves all interim approvals that expire before October 1, 1998 up to that date. All agencies with interim approvals prior to October 1, 1998 will, therefore, be granted interim approval extensions until that date to have the opportunity to submit requests to combine program revisions.

### IV. Administrative Requirements

#### A. Docket

The docket for this regulatory action is A-93-50. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for

interagency review materials). The docket is available for public inspection at EPA's Air Docket, which is listed under the ADDRESSES section of this notice.

#### B. Executive Order (E.O.) 12866

Under E.O. 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether each regulatory action is "significant," and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

1. Have an annual effect on the economy of \$100 million or more, adversely and materially affecting 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 obligation of recipients thereof.
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Pursuant to the terms of E.O. 12866, it has been determined that this action is not a "significant" regulatory action because it does not substantially change the existing part 70 requirements for States or sources; requirements which have already undergone OMB review. Rather than impose any new requirements, this action only extends an existing mechanism. As such, this action is exempted from OMB review.

#### C. Regulatory Flexibility Act Compliance

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities. In developing the original part 70 regulations, the Agency determined that they would not have a significant economic impact on a substantial number of small entities. Similarly, the same conclusion was reached in an initial regulatory flexibility analysis performed in support of the proposed part 70 revisions (a subset of which constitutes the action in this rulemaking notice). This action does not substantially alter the part 70 regulations as they pertain to small entities and accordingly will not have a

<sup>1</sup> Several States have been granted source-category limited interim approvals. Under that type approval, a subset of the part 70 source population is to submit permit applications during the first year of the program. The application submittal period for the remaining sources begins upon full approval of the program. The Agency concludes this second group of sources should still submit permit applications during a period beginning on the original expiration date of a State's interim approval as opposed to that date extended by 10 months. The other interim approval program deficiencies, however, will be eligible for the 10-month extension.

significant economic impact on a substantial number of small entities.

*D. Paperwork Reduction Act*

The OMB has approved the information collection requirements contained in part 70 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0243. The Information Collection Request (ICR) prepared for part 70 is not affected by the action in this rulemaking notice because the part 70 ICR determined burden on a nationwide basis, assuming all part 70 sources were included without regard to the approval status of individual programs. The action in this rulemaking notice, which simply provides for an extension of the interim approval of certain programs, does not alter the assumptions of the approved part 70 ICR used in determining the burden estimate. Furthermore, this action does not impose any additional requirements which would add to the information collection requirements for sources or permitting authorities.

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:

Director, Regulatory Information Division, Office of Policy, Planning, and Evaluation (2136), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Include the ICR number in any correspondence.

*E. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates 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 and the private sector. Under section 202 of the UMRA, EPA 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.

The EPA has determined that the action in this rulemaking notice does

not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector, in any 1 year. Although the part 70 regulations governing State operating permit programs impose significant Federal mandates, this action does not amend the part 70 regulations in a way that significantly alters the expenditures resulting from these mandates. Therefore, the Agency concludes that it is not required by section 202 of the UMRA of 1995 to provide a written statement to accompany this regulatory action.

*F. Submission to Congress and the General Accounting Office.*

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended 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 this **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

**List of Subjects in 40 CFR Part 70**

Environmental protection, air pollution control, prevention of significant deterioration, new source review, fugitive emissions, particulate matter, volatile organic compounds, nitrogen dioxide, carbon monoxide, hydrocarbons, lead, operating permits.

Dated: August 22, 1997.

**Carol M. Browner,**  
*Administrator.*

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as set forth below.

Appendix A of part 70 is amended by the following:

- a. Adding a sentence to the end of paragraph (a) under Virgin Islands;
- b. Revising the third sentence of paragraph (a) under Texas; and
- c. Replacing the end date of each paragraph with "October 1, 1998" as follows: Paragraph (a) of Arkansas, Colorado, District of Columbia, Florida, Hawaii, Illinois, Iowa, Maryland, Minnesota, Montana, North Dakota, Wisconsin, and Wyoming; Paragraphs (a) through (m), (o), (p), (r) through (w), (bb), (cc), (ee), (ff), and (hh) of California; paragraphs (b) and (c) of Nevada; paragraphs (a) and (e) of Tennessee; and paragraphs (a) through (i) of Washington.

**Appendix A—to Part 70—Approval Status of State and Local Operating Permits Programs**

*Arkansas*

(a) \* \* \* October 1, 1998.

*California* \* \* \*

- (a) \* \* \* October 1, 1998.
- (b) \* \* \* October 1, 1998.
- (c) \* \* \* October 1, 1998.
- (d) \* \* \* October 1, 1998.
- (e) \* \* \* October 1, 1998.
- (f) \* \* \* October 1, 1998.
- (g) \* \* \* October 1, 1998.
- (h) \* \* \* October 1, 1998.
- (i) \* \* \* October 1, 1998.
- (j) \* \* \* October 1, 1998.
- (k) \* \* \* October 1, 1998.
- (l) \* \* \* October 1, 1998.
- (m) \* \* \* October 1, 1998.

- \* \* \* \* \*
- (o) \* \* \* October 1, 1998.
- (p) \* \* \* October 1, 1998.
- \* \* \* \* \*
- (r) \* \* \* October 1, 1998.
- (s) \* \* \* October 1, 1998.
- (t) \* \* \* October 1, 1998.
- (u) \* \* \* October 1, 1998.
- (v) \* \* \* October 1, 1998.
- (w) \* \* \* October 1, 1998.

- \* \* \* \* \*
- (bb) \* \* \* October 1, 1998.
- (cc) \* \* \* October 1, 1998.

- \* \* \* \* \*
- (ee) \* \* \* October 1, 1998.
- (ff) \* \* \* October 1, 1998.
- \* \* \* \* \*
- (hh) \* \* \* October 1, 1998.

*Colorado*

(a) \* \* \* October 1, 1998.  
\* \* \* \* \*

*District of Columbia*

(a) \* \* \* October 1, 1998.  
\* \* \* \* \*

*Florida*

(a) \* \* \* October 1, 1998.  
\* \* \* \* \*

*Hawaii*

(a) \* \* \* October 1, 1998.  
\* \* \* \* \*

*Illinois*

(a) \* \* \* October 1, 1998.  
\* \* \* \* \*

*Iowa*

(a) \* \* \* October 1, 1998.  
\* \* \* \* \*

*Maryland*

(a) \* \* \* October 1, 1998.  
\* \* \* \* \*

*Minnesota*

(a) \* \* \* October 1, 1998.  
\* \* \* \* \*

Montana

(a) \* \* \* October 1, 1998.  
\* \* \* \* \*

Nevada

(a) \* \* \*  
(b) \* \* \* October 1, 1998.  
(c) \* \* \* October 1, 1998.  
\* \* \* \* \*

North Dakota

(a) \* \* \* October 1, 1998.  
\* \* \* \* \*

Tennessee

(a) \* \* \* October 1, 1998.  
\* \* \* \* \*  
(e) \* \* \* October 1, 1998.

Texas

(a) \* \* \* Interim approval will expire  
October 1, 1998. \* \* \* \* \*  
\* \* \* \* \*

Virgin Islands

(a) \* \* \* Interim approval will expire  
October 1, 1998.  
\* \* \* \* \*

Washington

(a) \* \* \* October 1, 1998.  
(b) \* \* \* October 1, 1998.  
(c) \* \* \* October 1, 1998.  
(d) \* \* \* October 1, 1998.  
(e) \* \* \* October 1, 1998.  
(f) \* \* \* October 1, 1998.  
(g) \* \* \* October 1, 1998.  
(h) \* \* \* October 1, 1998.  
(i) \* \* \* October 1, 1998.  
\* \* \* \* \*

Wisconsin

(a) \* \* \* October 1, 1998.  
\* \* \* \* \*

Wyoming

(a) \* \* \* October 1, 1998.

[FR Doc. 97-23033 Filed 8-28-97; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-300534; FRL-5738-7]

RIN 2070-AB78

**Cyromazine; Pesticide Tolerances for Emergency Exemptions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for combined residues of cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite, melamine (1,3,5-triazine-2,4,6-triamine) in or on dry bulb onions.

This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on onion seed in California. This regulation establishes a maximum permissible level for residues of cyromazine in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on July 31, 1998.

**DATES:** This regulation is effective August 29, 1997. Objections and requests for hearings must be received by EPA on or before October 28, 1997.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP-300534], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300534], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300534]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Stephen Schaible, Registration Division 7505C, Office of Pesticide

Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9362, e-mail: schaible.stephen@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for combined residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite, melamine (1,3,5-triazine-2,4,6-triamine), in or on dry bulb onions at 0.3 part per million (ppm). This tolerance will expire and is revoked on July 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

**I. Background and Statutory Authority**

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL-5572-9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to

infants and children from aggregate exposure to the pesticide chemical residue....”

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that “emergency conditions exist which require such exemption.” This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

## II. Emergency Exemption for Cyromazine on Onion Seed and FFDCA Tolerances

On February 6, 1997, the California Environmental Protection Agency, Department of Pesticide Regulation, availed itself of the authority to declare the existence of a crisis situation within the state, thereby authorizing use under FIFRA section 18 of cyromazine on onion seed to control onion maggots (*Delia antiqua*). Onion maggots damage onion plants by tunneling and feeding on the growing (underground bulbs and stems; several generations of onion maggots can mature within a single season, thereby increasing the magnitude of losses to growers. The Applicant claims that resistance to chlorpyrifos, the most effective registered alternative control agent, has developed in the onion maggot. Utilization of alternative cultural practices, such as crop rotation, has not successfully controlled the onion maggot without the use of chemical control agents. Onion growers in the states receiving seed are expected to experience up to a 36% yield loss without the use of cyromazine. EPA has authorized under FIFRA section 18 the use of cyromazine on onion seed for control of onion maggot in California. After having reviewed the submission,

EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of cyromazine in or on dry bulb onions as a result of treatment of onion seed. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on July 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on dry bulb onions after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether cyromazine meets EPA's registration requirements for use on onion seed or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of cyromazine by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for cyromazine, contact the Agency's Registration Division at the address provided above.

## III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects,

developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

### A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the “no-observed effect level” or “NOEL”).

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a “safety factor”) of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk

assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute", "short-term", "intermediate term", and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enactment of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment

nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

#### *B. Aggregate Exposure*

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of

estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup non-nursing infants less than one year old was not regionally based.

#### **IV. Aggregate Risk Assessment and Determination of Safety**

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of cyromazine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine and its metabolite, melamine (1,3,5-triazine-2,4,6-triamine on dry bulb onions at 0.3 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

##### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyromazine are discussed below.

1. *Acute toxicity.* OPP has determined that an acute dietary risk assessment is not required for this chemical.

2. *Short - and intermediate - term toxicity.* For short- and intermediate-term MOE calculations, the Agency recommends use of the systemic NOEL of 0.75 mg/kg/day from the 6-month dog feeding study. At the Lowest Effect Level (LEL) of 7.5 mg/kg/day, there were changes in hematological parameters.

3. *Chronic toxicity.* EPA has established the RfD for cyromazine at 0.0075 milligrams/kilogram/day (mg/kg/day). This RfD is based on the NOEL of 0.75 mg/kg/day, taken from the 6-month dog feeding study. Pronounced effects on hematological parameters were observed at the LEL of 7.5 mg/kg/day.

An uncertainty factor of 100 was applied to account for both interspecies and intraspecies variability.

4. *Carcinogenicity.* Cyromazine has been classified as a Group E (evidence of non-carcinogenicity for humans) chemical by the Agency. Melamine, a metabolite of cyromazine, has been evaluated by the Carcinogenicity Peer Review Committee (CPRC). The CPRC concluded that melamine was not amenable to classification using the current Agency guidelines and chose to describe the weight-of-the-evidence using a narrative form. Based on mechanistic evaluation of the only tumors seen, those that occurred at exceptionally high doses in the bladder of male rats, it appears that humans are not likely to be exposed to doses of melamine that produce the urinary tract toxicity that precedes and seems to lead to the carcinogenic response in rats. The CPRC concluded that it is unlikely that melamine exposure would pose a carcinogenic hazard to humans from pesticidal usage of cyromazine.

#### B. Exposures and Risks

##### 1. From food and feed uses.

Tolerances have been established (40 CFR 180.414) for the combined residues of cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite, melamine (1,3,5-triazine-2,4,6-triamine), in or on a variety of raw agricultural commodities. Though tolerances exist for residues of cyromazine in or on animal commodities, there are no animal feed items associated with the proposed use, and no secondary residues in meat, milk, poultry or eggs are expected. Risk assessments were conducted by EPA to assess dietary exposures and risks from cyromazine as follows:

*Chronic exposure and risk.* Chronic dietary exposure was calculated assuming tolerance level residues for published and proposed uses and percent of crop treated refinements for several commodities. While percent of crop treated refinements were incorporated into these ARC exposure estimates, chronic risk is still overestimated due to the use of tolerance level residues.

2. *From drinking water.* Review of available data indicates that cyromazine and its metabolite, melamine, are persistent and mobile. There is no established Maximum Concentration Level (MCL) for residues of cyromazine in drinking water, nor have there been drinking water Health Advisory Levels issued for cyromazine. The "Pesticides in Groundwater Database" has no information concerning cyromazine.

*Chronic exposure and risk.* Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause cyromazine to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with cyromazine in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

##### 3. From non-dietary exposure.

Cyromazine is currently registered for outdoor use on ornamentals. There are no lawn or indoor residential uses.

i. *Chronic exposure and risk.* There are residential uses of cyromazine and the Agency acknowledges that there may be chronic, non-occupational exposure scenarios. EPA has identified toxicity endpoints for chronic residential risk assessment. However, no acceptable, reliable exposure data to assess this potential risk are available at this time. Based on the low percentage of the RfD occupied by aggregate dietary exposure and in the best scientific judgement of the Agency, chronic exposure from residential uses will not cause the aggregate risk from cyromazine to exceed the Agency's level of concern.

ii. *Short- and intermediate-term exposure and risk.* There are residential uses of cyromazine and the Agency acknowledges that there may be short- and intermediate-term, non-occupational exposure scenarios. EPA has identified toxicity endpoints for short- and intermediate-term residential risk assessment. However, no acceptable, reliable exposure data to

assess these potential risks are available at this time. Based on the low percentage of the RfD occupied by aggregate dietary exposure and in the best scientific judgement of the Agency, short- and intermediate-term exposure from residential uses will not cause the aggregate risk from cyromazine to exceed the Agency's level of concern.

##### 4. Cumulative exposure to substances with common mechanism of toxicity.

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce



a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether cyromazine has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyromazine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyromazine has a common mechanism of toxicity with other substances.

### C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to cyromazine from food will utilize 32% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants less than 1 year old (discussed below). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to cyromazine in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cyromazine residues.

2. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

For short term MOE calculations, the Agency recommended use of the systemic NOEL of 0.75 mg/kg/day from the 6-month dog feeding study.

The Agency typically considers aggregate MOEs of greater than 100 to be acceptable. Using ARC exposure estimates and making conservative assumptions for exposure from water and residential routes of exposure, short term aggregate MOEs were acceptable for the U.S. and all population groups evaluated. EPA concludes that there is reasonable certainty that no harm to the U.S. population will result from short term aggregate exposure to cyromazine residues.

### D. Aggregate Cancer Risk for U.S. Population

Cyromazine has been classified as a Group E (evidence of non-carcinogenicity for humans) chemical by the Agency. No risk assessment for cancer effects was performed.

### E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children— i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of cyromazine, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the rabbit developmental study, the maternal (systemic) NOEL was 10 mg/kg/day, the highest dose tested. In the rat developmental study, the developmental NOEL was identified at 300 mg/kg/day, while the maternal NOEL was 100 mg/kg/day. Although there were developmental findings at 600 mg/kg/day in rat fetuses, these findings were not severe effects and only occurred in the presence of maternal toxicity.

iii. *Reproductive toxicity study.* In the rat reproduction study, the parental (systemic) and reproductive/developmental NOELs were both established at 50 mg/kg/day. A detailed analysis of the study indicates that slight pup effects (decreased pup growth, decreased number of pups per litter, and increased fetotoxicity) occurred in the presence of slight maternal toxicity (body weight loss).

iv. *Pre- and post-natal sensitivity.* The results of the rat and rabbit developmental studies did not demonstrate any potential for additional pre-natal sensitivity. In the rat reproduction study, the parental and reproductive/developmental NOELs were both established at 50 mg/kg/day, which suggests that there is no special post-natal sensitivity to cyromazine.

v. *Conclusion.* Based on detailed analysis of the toxicological data base for cyromazine, the Agency concludes that aggregate exposure to cyromazine resulting from registered uses plus the emergency exemption use does not represent an unacceptable pre- or post-natal risk to infants and children. The data support use of the standard uncertainty factor of 100; an additional uncertainty factor of 10 is not necessary to be protective of infants and children.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to cyromazine from food will utilize 50% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to cyromazine in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyromazine residues.

3. *Short- or intermediate-term risk.* For short term MOE calculations, the Agency recommended use of the systemic NOEL of 0.75 mg/kg/day from the 6-month dog feeding study.

The Agency typically considers aggregate MOEs of greater than 100 to be acceptable. Using ARC dietary exposure estimates and making conservative assumptions for exposure from water and residential routes of exposure, short term aggregate MOEs were acceptable for all infant and children population groups evaluated. EPA concludes that there is a reasonable certainty that no



harm will result to infants and children from short term aggregate exposure to cyromazine residues.

## V. Other Considerations

### A. Metabolism In Plants and Animals

The nature of the residue in plants is adequately understood. The residue of concern is cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite, melamine (1,3,5-triazine-2,4,6-triamine).

### B. Analytical Enforcement Methodology

An adequate analytical method, HPLC/UV method AG-408, has been validated by the Agency and published in PAM II.

### C. Magnitude of Residues

Residues of cyromazine are not expected to exceed 0.3 ppm in dry bulb onions grown from onion seed treated with cyromazine under the proposed use.

### D. International Residue Limits

There are currently no Codex, Canadian or Mexican limits for residues of cyromazine in or on onions. Therefore, establishment of a time-limited tolerance will not pose a concern for international harmonization.

### E. Rotational Crop Restrictions.

Tolerances are not yet established for sweet corn and radishes as rotational crops (a decision regarding petition PP#6F3332 is currently pending with the Agency). Until such tolerances are established, rotation to sweet corn and radishes is not permitted.

## VI. Conclusion

Therefore, the tolerance is established for combined residues of cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite, melamine (1,3,5-triazine-2,4,6-triamine) in dry bulb onions at 0.3 ppm. In addition to amending § 180.414 to establishing a tolerance for use in dry bulb onions, since the FQPA has eliminated the distinctions between processed food and feed commodities, § 180.414 is also being revised to restructure the existing tolerances.

## VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural

regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 28, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information 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.

## VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP-300534] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which

does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@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 rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests 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 Virginia address in "ADDRESSES" at the beginning of this document.

## IX. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCa section 408 (1), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

**X. 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, the Agency has 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 this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 17, 1997.

**James Jones,**  
*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.414 is revised to read as follows:

**§ 180.414 Cyromazine; tolerances for residues.**

(a) *General.* (1) Tolerances are established for combined residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite melamine (1,3,5-triazine-2,4,6-triamine) in or on the following food commodities:

Commodity	Parts per million
Celery .....	10.0
Cucurbit vegetables .....	2.0
Eggs .....	0.25
Leafy vegetables (except Brassica) .....	10.0
Lettuce, head .....	5.0
Mushrooms .....	10.0
Peppers .....	4.0
Tomato .....	1.0

(2) Tolerances are established for residues of the cyromazine metabolite melamine (1,3,5-triazine-2,4,6-triamine) in or on the following food commodities:

Commodity	Part per million
Fat, poultry (from chicken layer hens and chicken breeder hens only) .....	0.05
Meat, poultry (from chicken layer hens and chicken breeder hens only) .....	0.05
Meat byproducts (from chicken layer hens and chicken breeder hens only) .....	0.05

(3) Tolerances are established for residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) in or on the following food commodities:

Commodity	Part per million
Fat, poultry (from chicken layer hens and chicken breeder hens only) .....	0.05
Meat, poultry (from chicken layer hens and chicken breeder hens only) .....	0.05
Meat byproducts (from chicken layer hens and chicken breeder hens only) .....	0.05

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite, melamine (1,3,5-triazine-2,4,6-triamine), in connection with use of the pesticide under section 18 emergency exemption granted by EPA. The tolerances are specified in the following table. These tolerances expire and are revoked on the date specified in the table.

Commodity	Parts per million	Expiration/revocation date
Onion, dry bulb .....	0.3	July 31, 1998

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite melamine (1,3,5-triazine-2,4,6-triamine), calculated as cyromazine, in or on the following food commodities:

Commodity	Parts per million
Cabbage, Chinese .....	3.0

Commodity	Parts per million
Mustard, Chinese .....	3.0

(d) *Indirect or inadvertent residues.*  
[Reserved]  
[FR Doc. 97-23098 Filed 8-28-97; 8:45 am]  
BILLING CODE 6560-50-F

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-300532; FRL-5738-5]

RIN 2070-AB78

**Desmedipham; Pesticide Tolerances for Emergency Exemptions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for the herbicide desmedipham in or on garden beet roots

and tops. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on garden beet roots and tops. This regulation establishes a maximum permissible level for residues of desmedipham in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on August 30, 1998.

**DATES:** This regulation is effective August 29, 1997. Objections and requests for hearings must be received by EPA on or before October 28, 1997.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP-300532], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300532], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300532]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Pat Cimino, Registration Division

7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9357, e-mail: cimino.pat@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for the herbicide desmedipham, in or on garden beet roots and tops at 0.2 and 15.0 part per million (ppm) respectively. These tolerances will expire and are revoked on August 30, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

### I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL-5572-9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate

exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

### II. Emergency Exemption for Desmedipham on Garden Beet Roots and Tops and FFDCA Tolerances

The New York State Department of Environmental Conservation requested the use of the herbicide desmedipham (Betanex 1.3 EC) for postemergence control of hairy galinsoga, redroot pigweed, common ragweed, common lambsquarters, wild mustard, eastern black nightshade, hairy nightshade and velvetleaf weeds in red garden beets in New York. These weeds were controlled by diethyl-ethyl (Antor); however, this product was voluntarily canceled in 1993 and existing stocks have been exhausted. Alternatives do not provide effective control and growers will experience significant economic losses without the use of desmedipham. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of desmedipham in or on garden beet roots and tops. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent

non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on August 30, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on garden beet roots and tops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether desmedipham meets EPA's registration requirements for use on garden beet roots and tops or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of desmedipham by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than New York to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for desmedipham, contact the Agency's Registration Division at the address provided above.

### III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

#### A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects)

and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk

assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute", "short-term", "intermediate term", and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enactment of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this

assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

#### B. Aggregate Exposure

In examining aggregate exposure, FFDC section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most

highly exposed population subgroup children (1-6 years old) was not regionally based.

#### IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of desmedipham and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for desmedipham on garden beet roots and tops at 0.2 and 15.0 ppm respectively. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

##### A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by desmedipham are discussed below.

1. *Acute toxicity.* For acute dietary risk assessment, the Agency recommended use of the NOEL of 150 mg/kg/day, based on slight increase in skeletal variations in developing pups at the lowest effect level (LEL) of 450 mg/kg/day, from the developmental study in rabbits. This NOEL is used to evaluate the Margin of Exposure (MOE) from the acute dietary risk to pregnant women (females 13+ years or older).

2. *Short- and intermediate-term toxicity.* No short- or intermediate-term non-dietary, non-occupational exposure scenario exists for desmedipham.

3. *Chronic toxicity.* EPA has established the RfD for desmedipham at 0.04 milligrams/kilogram/day (mg/kg/day). This RfD is based on a reproduction study in rats with a NOEL of 4 mg/kg/day and an uncertainty factor of 100. The effects observed at the LEL of 20 mg/kg/day were significant increases in splenic weights and compensatory functioning of the thyroid.

4. *Carcinogenicity.* Cancer risks have not been identified by the Agency. Desmedipham has been classified as a Group "E" chemical, no evidence of carcinogenicity, based on the results from two acceptable studies with two species.

#### B. Exposures and Risks

1. *From food and feed uses.* A permanent tolerance of 0.2 ppm has been previously established (40 CFR 180.353) for negligible residues of the herbicide desmedipham, in or on sugar beet roots and tops. Risk assessments were conducted by EPA to assess dietary exposures and risks from desmedipham as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute dietary exposure endpoint of concern for desmedipham is a slight increase in skeletal variations in developing pups which was observed in the rabbit developmental study. The population subgroup of concern is females 13+ years old (women of childbearing age). Acute dietary exposure (food only) was calculated using the high end exposure value and TMRC (worst case) assumptions. Therefore, this risk assessment is considered conservative. Despite the potential for acute exposure to desmedipham in drinking water, EPA does not expect the aggregate acute exposure to exceed the Agency's level of concern.

ii. *Chronic exposure and risk.* In conducting exposure assessments for this section 18 request, EPA used tolerance level residues and assumed that 100% of the crop would be treated with the pesticide (TMRC worst-case analysis assumptions, as described above).

2. *From drinking water.* Based on information from the Weed Science Society Handbook (7th ed., 1994), desmedipham has the following environmental fate characteristics: 1) soluble in water to the extent of 7 mg/L at 20 C and pH 7; 2) half-life of  $\leq 1$  month in silty loam, sandy loam, and silty clay loam soils; and 3) exhibits no appreciable leaching with residues remaining in the top 2 inches of soil.

No Maximum Concentration Level or Health Advisory Level has been established for residues of desmedipham in drinking water. There is no entry for desmedipham in the "Pesticides in Groundwater Database" (EPA 34-12-92-001, Sept. 1992).

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by

a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause desmedipham to exceed the RfD if the tolerances being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with desmedipham in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerances are granted.

3. *From non-dietary exposure.* Non-dietary, non-occupational exposure is not expected because desmedipham is not registered for indoor or outdoor residential uses.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply

scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether desmedipham has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, desmedipham does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that desmedipham has a common mechanism of toxicity with other substances.

#### C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For the US population subgroup of concern, pregnant females (13+ years of age), an MOE value of 375,000 was calculated using the high end human exposure value of 0.0004 mg/kg/day. The Agency generally considers MOEs over 100 (food only) acceptable. This acute dietary (food only) risk assessment used tolerance level residues and assumed 100% crop-treated (TMRC worst-case analysis, described above).

Despite the potential for risk from acute exposure to desmedipham in drinking water, the Agency does not expect acute aggregate exposure to exceed its level of concern. EPA concludes that there is a reasonable certainty that no harm will result from acute aggregate exposure to desmedipham.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to desmedipham from food will utilize less than 1.0% of the RfD for the U.S. population. Aggregate exposure to desmedipham from food utilizes less than 1% of the RfD for all major identifiable subgroups, including infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

Despite the potential for exposure to desmedipham in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to desmedipham residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Because no short- or intermediate-term non-dietary, non-occupational exposure scenario exists for desmedipham, a short- or intermediate-term aggregate risk assessment is not required.

#### E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children— a. In general.* In assessing the potential for additional sensitivity of infants and children to residues of desmedipham, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE

analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

b. *Developmental toxicity studies*— i. *Rat developmental toxicity.* The maternal (systemic) NOEL was 100 mg/kg/day, based on decreased weight gain at the lowest observed effect level (LOEL) of 1,000 mg/kg/day. The developmental (pup) NOEL was 100 mg/kg/day, based on decreased fetal body weight and increased incidence of skeletal anomalies at the LOEL of 1,000 mg/kg/day.

ii. *Rabbit developmental toxicity.* The maternal (systemic) NOEL was 150 mg/kg/day, based on decreased weight gain at the LOEL of 450 mg/kg/day. The developmental (pup) NOEL was 150 mg/kg/day, based on a slight increase in skeletal variations at the LEL of 450 mg/kg/day.

c. *Reproductive toxicity study*— *Rat reproduction toxicity.* The maternal (systemic) NOEL was 4 mg/kg/day, based on decreased body weight and hemolytic anemia at the LOEL of 20 mg/kg/day. The reproductive/developmental (pup) NOEL was 4 mg/kg/day, based on decreased pup body weight and reduced litter size at the LEL of 20 mg/kg/day.

d. *Pre- and post-natal sensitivity.* In the rat and rabbit developmental studies, both the developmental and maternal NOELs and LOELs (100 and 1,000 mg/kg/day for rats and 150 and 450 mg/kg/day for rabbits), respectively, occurred at the same dose levels which demonstrates that there is no special pre-natal sensitivity in infants and children exposed to desmedipham.

In the rat reproductive study, both the pup and parental NOEL and LOEL of 4 and 20 mg/kg/day, respectively, occurred at the same dose level which demonstrates that there is no special post-natal sensitivity in infants and children exposed to desmedipham.

e. *Conclusion.* The Agency concluded that the developmental and reproductive findings in rats did not demonstrate any pre-natal or post-natal acute risk concerns for infants and children.

The Agency concluded that the observed developmental effects in the rabbit study, a slight increase in skeletal variations in developing pups, presents a pre-natal acute risk concern for infants and children. An acute dietary risk assessment evaluating margin of exposure (MOE) for pregnant women 13+ years or older is required when the Agency determines that there is a pre- or post- natal acute risk effect of concern.

2. *Acute risk.* As described above, the acute dietary MOE for pregnant women 13+ years old is 375,000 based on the rabbit developmental NOEL of 150 mg/kg/day and the high end human exposure value of 0.0004 mg/kg/day. This MOE is much higher than the minimal acceptable MOE of 100 for acute exposure to food. Despite the potential for acute exposure to desmedipham in drinking water, the Agency does not expect acute aggregate exposure to exceed its level of concern. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from acute aggregate exposure to desmedipham.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate chronic exposure to desmedipham from food will utilize less than 1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for chronic exposure to desmedipham in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from chronic aggregate exposure to desmedipham residues.

4. *Short- or intermediate-term risk.* Because no short- or intermediate-term non-dietary, non-occupational scenario exists for desmedipham, a short- or intermediate-term aggregate risk assessment is not required.

## V. Other Considerations

### A. Metabolism In Plants and Animals

The qualitative nature of the desmedipham residue in plants is adequately understood. The residue of concern is desmedipham per se.

### B. Analytical Enforcement Methodology

A desmedipham-specific analytical method (HPLC UV/VIS) is available for enforcement.

### C. Magnitude of Residues

Residues of desmedipham are not expected to exceed 0.2 ppm in garden beet roots and 15.0 ppm in garden beet tops (leaves) as a result of this Section 18 use. Secondary residues of desmedipham are not expected in animal commodities as no livestock feed items are associated with this Section 18 use.

### D. International Residue Limits

There are no Codex, Canadian, or Mexican international residue limits established for use of desmedipham on red (garden) beets.

## VI. Conclusion

Therefore, the tolerances are established for desmedipham in garden beet roots and tops at 0.2 and 15.0 ppm respectively.

## VII. Objections and Hearing Requests

The new FFDC section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 28, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue



of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information 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.

**VIII. Public Docket**

EPA has established a record for this rulemaking under docket control number [OPP-300532] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@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 rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests 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 Virginia

address in "ADDRESSES" at the beginning of this document.

**IX. Regulatory Assessment Requirements**

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408 (d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

**X. 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, the Agency has 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 this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 13, 1997.

**James Jones,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.353 is amended to read as follows:

- a. By designating the existing text as paragraph (a) and adding a heading.
- b. By adding paragraph (b).
- c. By adding the headings and reserving paragraphs (c) and (d).

The added text reads as follows:

**§ 180.353 Desmedipham; tolerances for residues.**

(a) *General.* \* \* \*

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the herbicide desmedipham in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the date specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Garden beet roots .....	0.2	8/30/98
Garden beet tops .....	15.0	8/30/98

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97-23096 Filed 8-28-97; 8:45 am]

BILLING CODE 6560-50-F



**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 180, 185 and 186**

[OPP-300542; FRL-5739-8]

RIN 2070-AB78

**Paraquat; Pesticide Tolerances for Emergency Exemptions**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for paraquat (1,1'-dimethyl-4,4'-bipyridinium-ion) in or on dry peas and mustard seed. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on dry peas in Idaho, Oregon and Washington, and mustard seed in Washington. This regulation establishes maximum permissible levels for residues of paraquat in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on November 15, 1998.

**DATES:** This regulation is effective August 29, 1997. Objections and requests for hearings must be received by EPA on or before October 28, 1997.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP-300542], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300542], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of

objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300542]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Pat Cimino, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9357, e-mail: cimino.pat@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for the herbicide/desiccant/defoliant paraquat, in or on dry peas at 0.3 parts per million (ppm) and mustard seed at 5.0 ppm. These tolerances will expire and are revoked on November 15, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

**I. Background and Statutory Authority**

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL-5572-9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is

"safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

**II. Emergency Exemptions for Paraquat on Dry Peas and Mustard Seed and FFDCA Tolerances**

The Idaho Department of Agriculture requested a regional emergency exemption for use of paraquat dichloride (Gramoxone Plus Herbicide) for desiccation of weeds infesting green peas grown for seed and dry peas in Idaho, Oregon and Washington in March, 1997. Unusually cold, wet weather delayed the pea planting season resulting in late pea emergence and higher incidence of weed infestations in fields. Continued moist, cool weather has contributed to weeds remaining green at harvest. Weeds plug harvesting equipment delaying harvest and the

delays result in downgraded or unmarketable peas due to shattered pods, bleached and sloughed seed coats and sprouting. There are currently no registered pesticides or alternative methods of control which can provide desiccation of weeds and permit harvest of the crops. After having reviewed the submission, EPA concurs that emergency conditions exist for these states.

The Washington Department of Agriculture requested a specific exemption for use of paraquat (Gramoxone Extra Herbicide) for desiccation of weeds in mustard seed grown for processing (condiment). An early season freeze coupled with continuous cool, early season growing conditions stunted this year's mustard crop and allowed weeds, predominantly Russian thistle, to become established in the crop. Affected growers will be unable to harvest infested mustard fields without the use of a desiccant harvest aid. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of paraquat in or on dry peas and mustard seed. In doing so, EPA considered the new safety standard in FFDC section 408(b)(2), and EPA decided that the necessary tolerance under FFDC section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on Nov 15, 1998, under FFDC section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on dry peas and mustard seed after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether paraquat meets EPA's registration requirements for use on dry peas and mustard seed or whether

permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of paraquat by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Idaho, Oregon, and Washington for dry peas and Washington for mustard seed to use this pesticide on these crops under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for paraquat, contact the Agency's Registration Division at the address provided above.

### III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

#### A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of

the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide

applications. However, since enactment of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

#### B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level.

The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup non-nursing infants (less than 1 year old) was not regionally based.

#### IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of paraquat and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for paraquat (1,1'-dimethyl-4,4'-bipyridinium-ion) on dry peas at 0.3 ppm and mustard seed at 5.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

##### A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as

the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by paraquat are discussed below.

1. *Acute toxicity.* Based on the proposed and existing use patterns and tolerances and available toxicological data, there are no acute dietary exposure endpoints of concern for paraquat.

2. *Short- and intermediate-term toxicity.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential uses. There are no indoor residential uses of paraquat and based on the nature of the non-food outdoor uses, the Agency does not expect significant exposure from the registered outdoor residential uses (spot treatment of vegetation for ornamental crop production) of paraquat. Therefore, a short- and intermediate-term aggregate risk assessment has not been performed.

3. *Chronic toxicity.* EPA has established the RfD for paraquat at 0.0045 milligrams/kilogram/day (mg/kg/day). This RfD is based on a one year dog feeding study with a NOEL of 15 ppm (0.45 mg/kg/day) and an uncertainty factor of 100. Chronic pneumonitis was observed at the next dose of paraquat tested, 30 ppm (0.93 mg/kg/day, expressed as paraquat cation).

4. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified paraquat as Group "E" for carcinogenicity (evidence of noncarcinogenicity for humans).

##### B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.205) for the herbicide/desiccant/defoliant paraquat (1,1'-dimethyl-4,4'-bipyridinium-ion), in or on a variety of plant raw agricultural commodities ranging from 0.05 ppm in broccoli to 30 ppm in bean straw, and animal commodities ranging from 0.01 ppm (non-detectable residues) in milk and eggs to 0.30 ppm for cattle kidney. Risk assessments were conducted by EPA to assess dietary exposures and risks from paraquat as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of

a one day or single exposure. Based on the proposed and existing use patterns and tolerances and available toxicological data, there are no acute dietary exposure endpoints of concern for paraquat.

ii. *Chronic exposure and risk.* For the purpose of assessing potential chronic dietary exposure from paraquat, EPA assumed tolerance levels for all uses and percent of crop treated refinements for some commodities to estimate the Anticipated Residue Contribution (ARC) from the proposed and existing food uses of paraquat. The use of percent of crop treated data for some of the existing food uses in this analysis results in a more refined estimate of exposure than the TMRC.

2. *From drinking water.* Review of terrestrial field dissipation data by the Environmental Fate and Effects Division indicates that paraquat is persistent and very soluble in water but has a high affinity to bind to sediment. As noted in "Pesticides in Groundwater Database" (EPA 734-12-92-001, Sept. 1992), 971 wells were sampled in 5 states from 1983 to 1990. Eleven of the 971 wells exhibited positive hits, up to 0.1 mg/L (ppm). However, the two wells that exhibited concentrations at 0.1 mg/L were in Missouri, with a detection limit which was also 0.1 mg/L. The next highest concentration of paraquat was 0.018 mg/L from a well in Virginia, where the detection limit of the analytical method was 0.00001 mg/L. Based on the poor analytical methodology used, the Agency believes that the Missouri data are unreliable. There is no established Maximum Concentration Level for residues of paraquat in drinking water. The following health advisory levels for paraquat in drinking water have been established: children (short-term exposure) 0.1 mg/L; children (longer-term exposure) 0.05 mg/L; adult (intermediate-term exposure) 0.2 mg/L; and adult (lifetime exposure) 0.03 mg/L.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about

body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause paraquat to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with paraquat in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Paraquat is registered for use in federal conservation reserve programs and for weed control in ornamental crop production; however, the Agency does not expect significant exposure from these registered outdoor non-food uses.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms

increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether paraquat has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, paraquat does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that paraquat has a common mechanism of toxicity with other substances.

### C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* No acute toxicity effect of concern was identified by the Agency, so this risk assessment is not required.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to paraquat from dietary (food only) sources will utilize 10 % of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants less than 1 year old. The chronic risk for infants and children is discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to paraquat in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to paraquat residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. There are no indoor residential uses for paraquat and based on the nature of the outdoor non-food uses, the Agency does not expect significant exposure from the registered outdoor residential uses (spot treatment of vegetation for ornamental crop production) of paraquat. Therefore, a short- and intermediate-term aggregate risk assessment has not been performed.

#### *E. Aggregate Risks and Determination of Safety for Infants and Children*

1. *Safety factor for infants and children.* i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of paraquat, EPA considered data from developmental toxicity studies in the rat and mouse and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies—* a. *Rats.* The maternal NOEL was 1 mg/kg/day. The maternal LOEL of 5 mg/kg/day (expressed as paraquat cation) was based on clinical signs of thin and

hunched appearance, and decreased body weight gains. Developmental toxicity was manifested as decreases in fetal body weight and delayed ossification in forelimb and hindlimb digits; the NOEL and LOEL were 1 mg/kg/day and 5 mg/kg/day, respectively.

b. *Mice.* The maternal NOEL was 1 mg/kg/day expressed as paraquat cation). The maternal LOEL of 5 mg/kg/day was based on a reduction in body weight gain. The NOEL for developmental toxicity was also 1 mg/kg/day. The LOEL of 5 mg/kg/day was based on partially ossified 4th sternbrae.

iii. *Reproductive toxicity study—Rats.* The NOEL for systemic toxicity in the adults was 25 ppm (1.25 mg/kg/day). The LOEL of 75 ppm (3.75 mg/kg/day), expressed as paraquat cation, was based on the increased incidence of alveolar histiocytosis in the parents. The reproductive/developmental toxicity NOEL was considered to be > 150 ppm (7.5 mg/kg/day, expressed as paraquat cation) at the highest dose tested since no reproductive effects were presented in this study.

iv. *Pre- and post-natal sensitivity.* The pre- and post-natal toxicology data base for paraquat is complete with respect to current toxicological data requirements.

In the rat developmental study, the maternal (systemic) NOEL and the developmental NOEL are both 1 mg/kg/day. The LOELs are 5 mg/kg/day for both maternal and developmental effects. The developmental results at 5 mg/kg/day do not indicate any severe effects compared to the maternal effects at the LOEL. In the mouse developmental study, the maternal (systemic) and developmental NOELs were established at 1 mg/kg/day with the LOELs set at 5 mg/kg/day. The developmental effects at the LOEL of 5 mg/kg/day do not demonstrate any special pre-natal sensitivity for infants and children which would require an additional safety factor.

In both studies, maternal and developmental NOEL/LOEL levels and effects at the LOEL suggest that there is no increased sensitivity for infants and children from exposure to paraquat residues in the diet.

In the rat reproduction study the parental (systemic) NOEL was 1.25 mg/kg/day. The pup NOEL was considered to be > 7.5 mg/kg/day at the highest dose tested which suggests that there is no increased post-natal sensitivity to paraquat.

v. *Conclusion.* The effects observed in the mouse and rat developmental studies and the rat reproductive study did not demonstrate any special pre- or

post-natal sensitivity for infants and children.

The Agency concludes that reliable data support use of the standard 100-fold uncertainty factor and that an additional uncertainty factor is not needed to protect infants and children.

2. *Acute risk.* No acute effect endpoint of concern was identified by the Agency so this risk assessment is not required.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that the percentage of the RfD that will be utilized from dietary (food only) exposure to paraquat ranges from 12% for nursing infants to 31% for non-nursing infants less than 1 year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Under current guidelines, the registered residential uses (weed control in ornamental crop production) do not fall under a chronic scenario. Despite the potential for exposure to paraquat in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to paraquat residues.

#### **V. Other Considerations**

##### *A. Metabolism In Plants and Animals*

The qualitative nature of the residue in plants and animals has been determined. The residue of concern is the parent compound, paraquat, only, as specified in 40 CFR 180.205.

##### *B. Analytical Enforcement Methodology*

Method I of PAM, Vol. II (spectrophotometric), is adequate for tolerance enforcement purposes. In addition, the Agency concluded that Method 1B adequately recovers paraquat cation residues from samples of potatoes and soybeans treated with radiolabeled paraquat.

##### *C. Magnitude of Residues*

Residues of paraquat are not expected to exceed 0.3 ppm in/on dry peas and 5.0 ppm in/on mustard seed as a result of these section 18 uses. For the purposes of the dried pea section 18 requests only, the Agency is willing to accept the proposed prohibition for feeding the pea byproducts. No animal feed items are associated with the proposed use on mustard seed.

#### D. International Residue Limits

No CODEX, Canadian, and/or Mexican MRLs/tolerances have been established for residues of paraquat on peas or mustard seed.

#### E. Rotational Crop Restrictions.

As noted in the residue chemistry chapter of the Paraquat Reregistration Eligibility Document, no plantback restrictions or field rotational crop studies are required.

#### VI. Conclusion

Therefore, tolerances are established for paraquat (1,1'-dimethyl-4,4'-bipyridinium-ion) in/on dry peas at 0.3 ppm and mustard seed at 5.0 ppm in 40 CFR 180.205. In addition, § 180.205 was restructured in a final rule published in the **Federal Register** on May 2, 1997 (62 FR 24045)(FRL-5713-2) to combine the tolerances for food and feed commodities and raw agricultural commodities into the same section. At that time the food and feed additive tolerances in §§ 185.4700 and 186.4700 were combined with the tolerances in § 180.205(a). Therefore, §§ 185.4700 and 186.4700 are no longer necessary and are removed in this rule.

#### VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 28, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a

statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information 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.

#### VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP-300542] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@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 rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests 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 Virginia address in "ADDRESSES" at the beginning of this document.

#### IX. Regulatory Assessment Requirements

This final rule establishes a time limited tolerance on EPA's own initiative, under FFDCA section 408(d). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the time limited tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

#### X. 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, the Agency has 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 this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects**

**40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

**40 CFR Part 185**

Environmental protection, Food additives, Pesticides and pests.

**40 CFR Part 186**

Environmental protection, Animal feeds, Pesticides and pests.

Dated: August 18, 1997.

**James Jones,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I, parts 180, 185, and 186 is amended as follows:

**PART 180—[AMENDED]**

- 1. In part 180:
  - a. The authority citation for part 180 continues to read as follows:  
**Authority** : 21 U.S.C. 346a and 371.
  - b. In § 180.205, the table in paragraph (b) is amended by ordering alphabetically the existing entries, and by adding alphabetically entries for "peas, (dry)," and "mustard, seed," to read as follows:

**§ 180.205 Paraquat; tolerances for residues.**

*	*	*	*	*
(b) *	*	*	*	*

Commodity	Parts per million	Expiration/Revocation Date
*      *	*      *      *	
Peas (dry) .....	0.3	November 15, 1998
Mustard, seed .....	5.0	November 15, 1998
*      *	*      *      *	

\*      \*      \*      \*      \*

**PART 185—[AMENDED]**

- 2. In part 185:
  - a. The authority citation for part 185 continues to read as follows:  
**Authority** : 21 U.S.C. 346a and 348.

**§ 185.4700 [Removed]**

b. Section 185.4700 is removed.

**PART 186—[AMENDED]**

- 3. In part 186:
  - a. The authority citation for part 186 continues to read as follows:  
**Authority** : 21 U.S.C. 346a and 348.

**§ 186.4700 [Removed]**

b. Section 186.4700 is removed.

[FR Doc. 97-23094 Filed 8-28-97; 8:45 am]  
BILLING CODE 6560-50-F

**LEGAL SERVICES CORPORATION**

**45 CFR Part 1602**

**Procedures for Disclosure of Information Under the Freedom of Information Act**

**AGENCY:** Legal Services Corporation.  
**ACTION:** Final rule.

**SUMMARY:** This final rule makes technical revisions to the Legal Services Corporation's ("Corporation" or "LSC")

rule concerning the disclosure of information under the Freedom of Information Act by revising the Corporation's address and deleting outdated references to regional offices. Other minor technical revisions are also made.

**EFFECTIVE DATE:** This final rule is effective on August 29, 1997.

**FOR FURTHER INFORMATION CONTACT:** Office of the General Counsel, (202) 336-8817.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Freedom of Information Act, the Corporation is required to publish current information in the **Federal Register** that provides guidance to the public regarding how to obtain information about and from the Corporation. See 5 U.S.C. 552. The Corporation's Operations and Regulations Committee ("Committee") of the Corporation's Board of Directors ("Board") met on July 13, 1997, in Los Angeles, California, and voted to recommend technical changes to the rule so that it would conform to this FOIA requirement. On July 14, 1997, the changes were recommended to the Board, which adopted the revisions and directed that they be published as final with an effective date on the date of publication.

This final rule makes several technical revisions to the Corporation's FOIA regulation to correct inaccurate and misleading information, so that the

Corporation is in compliance with the FOIA. The corrections include changing the Corporation's address to reflect its current location and deleting references to regional offices that no longer exist. Related stylistic and grammatical changes are also made. None of the changes are substantive, and therefore the changes do not require a public notice and comment period. The revisions are effective on the date of publication.

**List of Subjects in 45 CFR Part 1602**

Grant programs, Legal services.

For the reasons set forth in the preamble, LSC amends 45 CFR part 1602 to read as follows:

**PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT**

- 1. The authority citation for part 1602 is revised to read as follows:

**Authority:** 5 U.S.C. 552 and 42 U.S.C. 2996d(g).

- 2. Section 1602.4 is revised to read as follows:

**§ 1602.4 Index of records.**

The Corporation will maintain a current index identifying any matter within the scope of § 1602.5(b) (1) through (3) which has been issued, adopted, or promulgated by the Corporation, and other information



published or made publicly available. The index will be maintained and made available for public inspection and copying at the Corporation's office in Washington, DC. The Corporation will provide a copy of the index on request, at a cost not to exceed the direct cost of duplication.

3. Section 1602.5 is amended by revising paragraph (a) to read as follows:

**§ 1602.5 Central records room.**

(a) The Corporation will maintain a central records room at its office at 750 First Street, NE, 11th Floor, Washington, DC 20002-4250. This room will be supervised by a Records Officer, and will be open during regular business hours of the Corporation for the convenience of members of the public in inspecting and copying records made available pursuant to this part. Certain records, described in paragraph (b) of this section, will be regularly maintained in or in close proximity to the records room, to facilitate access thereto by any member of the public.

\* \* \* \* \*

4. Section 1602.7 is amended by revising the heading and paragraph (b) to read as follows:

**§ 1602.7 Use of records room.**

\* \* \* \* \*

(b) The records room will also be available to any member of the public to inspect and copy records which are not regularly maintained in such room. To obtain such records a person should present his or her request identifying the records to the Records Officer. Because it will sometimes be impossible to produce these records or copies of them on short notice, a person who wishes to use records room facilities to inspect or copy such records is advised to arrange a time in advance, by telephone or letter request made to the Records Officer. Persons submitting requests by telephone will be advised by the Records Officer or another designated employee whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Persons submitting written requests should identify the records sought in the manner provided in § 1602.8(b) and should indicate whether they wish to use the records room facilities on a specific date. The Records Officer will endeavor to advise the requesting party as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

5. Section 1602.8 is amended by revising paragraphs (a) and (b) (4) and (5) to read as follows:

**§ 1602.8 Availability of records on request.**

(a) In addition to the records made available through the records room, the Corporation will make such records available to any person in accordance with paragraphs (b) and (c) of this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9 of these regulations.

(b) *Requests.* \* \* \*

(4) All requests for records under this section shall be made in writing, with the envelope and the letter clearly marked "Freedom of Information Request." All such requests shall be addressed to the Records Officer at the address given in § 1602.5(a). Any request not marked and addressed as specified in this paragraph will be so marked by Corporation personnel as soon as it is properly identified, and forwarded immediately to the Records Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (c) of this section until forwarding has been effected. On receipt of an improperly addressed request, the Records Officer shall notify the requesting party of the date on which the time period commenced to run.

(5) A person desiring to secure copies of records by mail should write to the Records Officer at the address given in § 1602.5(a). The request must identify the records of which copies are sought in accordance with the requirements of this paragraph, and should indicate the number of copies desired. Fees may be required to be paid in advance in accordance with § 1602.13. The requesting party will be advised of the estimated fee, if any, as promptly as possible. If a waiver of fees is requested, the grounds for such request should be included in the letter.

\* \* \* \* \*

5. Section 1602.12(a) is revised to read as follows:

**§ 1602.12 Appeals of denial.**

(a) Any person whose written request has been denied is entitled to appeal the denial within ninety days by writing to the President of the Corporation at the address given in § 1602.5(a). The envelope and letter should be clearly marked "Freedom of Information Appeal." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

\* \* \* \* \*

Dated: August 25, 1997.

**Victor M. Fortunio,**  
*General Counsel.*

[FR Doc. 97-23040 Filed 8-28-97; 8:45 am]

BILLING CODE 7050-01-P

**LEGAL SERVICES CORPORATION**

**45 CFR Part 1626**

**Restrictions on Legal Assistance to Aliens**

**AGENCY:** Legal Services Corporation.  
**ACTION:** Final rule.

**SUMMARY:** This final rule revises the Legal Services Corporation's ("Corporation" or "LSC") rule on legal representation of aliens. The revisions to this rule are intended to implement a statutory provision included in the Corporation's FY 1997 appropriations act, which permits the use of a recipient's non-LSC funds for legal assistance to otherwise ineligible aliens who are the victims of domestic abuse.

**DATES:** The final rule is effective on September 29, 1997.

**FOR FURTHER INFORMATION CONTACT:** Office of the General Counsel, (202) 336-8817.

**SUPPLEMENTARY INFORMATION:** Section 504(a)(11) of the LSC appropriations act for Fiscal Year ("FY") 1996, Pub. L. 104-134, 110 Stat. 1321 (1996), prohibits the Corporation from providing funding to any person or entity ("recipient") that provides legal assistance to ineligible aliens. Subsequent to the publication of an interim rule to implement this restriction, Congress passed the Corporation's 1997 appropriations act, Pub. L. 104-208, 110 Stat. 3009 (1996). That legislation amended the § 504(a)(11) restriction in the FY 1996 appropriations act to permit recipients to use non-LSC funds to serve indigent aliens who are victims of domestic abuse on matters directly related to the abuse (hereinafter referred to as the "Kennedy Amendment"). The Kennedy Amendment became effective on October 1, 1996, during the comment period for the interim rule. A number of comments urged incorporation of the Kennedy Amendment into the final regulations, even though the interim rule understandably made no mention of the Kennedy Amendment because the rule was published before enactment of the Amendment. While the few comments the Corporation received made suggestions on how to include the Amendment into the rule, the general public was not provided notice of the Amendment. Accordingly, on April 21,



1997 (62 FR 19409), the Corporation published a final rule that included the Kennedy Amendment provisions as interim provisions with a request for comments.

The Corporation received 2 comments on the Kennedy Amendment interim provisions, one from an LSC recipient and one from Ayuda, a public interest organization which handles cases relating to immigration, political asylum and family law matters for foreign-born individuals residing in the D.C. Metropolitan area. Both comments urged the Corporation to interpret the Kennedy Amendment as broadly as possible consistent with Congressional intent. The comments also applauded the provisions protecting the confidentiality of Kennedy Amendment clients. In addition, Ayuda pointed out some inconsistencies in one of the interim definitions with the terms of the Kennedy Amendment.

The Corporation's Operations and Regulations Committee of the LSC Board of Directors held public hearings in Los Angeles, California, on July 13, 1997, on the Kennedy Amendment provisions and revised the definition of "battered or subjected to extreme cruelty" in response to comments. The other interim provisions were approved by the Committee without change. The Committee recommended that the LSC Board adopt the provisions as revised by the Committee, and on July 14, 1997, the Board adopted the recommended provisions as final regulations.

A section-by-section discussion of the Kennedy Amendment provisions is provided below.

#### *Section 1626.2 Definitions*

The Kennedy Amendment uses the terms "spouse" and "parent" as the defining relationships in abusive relationships covered by the Amendment. The abuser must either be a spouse or parent, or a member of the spouse's or parent's family residing in the same household. Ayuda's comment advocated a category broader than "spouse" or "parent" but conceded that new legislation would be required to include, for example, a non-spouse partner, a blood relative other than a parent, or an individual with whom the victim has had a dating relationship. Ayuda did, however, urge the Corporation to use a broad definition of what constitutes "a member of the spouse's or parent's family residing in the same household."

"Spouse" and "parent" are terms of relationships that are generally regulated by State law. "Spouse" refers to either the husband or wife in a marital relationship and "parent"

generally refers to a father or mother by blood or legal adoption. See Random House Webster's College Dictionary at 948 and 1249 (1997). This rule does not expand the generally recognized legal meanings of these terms; nor does it provide definitions for such common terms. The Board decided that it is unnecessary to define such common terms. Recipients should defer to local law defining "spouse" and "parent" or Federal law where it would apply in a particular case. For example, if the recipient assists the victim of abuse to self-petition for immigrant status under part 204 of the Immigration and Nationality Act ("INA"), the representation may require reference to the definition of "spouse" in Sec. 101(a)(35) of the INA.

The Board decided to direct recipients to refer to State protection order statutes for guidance on the meaning of a "member of the spouse's or parent's family." Ayuda pointed out that most states have protection order statutes that define "family members." Because protection order statutes would normally have the same purpose as the Kennedy Amendment to provide legal protection against domestic violence, it is appropriate for recipients to defer to such laws where available or to other applicable local law.

#### *Section 1626.2(f) Battered or Subjected to Extreme Cruelty*

The Kennedy Amendment requires the Corporation to base its definition of "battered or subjected to extreme cruelty" on the regulatory definition of the term promulgated by the Immigration and Naturalization Service ("INS") pursuant to subtitle G of the Violence Against Women Act of 1994 ("VAWA"), see Pub. L. 103-322, 108 Stat. 1953 (1994). Subtitle G refers to the section of VAWA that provides protections for battered immigrant women and children. *Id.* For example, Subtitle G provides authority for abused women and children to self-petition for lawful permanent resident status and to apply for suspension of deportation proceedings. Rather than include the language of the INS definition, the LSC interim rule simply cited to the INS definition at 8 CFR part 204. See 8 CFR 204.2(c)(1)(vi) and 204.2(e)(1)(vi) (The definition is found twice in part 204, once in the regulations governing self-petitions by spouses and again in the regulations governing self-petitions by a child).

Ayuda contended that, by simply citing to the definition in part 204, the Corporation was including language that goes beyond defining the type of abuse and is inconsistent with or not required

by the Kennedy Amendment. The Board agreed in part with Ayuda's specific recommendations regarding this definition.

In addition to defining the meaning of abuse, the INS definition in part 204 includes requirements that an abused person must meet in order to qualify to self-petition for immigration status under part 204. These qualifying requirements are unrelated to defining the type of abuse contemplated by the term "battered or subjected to extreme cruelty." In addition, for the purposes of the LSC definition in part 1626, certain of these qualifying requirements are not consistent with the Kennedy Amendment. For example, one requirement in the INS definition is that the abuse be committed by a U.S. citizen or lawful permanent resident spouse or parent. The Kennedy Amendment does not require that the spouse or parent be a U.S. citizen or lawful permanent resident. In addition, the category of perpetrators is limited to a spouse or parent in the INS definition, whereas the Kennedy Amendment also includes "a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent."

Ayuda urged the Corporation to adopt a definition that, unlike the INS definition, does not require that the abuse must have taken place during the victim's marriage to the abuser. The Board noted that the terms of the Kennedy Amendment only apply to spousal abuse that occurs during marriage. However, the Board decided it was unnecessary to deal with the issue in a definition, as the matter is made clear in § 1626.4, the provision setting out the terms of the Kennedy Amendment.

The Board adopted a definition that includes only that language from the INS definition that defines the type of abuse and that is consistent with the terms of the Kennedy Amendment. In addition, the final definition not only includes clear acts of violence, such as rape or forceful detention, it also clarifies that certain actions may be considered to be abusive because they are part of an overall pattern of violence.

#### *Section 1626.2(g) Legal Assistance Directly Related to the Prevention of, or Obtaining Relief From, the Battery or Cruelty*

The interim rule's definition of "legal assistance directly related to the prevention of, or obtaining relief from the battery or cruelty" established a standard that would include any legal assistance that would assist an abuse victim to escape from the abuse, ameliorate the current effects of the

abuse, or protect against future abuse. Ayuda urged that this standard be broadened to (1) ensure that "protecting against future abuse" include representation that would assist the victim to establish self-sufficiency, (2) recognize the lingering effects of domestic violence, and (3) allow assistance in immigration matters not covered by VAWA.

The Board did not broaden the interim rule's standard. A broader standard would be inconsistent with the language and intent of the Kennedy Amendment, because the Kennedy Amendment requires a direct nexus to the abusive situation. Besides, the standard already includes much of the type of representation of concern to Ayuda. Apparently, the interim rule's preamble discussion of the scope of representation was misinterpreted as being exclusive. It was not meant to be exclusive; rather, it was intended to provide a few examples. Although the preamble mentioned that representation under VAWA would be allowed, this was not intended to mean that other representation in immigration matters is prohibited. Thus, representation under the INA that would allow an abuse victim to stabilize immigration status, facilitate naturalization, or acquire work authorization would be permitted if the recipient can show the necessary connection to abuse. Likewise, as long as the representation can be justified as necessary to "assist victims escape from an abusive situation, ameliorate the current effects of the abuse or protect against future abuse," allowable representation would include everyday domestic and poverty law matters such as obtaining civil protection orders, divorce, paternity, child custody, child and spousal support, housing, public benefits, employment, abuse and neglect, juvenile proceedings, and contempt actions. For example, a recipient could provide legal assistance to seek a civil protection order against the abuser and to terminate the marriage and the parental rights of the abuser, but could not provide adoption assistance if the client remarries and the new spouse, who is also an ineligible alien, wishes to adopt the children. Similarly, the definition would permit the recipient to use non-LSC funds to provide assistance to secure housing, medical or income assistance for the abused spouse and children, so they would no longer have to be dependent on the abuser. However, absent some evidence that subsequent events were the direct result of the abuse, it would not, for example, permit them to challenge an eviction action by a landlord for non-payment of

rent, sue the agency administering the medical assistance program for failure to pay for specific care, or to challenge a cutoff of public assistance for failure to meet work requirements.

**Section 1626.4 Applicability**

Paragraph (a) of this section sets out the terms of the Kennedy Amendment. As a threshold matter, the Kennedy Amendment is not stated as an exception; rather, it clarifies that the restriction on alien representation in 504(a)(11) shall not be construed to prohibit representation of persons who fall within the terms of the Kennedy Amendment. Accordingly, the rule states that the prohibition in the rule does not apply to applicants for service who meet the criteria set out in the Kennedy Amendment. Thus, victims of abuse under the Kennedy Amendment may be represented by recipients with non-LSC funds, provided that the legal assistance is directly related to the abuse. Under this analysis, the immigration status of Kennedy Amendment clients is essentially irrelevant, because they may be served with non-LSC funds regardless of citizenship or alien status.

One comment stated that the Kennedy Amendment does not require that the abuse take place in the United States. The Board did not agree. The Kennedy Amendment clearly applies to "an alien who has been battered or subjected to extreme cruelty *in the United States*" or "whose child has been battered or subjected to extreme cruelty *in the United States*." [Emphasis added]. No changes were made to the rule in response to this comment, as the terms of § 1626.4 already make it clear that the abuse must occur in the United States.

Paragraph (b) addresses special confidentiality concerns regarding the special needs of aliens with respect to confidentiality of information relating to immigration status. There is a need to protect from disclosure information provided to a recipient by (1) applicants for service who are rejected or referred to another legal services provider because they do not fall within one of the permitted categories of aliens who may be served or (2) clients who are represented using non-LSC funds under the Kennedy Amendment. In both of these situations, the information on alien status contained in intake records could potentially lead to loss of employment or educational opportunities, deportation, imprisonment or other serious consequences if disclosed. Fear that such information might be revealed to the INS or other law enforcement agencies, whether or not well-founded,

could discourage those aliens uncertain of their eligibility for services from seeking legal assistance for critical legal needs. The Corporation decided that part 1626 should explicitly state that recipients are not required to maintain records regarding the immigration status of clients served under the Kennedy Amendment.

Recipients are also not required to maintain immigration records for applicants who are rejected or referred to other sources of legal assistance. Section 1626.3 clarifies that normal intake and referral services are not legal assistance for the purposes of this part. In addition, the documentation requirements in §§ 1626.6 and 1626.7 specifically do not apply to persons who receive only intake or referral services.

**List of Subjects in 45 CFR Part 1626**

Grant programs-law, Legal services.

For the reasons set forth in the preamble, LSC adopts the interim regulation at 62 FR 19409 (April 21, 1997) a final, with the following changes:

**PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS**

1. The authority citation for part 1626 continues to read as follows:

**Authority:** Pub. L. 104–208, 110 Stat. 1321; Pub. L. 104–134, 110 Stat. 3009.

2. Section 1626.2 is amended by revising paragraph (f) to read as follows:

**§ 1626.2 Definitions.**

\* \* \* \* \*

(f) *Battered or subjected to extreme cruelty* includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.

\* \* \* \* \*

Dated: August 25, 1997.

**Victor M. Fortunato,**  
*General Counsel.*  
 [FR Doc. 97–23041 Filed 8–28–97; 8:45 am]  
 BILLING CODE 7050–01–P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 63**

[IB Docket No. 96-261, FCC 97-280]

**International Settlement Rates****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** On August 7, 1997, the Federal Communications Commission adopted a Report and Order that revises the Commission's international settlement rate benchmarks. The revisions will move settlement rates closer to the underlying costs of providing international termination services. The Commission took this action in light of the significant changes that have occurred in the global telecommunications market in recent years. The decision represents one of the steps in an ongoing effort by the Commission, many foreign governments, and multilateral organizations such as the International Telecommunication Union ("ITU") and the Organization for Economic Cooperation and Development ("OECD") to lower international telephony costs by reforming the international accounting rate system.

**DATES:** Effective: January 1, 1998. The new information collection requirements adopted in this Order will become effective following OMB approval. The Commission will publish a document at a later date establishing the effective date. Written comments by the public and other agencies on the proposed information collections are due October 28, 1997.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554. For filing comments on the proposed information collections contained herein, in addition to filing comments with the Secretary, a copy of any comments should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Kathryn O'Brien, Attorney-Advisor, or John Giusti, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418-1470. For additional information concerning the information collections contained in this Order contact Judy Boley at 202-418-0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:****Summary of Report and Order**

1. On December 19, 1996, the Commission released a Notice of Proposed Rulemaking in the Matter of International Settlement Rates, IB Docket No. 96-261, FCC 96-484 (61 FR 68702, December 30, 1996). In the NPRM, the Commission proposed options for revising international settlement rate benchmarks that would move settlement rates closer to the underlying costs of providing international termination services. The NPRM sought comment on several alternate methods for calculating benchmark rates in the absence of reliable data on the costs foreign carriers incur to terminate international traffic.

2. On August 7, 1997, the Commission adopted a Report and Order in this proceeding that revised settlement rate benchmarks. The Commission concluded that current settlement rates are in most cases substantially above the cost that foreign carriers incur to terminate U.S.-originated traffic. These inflated settlement rates contribute to high international calling prices for U.S. consumers and create the potential for distortions in the U.S. market for international services.

3. The Commission adopted revised settlement rate benchmarks to assist U.S. international carriers in negotiating settlement rates that are more closely related to the costs incurred by foreign carriers. The benchmarks are calculated using foreign carriers' tariffed prices and information published by the International Telecommunication Union. The Commission concluded that basing benchmarks on foreign carriers' tariffed prices would more closely reflect the underlying costs of providing international termination service than most current settlement rates, although they still would result in benchmarks that are substantially above cost-based settlement rate levels. The Commission believes that basing benchmark settlement rates on the same rates that foreign carriers charge their own customers would ensure nondiscriminatory treatment for U.S. carriers. In addition, foreign carriers will be permitted to recover more than their incremental cost of terminating international service because the tariffed rates are for retail services and include costs that would not be included in cost-based settlement rates.

4. The Commission adopted four settlement rate benchmarks: \$0.15 for upper income countries; \$0.19 for upper-middle income countries and lower-middle income countries; and \$0.23 for lower income countries. The

Commission concluded that these settlement rate benchmarks will continue to exceed, usually substantially, any reasonable estimate of the level of foreign carriers' costs. Using the limited data available to the FCC for calculating benchmarks, these benchmarks will substantially reduce the above-cost excesses in current settlement rates in a manner that is reasonable and treats foreign carriers fairly. The Commission adopted its proposal in the NPRM to revise and update the benchmarks periodically as necessary.

5. The Commission also adopted a "best practices" rate that will be enforced as a safeguard when it detects distortion in the U.S. market for IMTS. The "best practices" rate is closer to a cost-based level than the settlement rate benchmarks and can be applied to prevent market distorting behavior. This rate will be applied only to the extent carriers seek authorization to provide facilities-based service from the United States to affiliated markets and to provide private line resale service. In those cases, the rate will be enforced only if the Commission detects market distortion on the route or routes in question. The rate is based on the lowest, commercially viable, settlement rate currently paid by U.S. carriers to an overseas carrier from a competitive market. The Commission selected a rate of \$.08, which is the current settlement rate between the United States and Sweden. The "best practice" rate will apply only in cases of competitive distortion, and that if an affected carrier believes such a requirement would prove unjustified it may follow established procedures to request an individualized settlement rate prescription.

6. The Commission adopted a transition schedule for compliance with the settlement rate benchmarks to balance the competing concerns of providing time for carriers to make adjustments and expeditiously reduce rates to a more cost-based level. The transition schedule is based primarily on the categorization of countries used to calculate the settlement rate benchmarks, the World Bank, and ITU's GNP per capita classifications. The Commission believes that this classification scheme provides a reasonable basis for determining a country's ability to transition to a more-cost based system or settlement rates without undue disruption to its telecommunications network. The Commission also established a separate category for the "least telecommunications developed" countries based on level of teledensity,

or lines per 100 people, rather than GNP per capita. The Commission will require that U.S. carriers negotiate settlement rates at or below the relevant benchmarks according to the following schedule:

Carriers in upper income countries—1 year from implementation of the Order

Carriers in upper-middle income countries—2 years from implementation of the Order

Carriers in lower-middle income countries—3 years from implementation of the Order

Carriers in lower income countries—4 years from implementation of the Order

Carriers in countries with teledensity (lines per 100) less than 1—5 years from implementation of the Order

7. The Commission declined to adopt the proposal to permit additional flexibility in the application of the benchmarks beyond the transition periods for U.S. carriers serving developing countries that have committed to introducing competitive reforms. The Commission believes that these transition periods adequately balance the challenges faced by developing countries in moving to more cost-based rates.

8. The Commission intends to take the appropriate enforcement measures that may be necessary to ensure that U.S. international carriers satisfy the benchmark requirements. Initially, the Commission will identify foreign carriers that are reluctant to engage in meaningful progress toward negotiating settlement rates at or below the relevant benchmark. The Commission will take steps to work with the foreign governments and carriers to achieve the goal of cost-based rates. If these efforts are unsuccessful, U.S. international carriers may file a petition with the FCC. The Commission can and will ensure compliance with its settlement rate benchmarks. Rather than adopt a set enforcement mechanism, the Commission will consider individual circumstances surrounding each carrier-initiated petition to determine the appropriate enforcement action to take. To protect smaller carriers from reprisals, the Commission emphasized that it will continue to safeguard U.S. carriers against discriminatory treatment by foreign carriers by vigorously enforcing its international settlements policy.

9. The Commission will consider, on a case-by-case basis, grandfathering settlement rate agreements that were negotiated prior to the effective date of this Order. The agreement, however,

must meet the Commission's public interest standard of serving the same goals set forth in this Order and achieving settlement rates at or below the relevant benchmark within a reasonable period of time. The Commission will reserve the right to consider alternative approaches to the settlement rate benchmarks if, in the future, it finds that meaningful progress is made in a multilateral forum to achieve its goals.

10. In the NPRM, the Commission identified two types of market distortions that could be created by above-cost settlement rates—price squeeze behavior and one-way bypass. In the Order, the Commission describes how it will detect and address these distortions. Price squeeze behavior potentially could distort competition in the U.S. market for IMTS by affecting the ability of other carriers to compete. The Commission will condition authorizations to provide international facilities-based switched or private line service from the United States to an affiliated market in order to restrain the ability of foreign-affiliated carriers to engage in anticompetitive price squeeze behavior in the U.S. market. The Commission adopted a rebuttable presumption that a carrier's service offering has distorted market performance if any of the carrier's tariffed collection rates on the affiliated route are less than the carrier's average variable costs on that route. In order to prevent one-way bypass of the accounting rate system, the Commission will condition the Section 214 authorizations of carriers to provide switched basic services over international facilities-based or resold private lines. The Commission also adopted a rebuttable presumption that one-way bypass is occurring if the percentage of outbound traffic relative to inbound traffic increases more than 10% in two successive quarterly measurement periods and it reserves the right to investigate other shifts in the inbound/outbound ratio to determine whether one-way bypass is occurring.

11. To assist in detecting market distortion, the Commission will amend § 43.61 of its rules to require certain carriers to file quarterly traffic reports pursuant to filing criteria adopted in the Order. In addition, the Commission intends to monitor closely U.S. carriers' collection rates to ensure that they reflect fully all net settlement savings. U.S. carriers with more than five percent of the outbound IMTS traffic on a route will be required to file a report every six months.

12. In the Notice, the Commission proposed a condition to carriers'

applications that would balance its desire to encourage international resale services and at the same time limit the potential for one-way bypass. In the Order, the Commission modified the proposed condition. The first modification to the condition will authorize carriers to provide switched services over resold international private lines between the United States and foreign destination countries on the condition that settlement rates for at least 50 percent of the settled U.S.-billed traffic on the route or routes are at or below the appropriate benchmark. In the event that competitive distortions result on the route in question, *i.e.*, carriers are engaging in one-way bypass, the Commission will take enforcement action. Such enforcement action may include a requirement prohibiting carriers from using their authorizations to provide switched services over private lines on that route until settlement rates for at least 50 percent of the settled U.S.-billed traffic on the route are at or below the level of the best practice rate of \$0.08, or revocation of a carrier's authorization.

13. The second modification the Commission made to the proposed condition would apply it to U.S. facilities-based carriers' use of their authorized private lines for the provision of switched, basic services. Carriers will be permitted to use their authorized facilities-based private lines to originate or terminate U.S. switched traffic on the condition that settlement rates for at least 50 percent of the settled U.S. billed traffic on the route or routes in question are at or below the appropriate benchmark. If market distortion occurs on the route, *i.e.*, carriers are using their authorized private lines to engage in one-way bypass of the accounting rate system, the Commission will take enforcement action.

14. *Final Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1990, 5 U.S.C. 601–612, the Commission's Final Regulatory Flexibility Analysis with respect to the Order is as follows:

*Reason for action:* The Commission issues this Report and Order adopting changes in the benchmark settlement rates for international message telephone service between U.S. facilities-based carriers and foreign carriers and related issues. The Commission believes that its benchmark rates should be revised to reflect recent technological improvements, their associated cost reductions, and the market structure changes occurring in the global telecommunications market. We also believe these revisions, and

related actions taken here, are necessary to move settlement rates closer to the actual costs of providing international termination services.

*Objectives:* The objective of this proceeding is to attain reform in the international accounting rate system and thereby help ensure lower international calling prices for consumers and protect competition in the U.S. IMTS market. The Commission will achieve this objective by revising its benchmark settlement rates so that they more closely resemble the underlying costs of providing international termination services.

*Legal basis:* The Report and Order is adopted pursuant to sections 1, 2, 4(i), 201, 205, 214 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 205, 214, 303(r).

*Description, potential impact, and number of small entities affected:* The Commission has not developed a definition of small entities applicable to international common carriers. We therefore have used as the applicable definition of small entity the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts. Based on preliminary 1995 data, at present there are 29 international facilities-based common carriers that qualify as small entities pursuant to the SBA's definition. The number of small international facilities-based common carriers has been growing significantly, and by the end of 1996 that number could increase to approximately 50. The revised benchmark rates will apply to all international facilities-based common carriers, including small entities, that enter into an operating agreement with a foreign carrier that provides for the payment of settlement rates. We note that the revised benchmark rates should result in lower settlement rates for carriers. This Report and Order also requires that a foreign carrier's settlement rates be at or below the relevant benchmark as a condition of Section 214 authorization for that carrier, or an affiliate, to provide U.S. international facilities-based services between the United States and the affiliated destination country. This condition will apply to all U.S. international facilities-based carriers, including small entities, that are affiliated with foreign carriers. The Commission has concluded that this condition is necessary to prevent

potential anticompetitive distortions in the IMTS market.

The Order also imposes an additional requirement on carriers that seek to provide switched services using resold or facilities-based private lines. Carriers must demonstrate that settlement rates for 50 percent of the settled traffic between the United States and the country at the foreign end of the private line are at or below the relevant benchmark for that country. The Commission believes that at most 635 small international carriers, both facilities-based and resale carriers, could be affected by this requirement. The Commission has concluded this requirement is necessary to prevent potential anticompetitive distortions in the IMTS market. We base our estimate of the number of small entities potentially affected on the number of toll carriers filing Telecommunications Relay Service Fund (TRS) worksheets. In 1995, 445 toll carriers filed TRS fund worksheets. We believe that between 50 and 200 carriers failed to file TRS fund worksheets. We also believe that fewer than 10 toll carriers were not small entities (based on the SBA's definition of small entity as one with fewer than 1,500 employees). Thus, at most 635 international carriers would be classified as small entities. The Secretary shall send a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.* (1981).

*Reporting, recordkeeping and other compliance requirements:* In its Initial Regulatory Flexibility Analysis the Commission did not propose any reporting requirements. The Notice, however, raised the issues of possible anticompetitive behavior and market distortions, and sought comment on how the Commission's reporting system could be modified in order to make monitoring and enforcement more effective. To address the concerns of commenters, the Report and Order contains certain mechanisms to detect potential market distortions. In this regard, the Commission amends its rules to impose an additional reporting requirement. Section 43.61 of the Commission's rules currently requires that carriers file annual reports that include actual traffic and revenue data. Common carriers subject to the existing § 43.61 requirements will be required to file traffic reports for each quarter in which their traffic meets any of the following thresholds: (i) Their aggregate U.S.-billed minutes of switched telephone traffic exceeds 1% of the total

of such minutes of international traffic for all U.S. carriers (as published in the most recent § 43.61 traffic data report); (ii) their aggregate foreign-billed minutes of switched telephone traffic exceeds 1% of the total of such minutes of international traffic for all U.S. carriers; (iii) their aggregate U.S.-billed minutes of switched telephone traffic for any country exceeds 2.5% of the total of such minutes for that country for all U.S. carriers; or (iv) their aggregate foreign-billed minutes of switched telephone traffic for any foreign country exceeds 2.5% of the total of such minutes for that country for all U.S. carriers. Limiting the quarterly filing requirement to carriers that meet these criteria will reduce the burden on small carriers, while enabling us to identify distortions in the balance of payments. The Report and Order only imposes an increase in the frequency with which the report must be filed. It will contain the same data that must be included in the current required annual report. Thus, the reporting requirement should not impose a significant economic burden, and no additional outside professional skills should be required in complying with this requirement.

*Federal rules which overlap, duplicate or conflict with the Commission's proposal:* None.

*Any significant alternatives minimizing impact on small entities and consistent with stated objectives:* The Notice solicited comments on a variety of alternative methodologies for calculating benchmark settlement rates, but these have no impact on small entities. The Notice also solicited comments on enforcement mechanisms that may be necessary to support U.S. carriers, including small entities, in their negotiations with foreign carriers and in their provision of international service. We did not receive any comments on the impact of these alternatives on small entities.

*Comments solicited:* Written comments were requested on the Initial Regulatory Flexibility Analysis in accordance with the same filing deadlines set for comments on the other issues in the Notice, but we did not receive any comments.

15. *Paperwork Reduction Act.* This Report and Order contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this order, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. Public and agency comments are due 60

days from the date of publication of this decision in the **Federal Register**.

Comments should address: (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 Commission's 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.

OMB Approval Number: 3060-0106.

Title: Section 43.61—Reports of Overseas Telecommunications Traffic.  
Form No.: None.

Type of Review: Revision of existing collection.

Respondents: U.S. common carriers providing international telecommunications services.

Number of Respondents: We estimate the number of respondents to be 5.

Although the number of respondents is less than 10, the Commission is unable to identify specific respondents because the respondents will vary depending on whether they carry specified levels of U.S. international traffic during any quarterly reporting period. Only those carriers that meet the reporting criteria established in the Order will be subject to the proposed information collection.

Estimated Time Per Response: 160 hours.

Total Annual Burden: 800 hours.

Estimated costs per respondent: None. Respondents already maintain this data as part of their normal business practices.

Needs and Uses: Section 43.61 requires each common carrier that provides international facilities-based switched service between the United States and any foreign country to file an annual traffic and revenue report. The annual report includes actual traffic and revenue data for each service provided by a common carrier, divided among service billed in the United States, service billed outside the United States, and service transiting the United States. In this Order we are increasing the filing frequency in order to detect market distortion that may occur from the routing of U.S. international switched, basic traffic over private lines. Common carriers subject to the existing § 43.51 requirement will be required to file the quarterly reports, in addition to annual reports for each quarter reporting period in which their minutes of switched telephone traffic meet certain thresholds established by the Commission.

However, we will require that carriers

file their traffic and revenue data only for switched facilities-based telephone services and switched facilities resale telephone services—not for their other international services.

We note that this decision imposes an additional requirement on carriers that seek to provide switched services using resold or facilities-based private lines. Carriers must demonstrate that settlement rates for at least 50 percent of the settled traffic between the United States and the country at the foreign end of the private line are at or below the relevant benchmark for that country. We do not anticipate that this requirement will impose any additional burden on carriers as any paperwork burden associated with this requirement is sufficiently covered under the currently approved information collection (OMB Control No. 3060-0686).

#### Ordering Clauses

16. Accordingly, it is ordered that, pursuant to sections 1, 2, 4(i), 201, 205, 214 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 205, 214, 303(r), the rules, requirements and policies discussed in this Order are adopted and parts 43 and 63 of the Commission's rules, 47 CFR parts 43 and 63, are amended.

17. It is further ordered that the rules, requirements and policies established in this decision shall take effect on January 1, 1998. The new information collection requirements adopted in this Order will become effective following OMB approval. The Commission will publish a document at a later date establishing the effective date.

#### List of Subjects in 47 CFR Parts 43 and 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

#### Rule Changes

Parts 43 and 63 of Title 47 of the Code of Federal Regulations are amended as follows:

#### PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:

**Authority:** Sec. 4 of the Communications Act of 1934, as amended, 47 U.S.C. 154.

2. In § 43.61, paragraphs (b) through (d) are redesignated as paragraphs (a)(1)

through (a)(3) and new paragraph (b) is added to read as follows:

#### § 43.61 Reports of international telecommunications traffic.

\* \* \* \* \*

(b) *Quarterly Traffic Reports.* (1) Each common carrier engaged in providing international telecommunications service between the area comprising the continental United States, Alaska, Hawaii, and off-shore U.S. points and any country or point outside that area shall file with the Commission, in addition to the report required by paragraph (a) of this section, actual traffic and revenue data for each calendar quarter in which the carrier's quarterly minutes exceed the corresponding minutes for all carriers by one or more of the following tests:

(i) The carrier's aggregate minutes of facilities-based or facilities resale switched telephone traffic for service billed in the United States are greater than 1.0 percent of the total of such minutes of international traffic for all U.S. carriers published in the Commission's most recent § 43.61 annual report of international telecommunications traffic;

(ii) The carrier's aggregate minutes of facilities-based or facilities resale switched telephone traffic for service billed outside the United States are greater than 1.0 percent of the total of such minutes of international traffic for all U.S. carriers published in the Commission's most recent § 43.61 annual report of international telecommunications traffic;

(iii) The carrier's aggregate minutes of facilities-based or facilities resale switched telephone traffic for service billed in the United States for any foreign country are greater than 2.5 percent of the total of such minutes of international traffic for that country for all U.S. carriers published in the Commission's most recent § 43.61 annual report of international telecommunications traffic; or

(iv) The carrier's aggregate minutes of facilities-based or facilities resale switched telephone traffic for service billed outside the United States for any foreign country are greater than 2.5 percent of the total of such minutes of international traffic for that country for all U.S. carriers published in the Commission's most recent § 43.61 annual report of international telecommunications traffic.

(2) Except as provided in this paragraph, the quarterly reports required by paragraph (b)(1) of this section shall be filed in the same format as, and in conformance with, the filing

procedures for the annual reports required by paragraph (a) of this section.

(i) Carriers filing quarterly reports shall include in those reports only their provision of switched, facilities-based telephone service and switched, facilities resale telephone service.

(ii) The quarterly reports required by paragraph (b)(1) of this section shall be filed with the Commission no later than April 30 for the prior January through March quarter; no later than July 31 for the prior April through June quarter; no later than October 31 for the prior July through September quarter; and no later than January 31 for the prior October through December period.

**PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS**

1. The authority citation for Part 63 continues to read as follows:

**Authority:** Sections 1, 4(i), 4(j), 201–205, 218 and 403 of the Communications Act of 1934, as amended, and Section 613 of the Cable Communications Policy Act of 1984, 47 U.S.C. secs. 151, 154(i), 154(j), 201–205, 218, 403 and 533 unless otherwise noted.

2. Section 63.18 is amended by revising paragraphs (e)(2)(ii)(B) through (e)(2)(ii)(C), (e)(3) introductory text, and (e)(4) to read as follows:

**§ 63.18 Contents of applications for international common carriers.**

\* \* \* \* \*

- (e) \* \* \*
- (2) \* \* \*
- (ii) \* \* \*

(B) The applicant may resell private line services for the provision of international switched basic services only in circumstances where the Commission has found that the country at the foreign end of the private line provides equivalent resale opportunities and that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and that country are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261. The Commission will provide public notice of its equivalency and settlement rate determinations. The applicant, however, shall not initiate such service on a particular route absent a grant of specific authority under paragraph (e)(6) of this section in circumstances where the applicant is affiliated with a facilities-based carrier in the country at the foreign end of the private line and the Commission has not determined that

the foreign carrier does not possess market power in that country.

(C) The authority granted under this paragraph shall be subject to all Commission rules and regulations, including the limitation in § 63.21 on the use of private lines for the provision of switched services, and any conditions stated in the Commission's public notice or order that serves as the applicant's Section 214 certificate. See Sections 63.12, 63.21.

(3) If applying for authority to provide international switched basic services over resold private lines between the United States and a country for which the Commission has not made the settlement rate and equivalency determinations specified in paragraph (e)(2)(ii)(B) of this section, applicant shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 and that the country affords resale opportunities equivalent to those available under U.S. law. In this regard, applicants shall:

\* \* \* \* \*

(ii) The procedures set forth in paragraph (e)(3) of this section are subject to Commission policies on resale of international private lines in CC Docket No. 90–337 as amended in IB Docket Nos. 95–22 and 96–261.

(4) Any carrier authorized under this section to acquire and operate international private line facilities other than through resale may use those private lines to provide switched basic services only in circumstances where the Commission has found that the country at the foreign end of the private line provides equivalent resale opportunities and that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and that country are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261. The Commission will provide public notice of its equivalency and settlement rate determinations. This provision is subject to the following exceptions and conditions:

(i) The applicant shall not initiate such service on a particular route absent a grant of specific authority under paragraph (e)(6) of this section in circumstances where the applicant is affiliated with a facilities-based carrier in the country at the foreign end of the private line and the Commission has not determined that the foreign carrier does not possess market power in that country.

(ii) The applicant is subject to all applicable Commission rules and regulations, including the limitation in § 63.21 on the use of private lines for the provision of switched services, and any conditions stated in the Commission's public notice or order that serves as the applicant's Section 214 certificate. See §§ 63.12, 63.21.

(A) Except as provided in paragraph (e)(4)(ii)(B) of this section, any carrier that seeks to provide international switched basic services over its authorized private line facilities between the United States and a country for which the Commission has not made the settlement rate and equivalency determinations specified in paragraph (e)(2)(ii)(B) of this section shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 and that the country affords resale opportunities equivalent to those available under U.S. law. In this regard, applicant shall include the information required by paragraph (e)(3) of this section.

(B) No formal application is required under paragraph (e)(4) of this section in circumstances where the carrier's previously authorized private line facility is interconnected to the public switched network only on one end—either the U.S. or the foreign end—and where the carrier is not operating the facility in correspondence with a carrier that directly or indirectly owns the private line facility in the foreign country at the other end of the private line.

3. Section 63.21(a) is revised to read as follows:

**§ 63.21 Conditions applicable to international Section 214 authorizations.**

\* \* \* \* \*

(a) Carriers may not use their authorized facilities-based or resold international private lines for the provision of switched basic services unless and until the Commission has determined that the country at the foreign end of the private line provides equivalent resale opportunities and that settlement rates for 50 percent of the settled U.S.-billed traffic between the United States and that country are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261. See § 63.18 (e)(3) through (e)(4). If at any time the Commission finds, after an initial determination of compliance for a particular country, that the country no longer provides



equivalent resale opportunities or that market distortion has occurred in the routing of traffic between the United States and that country, carriers shall comply with enforcement actions taken by the Commission. This condition shall not apply to a carrier's use of its authorized facilities-based private lines to provide service as described in § 63.18 (e)(4)(ii)(B).

[FR Doc. 97-22936 Filed 8-28-97; 8:45 am]  
BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 97-111; RM-9052]

#### Radio Broadcasting Services; Deerfield, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action in this document allots Channel 264C3 to Deerfield, Missouri, as that community's first local broadcast service in response to a petition filed by Deerfield FM Radio. See 62 FR 17773, April 11, 1997. The coordinates for Channel 264C3 at Deerfield are 37-43-01 and 94-36-22. There is a site restriction 16.2 kilometers (10.1 miles) southwest of the community. With this action, this proceeding is terminated.

**DATES:** Effective October 6, 1997. The window period for filing applications for Channel 264C3 at Deerfield, Missouri, will open on October 6, 1997, and close on November 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 97-111, adopted August 13, 1997, and released August 22, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800, facsimile (202) 857-3805.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

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

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Deerfield, Channel 264C3.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 97-22991 Filed 8-28-97; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 97-123; RM-9062]

#### Radio Broadcasting Services; Grand Isle, LA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Grand Isle Radio, allots Channel 283A to Grand Isle, Louisiana, as the community's first local aural transmission service. See 62 FR 23427, April 30, 1997. Channel 283A can be allotted to Grand Isle in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 283A at Grand Isle are 29-13-54 NL and 89-59-54 WL. With this action, this proceeding is terminated.

**DATES:** Effective October 6, 1997. The window period for filing applications will open on October 6, 1997, and close on November 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 97-123, adopted August 13, 1997, and released August 22, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor,

ITS, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

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

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Grand Isle, Channel 283A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 97-22997 Filed 8-28-97; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 96-161; RM-8842]

#### Radio Broadcasting Services; Carlisle, Irvine, and Morehead, KY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the joint request of James P. Gray, Kentucky River Broadcasting Company, and Morehead Broadcasting Company, substitutes Channel 221C3 for Channel 264A at Carlisle, Kentucky, and modifies Station WCAK(FM)'s license accordingly; substitutes Channel 264C3 for Channel 291A at Irvine, Kentucky, and modifies Station WCYO(FM)'s license accordingly; and substitutes Channel 291C3 for Channel 221A at Morehead, Kentucky, and modifies Station WMOR-FM's license accordingly. See 61 FR 42229, August 14, 1996. Channel 221C3 can be allotted to Carlisle in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.1 kilometers (8.1 miles) east. The coordinates for Channel 221C3 at Carlisle are North Latitude 38-17-42 and West Longitude 83-52-32. See Supplementary Information, *infra*.

**EFFECTIVE DATE:** October 9, 1997.



**FOR FURTHER INFORMATION CONTACT:**

Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 96-161, adopted August 13, 1997 and released August 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Additionally, Channel 264C3 can be allotted to Irvine with a site restriction of 7.7 kilometers (4.8 miles) west to avoid short-spacings to the licensed sites of Station WWYC(FM), Channel 261C2, Winchester, Kentucky, and Station WSGS(FM) Channel 266C, Hazard, Kentucky. The coordinates for Channel 264C3 at Irvine are North Latitude 37-43-27 and West Longitude 84-02-38. Channel 291C3 can be allotted to Morehead with a site restriction of 3.6 kilometers (2.3 miles) west to avoid a short-spacing to the licensed site of Station WMST-FM, Channel 288A, Mount Sterling, Kentucky. The coordinates for Channel 291C3 at Morehead are North Latitude 38-11-17 and West Longitude 83-28-37. With this action, this proceeding is terminated.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

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

**Authority:** Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Channel 221C3 and removing Channel 264A at Carlisle; adding Channel 264C3 and removing Channel 291A at Irvine; and adding Channel 291C3 and removing Channel 221A at Morehead.

Federal Communications Commission.

**John A. Karousos,**

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97-22996 Filed 8-28-97; 8:45 am]

BILLING CODE 6712-01-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 285**

[I.D. 082597B]

**Atlantic Tuna Fisheries; Atlantic Bluefin Tuna**

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

**ACTION:** Catch limit adjustment.

**SUMMARY:** NMFS adjusts the daily catch limit for the Angling category fishery for Atlantic bluefin tuna (ABT) in the northern area (New Jersey and states north) to two fish per vessel from the school size class and three fish per vessel from the large school or small medium size class. The duration of the catch limit adjustment is limited to the period of August 29 through September 12, 1997, whereupon the northern area catch limit will revert to one ABT per vessel per day. This action is being taken to ensure reasonable fishing opportunities in the northern area without risking overharvest of this category.

**EFFECTIVE DATE:** The daily catch limit adjustment is effective 1:00 a.m., local time, August 29, 1997, until 11:30 p.m., local time, September 12, 1997.

**FOR FURTHER INFORMATION CONTACT:** Chris Rogers, 301-713-2347, or Mark Murray-Brown, 508-281-9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Implementing regulations for the Atlantic tuna fisheries at § 285.24 allow for adjustments to the daily catch limits in order to provide for maximum utilization of the quota spread over the longest possible period of time. The Assistant Administrator for Fisheries, NOAA, may increase or reduce the per angler catch limit for any size class bluefin tuna or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit.

NMFS closed the winter Angling category fishery on March 2, 1997 to ensure that sufficient quota would remain for the summer ABT fisheries. On June 13, 1997, NMFS reopened the Angling category fishery but maintained the daily catch limit at one ABT per vessel to ensure that the southern area

quota would not be exceeded. Effective July 11, 1997, NMFS adjusted the daily catch limit for all areas to four school bluefin tuna and one large school or small medium ABT each day per Angling category vessel. The daily catch limit was again reduced to one ABT per vessel on August 8 to preserve the remaining quota for the traditional fall fisheries.

Information collected by NMFS through dockside and telephone surveys indicates that about 20 metric tons (mt) of school ABT and 60 mt of large school/small medium ABT remain of the northern area subquota. In order to provide for a reasonable opportunity to harvest the Angling category quota and collect scientific information needed to monitor the ABT stock, NMFS has determined that a catch limit adjustment is warranted.

The daily catch limit is adjusted as follows: No more than two school bluefin tuna (measuring 27 to 47 inches) may be retained each day per Angling category vessel. In addition, three ABT per vessel may be landed from the large school or small medium size class (measuring 47 to 73 inches). This catch limit adjustment is effective through September 12, 1997, whereupon the daily limit will revert to one ABT per day, which may be from the school, large school or small medium size class.

Depending on the level of fishing effort and catch rates of ABT, NMFS may determine that an interim closure or additional catch limit adjustment is necessary during or following this period. Closures or subsequent adjustments to the daily catch limit, if any, shall be announced through publication in the **Federal Register**. In addition, anglers may call the Highly Migratory Species Information Line at 301-713-1279 or 508-281-9305 for updates on quota monitoring and catch limit adjustments. Anglers aboard Charter/Headboat and General category vessels, when authorized to engage in recreational fishing for school, large school, and small medium ABT, are subject to the same rules as anglers aboard Angling category vessels.

Note that the fishery for school, large school, and small medium ABT in the southern area closed effective August 11, 1997 (62 FR 44423, August 21, 1997), and is therefore not affected by this catch limit adjustment.

**Classification**

This action is taken under 50 CFR 285.24(d)(3) and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 971 *et seq.*

Dated: August 26, 1997.

**Gary Matlock,**

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

[FR Doc. 97-23117 Filed 8-26-97; 2:48 pm]

BILLING CODE 3510-22-F

# Proposed Rules

Federal Register

Vol. 62, No. 168

Friday, August 29, 1997

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.

## DELAWARE RIVER BASIN COMMISSION

### 18 CFR Part 401

#### Rules of Practice and Procedure; Proposed Amendments to Administrative Manual—Rules of Practice and Procedure; Public Hearing

**AGENCY:** Delaware River Basin Commission.

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

**SUMMARY:** Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to review comments on proposed amendments to its Rules of Practice and Procedure which are intended to delete obsolete provisions, to clarify certain provisions of the rules and better inform the signatory parties, applicants and the general public with regard to the Commission's practices and procedures. The proposed revisions conform the rules to existing Commission interpretations and practices.

**DATES:** The public hearing will be held on October 22, 1997 beginning at 3:00 p.m. and continuing until 5:00 p.m., as long as there are people present wishing to testify.

The deadline for inclusion of written comments in the hearing record will be announced at the hearing.

**ADDRESSES:** The public hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. Telephone (609) 883-9500 ext. 203.

#### SUPPLEMENTARY INFORMATION:

##### Background and Rationale

The Rules of Practice and Procedure of the Delaware River Basin Commission have been modified and changed periodically since they were originally adopted December 13, 1961. There has not been a comprehensive review of these rules, however, for more than twenty years.

The proposed revisions are summarized below.

##### 1. Deletion of Article 4, Environmental Impact Statements, and Related Sections

Existing Article 4 sets forth DRBC's requirements with regard to environmental impact statements and reviews. Although these provisions have remained in DRBC's Rules, a copy of DRBC Resolution No. 80-11 suspending those provisions of the Commission's Rules of Practice and Procedure relating to environmental assessments has been inserted at the end of the existing rules. Since the adoption of this Resolution in 1980, the Commission has not conducted environmental assessments pursuant to DRBC's rules. The continued inclusion of these suspended sections, however, has been a source of confusion and misunderstanding to many individuals and groups interested in DRBC's review requirements. For example, when DRBC recently solicited public comments concerning its regulations for controlling toxic pollutants in the Delaware River Estuary, comments were received suggesting that DRBC had not complied with the environmental review requirements under its rules.

When Resolution No. 80-11 to suspend was adopted, the Resolution would have permitted reinstatement of environmental reviews if "financial resources are developed." The experiences of the last 17 years, and the financial constraints that have developed recently, make it clear that Federal or other funding is not likely to be available for the foreseeable future.

To avoid continuing confusion, the deletion of Article 4 is proposed. DRBC's review of projects, however, will continue to require all projects to comply with all environmental and other policies in the Commission's Comprehensive Plan.

##### 2. Review of Projects Having a Non-Substantial Impact on Basin Waters

In 1976 the Commission adopted Resolution No. 76-20 which provided two administrative changes designed to reduce the project review activity of DRBC staff.

The first was an attempt to provide more flexibility in the determination of what constitutes substantial projects resulting in more projects determined to be nonsubstantial and not subject to Commission review. Experience with a few projects indicated the process was not cost effective and staff reverted back to strictly following the exemptions list in the Rules Section 2.3.5(a). The 1976 revisions included in Sections 2.3.4 and 2.3.5(d) which provided for this procedure have not been applied since 1978.

The second administrative change provided for in Sections 2.3.5(e), 2.3.9 (b) and (c) was to have state staff review and submit a determination (called an action report) that each project forwarded to the Commission did not impair or conflict with the DRBC's Comprehensive Plan. Even though three states signed new administrative agreements to implement this procedure, state staffs did not provide the determinations and the procedure was never implemented.

Section 2.3.10 is proposed to be deleted and all rules regarding hearings are proposed to be consolidated in revised Article 6.

#### Summary of Proposed Revisions

##### 1. Introduction

In view of the changes included within the proposed revision, the Introduction has been rewritten to update the description of what is included in the Commission's Rules of Practice and Procedure.

##### 2. Article 1—Comprehensive Plan

The proposed revisions to this article clarify the meaning of Comprehensive Plan within DRBC's rules. The revisions further clarify the procedure related to application for inclusion of projects within the Comprehensive Plan and the review by the Commission of proposals for changes and additions to the Comprehensive Plan. These revisions conform with existing Commission interpretation of the provisions within Article 1.

**3. Article 2—Water Resources Program**

No proposed revisions to this article are recommended at this time.

**4. Article 3—Project Review Under Section 3.8 of the Compact**

(a) The proposed revisions to Article 3 relating to environmental reviews and non-substantial projects are discussed above.

(b) The proposed revision would delete Section 2–3.5.1. The regionalization policy was slightly modified with the adoption of revised Water Quality Regulations in December 1992 (Section 2.30, Basin Regulation—Water Quality). Deleting these requirements eliminates confusion and allows the more recent and flexible policy to control. The revised rule would add (6) in Section 2.1.4 requiring applications to include a discussion of the alternates considered and in Section 2.3.8 (a) “Exhibits to Accompany Application”, it would revise (8) to include analysis and conclusions of regional water supply and waste water investigations.

(c) The proposed revision would also delete Section 2.3.5.2. This policy was adopted in 1971, Resolution No. 71–3, when the DRBC was involved in four or five nuclear plants and several major expansions or new fossil fuel plants, all by the seven major electric utilities serving the Basin. Planning at that time centered around mega stations of 1000 to 3000 Megawatts and use of multi MGD of water. Future locations of such large single use water demands was essential for any future water resource planning. A consortium of the utilities was formed known as DRBEUG (Delaware River Basin Electric Utilities Group) to address this DRBC requirement. Between 1971 and 1989, periodic siting studies were submitted to DRBC. In 1989 DRBEUG explained that they no longer could present a comprehensive siting study since the regulators were now encouraging NUGs (Non Utility Generators) and they could not in any way appear to represent these non-utility electric generators. Essentially, the major utilities have abandoned plans for any new major stations. New applications for several years now have been non-utility projects and generally no more than 200 MW. After several meetings between DRBEUG and staff, it was concluded that the siting study would no longer serve its intended purpose for DRBC.

(d) The remaining sections are intended to clarify the Commission’s procedures with regard to Section 3.8 applications and the review thereof.

**5. Article 4—Environmental Impact Statements**

The Commission proposes deletion of the existing provisions of Article 4 as discussed above. Article 4 will be reserved for future use.

**6. Article 5—Review in Water Quality Cases**

The proposed revisions to Article 5 clarify that this article applies to administrative actions and decisions by the Executive Director. The procedures for review, hearing and decisions of objections to the Executive Director’s actions and decisions will be pursuant to Article 6. The time for requesting a hearing is extended to thirty days to conform with the thirty day period provided for in Article 6. The remaining proposed changes are to broaden the wasteload allocations section to cover allocations in general (including proposed allocations of toxics) as well as the existing allocation program of carbonaceous oxygen demand.

**7. Article 6—Conduct of Hearings**

The proposed revisions in this article reflect the practices employed by the Commission in connection with hearings, clarify the application of Article 6 to contested hearings and codify existing practices with regard to such hearings.

**8. Articles 7, 8 and 9**

No changes to these articles are proposed at this time.

Copies of the full text of the proposed amendments to the Administrative Manual—Rules of Practice and Procedure may be obtained by contacting Susan M. Weisman at the address provided in **FOR FURTHER INFORMATION CONTACT**. Persons wishing to testify are requested to notify the Secretary in advance.

Dated: August 18, 1997.

Delaware River Basin Compact, 75 Stat. 688.

**Susan M. Weisman,**  
Secretary.

[FR Doc. 97–23058 Filed 8–28–97; 8:45 am]

**BILLING CODE 6360–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

**21 CFR Parts 336, 338, 341, and 348**

[Docket No. 97N–0128]

RIN 0910–AA01

**Labeling of Diphenhydramine-Containing Drug Products for Over-the-Counter Human Use**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend the tentative final monograph for over-the-counter (OTC) external analgesic drug products, and the final monographs for oral OTC diphenhydramine drug products for antiemetic, antihistamine, antitussive, and nighttime sleep-aid indications. The amendment adds warning statements concerning diphenhydramine toxicity. The proposed warnings advise consumers not to use topical products containing diphenhydramine on chicken pox, poison ivy, sunburn, large areas of the body, blistered or oozing skin, more often than directed, or with any other product containing diphenhydramine, even one taken by mouth, and not to use oral OTC diphenhydramine products with any other product containing diphenhydramine including products used topically. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

**DATES:** Submit written comments by November 28, 1997. FDA is proposing that any final rule that may issue based on this proposal become effective 12 months after the date of its publication in the **Federal Register**.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Nahid Mokhtari-Rejali, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

**SUPPLEMENTARY INFORMATION:****I. Background**

Diphenhydramine hydrochloride is proposed for inclusion in the monograph for OTC external analgesic drug products for topical use as an antihistamine external analgesic.

Diphenhydramine hydrochloride is also included in the OTC drug monograph for oral use as an antiemetic (21 CFR part 336). Both diphenhydramine citrate and diphenhydramine hydrochloride are included in OTC drug monographs for oral use as a nighttime sleep-aid (21 CFR part 338), an antihistamine, or an antitussive (21 CFR part 341). The various OTC advisory review panels that reviewed diphenhydramine for these different uses as part of the OTC drug review did not consider interactions that may occur when a person takes oral diphenhydramine and applies diphenhydramine topically.

In the **Federal Register** of December 4, 1979 (44 FR 69768), the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug products (the Panel) evaluated the safety and effectiveness of diphenhydramine hydrochloride as an antihistamine external analgesic. The Panel acknowledged that diphenhydramine is absorbed through damaged skin and gains access to the blood stream. However, the Panel did not consider systemic toxicity from topical application to be of major importance because of its low degree of toxicity when used orally or parenterally. The Panel was unaware of any instance of systemic toxicity reported from topical use of diphenhydramine. The Panel concluded that the drug was safe at 1- to 2-percent concentrations for the temporary relief of pain and itching due to minor burns, sunburn, minor cuts, abrasions, insect bites, and minor skin irritations. The only warning the Panel recommended was not to use for longer than 7 days except under the advice and supervision of a physician (44 FR 69768 at 69809).

The agency concurred with the Panel's recommendations in the tentative final monograph for OTC external analgesic drug products, published in the **Federal Register** of February 8, 1983 (48 FR 5852). The agency did not change the Panel's recommended warnings for diphenhydramine, or add any other warnings.

## II. Developments After Publication of the External Analgesic Tentative Final Monograph

Since publication of the external analgesic tentative final monograph, the agency has become aware of reports of adverse events (toxic psychosis), especially in children, when diphenhydramine was used topically for relief of pruritus due to chicken pox, poison ivy, and sunburn. Some reports mentioned the concurrent use of topical

diphenhydramine with oral diphenhydramine drug products to relieve the itch and rash associated with chicken pox. Chicken pox is not a monograph indication for topical or oral diphenhydramine products.

### A. Early Case Reports to FDA

The agency has reviewed case reports of toxic psychosis reported to its Spontaneous Reporting System for the period from 1979 to 1989 (Ref. 1).

In 1979, a 6-year-old boy developed chicken pox and was treated with baking soda baths (8 ounce (oz)/tub) every 2 hours followed by topical application of a lotion containing 1 percent diphenhydramine and calamine every 2 hours. Twelve hours later he developed unusual behavior (talking to imaginary people, playing with imaginary toys, did not recognize parents). On the third day, a doctor saw the child and prescribed diphenhydramine elixir every 4 hours. After 2 doses, the boy became agitated and his strange ideas became worse. He was hospitalized with hallucinations, bizarre inappropriate behavior, and disorientation to time and place. He was afebrile. His pupils were dilated and his face was flushed. Diphenhydramine in calamine and diphenhydramine elixir were suspected of causing the toxic psychosis. The child was given no medication and the following morning he was fully alert and his behavior was normal, without hallucinations or delusions.

In 1980, a physician reported that diphenhydramine from a 1 percent diphenhydramine-calamine lotion was absorbed in high concentrations in two patients who were afebrile in the late stages of chicken pox. The first patient had diphenhydramine lotion painted on the body and sealed with a dryer by his mother. The patient developed hallucinations and delirium. A second patient who had the same lotion applied but not sealed also developed hallucinations. The physician noted that hallucinations and delirium would not be expected in the late stages of this disease.

In 1987, an 8-year-old child was admitted to the hospital for severe psychosis, urinary retention, ataxia, bizarre posturing, and dilated pupils. During the 12 hours before admission, 1 percent diphenhydramine-calamine lotion was applied three different times on the child from head to toe for severe poison ivy contact dermatitis. A toxic drug screen was negative for diphenhydramine but revealed traces of benzodiazepine which the child might have ingested. No other medication was

given. The diphenhydramine lotion was removed and the child recovered fully.

In 1989, a pharmacist reported that his 6-year-old son experienced toxic psychoses (hyperactive, jittery, disoriented with visual hallucinations) within 24 hours of application of 1 percent diphenhydramine-calamine lotion to chicken pox lesions. Diphenhydramine elixir was given 2 days before and on the day of the topical application. The child was hospitalized, treated with activated charcoal, and recovered completely within 24 hours, with no further problems.

### B. Early Pediatric Literature

Patranella (Ref. 2) reported an incident where a 4-year-old boy became toxic after topical application of 3 oz of 1 percent diphenhydramine-calamine lotion to chicken pox rash. The child was admitted to the hospital because of increasing hyperactivity, irregular eye movements, hallucinations, and intermittently failing to recognize his parents. The rash developed the day before admission, 16 days after exposure to varicella. The child's pupils were 4 millimeters in diameter and reacted sluggishly to light. He was awake, disoriented to person and place, combative, ataxic, and displayed tongue rolling. A urine drug screen revealed the presence of diphenhydramine. The lotion was washed from his skin with water and his mental status returned to normal within 6 to 8 hours. The report noted that diphenhydramine is a histamine (H<sub>1</sub>) receptor blocker which can cause central nervous system excitation or sedation. The fatal dose in adults is 20 to 40 milligrams/kilogram (mg/kg). The 4-year-old boy received 50 mg/kg topically over a 6-hour period.

Filloux (Ref. 3) described a 9-year-old boy with chicken pox who had 1 percent diphenhydramine-calamine lotion applied liberally from head to toe, a total of 12 oz in 48 hours, for intense pruritus. Diphenhydramine toxicity resulted with organic psychosis masquerading as varicella encephalitis, a serious neurologic complication of varicella zoster (chicken pox) disease that can result in permanent neurologic sequelae or death. On admission to the emergency room, the boy was markedly agitated, frightened, disoriented, completely confused, having frequent visual and auditory hallucinations, and would assume bizarre postures. Pupils were dilated but reactive. Laboratory results were within normal limits. The serum toxic screen showed a diphenhydramine level of 1.4 micrograms per milliliter ( $\mu\text{g/mL}$ ), which exceeded the therapeutic level of 0.3  $\mu\text{g/mL}$ . No further diphenhydramine

lotion was applied. Although agitated and hallucinating through the night, the following morning he was calmer, but still confused. His diphenhydramine level had dropped to 0.7 µg/mL. He was lucid by noon and by 4 p.m. his diphenhydramine level was 0.6 µg/mL. He was discharged from the hospital with a normal mental status. Ample evidence in this patient confirmed that transdermal absorption of diphenhydramine resulted in intoxication and organic psychosis. The report advised that appropriate caution was warranted when treating pruritus with topical antihistamine preparations, particularly when substantial epidermal breakdown exists.

Tomlinson, Helfaer, and Wiedermann (Ref. 4) described a case of diphenhydramine toxicity mimicking varicella encephalitis. Physical examination disclosed evidence of diphenhydramine toxicity related to systemic absorption of a topical preparation. The patient, a 5-year-old girl, developed chicken pox rash 4 days before admission to the hospital. Her mother had applied 1 percent diphenhydramine-calamine lotion repeatedly over most of the child's body during this 4-day-period, but gave no other medications. The day before admission the child appeared agitated, did not sleep, had an unsteady gait, and had trembling of the extremities. Later, she developed visual hallucinations and her speech became unintelligible. Upon admission to the hospital, she was disoriented, agitated, and grasping at imaginary objects in the air. Neurologic examination revealed dilated pupils, flushed face, and ataxia. A urine toxicity screen was positive only for diphenhydramine. The child's status improved quickly after the diphenhydramine lotion was removed. No other therapy was given and she was discharged on the fourth day. A followup examination done 2 weeks later was normal.

Although initially believed to have varicella encephalitis, the child's symptoms (ataxia, hallucinations, mydriasis, and flushing of the face) were more suggestive of an anticholinergic reaction. Tests confirmed diphenhydramine toxicity rather than varicella encephalitis. The report concurred with one manufacturer's recommendations that diphenhydramine not be used in skin disorders, such as varicella, where extensive systemic absorption of topical preparations may occur. The report suggested that families of children with chicken pox be warned to be cautious in the use of this drug product.

Schunk and Svendsen (Ref. 5) reported on three children (ages 4, 5, and 7) with chicken pox who developed toxic encephalopathy from having been treated with both oral and topical diphenhydramine. All displayed some of the symptoms common to diphenhydramine toxicity: Dilated pupils, flushed face, agitation, confusion, hallucinations, and ataxic gait. The plasma diphenhydramine level was 1.5 µg/mL in the 4-year-old and 0.96 µg/mL in the 5-year-old. After discontinuing the diphenhydramine, all children displayed normal mental status.

This report advised that physicians should be alerted to the possibility of diphenhydramine toxicity when confronted with a child with varicella and acute mental status changes. Further, both families and physicians should be advised against combined use of topical and oral diphenhydramine-containing preparations.

Woodward and Baldassano (Ref. 6) described a case of diphenhydramine intoxication from the combined effects of oral diphenhydramine elixir and topical diphenhydramine-calamine lotion in a 5-year-old boy who developed chicken pox 3 days before being taken to the emergency room. He had been treated with 6 or 7 teaspoons of oral diphenhydramine (12.5 mg/5 mL) for a total dosage of 75 to 87 mg (over 36 hours). His mother also had applied 1 percent diphenhydramine-calamine lotion liberally over his body in a 12-hour period, 24 hours prior to presentation in the emergency department. The boy's behavior was bizarre; he was talking to and seeing objects and people that were not present. The boy had the classic symptoms of diphenhydramine toxicity, including hallucinations, tachycardia, and dilated pupils. A toxic screen showed both acetaminophen and diphenhydramine (1.94 µg/L approximately 14 hours after the last oral dose). All diphenhydramine was discontinued, and the child returned to normal the next day. Varicella encephalitis was ruled out. The report stated that children more often show excitation with overdosage of antihistamines than the usual sedative effect seen in adults.

The article further stated that data on percutaneous absorption of diphenhydramine are limited. The recommended oral dose is 5 mg/kg/24 hours and three to four applications of topical diphenhydramine lotion per day. The child had a total of 3.6 mg/kg/36 hours, or less, of oral diphenhydramine, less than half the daily recommended dosage, and a larger

amount of lotion over a 12-hour period. Therefore, absorption of the lotion appears to have been a primary factor in the adverse reaction. The report noted that toxicity from oral use is more common than toxicity from topical use of diphenhydramine. Fatalities have been reported in both children and adults from oral overdosage. However, no deaths have been reported from topical diphenhydramine use alone. The report advised that physicians and patients need to be aware of this potential toxicity.

### C. More Recent Case Reports

Between 1987 and 1990, a major manufacturer of OTC diphenhydramine drug products received four adverse event reports that described toxic psychoses in seven children (Ref. 7). Apparently the drug products were being misused, contrary to labeling, and were being applied to large areas of the body where there was broken skin, possibly causing increased systemic absorption. Based on these seven cases, the manufacturer voluntarily revised the label warnings for its topical products containing diphenhydramine. In 1989, the manufacturer added to the following products a warning not to use on chicken pox and measles unless supervised by a doctor: A cream and lotion product containing 1 percent diphenhydramine and 8 percent calamine, and a cream and spray product containing 1 percent diphenhydramine and 0.1 percent zinc acetate. In 1990, the manufacturer added to these products a second warning not to use any other drugs containing diphenhydramine while using the topical products. This warning was added based on reports that the topical diphenhydramine drug products were being used with oral diphenhydramine drug products to relieve the itch and rash associated with chicken pox and measles, possibly resulting in toxic serum diphenhydramine levels. In April 1993, the manufacturer reformulated its lotion and cream products containing 1 percent diphenhydramine and 8 percent calamine to replace the diphenhydramine with 1 percent pramoxine hydrochloride.

Summaries of the adverse event reports received by the manufacturer follow:

The first report involved a 7-year-old boy who developed chicken pox. Oral hydroxyzine hydrochloride (one dose at 6:30 p.m.) was prescribed. The child's mother applied 5 to 10 mL of 1 percent diphenhydramine-calamine lotion three times to the child's abdomen and chest between 7:45 and 11:30 p.m. Around 12

a.m., the child became confused, irritable, and began hallucinating. When hospitalized, his diphenhydramine level at 5:40 a.m. was 73 nanograms per mL (ng/mL) (the normal level is 25 to 40 ng/mL). The diphenhydramine-calamine lotion was removed from the skin and the child recovered uneventfully the next day.

The second report involved four children, ages 4 to 6 years, who developed chicken pox. Typically, the mothers applied 1 percent diphenhydramine-calamine lotion over an extensive area of the body three to four times daily. In one case, the child was concurrently receiving diphenhydramine syrup. In all cases, within 24 to 48 hours, the children became irritable, delirious, and began hallucinating. The children were treated in an emergency room by washing the diphenhydramine lotion from their bodies, and they responded within 24 to 36 hours.

The third report concerned a 9-year-old boy with a mild sunburn without broken or blistered skin. An hour after his mother liberally applied one-half of a 45-gram tube of 1 percent diphenhydramine-calamine cream to the boy's trunk and limbs, he developed increased tiredness and became confused and disoriented. He convulsed, with widespread muscular twitching and "rolling of the eyes" 1½ to 2 hours after the cream had been applied. He was taken to the hospital and a chemical toxicology screen revealed a diphenhydramine level of 60 ng/mL. The child was treated with activated charcoal and intravenous fluids. Approximately 32 hours later, the diphenhydramine level was 16 ng/mL; the child recovered uneventfully and was discharged the following day.

The fourth report described an 8-year-old boy with a history of allergies and asthma who developed extensive chicken pox. One percent diphenhydramine-calamine lotion was applied all over the body every 4 to 5 hours for approximately 48 hours. The child complained of blurred vision and "not being able to see clearly" on the second day after "breaking out." He received acetaminophen every 4 to 5 hours for fever. About 2 to 3 a.m., the child awoke with hallucinations of flying insects. A dose of acetaminophen and a teaspoon of diphenhydramine elixir were given, and additional diphenhydramine-calamine lotion was applied. Afterwards, the boy's body was twitching, he was restless and unable to sit still or sleep. On the advice of the local emergency room's personnel, the child was placed in a cool tub of water to lower his temperature (103 to 104 °F).

Although his temperature was reduced, the boy continued to hallucinate. After another application of diphenhydramine-calamine lotion, the child was taken to the hospital around 7 a.m., still hallucinating. Neurological tests and a test for Reye's syndrome were negative, and the child was sent home. Another dose of diphenhydramine-calamine lotion was applied at 11 a.m. and after 1 to 2 hours the child began to bump into a hallway wall and was unable to sit still. The last dose of diphenhydramine lotion was applied mid-afternoon. A few hours later, the boy fell asleep for 4 hours, awoke vomiting, and had difficulty breathing. After these problems subsided, the child recovered uneventfully.

In the last 6 years, FDA has received several additional reports of toxic psychoses as a result of topical application of diphenhydramine. One doctor reported two cases in children who had symptoms of delirium from absorption of diphenhydramine from a 1 percent diphenhydramine-calamine product applied to their bodies (Ref. 8). One child had a blood level of 0.31 µg/mL while the other child's blood level was drawn much later and was not indicative of a toxic level. The doctor expressed concern about the potential side effects of the diphenhydramine in this product.

Chan and Wallender (Ref. 9) reported three cases of diphenhydramine toxicity. Two of the cases were included in earlier articles discussed previously. The third case described a 2-year-old boy who developed chicken pox lesions over his body. He was given an unknown amount of diphenhydramine elixir every 3 to 4 hours, and a 1 percent diphenhydramine-calamine in a lotion and/or spray was applied topically to most of his body surface. The child became increasingly irritable and displayed inappropriate behavior. The parents contacted the emergency room and were instructed to bathe the child to remove the diphenhydramine lotion. However, the child continued to have inappropriate behavior and visual hallucinations, and was brought to the emergency room 4 hours later. Vital signs were temperature 37.1 °C (rectally), heart rate 124 beats per minute, and respiration 36 breaths per minute. Chicken pox lesions covered his body and, although he had brief periods of inappropriate behavior, he was able to follow simple commands. The serum diphenhydramine concentration was 1.5 µg/mL. Based on laboratory reports, diphenhydramine concentrations greater than 0.1 µg/mL are potentially toxic. After 2 hours of observation, the

boy was dismissed. He was alert and playful without evidence of toxicity during a follow-up examination later that morning.

The report noted that the topical diphenhydramine products used in treating the patients discussed in the article had a label warning against use in chicken pox unless supervised by a physician. According to the authors, cases described in the article demonstrated three important points. First, absorption of topically applied diphenhydramine in patients with chicken pox and possibly other skin disorders with extensive disruption of the skin barrier can occur, resulting in serious systemic toxicity. Second, the use of topically applied diphenhydramine products in this patient population should be discouraged. Finally, pharmacists should educate the public as well as health professionals regarding the potential toxicity of these easily accessible diphenhydramine-containing nonprescription medications.

McGann et al. (Ref. 10) reported a case of a 19-month-old girl who developed chicken pox 5 days before being brought to the clinic. The girl had been treated with acetaminophen for fever, colloidal oatmeal baths, 1 percent diphenhydramine-calamine lotion applied to her entire body three or four times a day, and syrup given in varying doses totaling approximately 50 mg of diphenhydramine. Two hours later, the child began behaving strangely and rolling her eyes back into her head.

When brought to the clinic, the child was awake but did not interact with the examiner. She was moderately agitated and frightened; would not respond to commands; had a wide-eyed stare; had widely dilated pupils that were sluggishly reactive to light; occasionally made grimacing, tongue-chewing, and lip-smacking motions; staggered when walking; and retained urine. Her serum diphenhydramine level was 1,948 ng/mL. The girl was bathed to remove the diphenhydramine, then admitted to the hospital for hydration, cardiac monitoring, bladder catheterization for urine retention, and observation. After 48 hours, she had returned to normal and was discharged from the hospital.

The report cautioned parents to refrain from using topical diphenhydramine to avoid a serious life-threatening drug toxicity, and noted that the drug label specifically warns against use for chicken pox and measles, except under the supervision of a physician. The agency notes that the labeling directions proposed in § 348.50(d) of the tentative final monograph for OTC external analgesic

drug products (48 FR 5852 at 5869) state that a doctor should be consulted for children under 2 years of age. The report did not indicate whether a doctor had prescribed the drug.

### III. The Agency's Tentative Conclusions and Proposal

The case reports described a number of adverse events resulting from topical application of diphenhydramine to large areas of the body, often where there was broken skin and, in some cases, concurrent use of topical and oral diphenhydramine products. The diphenhydramine products were used to relieve pain and itching due to chicken pox (most cases), poison ivy (1 case), and sunburn (1 case). The age range of the patients with reactions was 19 months to 9 years. The symptoms determined to be most suggestive of diphenhydramine toxicity included dilated pupils, flushed face, hallucinations, ataxic gait, and urinary retention. As the Panel noted (44 FR 69768 at 69809), diphenhydramine is absorbed through damaged skin, and the case reports confirmed that transdermal absorption occurs. In some cases, high serum concentrations confirmed diphenhydramine toxicity. Symptoms gradually disappeared when diphenhydramine was removed from the body by bathing and oral administration of diphenhydramine was discontinued. Most patients returned to normal in about 48 hours after the drug was withdrawn. No deaths have been reported from topical diphenhydramine use alone.

The authors of many of these reports have indicated the need to inform health professionals and consumers about the situations when topical diphenhydramine should not be used, especially in conjunction with oral diphenhydramine. This is especially true in patients with chicken pox and possibly other skin disorders with extensive disruption of the skin barrier, which can result in serious systemic toxicity if absorption of diphenhydramine occurs. As noted in section II.C. of this document, a major manufacturer of OTC diphenhydramine drug products voluntarily added warning information to the labeling of its topical products.

The agency believes there is underreporting of adverse reactions for topical diphenhydramine drug products. There is currently no adverse event reporting requirement for topical diphenhydramine products included in an OTC drug monograph. In addition, the agency is concerned that consumers, primarily parents, may use these topical products casually because they consider

them to be innocuous. Because the exact extent of the problem is not known, and there is a potentially large exposure of the general population to this ingredient, the agency has determined that additional warnings are needed to avoid the possibility of serious adverse reactions. A sufficient number of significant serious neuropsychiatric events have already occurred (especially in children) to propose a change in the labeled warnings for both topical and oral diphenhydramine products. In this document, the agency is proposing to require the following additional warning for topical products containing diphenhydramine: "Do Not Use" (these three words in bold print) "on chicken pox, poison ivy, sunburn, large areas of the body, broken, blistered, or oozing skin, more often than directed, or with any other product containing diphenhydramine, even one taken by mouth."

The agency notes that one manufacturer includes "not to use on measles" in the warning that it voluntarily added to its topical diphenhydramine products. However, because none of the case reports were associated with measles lesions, the agency has not specifically listed measles in the warning. The agency invites interested persons to submit any available information related to any adverse events associated with the topical application of diphenhydramine to measles.

Manufacturers may use bullet points or other identifying marks to emphasize the subparts of this warning. The format of this warning might look something like the following:

Do Not Use (these words in bold print):

- on chicken pox, poison ivy, sunburn
- on large areas of the body
- on broken, blistered, or oozing skin
- more often than directed
- with any other product containing

diphenhydramine, even one taken by mouth

The agency is proposing this warning in new § 348.50(c)(10) under the heading *For products containing diphenhydramine hydrochloride identified in § 348.10(c)(1)*. For these products, this warning shall be the first statement under the heading "Warnings:"

In addition, in §§ 336.50, 338.50, 341.72, and 341.74 the agency is proposing an additional warning for oral drug products that contain diphenhydramine. The warning states: "Do Not Use" (these three words in bold print) "with any other product containing diphenhydramine, including one applied topically." The agency

believes that this warning statement will help reduce the toxicity that may occur from the inadvertent concurrent use of several products containing diphenhydramine. The agency points out that its recent final rule/enforcement policy that provides for diphenhydramine citrate or diphenhydramine hydrochloride to be labeled for concurrent antihistamine and antitussive use should also help reduce the toxicity that may occur from the concurrent administration of more than one oral product containing diphenhydramine. (See the **Federal Register** of April 9, 1996 (61 FR 15700).)

Manufacturers of OTC topical and oral diphenhydramine drug products are encouraged to implement this labeling addition voluntarily as soon as possible after publication of this proposal, subject to the possibility that FDA may change the wording of the warning statement as a result of comments filed in response to this proposal. Because FDA is encouraging the voluntary use of the proposed additional warning statement at this time, the agency advises that manufacturers will be given ample time after publication of a final rule to use up any labeling voluntarily implemented in conformance with this proposal.

### IV. 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) Drug Experience Reports No. 801101-034-00101, 80051000100501, 8706110020071, 89081500100012, 89081500100011, OTC Vol. 06DTFM, Docket No. 78N-0301, Dockets Management Branch.

(2) Patranella, P., "Diphenhydramine Toxicity Due to Topical Application of Caladryl," *Clinical Pediatrics*, 3:163, 1986.

(3) Filloux, F., "Toxic Encephalopathy Caused by Topically Applied Diphenhydramine," *The Journal of Pediatrics*, 108:1018-1020, 1986.

(4) Tomlinson, G., M. Helfaer, and B. Wiedermann, "Diphenhydramine Toxicity Mimicking Varicella Encephalitis," *The Pediatric Infectious Disease Journal*, 6:220-221, 1987.

(5) Schunk, J. E., and D. Svendsen, "Diphenhydramine Toxicity from Combined Oral and Topical Use," *The Pediatric Forum*, 142:1020-1021, 1988.

(6) Woodward, G. A., and R. N. Baldassano, "Topical Diphenhydramine Toxicity in a Five-Year Old with Varicella," *Pediatric Emergency Care*, 4:18-20, 1988.

(7) Letter dated December 14, 1993, from R. G. Kohler, Warner Lambert Co. to W. E. Gilbertson, FDA, in OTC Vol. 06DTFM, Docket No. 78N-0301, Dockets Management Branch.



(8) Drug Experience Report No. 698132, OTC Vol. 06DTFM, Docket No. 78N-0301, Dockets Management Branch.

(9) Chan, C. Y. J., and K. A. Wallander, "Diphenhydramine Toxicity in Three Children with Varicella-Zoster Infection," *The Annals of Pharmacology*, 25:130-132, 1991.

(10) McGann, K. P. et al., "Diphenhydramine Toxicity in a Child with Varicella," A Case Report, *The Journal of Family Practice*, 35:210-214, 1992.

## V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant economic impact of a rule on small entities.

Title II of the Unfunded Mandates Reform Act (21 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this proposed rule is to add warning statements to the labeling of oral and topical OTC drug products that contain diphenhydramine. These warning statements concern diphenhydramine toxicity and are intended to help ensure the safe and effective use of all OTC drug products that contain this ingredient. Potential benefits include reduced toxicity when consumers use these products.

This proposed rule amends the final monographs for oral OTC diphenhydramine drug products for antiemetic, antihistamine, antitussive, and nighttime sleep-aid indications and will require some relabeling of these products to add the new warning statement. The proposed rule also amends the tentative final monograph for OTC external analgesic drug products and will require some

relabeling to add the new warning statement to products containing diphenhydramine. The agency's drug listing system identifies approximately 100 manufacturers and 300 marketers of over 800 oral OTC diphenhydramine drug products, and 10 manufacturers and 50 marketers of over 100 topical OTC diphenhydramine drug products. It is likely that there are some additional marketers and products that are not currently included in the agency's system. However, after adjusting for overlap among the oral and external counts, the agency estimates that there are a total of 100 manufacturers and 300 marketers of about 1,000 affected stock keeping units (SKU) (individual products, packages, and sizes).

The agency has been informed that relabeling costs of this type generally average about \$2,000 to \$3,000 per SKU. Assuming that there are about 1,000 affected OTC SKU's in the marketplace, total one-time costs of relabeling would be \$2 to \$3 million. The agency believes that actual costs would be lower for several reasons. First, most of the label changes will be made by private label manufacturers that tend to use relatively simple and less expensive labeling. Second, for oral OTC diphenhydramine drug products, the agency is proposing a 12-month implementation period that would allow many manufacturers to coordinate this change with routinely scheduled label printing and/or revisions. Similarly, labeling changes for external OTC diphenhydramine drug products would not be required until that monograph is issued and becomes final. Thus, the relabeling costs for a warning statement on these products would be mitigated or eliminated. In addition, because the new warning statement involves only a single sentence, supplementary labeling (e.g., stick on labeling) could be used for those oral products not undergoing a new labeling printing within this 1-year period.

The proposed rule would not require any new reporting and recordkeeping activities. Therefore, no additional professional skills are needed. There are no other Federal rules that duplicate, overlap, or conflict with the proposed rule. The agency does not believe that there are any significant alternatives to the proposed rule that would adequately provide for the safe and effective OTC use of drug products that contain diphenhydramine.

This proposed rule may have a significant economic impact on some small entities. The labeling of many of the affected products is prepared by private label manufacturers for small marketers. Census data provide

aggregate industry statistics on the total number of manufacturers for Standardized Industrial Classification Code 2834 Pharmaceutical Preparations by establishment size, but do not distinguish between manufacturers of prescription and OTC drug products. According to the U.S. Small Business Administration (SBA) designations for this industry, over 92 percent of the roughly 700 establishments and over 87 percent of the 650 firms are small. (Because census size categories do not correspond to the SBA designation of 750 employees, these figures are based on 500 employees.)

An analysis of IMS Co. listings for manufacturers of OTC drug products found that from 46 to 69 percent of the 400 listed firms are small using the SBA definition of 750 employees. The agency's drug listing system indicates that about 300 marketers will need to relabel, and that this relabeling will be prepared by about 100 entities, most of which are private label manufacturers. Thus, the agency believes that most of the manufacturers affected by this proposed rule would be small.

Because this regulation would affect the information content of all OTC drug products that contain diphenhydramine, firms that manufacture or relabel these OTC drug products will need to change the information panel for each affected SKU. Some of these costs of doing so will be mitigated because the agency is allowing up to 1 year for oral products so that the required labeling revision may be made in the normal course of business. Labeling changes for topical products may be coordinated with the final monograph for OTC external analgesic drug products. Among the steps the agency is taking to minimize the impact on small entities are: (1) To provide enough time for implementation to enable entities to use up existing labeling stock, and (2) to provide for the use of supplementary labeling (e.g., stick on labeling) if necessary. The agency believes that these actions provide substantial flexibility and reductions in cost for small entities.

The agency considered but rejected several labeling alternatives: (1) Voluntary relabeling, (2) a longer implementation period, and (3) an exemption from coverage for small entities. The agency does not consider any of these approaches acceptable because they do not assure that consumers will have the most recent needed information for safe and effective use of OTC diphenhydramine drug products at the earliest possible time.

This analysis shows that this proposed rule is not economically significant under Executive Order 12866 and that the agency has undertaken important steps to reduce the burden to small entities. Nevertheless, some entities, especially those private label manufacturers that provide labeling for a number of the affected products, may incur significant impacts. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis, as required under the Regulatory Flexibility Act. Finally, this analysis shows that the Unfunded Mandates Act does not apply to the proposed rule because it would not result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million.

The agency invites public comment regarding any economic impact that this rulemaking would have on manufacturers of OTC oral and topical drug products containing diphenhydramine hydrochloride. Comments regarding the economic impact of this rulemaking on such manufacturers should be accompanied by appropriate documentation. The agency is providing a period of 90 days from the date of publication of this proposed rulemaking in the **Federal Register** for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

#### VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document for oral and topical OTC drug products are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed warning statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

#### VII. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### VIII. Request for Comments

Interested persons may, on or before November 28, 1997, submit written comments on the proposed regulations to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before November 28, 1997. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

#### List of Subjects in 21 CFR Parts 336, 338, 341, 348

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 336, 338, and 341, and 21 CFR part 348 (as proposed in the **Federal Register** of February 8, 1983 (48 FR 5852)) be amended as follows:

#### PART 336—ANTIEMETIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 336 continues to read as follows:

**Authority:** Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 336.50 is amended by adding new paragraph (c)(8) to read as follows:

#### § 336.50 Labeling of antiemetic drug products.

\* \* \* \* \*

(c) \* \* \*

(8) *For products containing diphenhydramine hydrochloride identified in § 336.10(c).* "Do Not Use" (these three words in bold print) "with any other product containing diphenhydramine, including one applied topically."

\* \* \* \* \*

#### PART 338—NIGHTTIME SLEEP-AID DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 338 continues to read as follows:

**Authority:** Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

4. Section 338.50 is amended by adding new paragraph (c)(5) to read as follows:

#### § 338.50 Labeling of nighttime sleep-aid drug products.

\* \* \* \* \*

(c) \* \* \*

(5) "Do Not Use" (these three words in bold print) "with any other product containing diphenhydramine, including one applied topically."

\* \* \* \* \*

#### PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTI-ASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

5. The authority citation for 21 CFR part 341 continues to read as follows:

**Authority:** Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

6. Section 341.72 is amended by adding new paragraphs (c)(6)(iv) and (c)(7) to read as follows:

#### § 341.72 Labeling of antihistamine drug products.

\* \* \* \* \*

(c) \* \* \*

(6) \* \* \*

(iv) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.12(f) and (g).* "Do Not Use" (these three words in bold print) "with any other product containing diphenhydramine, including one applied topically."

(7) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.12(f) and (g).* "Do Not Use:" (these three words in bold print) "with any other product containing diphenhydramine, including one applied topically."

\* \* \* \* \*

7. Section 341.74 is amended by adding new paragraphs (c)(4)(viii)(C) and (c)(4)(ix)(C) to read as follows:

#### § 341.74 Labeling of antitussive drug products.

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(viii) \* \* \*

(C) "Do Not Use" (these three words in bold print) "with any other product containing diphenhydramine, including one applied topically."

(ix) \* \* \*

(C) "Do Not Use" (these three words in bold print) "with any other product

containing diphenhydramine, including one applied topically."

\* \* \* \* \*

#### **PART 348—EXTERNAL ANALGESIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE**

8. The authority citation for 21 CFR part 348 continues to read as follows:

**Authority:** Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

9. Section 348.50 (as proposed at 48 FR 5852, February 8, 1983) is amended by adding new paragraph (c)(10) to read as follows:

#### **§ 348.50 Labeling of external analgesic drug products.**

\* \* \* \* \*

(c) \* \* \*

(10) *For products containing diphenhydramine hydrochloride identified in § 348.10(c)(1).* The following statement shall appear as the first warning statement under the heading "Warnings:" "Do Not Use:" (these three words in bold print) "on chicken pox, poison ivy, sunburn, large areas of the body, broken, blistered, or oozing skin, more often than directed, or with any other product containing diphenhydramine, even one taken by mouth."

\* \* \* \* \*

Dated: August 22, 1997.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 97-22983 Filed 8-28-97; 8:45 am]

BILLING CODE 4160-01-F

#### **DEPARTMENT OF JUSTICE**

##### **Civil Division; Radiation Exposure Compensation Act: Evidentiary Requirements; Definitions and Number of Claims Filed**

##### **28 CFR Part 79**

[A.G. Order No. 2111-97]

RIN 1105-AA49

**AGENCY:** Civil Division, Department of Justice.

**ACTION:** Notice of reopening of comment period for proposed rule.

**SUMMARY:** On May 23, 1997, the United States Department of Justice (DOJ) published a proposed rule amending the existing regulations implementing the Radiation Exposure Compensation Act. This proposed rule may be found at 62 FR 28393, May 23, 1997. The original 60

day comment period expired on July 22, 1997.

Several individuals have requested additional time to submit comments regarding the proposed changes. To ensure that the public has ample opportunity to fully review and comment on the proposed amendments, we are now extending the comment period and will accept comments for an additional 30 days after publication of this notice.

**DATES:** Written comments must be submitted on or before September 29, 1997.

**ADDRESSES:** Please submit written comments to Gerard W. Fischer, Assistant Director, U.S. Department of Justice, Civil Division, P.O. Box 146, Ben Franklin Station, Washington, D.C. 20044-0146.

**FOR FURTHER INFORMATION CONTACT:** Gerard W. Fischer (Assistant Director), (202) 616-4090 and Lori Beg (Attorney), (202) 616-4377.

Dated: August 25, 1997.

**Janet Reno,**

*Attorney General.*

[FR Doc. 97-23015 Filed 8-28-97; 8:45 am]

BILLING CODE 4410-12-M

#### **DEPARTMENT OF TRANSPORTATION**

##### **Coast Guard**

##### **33 CFR Parts 148-150**

[CGD 97-050]

##### **Deepwater Ports**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Advanced notice of proposed rulemaking; request for comments.

**SUMMARY:** The Coast Guard, in an effort to continually update its regulations and in response to recent legislation, plans to revise the Deepwater Port regulations. The Coast Guard solicits comments from the public and industry on the questions listed in this request.

**DATES:** Comments must reach the Coast Guard on or before October 14, 1997.

**ADDRESSES:** You may mail comments to the Executive Secretary, Marine Safety Council (G-LRA) (CGD 97-050), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments and documents as indicated

in this preamble, will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Diane Foster, Office of Operating and Environmental Standards (G-MSO-2), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, telephone (202) 267-1181.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Information**

The Coast Guard encourages interested persons to participate in this request by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 97-050) and the specific section or question of this document to which each comment or question applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period.

The Coast Guard plans no public meeting. Persons may request a public meeting by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

##### **Background and Purpose**

The Coast Guard Authorization Act of 1996 prescribes changes to the regulations developed in accordance with the Deepwater Port Act of 1974, and contained in 33 CFR Parts 148 to 150. The changes include:

1. Removing from the regulations and placing in the license conditions, those requirements necessary to carry out the provisions of the Deepwater Port Act;

2. Removing from the regulations and license conditions, those things which can be stated in an approved operations manual. Basic standards and conditions, however, will continue to be addressed in the regulations.

The Deepwater Port regulations were written in the 1970's when there were

no Deepwater Ports in the United States. While revising the regulations as discussed above, the Coast Guard is also considering revising the regulations to reflect technological advancements which have occurred, and operational knowledge which has been gained over the past twenty years.

### Questions

Public response to the following questions will help the Coast Guard develop a more complete and carefully considered rulemaking. The questions are not all-inclusive, and any supplemental information is welcome. In responding to each question please explain the reasons for each answer.

1. What provisions of the regulations addressed can be moved from the regulations and placed in the license conditions?
2. What provisions of the regulations can be moved from the regulations and placed in the operations manual?
3. What regulations are obsolete, unnecessary, redundant, or restrictive?
4. Should the Outer Continental Shelf Activities regulations (33 CFR Subchapter N) be applied to Deepwater Ports?
5. Should the Regulations for Facilities Transferring Oil or Hazardous Material in Bulk (33 CFR 154) be applied to Deepwater Ports?
6. Should the environmental monitoring program be revised?
7. What other regulations, if any, should the Deepwater Port regulations be designed like?

Dated: August 22, 1997.

### R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97-23074 Filed 8-28-97; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

[CCGD08-97-020]

RIN 2115-AE84

### Regulated Navigation Area Regulations; Mississippi River, LA—Regulated Navigation Area

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to revise the Regulated Navigation Area (RNA) established under 33 CFR 165.810 by incorporating portions of the

temporary RNA that affects vessels of 1,600 gross tons or greater operating on the Mississippi River. This revision requires enhanced safety procedures for vessels of 1,600 gross tons or greater operating on the Mississippi River. The Coast Guard is also proposing to require moored or anchored passenger vessels with embarked passengers to maintain a manned pilothouse watch for the safety of the vessel, crew and passengers.

**DATES:** Comments must be received on or before October 14, 1997.

**ADDRESSES:** Comments should be mailed to Commander, Eighth Coast Guard District (mov-1), Room 1341, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396. The comments and other materials referenced in this notice will be available for inspection and copying at the Eighth Coast Guard District Marine Safety Division Office, New Orleans, LA during normal office hours between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may also be hand delivered to this address.

### FOR FURTHER INFORMATION CONTACT:

Mr. M.M. Ledet, Vessel Traffic Management Specialist, at the Eighth Coast Guard District Marine Safety Division, New Orleans, LA or by telephone at (504) 589-4686.

### SUPPLEMENTARY INFORMATION:

#### Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Receipt of comments will be acknowledged if a stamped self-addressed postcard is enclosed. Persons submitting comments should include their names and addresses, identify this notice (CGD 08-97-20) and the specific section of the proposal that the comments apply, and give reasons for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. The Coast Guard will consider all comments received during the comment period and may change this proposed rule in view of the comments.

The Coast Guard plans no public hearings. Persons may request a public hearing by writing to the Marine Safety Division at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and

place announced by a later notice in the **Federal Register**.

### Regulatory History

On December 14, 1996 the 36,000 gross ton M/V BRIGHT FIELD allided with the Riverwalk store complex causing extensive damage and numerous injuries. This marine casualty prompted the Captain of the Port New Orleans to issue Captain of the Port Orders to moored or anchored high capacity passenger vessels operating on the Mississippi River. These orders required those vessels to maintain a manned pilothouse watch in order to monitor river activity, and to be immediately available to activate emergency procedures to protect the vessel, crew and passengers in the event of an emergency radio broadcast, danger signal or other visual indication of a problem. The initial intent of this order was to establish an interim measure to prevent future allisions and collisions.

On March 18, 1997, (62 FR 14637, March 27, 1997) the Coast Guard established a temporary regulated navigation area affecting the operation of downbound tows in the Lower Mississippi River from mile 437 at Vicksburg, MS to mile 88 above Head of Passes. These regulations were subsequently amended on March 21 (62 FR 15398, April 1, 1997), March 29 (62 FR 16081, April 4, 1997), April 4 (62 FR 17704, April 11, 1997), April 20 (62 FR 23358, April 30, 1997). The amendments added additional operating requirements for vessels of 1,600 gross tons or greater, increased the operating limitations on tank barges and ships carrying hazardous chemicals and gasses, and extended the RNA to the boundary of the territorial sea at the approaches to Southwest Pass.

This RNA and its subsequent amendments was also prompted by unprecedented high waters on the Mississippi River. Conditions on the Lower Mississippi River became so severe that it necessitated the opening of the Bonnet Carre Spillway by the Army Corps of Engineers in order to ease high water conditions and partially combat very strong river currents. The high-water conditions contributed to numerous barge breakaways and a marked increase in vessel accidents. The additional operating requirements were designed to provide a greater margin of safety for vessels of 1,600 gross tons or greater operating on this waterway.

On April 20 (62 FR 23358, April 30, 1997), the towboat and barge limitations and the chemical and gas ship operating restrictions expired. The regulations affecting self-propelled vessels of 1,600

gross tons or greater were extended until July 1, 1997. On June 24, 1997 (62 FR 35097, June 30, 1997), the regulations affecting self-propelled vessels of 1,600 gross tons or greater were again extended until October 31, 1997, pursuant to a notice published in 62 FR 35097. The purpose of this extension was to maintain the enhanced margin of safety that had been facilitated by these regulations. Although the Lower Mississippi River was receding, dangerous and unpredictable currents remained.

### Background and Purpose

In the interest of navigation safety in the narrow confines of the Lower Mississippi River, the Coast Guard is seeking to make permanent the regulations affecting self-propelled vessels of 1,600 gross tons or greater by incorporating them into 33 CFR 165.810. The regulated navigation area is needed to protect vessels, bridges, shore-side facilities, commercial businesses and the public from a safety hazard created by deep-draft vessel operations along the Lower Mississippi River.

During 1995 and 1996 over 300 self-propelled vessels of 1,600 gross tons or greater operating on the Mississippi River experienced casualties involving loss of power, loss of steering or engine irregularities.

The proposed regulations will enhance the safety of navigation on the river and protect shoreside facilities—including commercial businesses—by causing masters and engineers to take measures that will minimize the risk of steering casualties, engine failures and engine irregularities. They also place the ship in a manning status and operating condition that will allow the vessel to take prompt and appropriate emergency action should a casualty occur, thereby reducing the likelihood of a cascading series of allisions and collisions following a casualty. Comments from river pilots operating within the RNA have established the necessity and viability of these regulations and the necessity for their continuation. As a result of the operating restrictions, pilots have seen improvements in vessels' readiness to respond to steering casualties and main propulsion irregularities and failures. Self-propelled vessels of 1,600 or more gross tons are prohibited from operating in this area unless they are in compliance with this regulation.

33 CFR 164.25 requires that before a person causes a vessel to enter or get underway on the navigable waters of the United States a series of steering systems, main propulsion machinery,

and other equipment tests shall be conducted. Subsection 164.11(q) mandates that the tests required by § 164.25 are made and recorded in the vessel's log. This allows the pilot to verify that the tests required by § 164.25 have been conducted and logged in accordance with subsection 164.11(q).

As an enhanced safety precaution for passenger vessels anchored or moored within the regulated navigation area, the Coast Guard is seeking to make permanent a regulation requiring certain passenger vessels to maintain a manned pilothouse watch to monitor river and/or waterway activity, and to be immediately available to activate emergency procedures to protect the vessel, crew and passengers in the event of an emergency radio broadcast, danger signal or other visual indication of a problem. The Coast Guard believes that this measure will significantly enhance the safety of passenger vessels moored or anchored within the regulated navigation area.

Each ferryboat, and each small passenger vessel that operates with 49 or less passengers, would be required to monitor and respond, but may conduct monitoring from a vantage point other than the pilothouse using a portable radio. These vessels were given consideration because of their relatively small size and associated reduced risk while passengers are aboard.

### Discussion of Regulation

The existing regulation in 33 CFR 165.810 establishes a Regulated Navigation Area for the waters of the Mississippi River below Baton Rouge, LA, including South Pass and Southwest Pass. By this proposed rule the Coast Guard adds specific operational requirements to certain vessels when transiting, moored or anchored in the Regulated Navigation Area. These requirements are designed to assist in the prevention of collisions and groundings, ensure port safety, enhance the safety of moored or anchored passenger vessels.

Subsection (e) of this proposed rule addresses additional operating requirements for passenger vessels with embarked passengers. Passenger vessels shall continuously man the pilothouse and remain apprised of river activities in their vicinity by monitoring VHF emergency and working frequencies. This would allow an individual operating a passenger vessel to be immediately available to take necessary action to protect the vessel, crew and passengers in the event that an emergency broadcast, danger signal or visual indication of a problem is received or detected.

An exception to this proposed rule is made for any ferryboat or small passenger vessel that operates with 49 or fewer passengers. These vessels are not required to continuously man the pilothouse since personnel may monitor VHF frequencies via a portable radio from a vantage point other than the pilot house.

Subsection (f) of this proposed rule pertains to all self-propelled vessels bound by 33 CFR part 164. The proposed rule requires that the master shall ensure the vessel is in compliance with 33 CFR part 164 and that the engine room is manned at all times while the vessel is underway in the RNA. Additionally, this subsection requires that the master ensure that the chief engineer has certified that: The main propulsion plant is ready in all respects for operations including the main propulsion air start systems, fuel systems, lube oil systems, cooling systems and automation systems; automatic or load limiting throttle systems are operating in the manual mode with engines available to immediately answer maneuvering commands; cooling, lubricating and fuel oil systems are within proper temperature parameters; and standby systems are ready to be placed immediately in service. These additional operating conditions are required so long as the vessel is underway in the RNA.

### Regulatory Evaluation

This proposed 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 not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although the exact cost of the impact of this proposed rule is not known the safety benefits derived from these rules far exceed the de minimus nature of the costs. The prevention of another M/V BRIGHT FIELD-type allision would save shoreside businesses, maritime users and the public in general tens of millions of dollars in potential property damage and liability. It is difficult to precisely quantify the benefits accrued from the prevention of collisions and allisions on the Lower Mississippi

River. Nevertheless, this proposed rule represents a minimal cost in return for the heightened safety on this waterway, particularly given the fact that the requirements in this proposed rule supplement existing regulatory requirements.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule, if adopted, will have a significant economic impact on a substantial number of small entities. "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. The Coast Guard has reviewed it for potential impact on small entities. The Coast Guard does not believe that any of the entities affected by this proposed rule qualify as small entities. Furthermore, because the proposed rule affects deep-draft vessels underway and passenger vessels when passengers are onboard, and because a ferryboat or small passenger vessel carrying 49 people or less may monitor using a portable radio from a vantage point other than the pilot house, the Coast Guard's position is that this proposed rule will not have a significant economic impact on a substantial number of small entities. If, however, an individual or organization believes that its business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on its business or organization, please submit a comment (see ADDRESSES) explaining why the individual or organization believes it qualifies and in what way and to what degree this proposed rule will adversely affect it.

#### Collection of Information

This proposal 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 proposed rule under the principles and criteria contained in Executive Order 12612, and it is determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Environmental

The Coast Guard considered the environmental impact of this proposed

rule and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 61 FR 13563, March 27, 1996), this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

#### List of Subjects in 33 CFR Part 165

Harbors, Mine safety, Navigation (waters), Reporting and recordkeeping requirements, Safety measures, and Waterways.

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations to read as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 46 CFR 1.46.

2. In § 165.810, paragraph (a) is revised and new paragraphs (e) and (f) are added to read as follows:

#### § 165.810 Mississippi River, LA-regulated navigation area.

(a) Purpose and applicability: This section prescribes rules for all vessels operating in the Mississippi River below Baton Rouge, LA, including South Pass and Southwest Pass, to assist in the prevention of collisions and groundings so as to ensure port safety and to enhance the safety of passenger vessels moored or anchored in the Mississippi River. \* \* \*

(e) Watch requirements for anchored and moored passenger vessels.

(1) Passenger vessels. Except as provided in paragraph (e)(2) of this section, each passenger vessel whenever one or more passengers are aboard shall:

(i) Keep a continuously manned pilothouse and;

(ii) Monitor river activities and marine VHF emergency and working frequencies of the port so as to be immediately available to take necessary action to protect the vessel, crew and passengers in the event that an emergency radio broadcast, danger signal or visual indication of a problem is received or detected.

(2) Each ferryboat, and each small passenger vessel that operates with 49 or less passengers, may monitor river activities using a portable radio from a vantage point other than the pilothouse.

(f) All self-propelled vessels subject to the regulations at 33 CFR part 164 shall also comply with the following:

(1) The engine room shall be manned at all times while underway in the RNA.

(2) Prior to embarking a pilot when entering or getting underway in the RNA, the master of each vessel shall ensure that the vessel is in compliance with 33 CFR part 164.

(3) The master shall ensure that the chief engineer has certified that the following additional operating conditions will be satisfied so long as the vessel is underway within the RNA:

(i) The main propulsion plant is in all respects ready for operations including the main propulsion air start systems, fuel systems, lubricating systems, cooling systems and automation systems;

(ii) Cooling, lubricating and fuel oil systems are at proper operating temperatures;

(iii) Automatic or load limiting main propulsion plant throttle systems are operating in manual mode with engines available to immediately answer maneuvering commands; and

(iv) Main propulsion standby systems are ready to be immediately placed in service.

Dated: August 22, 1997.

**T.W. Josiah,**

*Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.*

[FR Doc. 97-23076 Filed 8-28-97; 8:45 am]

BILLING CODE 4910-14-M

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR PART 62

[LA-39-1-7332b; FRL-5876-6]

#### Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Louisiana; Control of Landfill Gas Emissions from Existing Municipal Solid Waste Landfills

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** This notice proposes approval of the Louisiana State Plan for controlling landfill gas emissions from existing municipal solid waste landfills. The plan was submitted to fulfill the requirements of the Clean Air Act. The State Plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits. Please see the direct final notice of this action located

elsewhere in today's **Federal Register** for a detailed description of the State Plan.

**DATES:** Comments on this proposed rule must be postmarked by September 29, 1997. If no adverse comments are received, then the direct final rule is effective on October 28, 1997.

**ADDRESSES:** Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the State's plan and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency,  
Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700,  
Dallas, Texas 75202-2733.

Louisiana Department of Environmental Quality, Air Quality Program, 7290 Bluebonnet Blvd., Baton Rouge, Louisiana 70810.

Anyone wishing to review this plan at the Region 6 EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Lt. Mick Cote, Air Planning Section (6PD-L), EPA Region 6, telephone (214) 665-7219.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final notice which is located in the Rules Section of this **Federal Register**.

#### List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Paper and paper products industry, Reporting and recordkeeping requirements, Sulfuric acid plants, Sulfuric oxides.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: August 11, 1997.

**Jerry Clifford,**

**Acting Regional Administrator.**

[FR Doc. 97-21816 Filed 8-28-97; 8:45 am]

BILLING CODE 6560-50-P

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## LEGAL SERVICES CORPORATION

### 45 CFR Part 1630

#### Cost standards and procedures

**AGENCY:** Legal Services Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes substantial revisions to the Legal Services Corporation's rule concerning the Corporation's cost standards and

procedures. The proposed revisions are intended to conform the rule to applicable provisions of the Inspector General Act, the Corporation's appropriation's act and relevant OMB Circulars.

**DATES:** Comments should be received on or before October 29, 1997.

**ADDRESSES:** Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002-4250.

**FOR FURTHER INFORMATION CONTACT:** Office of the General Counsel, (202) 336-8817.

**SUPPLEMENTARY INFORMATION:** This rule proposes substantial revisions to the Legal Services Corporation's ("LSC" or "Corporation") rule on cost standards and procedures to conform the rule to applicable provisions of Sec. 509 of Public Law 104-134; the Inspector General ("IG") Act, 5 U.S.C. App. 3, as amended; the Audit Guide for LSC Recipients and Auditors ("Audit Guide"); OMB Circular A-50, Audit Followup (September 29, 1982); and OMB Circular A-133, Audits of Institutions of Higher Education and Other Non-Profit Institutions (June 24, 1997) (this circular is applicable to LSC recipients through Section I-2 of the Audit Guide). In addition, the rule borrows from other relevant OMB circulars as appropriate; see OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations (November 19, 1993); OMB Circular A-122, Cost Principles for Nonprofit Organizations (May 8, 1997). The Corporation's Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") held public hearings on a draft proposed rule in Los Angeles, California, on July 13, 1997 and, after making revisions to the draft, adopted a proposed rule for publication in the **Federal Register** for public notice and comment.

Generally, this rule sets out proposed uniform standards for determining the allowability of costs and provides a proposed process for resolving questioned costs. A section-by-section analysis is provided below.

#### Section 1630.1 Purpose

The purpose of this proposed rule is to provide uniform standards for determining the allowability of costs and to provide a process for the resolution of questioned costs. This rule proposes deleting language in the current rule which explains that the

Corporation has considered the standardized policies developed under Federal experience and has adopted or adapted many Federal policies as appropriate for the legal services system. Such language is better placed in the rule's preamble.

#### Section 1630.2 Definitions

Paragraph (a) defines allowed cost as a cost that is determined in a management decision to be eligible for payment with LSC funds.

Paragraph (b) defines corrective action as action taken by a recipient that corrects deficiencies or makes improvements. It also includes a demonstration by the recipient that the audit or other findings do not warrant corrective action.

Paragraph (c) defines derivative income. This definition replaces the current § 1630.4(e) which defines program income, a term used within the Federal government for derivative income. Derivative income is used in this rule instead of program income because it is more familiar to the legal services community. Even though the current rule defines program income, the term is not used anywhere in the rule. This proposed rule devotes a section to derivative income, see § 1630.12.

Derivative income is defined as income earned from LSC-funded activities during the term of an LSC grant or contract. It would include interest earned on an LSC grant, fees for services or income for sales or rentals of real or personal property.

Paragraph (d) defines disallowed cost as a cost that should not be charged to LSC funds. It does not include reference to derivative income as does the current definition in § 1630.2(c). Instead, the rule addresses the recovery of derivative income in §§ 1630.7(b) and 1630.8.

Paragraph (e) defines final action as the completion of all corrective actions called for in a management decision. When no corrective action is required by Corporation management, the management decision is the final action. This term is not found in the current rule.

Paragraph (f) defines management decision as a written response by management to findings and recommendations in an audit or other report and a recipient's response to such findings and recommendations. A management decision includes any corrective actions necessary to address any findings and recommendations. This term is not found in the current rule.

Paragraph (g) defines questioned cost as a cost charged to LSC funds that is



questioned in an audit or other finding because (1) there may have been a violation of applicable law, (2) the costs are unsupported by adequate documentation, or (3) the costs appear to be unnecessary or unreasonable. The proposed definition expands the current definition to incorporate current law, which contemplates that, in addition to Corporation management, the Office of Inspector General ("OIG"), the General Accounting Office ("GAO"), or a duly authorized independent auditor or audit organization may question a cost.

Paragraph (h) defines recipient for the purposes of this part. No change has been made from the current definition.

#### *Section 1630.3 Burden of Proof*

This section provides that the burden of proof is on the recipient. A statement in the current rule that the recipient has the burden of showing that funds expended are not subject to a restriction is deleted in this rule as redundant and unnecessary.

#### *Section 1630.4 Standards Governing Allowability of Costs Under Corporation Grants or Contracts*

Paragraph (a) of this section sets out the nine standards that determine whether an expenditure will be allowed under a recipient's grant or contract. The standards are generally the same as those in the current rule. However, several changes are proposed. First, the proposed rule modifies subparagraph (a)(1) of the current rule to permit, in limited circumstances, costs incurred immediately prior to or immediately after the term of the grant, provided the costs are necessary to the performance of the grant and the Corporation has approved them pursuant to § 1630.5(b)(1) of the proposed rule. These costs are not allowed under the current rule. Allowing such costs is consistent with Federal practice and the Corporation's new competitive grant process and will enable new recipients to incur necessary start-up costs immediately prior to the onset of the grant term and will permit current recipients who are terminating their relationship with LSC to incur necessary close-out costs that occur immediately after the conclusion of the grant. Second, subparagraph (a)(2) of the current rule has been modified and is based on OMB Circular A-122. Third, reference to the Audit Guide has been deleted in subparagraph (a)(4), because the latter does not set forth any rules or guidelines governing the allowability of costs. Fourth, subparagraph (a)(6) has added the words "over time" to the current language to clarify that it addresses consistency over time, as

opposed to subparagraph (a)(5), which addresses consistency among funding sources. Finally, subparagraph (a)(9) has added language to require recipients to provide access to business records to the OIG, the GAO, and other federally funded auditors as required by section 509(h) of Pub. L. 104-134.

One of the standards in paragraph (a) is that the cost be reasonable and necessary for the performance of the grant or contract. Paragraph (b) sets out the factors that determine whether a cost is reasonable. Generally, a prudent person standard is established. This paragraph clarifies that if a cost is disallowed solely because it is excessive, only the amount above that which is reasonable will be disallowed. Although this paragraph is generally the same as the current rule, hortatory language in the current rule that urges careful scrutiny of costs has been deleted because it has no practical effect and provides no additional clarity about what constitutes a reasonable cost.

Another standard in paragraph (a) is whether a cost may be allocated to the grant or contract. Paragraph (c) clarifies when a cost may be allocated to a grant or contract and includes new language that provides that costs may be charged to an LSC grant or contract directly or indirectly. The new language is adapted from OMB Circular A-122. The Committee has deleted language in the current rule that prohibits recipients from shifting costs from non-LSC to LSC grants or from one LSC grant to another LSC grant, to overcome funding deficiencies, or to avoid restrictions on the use of funds. It is already clear in other LSC regulations that certain recipient funds may not be allocated to prohibited or restricted activities, and the Committee proposes to delete the provision as redundant and unnecessary. However, the Committee seeks comment on the deletion of the current § 1630.4(c)(2), which provides:

Any cost allocable to a particular grant or contract or other cost objective under these principles may not be shifted to other Corporation grants or contracts to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms or conditions of the grant or contract.

Paragraphs (d), (e) and (f) define direct and indirect costs and specify methods for allocating costs. Some indirect costs will carry specific allocation requirements. For example, section 509(c) of Pub. L. 104-134 requires a pro rata distribution of audit costs among a recipient's funding sources.

Paragraph (g) adapts language from the Corporation's Accounting Guide for LSC Recipients and governs situations

where another funding source will not allow the charging of indirect costs to that funding source. In such a situation, paragraph (g) provides an exception to allow recipients to use a cost allocation method that charges the LSC grant with a proportional share of the other funding source's share of indirect costs.

Paragraph (h), which is unchanged from the current rule, defines and explains how to allocate applicable credits. Applicable credits are defined as receipts or reductions of expenditures which operate to offset or reduce expenses.

Paragraph (i) provides that OMB Circulars shall provide guidance for allowable costs unless the guidance is inconsistent with other law applicable to the Corporation.

#### *Section 1630.5 Costs Requiring Corporation Prior Approval*

Paragraph (a) explains that recipients may seek advance understandings from the Corporation on the reasonableness and allocability of a particular cost before it is incurred.

Paragraph (b) requires prior approval from the Corporation before certain costs may be charged to Corporation funds. Several changes have been made from the current rule. The requirement for prior approval of consultant contracts has been deleted to be consistent with OMB Circulars A-122 and A-110. In addition, provisions requiring prior approval for pre-award and post-award costs and capital expenditures exceeding \$10,000 to improve real property have been added. The reference to "combined purchase price" has been deleted as confusing and unnecessary. It is only the purchase price of individual items that is considered for the purposes of prior approval. The combined purchase requirement in the current rule penalized programs that made independent purchases of equipment over a period of time and then belatedly discovered that they had exceeded the current rule's \$10,000 threshold. The elimination of the combined purchase provision does not alter the accounting rules which determine when to treat property purchases as capital expenditures. For example, the Accounting Guide for LSC Recipients requires that purchases of property items costing in excess of \$1,000 be treated as capital expenditures.

Paragraph (c) clarifies that the Corporation's approval or advance understanding is valid for one year only or for a greater time if specified by the Corporation in its approval or understanding. This provision is highlighted in a single paragraph in this



proposed rule. Its placement in the current rule has often caused it to be missed by recipients. Situations where approval may be given for a period greater than a year usually involve multiple-year leases for equipment such as photocopiers.

#### *Section 1630.6 Effect of Absence of Prior Approval*

This section sets out the procedures for granting or denying prior approval and the effects of the absence of prior approval. The proposed rule modifies the structure of the current section to provide greater clarity, but does not substantively change the content of the section.

Paragraph (a) explains that approval will be granted for a cost if the recipient has provided sufficient information to show that the cost is consistent with this part. When the Corporation denies a request, this paragraph requires that the recipient be provided a written explanation of the grounds for denial.

Paragraph (b) provides a time limit of sixty days for the Corporation to respond to a request for prior approval. If the Corporation fails to meet the deadline, the Corporation may not assert the absence of prior approval as grounds to disallow the cost.

Paragraph (c) allows the Corporation to seek additional information from the recipient to make its determination on the request for prior approval. Paragraph (d) sets out the Corporation's deadline for responding to a request for prior approval when the Corporation has requested additional information from the recipient.

#### *Section 1630.7 Review and Appeal of Questioned Costs*

This section sets out the process for reviewing and appealing questioned costs. The proposed rule retains the overall process contained in the current rule, but makes several changes to be consistent with the IG Act, Section 504 of Public Law 104-134, and OMB Circular A-133.

Paragraph (a) expands the current rule to include additional parties who are authorized by current law to question costs. The current rule recognizes only the authority of Corporation management to question costs. This proposed rule also recognizes the authority of the Inspector General, the GAO, and authorized independent auditors or audit organizations to question costs. This paragraph provides that the Corporation shall follow up on any referred or identified questioned costs to determine whether there is a legal or factual basis for taking any additional action.

If the Corporation determines there is a basis for taking additional action, paragraph (b) requires the Corporation to provide the recipient with a notice of its intent to disallow a cost. This paragraph describes what information must be in the notice and also authorizes the Corporation to recover any derivative funds resulting from the activity to which the questioned cost is attributable. Finally, this paragraph states that the Corporation must take action within three years of the time the cost was incurred by the recipient. The current rule allows the Corporation to take action up to six years after a cost has been incurred. The Committee decided that six years is too long, even considering the time needed for the development of an audit or other report and implementation of the Corporation's questioned cost procedures. The Committee especially seeks comments on the proposed change to three years.

The rest of this section describes the due process rights of recipients, which include a right to appeal a management decision to the President for questioned costs that exceed \$2,500. The \$2,500 threshold is new. This section also clarifies when management decisions on questioned costs are final and makes it clear that final decisions shall include whatever action the recipient is required to take to repay the questioned costs and to prevent any recurrence of the circumstances causing the disallowed costs.

#### *Section 1630.8 Recovery of Disallowed Costs and Other Corrective Action*

This section sets out the requirements for and process by which the Corporation collects disallowed costs and ensures that a recipient take applicable corrective action. It also clarifies that final action occurs when the recipient has repaid all disallowed costs and has taken all required corrective action.

#### *Section 1630.9 Other Remedies; Effect on Other Parts*

Paragraph (a) has been updated and it clarifies the relationship of this part to parts 1606, 1623, 1625, and 1640 of the Corporation's regulations. Paragraph (b) clarifies that a recovery of disallowed costs under this part does not constitute a termination (part 1606), suspension of funding (part 1623) or a denial of refunding (part 1625).

#### *Section 1630.10 Applicability to Subgrants*

This section clarifies that this part applies to expenditures under subgrants.

#### *Section 1630.11 Applicability to Non-LSC Funds*

Paragraph (a) has been updated and it clarifies that costs for certain activities may not be charged to various types of a recipient's non-LSC funds. This paragraph uses the terms found in 45 CFR part 1610 which, sets out the various prohibitions applicable to recipients on their use of non-LSC funds for certain activities.

Paragraph (b) allows the Corporation to recover from a recipient's LSC funds any disallowed costs charged to a recipient's non-LSC funds.

#### *Section 1630.12 Applicability to Derivative Income*

This is a new section intended to clarify the applicability of this part to derivative income. Paragraph (a) sets out the allocation requirements for derivative income. Paragraph (b) clarifies that expenditures of LSC derivative income are subject to the same requirements that govern expenditures of LSC grant funds, including the cost allowability requirements of this part.

#### *Section 1630.13 Time*

This section describes how time will be computed for the purposes of this part and provides for an extension of time requirements for good cause.

#### **List of Subjects in 45 CFR Part 1630**

Accounting; Government contracts; Grant programs; Legal services; Questioned costs.

For reasons set forth in the preamble, LSC proposes to revise 45 CFR part 1630 to read as follows:

#### **PART 1630—COST STANDARDS AND PROCEDURES**

- Sec.
- 1630.1 Purpose.
  - 1630.2 Definitions.
  - 1630.3 Burden of proof.
  - 1630.4 Standards governing allowability of costs under Corporation grants or contracts.
  - 1630.5 Costs requiring Corporation prior approval.
  - 1630.6 Effect of absence of prior approval.
  - 1630.7 Review and appeal of questioned costs.
  - 1630.8 Recovery of disallowed costs and other corrective action.
  - 1630.9 Other remedies; effect on other parts.
  - 1630.10 Applicability to subgrants.
  - 1630.11 Applicability to non-LSC funds.
  - 1630.12 Applicability to derivative income.
  - 1630.13 Time.

**Authority:** 42 U.S.C. 2996e, 2996f, 2996g, 2996h(c)(1), and 2996i(c).

**§ 1630.1 Purpose.**

This part is intended to provide uniform standards for allowability of costs and to provide a comprehensive, fair, timely, and flexible process for the resolution of questioned costs.

**§ 1630.2 Definitions.**

(a) *Allowed cost* means a cost that the Corporation, in a management decision, has determined to be eligible for payment from a recipient's Corporation funds.

(b) *Corrective action* means action taken by a recipient that:

- (1) corrects identified deficiencies
- (2) produces recommended improvements; or
- (3) demonstrates that audit or other findings are either invalid or do not warrant recipient action.

(c) *Derivative income* means income earned by a recipient from Corporation-supported activities during the term of a Corporation grant or contract, and includes, but is not limited to, income from fees for services (including attorney fee awards and reimbursed costs), sales and rentals of real or personal property, and interest earned on Corporation grant or contract advances.

(d) *Disallowed cost* means a questioned cost that the Corporation, in a management decision, has determined should not be charged to a recipient's Corporation funds.

(e) *Final action* means the completion of all actions that Corporation management, in a management decision, has concluded are necessary with respect to the findings and recommendations in an audit or other report. In the event that Corporation management concludes no corrective action is necessary, final action occurs when a management decision has been made.

(f) *Management decision* means the evaluation by Corporation management of findings and recommendations in an audit or other report and the recipient's response to the report, and the issuance of a final, written decision by management concerning its response to such findings and recommendations, including any corrective actions which Corporation management has concluded are necessary to address the findings and recommendations.

(g) *Questioned cost* means a cost that a recipient has charged to Corporation funds which Corporation management, the Office of Inspector General, the General Accounting Office, or an independent auditor or other audit organization authorized to conduct an audit of a recipient has questioned because of an audit or other finding that:

(1) There may have been a violation of a provision of a law, regulation, contract, grant, or other agreement or document governing the use of Corporation funds;

(2) The costs are not supported by adequate documentation; or

(3) The costs incurred appear unnecessary or unreasonable and do not reflect the actions a prudent person would take in the circumstances.

(h) *Recipient* as used in this part means any grantee or contractor receiving funds from the Corporation under sections 1006(a)(1) or 1006(a)(3) of the Act.

**§ 1630.3 Burden of proof.**

The recipient shall have the burden of proof under this part.

**§ 1630.4 Standards governing allowability of costs under Corporation grants or contracts.**

(a) *General criteria.* Expenditures by a recipient are allowable under the recipient's grant or contract only if the recipient can demonstrate that the cost was:

(1) Actually incurred in the performance of the grant or contract and the recipient was liable for payment;

(2) Reasonable and necessary for the performance of the grant or contract as approved by the Corporation;

(3) Allocable to the grant or contract;

(4) In compliance with the Act, applicable appropriations law, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC Recipients, the terms and conditions of the grant or contract, and other applicable law;

(5) Consistent with accounting policies and procedures that apply uniformly to both Corporation-financed and other activities of the recipient;

(6) Accorded consistent treatment over time;

(7) Determined in accordance with generally accepted accounting principles;

(8) Not included as a cost or used to meet cost sharing or matching requirements of any other federally financed program, unless the agency whose funds are being matched determines in writing that Corporation funds may be used for federal matching purposes; and

(9) Adequately and contemporaneously documented in business records accessible during normal business hours to Corporation management, the Office of Inspector General, the General Accounting Office, and independent auditors or other audit organizations authorized to conduct audits of recipients.

(b) *Reasonable costs.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. If a cost is disallowed solely on the ground that it is excessive, only the amount that is larger than reasonable shall be disallowed. In determining the reasonableness of a given cost, consideration shall be given to:

(1) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the recipient or the performance of the grant or contract;

(2) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms-length bargaining, Federal and State laws and regulations, and the terms and conditions of the grant or contract;

(3) Whether the individuals concerned acted with prudence under the circumstances, considering their responsibilities to the recipient, its clients and employees, the public at large, the Corporation, and the Federal government; and

(4) Significant deviations from the established practices of the recipient which may unjustifiably increase the grant or contract costs.

(c) *Allocable costs.* A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. Costs may be allocated to Corporation funds either as direct or indirect costs according to the provisions of this section. A cost is allocable to a Corporation grant or contract if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the grant or contract;

(2) Benefits both the grant or contract and other work and can be distributed in reasonable proportion to the benefits received; or

(3) Is necessary to the overall operation of the recipient, although a direct relationship to any particular cost objective cannot be shown.

(d) *Direct costs.* Direct costs are those that can be identified specifically with a particular final cost objective, i.e., a particular grant award, project, service, or other direct activity of an organization. Costs identified specifically with grant awards are direct costs of the awards and are to be assigned directly thereto. Direct costs include, but are not limited to, the salaries and wages of recipient staff who are working on cases or matters that are

identified with specific grants or contracts. Salary and wages charged directly to Corporation grants and contracts must be supported by time records.

(e) *Indirect costs.* Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives. Indirect costs include, but are not limited to, the costs of operating and maintaining facilities, and the costs of general program administration, such as the salaries and wages of program staff whose time is directly attributable to a particular grant or contract. Such staff may include, but are not limited to, executive officers and personnel, accounting, secretarial and clerical staff.

(f) *Allocation of indirect costs.* Where a recipient has only one major function, i.e., the delivery of legal services to low-income clients, allocation of indirect costs may be by a simplified allocation method, whereby total allowable indirect costs (net of applicable credits) are divided by an equitable distribution base and distributed to individual grant awards accordingly. The distribution base may be total direct costs, direct salaries and wages, attorney hours, numbers of cases, numbers of employees, or another base which results in an equitable distribution of indirect costs among funding sources.

(g) *Exception for certain indirect costs.* Some funding sources may refuse to allow the allocation of certain indirect costs to an award. In such instances, a recipient may allocate a proportional share of another funding source's share of an indirect cost to Corporation funds, provided that the activity associated with the indirect cost is permissible under the LSC Act and regulations.

(h) *Applicable credits.* Applicable credits are those receipts or reductions of expenditures which operate to offset or reduce expense items that are allocable to grant awards as direct or indirect costs. Applicable credits include, but are not limited to, purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits relate to allowable costs, they shall be credited as a cost reduction or cash refund in the same fund to which the related costs are charged.

(i) *Guidance.* The Circulars of the Office of Management and Budget shall provide guidance for all allowable cost questions arising under this part when relevant policies or criteria therein are not inconsistent with the provisions of the Act, applicable appropriations law, this part, the Accounting Guide for LSC Recipients, Corporation rules, regulations, guidelines, instructions, and other applicable law.

#### **§ 1630.5 Costs requiring Corporation prior approval.**

(a) *Advance understandings.* Under any given grant award, the reasonableness and allocability of certain cost items may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, recipients may seek a written understanding from the Corporation in advance of incurring special or unusual costs. If a recipient elects not to seek an advance understanding from the Corporation, the absence of an advance understanding on any element of a cost does not affect the reasonableness or allocability of the cost.

(b) *Prior approvals.* Without prior written approval of the Corporation, no cost attributable to any of the following may be charged to Corporation funds:

(1) Costs incurred prior to or after the completion of the term of the grant or contract;

(2) Purchases and leases of equipment, furniture, or other personal, non-expendable property, if the current purchase price of any individual item of property exceeds \$10,000;

(3) Purchases of real property; and

(4) Capital expenditures exceeding \$10,000 to improve real property.

(c) *Duration.* The Corporation's approval or advance understanding shall be valid for one year, or for a greater period of time which the Corporation may specify in its approval or understanding.

#### **§ 1630.6 Effect of absence of prior approval.**

(a) The Corporation shall grant prior approval of a cost if the recipient has provided sufficient written information to demonstrate that the cost would be consistent with the standards and policies of this part. If the Corporation denies a request for approval, it shall provide to the recipient a written explanation of the grounds for denying the request.

(b) Except as provided in paragraphs (c) and (d) of this section, the Corporation may not assert the absence of prior approval as a basis for disallowing a cost, if the Corporation

has not responded to a written request for approval within sixty (60) days of receiving the request.

(c) If additional information is necessary to enable the Corporation to respond to a request for prior approval, the Corporation may make a written request for additional information within forty-five (45) days of receiving the request for approval.

(d) If the Corporation has made a written request for additional information about a cost as provided by paragraph (c) of this section, and if the Corporation has not responded within thirty (30) days of receiving in writing all additional, requested information, the Corporation may not assert the absence of prior approval as a basis for disallowing the cost.

#### **§ 1630.7 Review and appeal of questioned costs.**

(a) When the Office of Inspector General, the General Accounting Office, or an independent auditor or other audit organization authorized to conduct an audit of a recipient has identified and referred a questioned cost to the Corporation, Corporation management shall review the findings of the Office of Inspector General, General Accounting Office, or independent auditor or other authorized audit organization, as well as the recipient's written response to the findings, in order to determine accurately the amount of the questioned cost, the factual circumstances giving rise to the cost, and the legal basis for disallowing the cost. Corporation management may also identify questioned costs in the course of its oversight of recipients.

(b) If Corporation management determines that there is a basis for disallowing a questioned cost, and if not more than three years have elapsed since the recipient incurred the cost, Corporation management shall provide to the recipient written notice of its intent to disallow the cost. The written notice shall state the amount of the cost and the factual and legal basis for disallowing it. If the activity to which the cost is attributable directly resulted in derivative income earned by the recipient, the written notice shall also state the amount of derivative income and the factual and legal basis for seeking to recover it.

(c) Within thirty (30) days of receiving written notice of the Corporation's intent to disallow the questioned cost, the recipient may respond with written evidence and argument to show that the cost was allowable, or that the Corporation, for equitable, practical, or other reasons, should not recover all or part of the amount, or that the recovery

should be made in installments. If the recipient does not respond to the Corporation's written notice, Corporation management shall issue a management decision on the basis of information available to it.

(d) Within sixty (60) days of receiving the recipient's written response to the notice of intent to disallow the questioned cost, Corporation management shall issue a management decision stating whether or not the cost has been disallowed, the reasons for the decision, and the method of appeal as provided in this section. If Corporation management has determined that the cost should be disallowed, the management decision shall also describe the expected recipient action to repay the cost, including the method and schedule for collection of the amount of the cost. The management decision may also require the recipient to make financial adjustments or take other corrective action to prevent a recurrence of the circumstances giving rise to the disallowed cost.

(e) If the amount of a disallowed cost exceeds \$2,500, the recipient may appeal in writing to the Corporation President within thirty (30) days of receiving the Corporation's management decision to disallow the cost. The written appeal should state in detail the reasons why the Corporation should not disallow part or all of the questioned cost. If the amount of a disallowed cost does not exceed \$2,500, or if the recipient elects not to appeal the disallowance of a cost in excess of \$2,500, the Corporation's management decision shall be final.

(f) Within thirty (30) days of receipt of the recipient's appeal of a disallowed cost in excess of \$2,500, the President shall either adopt, modify, or reverse the Corporation's management decision to disallow the cost. If the President has had prior involvement in the consideration of the disallowed cost, the President shall designate another senior Corporation employee who has not had prior involvement to review the recipient's appeal. The President shall also have discretion, in circumstances where the President has not had prior involvement in the disallowed cost, to designate another senior Corporation employee to review the recipient's appeal, provided that the senior Corporation employee has not had prior involvement in the disallowed cost.

(g) The decision of the President or designee shall be final and shall be based on the written record, consisting of the Corporation's notice of intent to disallow the questioned cost, the recipient's response, the management decision, the recipient's written appeal,

any additional response or analysis provided to the President or designee by Corporation staff, and the relevant findings, if any, of the Office of Inspector General, General Accounting Office, or other authorized auditor or audit organization. Upon request, the Corporation shall provide a copy of the written record to the recipient.

**§ 1630.8 Recovery of disallowed costs and other corrective action.**

(a) The Corporation shall recover from the recipient, within the time limits and conditions set forth in the Corporation's management decision, any disallowed costs, plus any derivative income which the recipient may have earned directly as a result of activity attributable to the disallowed cost. Recovery of the disallowed cost and derivative income, if any, may be in the form of a reduction in the amount of future grant checks or in the form of direct payment from the recipient to the Corporation.

(b) The Corporation shall ensure that a recipient which has incurred a disallowed cost takes any additional, necessary corrective action within the time limits and conditions set forth in the Corporation's management decision. The recipient shall have taken final action when the recipient has repaid all disallowed costs and has taken all corrective action which the Corporation has stated in its management decision is necessary to prevent the recurrence of circumstances giving rise to a questioned cost.

**§ 1630.9 Other remedies; effect on other parts.**

(a) In cases of serious financial mismanagement, fraud, or defalcation of funds, the Corporation may refer the matter to the Office of Inspector General, and may take appropriate action pursuant to 45 CFR parts 1606, 1623, 1625, and 1640.

(b) The recovery of a disallowed cost according to the procedures of this part does not constitute a permanent reduction in the annualized funding level of the recipient, nor does it constitute a termination of financial assistance under 45 CFR part 1606, a suspension of funding under 45 CFR part 1623, or a denial of refunding under 45 CFR part 1625.

**§ 1630.10 Applicability to subgrants.**

When disallowed costs arise from expenditures incurred under a subgrant of Corporation funds, the recipient and the subrecipient will be jointly and severally responsible for the actions of the subrecipient, as provided by 45 CFR part 1627, and will be subject to all remedies available under this part. Both

the recipient and the subrecipient shall have access to the review and appeal procedures of this part.

**§ 1630.11 Applicability to non-LSC funds.**

(a) No cost attributable to a purpose prohibited by the LSC Act, as defined by 45 CFR 1610.2(a), may be charged to private funds, except for tribal funds used for the specific purposes for which they were provided. No cost attributable to an activity prohibited by or inconsistent with Section 504, as defined by 45 CFR 1610.2(b), may be charged to non-LSC funds, except for tribal funds used for the specific purposes for which they were provided.

(b) According to the review and appeal procedures of 45 CFR 1630.7, the Corporation may recover from a recipient's Corporation funds an amount not to exceed the amount improperly charged to non-LSC funds, plus any income which the recipient may have derived as a result of the activity in question.

**§ 1630.12 Applicability to derivative income.**

(a) Derivative income resulting from an activity supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the activity.

(b) Derivative income which is attributable to activities supported in whole or in part by Corporation funds is subject to the requirements of this part, including the requirement of 45 CFR 1630.4(a)(4) that expenditures of such funds be in compliance with the Act, applicable appropriations law, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC Recipients, the terms and conditions of the grant or contract, and other applicable law.

**§ 1630.13 Time.**

(a) *Computation.* Time limits specified in this part shall be computed in accordance with Rules 6(a) and 6(e) of the Federal Rules of Civil Procedure.

(b) *Extensions.* The Corporation may, on a recipient's written request for good cause, grant an extension of time and shall so notify the recipient in writing.

Dated: August 25, 1997.

**Victor M. Fortunio,**  
General Counsel.

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**FEDERAL COMMUNICATIONS  
COMMISSION****47 CFR Part 73**

[MM Docket No. 97-185, RM-9080]

**Radio Broadcasting Services;  
Vergennes, VT, and Willsboro, NY****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Watertown Radio Associates Limited Partnership requesting the reallocation of Channel 244A from Vergennes, Vermont, to Willsboro, New York, and the modification of Station WXPS(FM)'s license to specify Willsboro as its community of license. Channel 244A can be allotted to Willsboro in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.1 kilometers (3.8 miles) northwest imposed to accommodate Watertown Radio's desired site. The coordinates for Channel 244A at Willsboro, New York, are 44-24-11 NL and 73-26-03 WL. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 244A at Willsboro or require the petitioner to demonstrate the availability of an additional equivalent class channel for us by such parties.

**DATES:** Comments must be filed on or before October 16, 1997, and reply comments on or before October 31, 1997.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David G. O'Neil, Rini, Coran & Lancellotta, P.C., 1350 Connecticut Avenue, N.W., Suite 900, Washington, D.C. 20036 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97-185, adopted August 13, 1997, and released August 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-

3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,***Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 97-22992 Filed 8-28-97; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS  
COMMISSION****47 CFR Part 73**

[MM Docket No. 97-186; RM-9130]

**Radio Broadcasting Services; Canton  
and Glasford, IL****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Neil A. Ronés and Luann C. Dahl proposing the reallocation of Channel 266A from Canton to Glasford, Illinois, as the community's first local aural transmission service, and the modification of the petitioners' construction permit (no call sign) accordingly. Channel 266A can be allotted to Glasford in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioners' requested site. The coordinates for Channel 266A at Glasford are North Latitude 40-34-20 and West Longitude 89-48-47. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 266A at Glasford, Illinois.

**DATES:** Comments must be filed on or before October 16, 1997, and reply comments on or before October 31, 1997.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frank R. Jazzo, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor., Rosslyn, Virginia (Counsel for Petitioner).

**FOR FURTHER INFORMATION CONTACT:**

Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97-186, adopted August 13, 1997, and released August 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,***Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 97-22995 Filed 8-28-97; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS  
COMMISSION****47 CFR Part 73**

[MM Docket No. 97-184, RM-9120]

**Radio Broadcasting Services; New  
Augusta, MS****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Community Broadcasting Company proposing the allotment of Channel 269A to New Augusta, Mississippi, as the community's first local aural transmission service. Channel 269A can be allotted to New Augusta in compliance with the Commission's minimum distance separation requirements with a site restriction 7.8 kilometers (4.9 miles) northwest in order to avoid a short-spacing conflict with the site specified in Station WTKX-FM's construction permit for Channel 268C, Pensacola, Florida. The coordinates for Channel 269A at New Augusta, Mississippi, are 31-13-41 NL and 89-06-47 WL.

**DATES:** Comments must be filed on or before October 16, 1997, and reply comments on or before October 31, 1997.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John S. Neely, Miller & Miller, P.C., P.O. Box 33003, Washington, D.C. 20033 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97-184, adopted August 13, 1997, and released August 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 97-22994 Filed 8-28-97; 8:45 am]

BILLING CODE 6712-01-P

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[MM Docket No. 97-183, RM-9119]

#### Radio Broadcasting Services; Lindsborg, KS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Michael D. Law proposing the allotment of Channel 269C3 at Lindsborg, Kansas, as the community's second local FM service. Channel 269C3 can be allotted to Lindsborg in compliance with the Commission's minimum distance separation requirements with a site restriction 8.6 kilometers (5.4 miles) north to avoid short-spacing conflicts with the licensed operations of Station KFDI-FM, Channel 267C, Wichita, Kansas; Station KVOE-FM, Channel 269A, Emporia, Kansas; and Station KZSN-FM, Channel 271C, Hutchinson, Kansas. The coordinates for Channel 269C3 at Lindsborg are 38-39-03 NL and 97-42-12 WL.

**DATES:** Comments must be filed on or before October 16, 1997, and reply

comments on or before October 31, 1997.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dan J. Alpert, 2120 N. 21st Road, Suite 400, Arlington, Virginia 22201 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97-183, adopted August 13, 1997, and released August 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 97-22993 Filed 8-28-97; 8:45 am]

BILLING CODE 6712-01-P

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 Nutrition Monitoring Advisory Council; Notice of Meeting

**AGENCIES:** Agricultural Research Service, U.S. Department of Agriculture; National Center for Health Statistics, Centers for Disease Control and Prevention, Department of Health and Human Services.

**ACTION:** National Nutrition Monitoring Advisory Council; notice of meeting.

**SUMMARY:** The Department of Agriculture (USDA) and the Department of Health and Human Services (HHS) announce the meeting of the National Nutrition Monitoring Advisory Council.

**DATES:** The Council will meet September 18, 1997 for a full-day meeting (8:30 a.m.–5 p.m. e.s.t.) in the Williamsburg Room, 104–A, of USDA's Jamie L. Whitten Federal Building, 14th and Independence Avenues, SW., Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Junko Alice Tamaki, M.P.H., USDA Co-Executive Secretary to the National Nutrition Monitoring Advisory Council, National Program Staff, Agricultural Research Service, 10300 Baltimore Blvd, Bldg. 005, Room 336, Beltsville, MD 20705, (301) 504–6216 or Ronette Briefel, Dr. P.H., HHS Co-Executive Secretary to the National Nutrition Monitoring Advisory Council, National Center for Health Statistics, Centers for Disease Control and Prevention, Department of Health and Human Services, 6525 Belcrest Road, Room 1000, Hyattsville, MD 20782, (301) 436–3473 x157.

#### SUPPLEMENTARY INFORMATION:

### National Nutrition Monitoring Advisory Council Task

The purpose of the nine member Council, consisting of 5 Presidential appointees and 4 Congressional appointees, is to provide scientific and

technical guidance to improve the National Nutrition Monitoring and Related Research Program and the Ten-Year Comprehensive Plan. The Council was established by an Executive Order of the President of the United States, pursuant to Public Law No. 101–445, the National Nutrition Monitoring and Related Research Act of 1990.

The agenda is in the process of being finalized. The tentative agenda includes discussion of welfare reform and nutrition data needs, survey coordination plans for the NHANES (National Health and Nutrition Examination Survey) and CSFII (Continuing Survey of Food Intakes by Individuals), and food composition-related projects. The final agenda is obtainable from the contact persons listed above after August 22, 1997.

### Public Participation at Meeting

The meeting is open to the public. Written comments may be sent to the contact persons listed above before or after the meeting. Please call Junko Tamaki (301–504–6216) by September 5 if you will require a sign language interpreter at the meeting.

Dated: August 22, 1997.

#### I. Miley Gonzalez,

*Under Secretary, Research, Education, and Economics, Department of Agriculture.*

[FR Doc. 97–22987 Filed 8–28–97; 8:45 am]

BILLING CODE 3410–03–M

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### National Commission on Small Farms; Meeting

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Secretary of Agriculture by Departmental Regulation No. 1043–43 dated July 9, 1997, established the National Commission on Small Farms (Commission) and further identified the Natural Resources Conservation Service to provide support to the Commission. The purpose of the Commission is to gather and analyze information regarding small farms and ranches and recommend to the Secretary of Agriculture a national policy and strategy to ensure their continued viability. The Commission's next meeting is September 15 and 16, 1997.

**PLACE, DATE AND TIME OF MEETING:** The Commission's fourth public meeting is September 15 and 16 at the Beverly Garland Hotel and Conference Center, 1780 Tribute Road, Sacramento, California. The meeting is open to the public. On September 15, the Commission will meet from 2:00 p.m. to 6:00 p.m. to hear public testimony. On September 16, the Commission will meet from 8:00 a.m. to 5:00 p.m. to conduct Commission business. We are seeking testimony from various sources to arrive at conclusions and recommendations that will ensure the continued viability of small farms. The Commission requests that testimony and comments include ideas and recommendations based on the following questions. Concerns or problems of individual farms that relate to specific USDA programs should be addressed only in the context of a recommendation for the Commission to consider.

The questions are:

1. How are current USDA programs helping or hurting the viability of small farms?

2. What are the needs of small farms in terms of financing, research, extension, marketing and risk management and other areas? What recommendations would you make about these needs that could be part of a long-range strategy to ensure the continued viability of small farms?

3. Are there innovative non-governmental or state efforts to assist beginning and smaller independent farms that might be replicated or supplemented at the Federal level?

4. What changes in USDA policy or practices are needed to make USDA programs in the areas of credit, research, extension, marketing, risk management and other areas more effective in enabling small farms to survive and thrive?

5. What new programs could provide effective and affordable support for small farmers as commodity programs are phased out?

6. What can be done to assist beginning farmers and farm workers to become farm owners?

7. What role should the Federal government play to ensure a diversified, decentralized and competitive farm structure?

8. What do small farms contribute to your community and your state?



9. What other generic issues pertaining to small farms should the Commission consider?

Interested parties wishing to testify must contact the office of the National Commission on Small Farms by September 8, 1997, in order to be placed on a list of witnesses. Oral presentations will be limited to 5 minutes. Those wishing to testify, but unable to notify the Commission office by September 8, will be able to sign up as a presenter September 15 in Sacramento from 2:00 p.m. to 3:00 p.m. These presenters will testify on a first come, first served basis. Written statements will be accepted at the meeting or may be mailed or faxed to the Commission office by September 17, 1997.

**ADDRESSES:** Written statements should be sent to National Commission on Small Farms, USDA, P.O. Box 2890, Room 5237, South Building, Washington, D.C. 20013.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Yezak Molen, Director, National Commission on Small Farms, at the address above or at (202) 690-0648 or (202) 690-0673. The fax number is (202) 720-0596.

**SUPPLEMENTARY INFORMATION:** The purpose of the Commission is to gather and evaluate background information, studies, and data pertinent to small farms and ranches, including limited-resource farmers. On the basis of the review, the Commission shall analyze all relevant issues and make findings, develop strategies, and make recommendations for consideration by the Secretary of Agriculture toward a national strategy on small farms. The national strategy shall include, but not be limited to: changes in existing policies, programs, regulations, training, and program delivery and outreach systems; approaches that assist beginning farmers and involve the private sectors and government, including assurances that the needs of minorities, women, and persons with disabilities are addressed; areas where new partnerships and collaborations are needed; and other approaches that it would deem advisable or which the Secretary of Agriculture or the Chief of the Natural Resources Conservation Service may request the Commission to consider.

The Secretary of Agriculture has determined that the work of the Commission is in the public interest and within the duties and responsibilities of USDA. Establishment of the Commission also implements a recommendation of the USDA Civil Rights Action Report to appoint a

diverse commission to develop a national policy on small farms.

Dated: August 26, 1997.

**Pearlie S. Reed,**

*Acting Assistant Secretary for Administration.*

[FR Doc. 97-23100 Filed 8-28-97; 8:45 am]

BILLING CODE 3410-16-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[Docket No. FV97-356]

#### Notice of Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for the Reporting and Record Keeping Requirements Under Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act (PACA) (7 U.S.C. 499a-499t).

**DATES:** Comments on this notice must be received on or before October 28, 1997, to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Charles W. Parrott, Assistant Chief, PACA Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2095-South, Washington, D.C. 20090-6456; telephone (202) 720-4180; fax (202) 690-3244.

#### SUPPLEMENTARY INFORMATION:

*Title:* Reporting and Record Keeping Requirements Under Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

*OMB Number:* 0581-0031.

*Expiration Date of Approval:* October 31, 1999.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* The PACA was enacted by Congress in 1930 to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those

commodities by prohibiting unfair and fraudulent practices.

The law provides for the enforcement of contracts by providing a forum for resolving contract disputes, and for the collection of damages from anyone who fails to meet contractual obligations. In addition, the PACA impresses a statutory trust on licensees for perishable agricultural commodities received, products derived from them, and any receivables or proceeds due from the sale of the commodities for the benefit of suppliers, sellers, or agents that have not been paid.

The PACA is enforced through a licensing system and is user-fee financed through a license fee. All commission merchants, dealers, and brokers engaged in business subject to the PACA must be licensed. The license is effective for one (1) year unless withdrawn by USDA for valid reasons, and must be renewed annually. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked.

The information collected from respondents is used to administer licensing provisions under the PACA. The records maintained are used to adjudicate reparation and administrative complaints filed against licensees to determine the imposition of sanctions on firms and responsibly connected individuals who have engaged in unfair trading practices. We estimate the paperwork and time burden as follows:

*Form FV-211, Application for License:* Average of 15 minutes per application per response.

*Form FV-231, Application for Renewal of License:* Average of 5 minutes per application per response.

*Form FV-232, Business Reply Card:* Average of 2 minutes with approximately 10,000 respondents.

*Regulations Section 46.13—Letters to Notify USDA of Changes in Business Operations:* Average of 5 minutes per notice per response.

*Regulations Section 46.20—Records Reflecting Lot Numbers:* Average of 8.25 hours with approximately 1,000 record keepers.

*Regulations Section 46.46(d)(2)—Waiver of Rights to Trust Protection:* Average of 15 minutes per notice with approximately 100 principals.

*Regulations Sections 46.46(f) and 46.2(aa)(11)—Copy of Written Agreement Reflecting Times for Payment:* Average of 20 hours with approximately 2,000 record keepers.

*Estimate of Burden:* The total public reporting burden for this collection of information is estimated to average 2.78011 hours per response.



*Respondents:* Commission merchants, dealers, and brokers engaged in the business of buying, selling, or negotiating the purchase or sale of fresh and/or frozen fruits and vegetables in interstate or foreign commerce are required to be licensed under the PACA (7 U.S.C. 499(c)(a)).

*Estimated Number of Respondents:* 25,550.

*Estimated Number of Responses per Respondent:* 1.67906.

*Estimated Total Annual Burden on Respondents:* 119,267 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Charles W. Parrott, Assistant Chief, PACA Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2095-South, P.O. Box 96456, Washington, D.C. 20090-6456. All comments received will be available for public inspection during regular business hours at the same 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.

Dated: August 25, 1997.

**Eric M. Forman,**

*Acting Director, Fruit and Vegetable Division.*

[FR Doc. 97-22988 Filed 8-28-97; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Revision of the Land and Resource Management Plans for the Chippewa and Superior National Forests; Beltrami, Cass, Cook, Itasca, Koochiching, Lake and St. Louis Counties, MN

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare environmental impact statement.

**SUMMARY:** The purpose of this notice is to inform the public that the Forest Service intends to prepare an environmental impact statement for revising the Chippewa and Superior Land and Resource Management Plans (forest plans) (*pursuant to 16 U.S.C. 1604[f][5] and 36 CFR 219.12*). The Chippewa and Superior National Forests are working together to revise their forest plans. The Forest Service will prepare only one environmental impact statement but will prepare two separate forest plans.

We are now soliciting comments and suggestions from American Indian tribes, federal agencies, state and local governments, individuals and organizations on the scope of the analysis to be included in the draft environmental impact statement for the revised forest plans (*40 CFR 1501.7*). Comments should focus on (1) the proposal for revising forest plans and (2) possible alternatives for addressing issues associated with the proposal.

The current forest plans for the Chippewa and Superior National Forests were approved in June 1986. These plans guide the overall management of Minnesota's two national forests. Six primary decisions are made in forest plans:

1. Forestwide multiple-use goals and objectives (*as required by 36 CFR 219.11[b]*)
2. Forestwide management requirements (*36 CFR 219.27*)
3. Management area direction (*36 CFR 219.11[c]*)
4. Lands suited and not suited for timber management (*36 CFR 219.14, 219.16, 219.21*)
5. Monitoring and evaluation requirements (*36 CFR 219.11[d]*)
6. Recommendations to Congress (if any) (*36 CFR 219.17*)

By law, forest plans must be revised every 10 to 15 years (*U.S.C. 1604[f][5] and 36 CFR 219.10[g]*). In addition, based on public comments received and the results of annual monitoring and evaluation, we have determined the need to make some changes to the primary decisions made in the 1986 forest plans for the Chippewa and Superior National Forests.

The process of revising the forest plans will be narrow in scope, focusing predominantly on vegetation management aspects of those topics identified as being most critically in need of revision. We will also consider the interests of American Indians and Indian Tribes.

Revised plans will address 12 revision topics that have been identified through public comment and through monitoring and evaluation:

1. Biological diversity
2. Habitat fragmentation
3. Ecosystem health
4. Age class distribution
5. Old growth forests
6. Rare natural resource management
7. Silvicultural prescriptions
8. Fire Management
9. Riparian management
10. Fish habitat management
11. Allowable sale quantity of timber
12. Wildlife habitat management

We will also be revising monitoring requirements to provide for better tracking and evaluation of the implementation and effectiveness of revised forest plans. We may make other minor changes, particularly in the standards and guidelines section of the forest plans, to promote greater consistency between the two plans, and to reflect changes made when addressing the 12 revision topics.

In many northern Minnesota communities, the relationship between people and the natural environment in which the needs of people are met predominantly centers around three industries: forest products, tourism, and mining. People also value the opportunities forests provide for enjoying recreation, solitude and scenic beauty.

National forests are integral to the image and sense of place of communities across northern Minnesota. When making decisions in the revised plans, we will examine the economic and social impacts to local communities and at a broader regional level, as well as biological impacts at similar levels.

As part of the overall effort to ensure that treaty rights are honored and responsibilities to American Indian tribes are met, we will routinely consult with and exchange information with tribes on a government-to-government basis throughout the forest plan revision process. This consultation will include the development of goals and objectives that provide for the exercise of tribal hunting, gathering and fishing rights. In addition, we will be sensitive to American Indian religious beliefs (Forest Service Manual 1563).

We are committed to and will continue to participate in statewide land management planning and coordination efforts resulting from enactment of the Minnesota Sustainable Forest Resources Act of 1995. Technical guidelines developed through this process will be considered when developing standards and guidelines in revised plans.

The environmental analysis and decision-making process leading to revised forest plans will include opportunities for public participation

and comment, so that individuals interested in this proposal may contribute to the decision-making process:

Tentative date	Step	Public involvement
Aug. 1997 .....	Notice of intent, proposal.	60-day formal comment period, open house meetings, written comments.
Early 1998 ....	Alternative development.	Public workshops.
Late 1998 .....	Proposed revised plans, draft environmental impact statement.	Formal comment period, open house meetings, written comments.
Late 1999 .....	Final revised plans, final environmental impact statement and Record of Decision.	Informational meetings to explain decision on final plan.

We will provide the public with general notices on opportunities to participate through mailings, news releases and public meetings. In addition to formal opportunities for public comment, we will consider received at any time throughout the revision process.

The Forest Service will host a series of open house meetings to (1) present and clarify proposed changes to forest plans; (2) describe ways that individuals can respond to this notice of intent; and (3) accept comments from the public on the proposal for revising the forest plans.

The following open house meetings will be held from 4 pm to 7 pm on September 17-18, 1997:

- September 17 LaCroix Ranger District Office, Cook, MN
- September 18 Gunflint Ranger District Office, Grant Marais, MN
- September 18 Kawishiwi Ranger District Office, Ely, MN
- September 18 Laurentian River District Office, Aurora, MN
- September 18 Tofte Ranger District Office, Tofte, MN
- September 18 Blackduck Ranger District Office, Blackduck, MN
- September 18 Cass Lake Ranger District Office, Cass Lake, MN
- September 18 Deer River Ranger District Office, Deer River, MN
- September 18 Marcell Ranger District Office, Marcell, MN

September 18 Walker Ranger District Office, Walker, MN

The following open house meetings will be held from 7 pm to 9:30 pm, with a presentation on the proposal for plan revisions repeated every half hour:

September 23 Northern Inn, Bemidji, MN

September 25 Earle Brown Continuing Education Center, St. Paul, MN

September 30 MN Interagency Fire Center, Grand Rapids, MN

October 2 Superior National Forest Headquarters, Duluth, MN

**DATES:** Comments on this Notice of Intent should be received in writing by October 28, 1997.

**ADDRESSES:** Send written comments to: Forest Plan Revision, Chippewa and Superior National Forests, Route 3, Box 244, Cass Lake, MN 56633-8929. Or direct electronic mail to: [chippewa@northernnet.com](mailto:chippewa@northernnet.com) (ATTN: Forest Plan Revision).

**FOR FURTHER INFORMATION CONTACT:** Duane Lula, Forest Planner, at (218) 626-4383. TTY (218) 626-4399.

**SUPPLEMENTARY INFORMATION:** Additional detail on this proposal is available on request. This is in the form of a document titled "Notice of Intent, Description of Proposal for Revising Forest Plans, and Supplementary Information." You are encouraged to review this additional document prior to commenting on the notice of intent. You may request the additional information by calling the phone number listed above or by writing or e-mail to the addresses listed in this notice.

The DEIS and the proposed revised plans are expected to be published late in 1998. The comment period on the draft environmental impact statement and proposed revised forest plans will be 90 days from the date the U.S. Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection.

Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217.

Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA)

permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets.

The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and, where the requester is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

Special note to reviewers of the draft environmental impact statement: The Forest Service believes that, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process:

First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp. v. NRDC* U.S. 519, 533 [1978]).

Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon v. Hodel*, 803 F.2d 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period on the draft environmental impact statement, so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible.

It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement.

Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act (at 40 CFR 1503.3) in addressing these points.

The responsible official is Robert T. Jacobs, Regional Forester, Eastern Region, 310 W. Wisconsin Ave., Milwaukee, Wisconsin 53203.

Dated: August 12, 1997.

**Robert T. Jacobs,**

*Regional Forester.*

[FR Doc. 97-22313 Filed 8-28-97; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Notice of Intent; Environmental Impact Statement for the Crane and Rowan Mountain Timber Sales, Tongass National Forest, Stikine Area, Petersburg, AK**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** This proposed action was announced on April 1, 1997 as two separate Environmental Assessments (EA), one each for the Crane and Rowan Mountain Timber Sales. The decision to prepare EAs for these projects was based upon, among other things, several prior extensive environmental analyses that have been conducted for similar projects. Individually they did not indicate a significant effect to the human environment. After considering the public input, we have decided to document the analysis of these two proposed timber sales in an Environmental Impact Statement (EIS).

*1. Purpose and scope of the decision.* The purpose of the projects is to make available for harvest approximately 10-15 million board feet (MMBF) of timber from the Crane Timber Sale and approximately 9-12 MMBF from the Rowan Mountain Timber Sale. These projects will contribute sawlog and utility timber volume and related employment and income opportunities to the timber industry in Southeast Alaska and will help meet the goals and objectives of the Revised Tongass Land Management Plan.

The geographic location of this proposed project is the north portion of Kuiu Island and includes value comparison units (VCU) 399, 400, 402, and 421. The western portion of VCU 420 (west side of Port Camden) is also included. Timber harvesting and roading has occurred in all of the VCU's.

The decision to be made is:

(1) Whether or not timber harvest will occur in the Crane and Rowan Mountain project area;

(2) How much timber will be harvested;

(3) Location and design of harvest units;

(4) Location and design of road construction and potential reconstruction; and

(5) What mitigation measures and monitoring will be implemented.

A reasonable range of alternatives will be developed, including a No Action alternative. No additional road building or timber harvest would occur under the No Action alternative.

*2. Scoping and public participation.* Public scoping for these projects began on April 1, 1997. We mailed a scoping letter to interested groups, organizations, and members of the public who indicated an interest in the project by responding to the Stikine Area Project Schedule, or who otherwise notified the Stikine Area that they were interested in the Crane and Rowan Mountain Timber Harvest Projects. This Notice of Intent constitutes an extension of this scoping process, which will end September 19th, 1997. At the time of this notice, a scoping letter is being mailed to interested groups, organizations, and members of the public explaining the transition from an Environmental Analysis to an Environmental Impact Statement Process.

Scoping results from the April 1, 1997 mailing have reinforced the preliminary issues identified and did not suggest additional issues. The issues as noted in the April 1 mailing are listed below:

1. Cultural Resources—How should timber management activities be designed to protect cultural resources?

2. Economics—How should the project be designed to contribute to the economic health of Southeast Alaska?

3. Fish—How should fish habitat be managed and what effect would timber harvest and related activities have on fish habitat?

4. Recreation—How should recreation opportunities be protected or enhanced in the design of timber management activities?

5. Soil—How should timber management activities be designed to protect the soil resource? What effects would activities have on soil productivity?

6. Subsistence—How should timber management activities be designed to protect traditional subsistence uses? What effect would activities have on subsistence uses and users?

7. Timber Management—How should the project be designed to provide for efficient and long-term timber management?

8. Scenery—How should timber management activities be designed to protect areas of high scenic quality and

what effect would activities have on the landscapes of Kuiu Island?

9. Water Quality—How should timber management activities be designed to protect water quality? What effects would activities have on water quality?

10. Wildlife Habitat—What effects would timber harvest and related activities have on wildlife habitat?

**DATES:** Comments concerning the scope of the analysis should be received in writing by September 19, 1997.

**FOR FURTHER INFORMATION CONTACT:** Information relating to the supplement may be obtained by contacting Bob Gerdes, Interdisciplinary Team Leader, USDA Forest Service, P.O. Box 309, Petersburg, AK 99833.

**EXPECTED TIME FOR COMPLETION:** A draft EIS is projected for issuance approximately 2 months from the date of the Notice of Intent, or October 17, 1997.

The Final Environmental Impact Statement and Record of Decision is expected to be released by March 30, 1998. The Responsible Official will make a decision regarding this proposal after considering public comments, and the environmental consequences displayed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The decision and supporting reason will be documented in the Record of Decision.

**PUBLIC COMMENT:** Interested parties are invited to comment. The comment period on the Draft EIS will be 45 days from the first day after publication of notice of availability in the **Federal Register** by the Environmental Protection Agency. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is helpful for comments to refer to specific pages or chapters of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 while addressing these points.

In addition, Federal court decisions have established that reviewer's of Draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* versus NRDC, 435 U.S. 519, 533 (1978). Environmental objections that could

have been raised at the draft stage may be waived if not raised until after completion of the Final EIS. *City of Angonn versus Hodel*, (9th Circuit, 1986) and *Wisconsin Heritage's, Inc. versus Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

The responsible official for the decision in Patricia A. Grantham, Acting Forest Supervisor, Stikine Area, Tongass National Forest, Alaska Region, Petersburg, Alaska.

Dated: August 15, 1997.

**Patricia A. Grantham,**  
*Acting Forest Supervisor.*

[FR Doc. 97-23000 Filed 8-28-97; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### Notice of proposed change to Section IV of the Field Office Technical Guide (FOTG) of the NRCS in MS

**AGENCY:** Natural Resources Conservation Service (NRCS) in Mississippi, U.S. Dept. of Agriculture.

**ACTION:** Notice of availability of proposed changes in Section IV of the

FOTG of the NRCS in Mississippi for review and comment.

**SUMMARY:** NRCS in Mississippi is issuing the following new conservation practice standards: Agrichemical Mixing Center (Code 702), Conservation Crop Rotation (Code 3289), Cross Slope Farming (Code 733), Fence (Code 382), Filter Strip (Code 393), Forage Harvest Management (Code 511), Forest Harvest Trials and Landings (Code 655), Forest Site Preparation (Code 490), Forest Stand Improvement (Code 666), Heavy Use Protection Area (Code 561), Prescribed Grazing (Code 528A), Residue Management No-Till & Strip-Till (Code 329A), Residue Management, Mulch Till (Code 329B), Residue Management, Ridge Till (Code 329C), Residue Management, Seasonal (Code 344), Stream Crossing (Code 733), Tree/Shrub Establishment (Code 612), Use Exclusion (Code 472), Vegetative Barrier (Code 734), Waste Storage Facility (Code 313), Waste Treatment Lagoon (Code 359), Well Decommissioning (Code 351) in Section IV of the FOTG.

**DATES:** Comments will be received on or before September 29, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Inquire in writing to Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321 Federal Bldg., 100 West Capitol St., Jackson, MS 39269. Copies of the practice standards will be made available upon written request.

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Mississippi will receive comments relative to the stated summary. Following that period a determination will be made by the NRCS in Mississippi regarding disposition of those comments and a final determination of change will be made.

Dated: August 21, 1997.

**Homer L. Wilkes,**

*State Conservationist, NRCS, Jackson, MS.*

[FR Doc. 97-23077 Filed 8-28-97; 8:45 am]

BILLING CODE 3410-21-M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### 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 services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** September 29, 1997.

**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 required to procure the commodities and services 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 services to the Government.

2. The action does not appear to 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. 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 services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

#### Commodities

Magnetic Shopping List

M.R. 822

NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina Office and Miscellaneous Supplies

(Requirements for Luke Air Force Base, Arizona)

NPA: Arizona Industries for the Blind, Phoenix, Arizona

Office and Miscellaneous Supplies

(Requirements for the Naval Support Activity, New Orleans, Louisiana)

NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana

Office and Miscellaneous Supplies

(Requirements for the White Sands Missile Range, New Mexico)

NPA: San Antonio Lighthouse, San Antonio, Texas

Office and Miscellaneous Supplies

(Requirements for Randolph Air Force Base, Texas)

NPA: San Antonio Lighthouse, San Antonio, Texas

#### Services

Access Control

Fleet and Industrial Supply Center, Oakland, California

NPA: Pacific Coast Community Services, Alameda, California

Grounds Maintenance

U.S. Post Office, Rancho Bernardo Station, 16960 Bernardo Center Drive, San Diego, California

NPA: Job Options, Inc., San Diego, California

Janitorial/Custodial

Department of Energy, Forrestal Building, Washington, DC

NPA: Didlake, Inc., Manassas, Virginia

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 97-23062 Filed 8-28-97; 8:45 am]

BILLING CODE 6353-01-P

### 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 commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** September 29, 1997.

**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:** On June 27 and July 11, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 F.R. 34686 and 37192) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c 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 commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity 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 commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

#### Commodity

Bag, Vacuum Cleaner, Disposable  
M.R. 1000 thru 1008

#### Services

Food Service

HQ, U.S. Marine Corps Henderson Hall, Arlington, VA  
Janitorial/Custodial  
Picatinny Arsenal Buildings 1, 2, 3, 6, 9, 10, 171, 172, 173, 174, 176, 178 and 183, Picatinny, New Jersey  
Mailing Service  
USDA, Farm Service Agency, Phoenix, Arizona

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. 97-23063 Filed 8-29-97; 8:45 am]

BILLING CODE 6353-01-P

### DEPARTMENT OF COMMERCE

#### Bureau of the Census

#### Survey of Income and Program Participation Wave 7 of the 1996 Panel

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before October 28, 1997.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael McMahon, Bureau of the Census, FOB 3, Room 3387, Washington, DC 20233-8400, (301) 457-3819.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The Census Bureau conducts the Survey of Income and Program Participation (SIPP) which is a household-based survey designed as a continuous series of national panels, each lasting four years. Respondents are interviewed once every four months, in monthly rotations. Approximately

37,000 households are in the current panel.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified data base so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits, and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as obtaining information about the terms of child support agreements and whether they are being fulfilled by the absent parent, examining the program participation status of persons with specific health and disability statuses, and obtaining detailed information needed to understand the current status of the employment-based health care system and changes that have occurred. These supplemental questions are included with the core and are referred to as "topical modules."

The topical modules for the 1996 Panel Wave 7 collect information about:

- (1) Annual Income & Retirement Accounts
- (2) Taxes
- (3) Retirement & Pension Plan Coverage
- (4) Home Health Care

Wave 7 interviews will be conducted from April 1998 through July 1998.

## II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every 4 years, with each panel having a duration of 4 years in the survey. All household members 15 years old or over are interviewed using regular proxy-respondent rules. They are interviewed a total of 12 times (12 waves) at 4-month intervals, making the SIPP a longitudinal survey. Interviewers personally visit all households at least once a year and conduct the other 2 interviews by phone if the respondent

agrees. Sample persons (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP Primary Sampling Unit will be followed and interviewed at their new address. Persons 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these persons move, they are not followed unless they happen to move along with a Wave 1 sample person.

The survey is administered using Computer-Assisted Personal Interviewing (CAPI) methodologies. Census Bureau field representatives collect the data from respondents using laptop computers, and the data are transmitted to Census Bureau headquarters via high-speed modems.

## III. Data

*OMB Number:* 0607-0813.

*Form Number:* SIPP/CAPI Automated Instrument.

*Type of Review:* Regular.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 77,700 (We will obtain interviews from approximately 37,000 households, yielding about 77,700 person-interviews (2.1 persons 15 years old or over per household). The household interviews will be conducted at 4-month intervals.

*Estimated Time Per Response:* 30 minutes per person.

*Estimated Total Annual Burden Hours:* 117,800.

*Estimated Total Annual Cost:* The only cost to respondents is that of their time..

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, United States Code, Section 182.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 25, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97-23092 Filed 8-28-97; 8:45 a.m.]

BILLING CODE 3510-07-P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket 69-97]

#### Foreign-Trade Zone 123—Denver, CO; Application for Subzone Status, Zytec Corporation Plant (Electric Power Supplies), Broomfield, CO

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City and County of Denver, Colorado, grantee of FTZ 123, requesting special-purpose subzone status for the electric power supply manufacturing plant of Zytec Corporation (Inc.), located in Broomfield, Colorado. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 22, 1997.

The Zytec plant (10 acres, 92,000 sq. ft.) is located at 2400 Industrial Lane in Broomfield (Boulder County), about 20 miles northwest of Denver. The plant (250 employees) is used to produce electric switch mode power supplies (HTSUS #8504.40.60) for the U.S. market and export. The power supplies are sold to manufacturers of data processing, communications, and electronic business equipment. The production process involves assembly, testing and warehousing. Components purchased from abroad (about 50% of total, by value) include: Diodes, semiconductors, transformers, thermostats, torroids, inductors, fans, batteries, circuit breakers, resistors, and capacitors (duty rate range: free—9.4%).

FTZ procedures would exempt Zytec from Customs duty payments on the foreign components used in the export production. On its domestic sales, the company would be able to choose the duty rate that applies to the power supplies (duty free) for the foreign inputs noted above. The application indicates that subzone status would help improve the international competitiveness of the Zytec plant.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 28, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 12, 1997.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, Suite 680, 1625 Broadway, Denver, CO 80202  
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230-0002.

Dated: August 22, 1997.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 97-23104 Filed 8-28-97; 8:45 am]

BILLING CODE 3510-DS-U

**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

[Docket 68-97]

**Foreign-Trade Zone 119—Minneapolis, MN; Application for Subzone Status, Zytec Corporation Facilities (Electric Power Supplies), Redwood Falls, MN**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Metropolitan Area Foreign Trade Zone Commission, Inc., grantee of FTZ 119 (Minneapolis, Minnesota, area), requesting special-purpose subzone status for the electric power supply manufacturing facilities of Zytec Corporation (Inc.), located in Redwood Falls, Minnesota. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 22, 1997.

The proposed subzone would consist of Zytec's manufacturing/warehousing facilities on two parcels located in Redwood Falls (Redwood County), Minnesota, some 80 miles southwest of Minneapolis: Parcel 1 (134,000 sq. ft. on 12 acres)—manufacturing/warehouse facilities, 1425 East Bridge Street, about one-half mile east of downtown Redwood Falls; Parcel 2 (46,000 sq. ft. on 4 acres)—manufacturing/warehouse

facilities, adjacent west of Parcel 1. The facilities (800 employees) are used to produce electric switch mode power supplies (HTSUS #8504.40.60) for the U.S. market and export. The power supplies are sold to manufacturers of data processing, communications, and electronic business equipment. The production process involves assembly, testing and warehousing. Components purchased from abroad (about 50% of total, by value) include: Diodes, semiconductors, transformers, thermostats, torroids, inductors, fans, batteries, circuit breakers, resistors, and capacitors (duty rate range: free—9.4%).

FTZ procedures would exempt Zytec from Customs duty payments on the foreign components used in the export production. On its domestic sales, the company would be able to choose the duty rate that applies to the power supplies (duty free) for the foreign inputs noted above. The application indicates that subzone status would help improve the international competitiveness of the Zytec facilities.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 28, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 12, 1997).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, Room 108, 110 South Fourth Street, Minneapolis, MN 55401

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230-0002.

Dated: August 22, 1997.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 97-23103 Filed 8-28-97; 8:45 am]

BILLING CODE 3510-DS-U

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspension of investigation.

**Background**

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

*Opportunity To Request a Review*

Not later than the last day of September 1997, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

	Period
Antidumping Duty Proceedings:	
Argentina: Silicon Metal, A-357-804 .....	9/1/96-8/31/97
Canada: Steel Jacks, A-122-006 .....	9/1/96-8/31/97
Canada: Steel Rail, A-122-804 .....	9/1/96-8/31/97
Japan: E L Flat Panel Displays, A-588-817 .....	9/1/96-8/31/97
Taiwan: Lug Nuts, A-583-810 .....	9/1/96-8/31/97
The People's Republic of China: CDIW Fittings & Glands, A-570-820 .....	9/1/96-8/31/97
The People's Republic of China: Greige Polyester/Cotton Printcloth, A-570-101 .....	9/1/96-8/31/97



	Period
The Peoples Republic of China: Lug Nuts, A-570-808 .....	9/1/96-8/31/97
Countervailing Duty Proceedings: Canada: New Steel Rail, Except Light Rail, C-122-805	1/1/96-12/31/96
Thailand: Steel Wire Rope, C-549-806 .....	1/1/96-12/31/96

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Interim Regulations, 60 FR 25130, 25137 (May 11, 1995)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation

of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of September 1997. If the Department does not receive, by the last day of September 1997, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 22, 1997.

**Jeffrey P. Bialos,**

*Principal Deputy Assistant Secretary for Import Administration.*

[FR Doc. 97-23101 Filed 8-28-97; 8:45 am]

BILLING CODE 3510-DS-M

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-588-804, A-412-801]

**Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of amended final results of antidumping duty administrative reviews.

**SUMMARY:** On January 15, 1997, the Department of Commerce (the Department) published Antifriction Bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081. On May 27, 1997, the Court of International Trade (CIT) remanded the Final Results to the Department to correct certain clerical errors therein with respect to the antidumping duty orders on antifriction bearings (AFBs) from Japan (concerning AFBs sold by NSK Ltd. and NSK Corporation (NSK)) and the United Kingdom (concerning AFBs sold by

NSK Bearings Europe Ltd. and RHP Bearings Ltd. (NSK/RHP)). In this notice, we are amending the Final Results to reflect these corrections. The reviews at issue cover the period May 1, 1994, through April 30, 1995. The classes or kinds of merchandise covered by the reviews are ball bearings and parts thereof (BBs) and cylindrical roller bearings and parts thereof (CRBs).

**EFFECTIVE DATE:** August 29, 1997.

**FOR FURTHER INFORMATION CONTACT:** Hermes Pinilla or Robin Gray, 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 January 15, 1997, the Department published in the **Federal Register** the final results of its administrative reviews of the antidumping duty orders on AFBs from France, Germany, Italy, Japan, Singapore, and the United Kingdom (62 FR 2081). Respondents NSK and NSK/RHP challenged the final results before the Court of International Trade (CIT), alleging clerical errors in the calculations for AFBs from Japan and the United Kingdom. On May 27, 1997, the CIT remanded the Final Results to the Department to correct certain clerical errors. *See NSK Ltd., and NSK Corporation v. United States*, 966 F. Supp. 1241 (May 27, 1997), and *RHP Bearings Ltd. et al. v. United States*, 966 F. Supp. 1240 (May 27, 1997).

On June 23, 1997, in compliance with the CIT's instructions, we submitted a remand redetermination correcting the clerical errors at issue. On July 7, 1997, in slip opinion 97-90, the CIT affirmed the remand redetermination. On August 8, 1997, the CIT ordered the Department to issue, and transmit to the **Federal Register** for publication, the amended Final Results arising from the remand redetermination. This notice implements the CIT's order.

**Amended Final Results of Reviews**

As a result of the amended margin calculations as directed by the CIT, the following weighted-average percentage margins exist for the period May 1, 1994, through April 30, 1995:

Manufacturer/exporter and country	BBs rate (percent)	CRBs rate (percent)
NSK Ltd., Japan ....	12.61	21.61
NSK/RHP, United Kingdom .....	20.15	23.60

The Department shall determine, and the Customs Service shall assess,



antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-by-entry assessments, we will calculate wherever possible an exporter/importer-specific assessment rate for each class or kind of AFBs.

We will instruct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the Final Results (62 FR 2081) and as amended by this determination. These amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a final 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 the 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.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO.

This amendment of final results of reviews and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)) and 19 CFR 353.28(c).

Dated: August 26, 1997.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 97-23105 Filed 8-28-97; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 082197F]

#### Marine Mammals; Public Display Permit (PHF# 880-1426)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that the Big Apple Circus, 35 West 35th Street, New York, NY 10001, has applied in due form for a permit to import two Patagonian sea lions (*Otaria byronia*), from Lipperswil, Switzerland, for purposes of public display.

**DATES:** Written or telefaxed comments must be received on or before September 29, 1997.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, (301/713-2289); and

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (508/281-9250).

Written comments or requests for a public hearing on this application, should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such a hearing is at the discretion of the Director, Office of Protected Resources.

Written comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by email or other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant requests authorization to import two male marine mammals from Switzerland where the animals are currently maintained at Conny-Land, a public display facility in Lipperswil, for exhibit with the circus during its 1997-

1998 season. During their 14-month stay in the United States, the animals will be accompanied by their trainer, Roberto Gasser of Conny-Land. When the sea lions are not traveling with the circus, they will be maintained at the applicant's new facility in Walden, NY. At the conclusion of the tour, the animals will be re-exported to Conny-Land.

The applicant has an exhibitor's license, No. 21-C-0061, from the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) under the Animal Welfare Act (AWA), and plans have been submitted to APHIS for a new facility, to be completed in August 1997, at 39 Edmunds Lane, Walden, New York 12586. The new facility must also meet APHIS standards. As any issues relating to the care and maintenance of captive marine mammals are within the purview of APHIS, under the AWA, a copy of the application is also being sent to APHIS for review.

Each exhibition will be open to the public on a regularly scheduled basis with access that is not limited or restricted other than by charging an admission fee and will offer an educational program based upon the standards of both the AZA and the Alliance.

In addition to determining whether the applicant meets the public display criteria provided in sec. 104 (2)(a)(i-iii) of the MMPA, NMFS must determine whether the applicant has demonstrated that the proposed activity is humane and does not present any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities, and resources are adequate to accomplish successfully the objectives and activities stated in the application.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: August 22, 1997.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 97-23027 Filed 8-28-97; 8:45 am]

BILLING CODE 3510-22-F

**DEPARTMENT OF DEFENSE****Office of the Secretary****Proposed Collection; Comment Request**

**AGENCY:** Defense Finance and Accounting Service, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 28, 1997.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Denver Center, ATTN: Ruth Roehrman, 6760 East Irvington Place, Denver, CO 80279-3000.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Ruth Roehrman, 303-676-7613.

*Title, Associated Form, and OMB Number:* Dependency Statement—Child Born Out of Wedlock Under Age 21 (DFAS-DE Form 1865).

*Needs and Uses:* A military member may claim a child born out-of-wedlock for a Uniformed Services Identification and Privilege (USIP) card depending upon the relationship. Pursuant to 10 USC 1072 and 1076, the member must provide at least one-half of the claimed child's monthly expenses. DoDFMR 7000.14, Volume 7A defines the definition of dependent and directs that dependency be proved. This form may be prepared by the military member him/herself or may be prepared by another individual who may be a member of the public.

*Affected Public:* Individuals.

*Annual Burden Hours:* 700 hours.  
*Number of Respondents:* 350.  
*Responses per Respondent:* 1 (new form may be required if circumstances change).

*Average Burden Per Response:* 1.25 hours.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:****Summary of Information Collection**

When military members apply for benefits, they must complete Defense Finance and Accounting Service, Denver Form 1865 (DFAS-DE Form 1865). While members normally complete these forms, they can also be completed by others considered members of the public. Dependency claim examiners use the information from these forms to determine the degree of benefits. Without this collection of information, proof of an entitlement to a benefit would not exist. This collection also decreases the possibility of monetary allowances being approved on behalf of ineligible dependents. The requirement to complete this form helps alleviate the opportunity for fraud, waste, and abuse of dependent benefits.

Dated: August 26, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97-23022 Filed 8-28-97; 8:45 am]

**BILLING CODE 5000-04-M**

**DEPARTMENT OF DEFENSE****Office of the Secretary****Proposed Collection; Comment Request**

**AGENCY:** Defense Finance and Accounting Service, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on

respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 28, 1997.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Denver Center, ATTN: Ruth Roehrman, 6760 East Irvington Place, Denver CO 80279-3000.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Ruth Roehrman, 303-676-7613.

*Title, Associated Form, and OMB Number:* Dependency Statement—Incapacitated Child Over Age 21 (DFAS-DE Form 1866).

*Needs and Uses:* A military member may claim an incapacitated child over age 21 for monetary allowances or a Uniformed Services Identification and Privilege (USIP) card depending upon the relationship. Pursuant to 37 U.S.C. 401, 403, 406, and 10 U.S.C. 1072 and 1076, the member must provide at least one-half of the claimed child's monthly expenses. DoDFMR 7000.14, Volume 7A defines the definition of dependent and directs that dependency be proved. This form may be prepared by the military member him/herself or may be prepared by another individual who may be a member of the public.

*Affected Public:* Individuals.

*Annual Burden Hours:* 1500 hours.

*Number of Respondents:* 750.

*Responses Per Respondent:* 1 (new form may be required if circumstances change).

*Average Burden Per Response:* 1.25 hours.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:****Summary of Information Collection**

When military members apply for benefits, they must complete Defense Finance and Accounting Service, Denver Form 1866 (DFAS-DE Form 1866). While members normally complete these forms, they can also be completed by others considered members of the public. Dependency claim examiners use the information from these forms to determine the degree of benefits. Without this collection of information, proof of an entitlement to a benefit would not exist. This collection also decreases the possibility of monetary allowances being approved on behalf of ineligible dependents. The requirement to

complete this form helps alleviate the opportunity for fraud, waste, and abuse of dependent benefits.

Dated: August 26, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97-23023 Filed 8-28-97; 8:45 am]

BILLING CODE 5000-04-M

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Proposed Collection; Comment Request**

**AGENCY:** Defense Finance and Accounting Service, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 28, 1997.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Denver Center, ATTN: Ruth Roehrman, 6760 East Irvington Place, Denver CO 80279-3000.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Ruth Roehrman, 303-676-7613.

*Title, Associated Form, and OMB Number:* Dependency Statement—Full Time Student 21-22 Years of Age (DFAS-DE Form 1867).

*Needs and Uses:* A military member may claim a student ages 21-22 for monetary allowances depending upon the relationship. Pursuant to 37 U.S.C. 401, 403, and 406, the member must

provide at least one-half of the claimed child's monthly expenses. DoDFMR 7000.14, Volume 7A defines the definition of dependent and directs that dependency be proved. This form may be prepared by the military member him/herself or may be prepared by another individual who may be a member of the public.

*Affected Public:* Individuals.

*Annual Burden Hours:* 200 hours.

*Number of Respondents:* 100.

*Responses Per Respondent:* 1 (new form may be required if circumstances change).

*Average Burden Per Response:* 1.25 hours.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

When military members apply for benefits, they must complete Defense Finance and Accounting Service, Denver Form 1867 (DFAS-DE Form 1867). While members normally complete these forms, they can also be completed by others considered members of the public. Dependency claim examiners use the information from these forms to determine the degree of benefits. Without this collection of information, proof of an entitlement to a benefit would not exist. This collection also decreases the possibility of monetary allowances being approved on behalf of ineligible dependents. The requirement to complete this form helps alleviate the opportunity for fraud, waste, and abuse of dependent benefits.

Dated: August 26, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97-23024 Filed 8-28-97; 8:45 am]

BILLING CODE 5000-04-M

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Proposed Collection; Comment Request**

**AGENCY:** Defense Finance and Accounting Service, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 28, 1997.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Denver Center, ATTN: Ruth Roehrman, 6760 East Irvington Place, Denver, CO 80279-3000.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Ruth Roehrman, 303-676-7613.

*Title, Associated Form, and OMB Number:* Dependency Statement—Parent (DFAS-DE Form 1868).

*Needs and Uses:* A military member may claim a parent, parent-in-law, stepparent, in-loco-parentis, or parent by adoption for monetary allowances and/or a Uniformed Services Identification and Privilege (USIP) card depending upon the relationship. Pursuant to 37 U.S.C. 401, 403, 406, and 10 U.S.C. 1072 and 1076, the member must provide at least one-half of the claimed parent's monthly expenses. DoDFMR 7000.14, Volume 7A defines the definition of dependent and directs that dependency be proved. This form may be prepared by the military member him/herself or may be prepared by another individual who may be a member of the public.

*Affected Public:* Individuals.

*Annual Burden Hours:* 6,000 hours.

*Number of Respondents:* 3,000.

*Responses Per Respondent:* 1 (new form may be required if circumstances change).

*Average Burden Per Response:* 1.25 hours.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

When military members apply for benefits, they must complete Defense Finance and Accounting Service, Denver Form 1868 (DFAS-DE Form 1868). While members normally complete these forms, they can also be

completed by others considered members of the public. Dependency claim examiners use the information from these forms to determine the degree of benefits. Without this collection of information, proof of an entitlement to a benefit would not exist. This collection also decreases the possibility of monetary allowances being approved on behalf of ineligible dependents. The requirement to complete this form helps alleviate the opportunity for fraud, waste, and abuse of dependent benefits.

Dated: August 26, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97-23025 Filed 8-28-97; 8:45 am]

BILLING CODE 5000-04-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Science Board Task Force on Open Systems

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board Task Force on Open Systems will meet in open session on September 16-17, and November 18-19, 1997 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Ms. Marya Bavis at (703) 527-5410.

Dated: August 26, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97-23021 Filed 8-28-97; 8:45 am]

BILLING CODE 5000-04-M

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Cooperative Research and Development Agreement for Proximity Sensor Technology

**AGENCY:** U.S. Army, DoD.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the United States Army Tank-automotive and Armaments Command,

Armament Research, Development and Engineering Center (TACOM-ARDEC) has entered into a Cooperative Research and Development Agreement (CRADA) with KDI Precision Products, Inc. to explore the feasibility of adapting Army proximity sensor technology for potential use in proximity sensor applications for other military munition items and non-military applications. The goal of this collaborative effort is to provide a variety of proximity sensor users (e.g. military munitions, intelligent highway collision-avoidance sensors, proximity sensors used in machine control and robotics applications) with a low cost and reliable proximity sensor alternative to current technology. Any others wishing to pursue the possibility of a CRADA for similar activities should contact TACOM-ARDEC at the address below.

**ADDRESSES:** U.S. Army TACOM-ARDEC, ATTN: AMSTA-AR-ASC Picatinny Arsenal, N.J. 07806-5000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tim Ryan, General Engineer, telephone, (201) 724-7953 or fax, (201) 724-2934.

E-mail address: *tryan@pica.army.mil*

**SUPPLEMENTARY INFORMATION:** None.

**Timothy S. Ryan,**

[FR Doc. 97-23114 Filed 8-28-97; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

**AGENCY:** U.S. Army Research Laboratory, DOD.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made the availability of the following U.S. patents for non-exclusive, exclusive, or partially-exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

These patents cover a wide variety of technical arts including: A Device and Method for Estimating a Mental Decision; and A Sabot for a High Dispersion Shot Shell.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the

U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

*Title:* Device and Method for Estimating a Mental Decision.

*Inventor:* Christopher C. Smyth.

*Patent Number:* 5,649,061.

*Issue Date:* July 15, 1997.

*Title:* Sabot for High-Dispersion Shot Shell.

*Inventor:* Lawrence J. Puckett and Robert P. Kaste.

*Patent Number:* 5,644,100.

*Issue Date:* July 1, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Mike Rausa, Technology Transfer Office, AMSRL-CS-TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, Maryland, tel: (410) 278-5028; fax: (410) 278-5820; e-mail: *nvaught@arl.mil*

**SUPPLEMENTARY INFORMATION:** None.

**Mary V. Yonts,**

*Alternate Army Federal Register Liaison Officer.*

[FR Doc. 97-23113 Filed 8-28-97; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Corps of Engineers

#### Intent to Prepare an Environmental Impact Statement (EIS) for the Tres Rios Feasibility Study, Maricopa County, Arizona

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of Intent.

**SUMMARY:** The Los Angeles District intends to prepare an EIS to support the proposed Federal action associated with a feasibility study along the Salt River between 83rd Avenue and the confluence of the Agua Fria River in Maricopa County, Arizona. The purpose of the study is to examine water resources opportunities in the study area including ecosystem restoration, flood control, water quality, water supply and recreation. The proposed project alternatives would address these specific areas of concern, as well as a no action alternative. The EIS will analyze potential impacts on the environment of a range of alternatives, including the recommended plan.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Mike Ternak or Mr. John Drake, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL-PD-WC, 3636 N.

Central Avenue, Phoenix AZ 85012-1936 at (602) 640-2003, or Mr. Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL-PD-RQ, P.O. Box 532711, Los Angeles CA 90053 at (213) 452-3860.

**SUPPLEMENTARY INFORMATION:** The Army Corps of Engineers intends to prepare an EIS to assess the environmental effects associated with the proposed action for the Tres Rios Feasibility Study. The public will have the opportunity to comment on this analysis before any action is taken to implement the proposed action.

### Scoping

The Army Corps of Engineers will conduct a scoping meeting prior to preparing the Environmental Impact Statement to aid in determining the significant environmental issues associated with the proposed action. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, alternatives that should be addressed in the analysis, and potential mitigation measures associated with the proposed action.

A public scoping meeting will be held both in conjunction with the City of Phoenix in September, 1997. The location, date, and time of the public scoping meeting will be announced in the local news media. A separate notice of this meeting will be sent to all parties on the project mailing list.

Individuals and agencies may offer information or data relevant to the environmental or socioeconomic impacts by attending the public scoping meeting, or by mailing the information to Mr. Alex Watt at the address below prior to January 30, 1998. Comments, suggestions, and requests to be placed on the mailing list for announcement and for the Draft EIS, should be sent to Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL-PD-RQ, P.O. Box 532711, Los Angeles CA 90053.

### Availability of the Draft EIS

The Draft EIS is expected to be published and circulated in October 1999, and a public hearing to receive

comments on the Draft EIS will be held after it is published.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 97-23112 Filed 8-28-97; 8:45 am]

BILLING CODE 3710-KF-M

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 29, 1997.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

#### FOR FURTHER INFORMATION CONTACT:

Patrick J. Sherrill (202) 708-8196. 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:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information

collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: August 25, 1997.

**Gloria Parker,**

*Deputy Chief Information Officer, Office of the Chief Information Officer.*

### Office of the Under Secretary

*Type of Review:* New.

*Title:* Evaluation of the Eisenhower Professional Development Program: State and Local Activities.

*Frequency:* One time.

*Affected Public:* Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

*Annual Reporting and Recordkeeping Hour Burden:*

Responses: 4,313.

Burden Hours: 3,817.

*Abstract:* The Planning and Evaluation Service is conducting a three-year study to examine the Eisenhower Professional Development Program and to report on the progress of the program with respect to a set of Performance Indicators established by the Department of Education. The evaluation will provide information on the types of professional development activities supported by the program, the effects of program participation on classroom teaching, and the quality of program planning and coordination. Clearance is sought for a National Profile, In-Depth Cases, and a Longitudinal Study of Teacher Change, to be conducted during the 1997-1998 school year. Respondents include teachers, educational administrators, and professional development providers.

[FR Doc. 97-23013 Filed 8-28-97; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Notice Establishing Deadlines for the Submission of Requests for Waivers That Would Directly Affect School-Level Activities

**SUMMARY:** In this notice, the Acting Deputy Secretary establishes deadlines

for the submission of waiver requests under sections 14401 and 1113(a)(7) of the Elementary and Secondary Education Act of 1965 (ESEA), section 311(a) of the Goals 2000: Educate America Act, and section 502 of the School-to-Work Opportunities Act of 1994.

**Deadlines:** Requests for waivers that would be implemented in the semester immediately following January 1, 1998 must be submitted no later than October 1, 1997.

Requests for waivers that would be implemented in the beginning of the 1998-99 school year must be submitted no later than April 1, 1998.

These deadlines apply only to waivers that would directly affect school-level activities. For example, the deadlines would apply to requests for waivers of the Title I targeting provisions or of the minimum poverty threshold required for implementation of a schoolwide program. However, the deadlines would not apply to waivers of requirements relating to the consolidation of administrative funds.

Waiver applicants are encouraged to submit their requests as early as possible and not wait until the deadlines to seek waivers. The requests will be reviewed upon receipt.

For purposes of this notice, the submission date is the date that the waiver request is received by the U.S. Department of Education (Department) in substantially approvable form. A waiver request is considered to be in substantially approvable form when it has adequately addressed the applicable statutory criteria governing waivers.

During the period a waiver request is under review by the Department, a waiver applicant must continue to comply with the requirement that is the subject of the waiver request.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Doherty at the Department's Waiver Assistance Line, (202) 401-7801. Copies of the Department's updated waiver guidance, which provide examples of waivers and describe how to apply for a waiver, are available at this number. The guidance, along with other information on flexibility, is also available at the Department's World Wide Web site at <http://www.ed.gov/flexibility>.

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.

Dated: August 25, 1997.

**Marshall S. Smith,**

*Acting Deputy Secretary.*

[FR Doc. 97-23110 Filed 8-28-97; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### National Assessment Governing Board; Closed Meeting

**AGENCY:** National Assessment Governing Board; Education.

**ACTION:** Notice of closed meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Design and Methodology Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

**DATES:** September 23, 1997.

**TIME:** 9:00 A.M.-3:00 P.M. (closed).

**LOCATION:** Washington Court Hotel of Capitol Hill, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., 20002-4233, Telephone: (202) 357-6938.

**SUPPLEMENTARY INFORMATION:** The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103-382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On September 23, 1997 between the hours of 9:00 A.M. to 3:00 P.M. the Design and Methodology Committee will convene in a closed meeting to review preliminary cost estimates for NAEP, and to discuss the implications of these estimates for the NAEP redesign. Also, the Committee will review and comment on the draft request for proposal, (RFP) for the next NAEP competition. Public disclosure of this information would likely have an adverse financial affect on the NAEP program. The discussion of this information would be likely to

significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption (9)(B) of Sections 552b(c) of Title 5 U.S.C.

Summaries of these activities and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 A.M. to 5:00 P.M.

Dated: August 26, 1997.

**Roy Truby,**

*Executive Director, National Assessment Governing Board.*

[FR Doc. 97-23116 Filed 8-28-97; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EG97-76-000]

#### Zond Systems, Inc.; Notice of Amendment to Application for Determination of Exempt Wholesale Generator Status

August 26, 1997.

On August 25, 1997, Zond Systems, Inc., 13000 Jameson Road, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission an amendment to its application, previously filed June 27, 1997.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions or comments should be filed on or before September 8, 1997 and must be served on applicant. 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. 97-23035 Filed 8-28-97; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. EG97-77-000]

**Zond Windsystem Partners, Ltd., Series 85-A, a California Limited Partnership; Notice of Amendment to Application for Determination of Exempt Wholesale Generator Status**

August 26, 1997.

On August 25, 1997, Zond Windsystem Partners, Ltd., Series 85-A, a California Limited Partnership, 13000 Jameson Road, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission an amendment to its application.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 8, 1997 and must be served on applicant. 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. 97-23036 Filed 8-28-97; 8:45 am]

BILLING CODE 6717-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-5885-5]

**Air Pollution Control; Motor Vehicle Emission Factors**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop.

**SUMMARY:** The Environmental Protection Agency is now in the process of developing revisions and improvements to the highway vehicle emission factor model (the MOBILE model). The current version of the model, MOBILE5a, was released for use March 26, 1993. The next version of the model, MOBILE6, is tentatively planned for completion early in 1998 and release for use in the summer of 1998. This notice announces

the second public workshop for the purpose of discussing issues raised by the pending revisions to the model. At this workshop, EPA will present results of analyses that have been completed to date, raise new issues for discussion and comment, and generally provide an update as to the progress that has been made since the first MOBILE6 workshop held in March, 1997. There is likely to be one additional MOBILE6 workshop, probably in the spring of 1998. As at the March 1997 workshop, this workshop will also include a presentation on EPA's progress in the development of a nonroad mobile source emissions inventory model.

**DATES:** The workshop will be held Wednesday, October 1 and Thursday, October 2, 1997. The times are from 8:30 am to 4:30 pm October 1, and 8:30 am to 5 pm October 2. All times are Eastern Daylight Time (EDT).

**ADDRESSES:** The workshop will be held in Powsley Auditorium of the Morris Lawrence Building, Washtenaw Community College, 400 East Huron River Drive, Ann Arbor, MI 48106. Directions to the workshop can be requested from the contact person listed below, or through accessing the OMS World Wide Web (WWW) site ([www.epa.gov/omswww/](http://www.epa.gov/omswww/)). Information on how to electronically access this and other workshop-related information appears below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Betty Measley, U. S. EPA Office of Mobile Sources, Assessment and Modeling Division, Emission Inventory Group, 2565 Plymouth Road, Ann Arbor MI 48105. Telephone: (313) 741-7902; fax (313) 741-7939.

This notice, as well as related information concerning the workshop, may be found in the OMS section of the EPA Web site. To access this information using the WWW:

<http://www.epa.gov/OMSWWW/models.htm>

gopher: gopher.epa.gov menus->Offices: Air: OMS

ftp: ftp.epa.gov Chg Dir->pub/gopher/OMS

Workshop-related files, including a copy of this notice, a map showing the location of WCC and the Morris Lawrence Building, and later additional information as described in the body of this announcement, will be found at the OMS Section, Models & Utilities Subsection.

**SUPPLEMENTARY INFORMATION:** Under section 130 of the Clean Air Act Amendments of 1990, EPA is required to review, and to revise as necessary, the emission factors used to estimate

emissions of volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (NO<sub>x</sub>) from area and mobile sources. In the case of highway vehicles, emission factors for these pollutants as a function of various parameters are estimated using the highway vehicle emission factor model, commonly referred to as MOBILE. This model, first developed in the late 1970s, has been revised, updated, and improved periodically since that time to account for increasing data and analyses concerning in-use emissions performance of highway vehicles, changes in vehicle and emission control technology, changes in fuel composition, strengthening of applicable emission standards, refinements to applicable test procedures, and other items that affect in-use emission levels.

Section 130 of the Act requires that this emission factor review, and revision as needed, be performed at least every three years. As noted above, the current official version of the model, MOBILE5a, was released in March 1993. Since that time, two interim updates to the model have been developed, MOBILE5a\_H (released in November 1995) and MOBILE5b (released in October 1996). While not involving revision and update to the entire model, these versions were developed to address specific needs on the part of emission factor users. MOBILE5a\_H incorporated a number of changes intended to improve the ability of modelers, particularly States and local/regional governments, in estimating the benefits of various innovative inspection and maintenance (I/M) programs and to improve the accuracy of modeling situations in which such programs change over time or different programs are applied to different subsets of the covered fleet. MOBILE5b greatly simplified the use of the features first provided in MOBILE5a\_H, and included a number of other minor changes, corrections, and improvements.

The time elapsed since the last complete revision to the model and the additional test data and analyses available since that time warrant another thorough update and revision to the model. OMS plans significant changes not only to the underlying emission factor estimates, but to how emission factors are modeled to account for things such as separation of start and running exhaust emissions, roadway facility type, average traffic speeds, and a number of other important changes that will affect the input information required to use the model as well as the type of information produced by the



model. The first MOBILE6 workshop last March presented an overview of the more important model revisions being planned. Since then, considerable analyses have been performed, and the model revisions proposed in March have been modified to some extent in response comments received since then. At this workshop, results will be presented in a number of topical areas that were discussed only in terms of proposals at the first workshop.

The tentative agenda for this workshop is discussed below. Other aspects of the modeling of highway vehicle emissions that are not specifically included within the following discussion may also be briefly addressed in this workshop; however, the agenda discussed below is intended to illustrate the major areas of discussion for the workshop.

The workshop being announced by today's notice will span two days. In an effort to facilitate travel plans on the part of attendees, a preliminary agenda for the two days is presented below. Note that, as was done for the March 1997 workshop, the first day (October 1) is largely devoted to "technical" issues involved in updating and revising the model, including revisions to emission factors and calculation methodologies, while the second day (October 2) is focused more on "user changes," meaning those revisions planned that will affect the input data requirements and file structure and output changes. The update on the progress of EPA's development of a nonroad emission inventory model will also be presented on the second day. Many attendees will likely want to be present for both sessions, however, some may find that they can limit their attendance to one or the other days based on their specific interests and needs.

*Topics to be discussed on October 1.* The first day of the workshop is planned to include discussion of the stakeholder review process; start-related emissions, separation of start from running (driving) exhaust emissions, and revisions to the basic emission rate equations; the use of facility-specific driving cycles and means for weighting such emission factors by vehicle miles traveled (VMT) to develop area-wide emission factor estimates; the impacts of air conditioning use on exhaust emissions; the effects of fuel sulfur content on emissions, and of fuel oxygenate content on carbon monoxide (CO) emissions; and revisions and improvements to evaporative emissions estimates (including real-time diurnals, resting losses, liquid leaks, and hot soak emissions). Each

presentation will be followed by a short discussion/question and answer period, and there should be some time left at the end of the day for more general open discussion of the material that has been presented.

These are the main areas in which presentations are planned for the first day of the workshop. Results of test programs and data analyses will be presented where available, and in all subject areas plans for additional work and proposed revisions to the model's treatment of each area will be discussed.

*Topics to be discussed on October 2.* On the second day, EPA will present its proposal for modeling the benefits of second-generation onboard diagnostic systems (OBD-II) in MOBILE6. This will be followed by discussions of the changes to input files/structure/content and proposed changes to the output files produced by the model. A significant amount of time will be spent on these "input/output" issues on the second day, as EPA is hoping to engage workshop attendees in active discussions concerning these changes.

The last presentation on October 2 will be an update on the development of the proposed nonroad emission inventory model for mobile sources. The workshop will conclude with reminders to the audience on how to keep abreast of progress, stakeholder review and comment of products to be used in MOBILE6 and the nonroad emission inventory model, and discussion of the schedule for development of MOBILE6 and the nonroad emission inventory model over the coming months.

*Additional Information.* To the extent possible, EPA will post material at the OMS Web site described under **FOR FURTHER INFORMATION CONTACT**, above, in advance of the workshop. Those planning to attend, and those interested in following the progress of workshop planning more closely, should periodically visit the workshop information site. For example, some of the presentation materials that will be used at the workshop will be posted in advance to facilitate discussion and comment at the workshop.

Dated: August 22, 1997.

**Richard D. Wilson,**

*Acting Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 97-23034 Filed 8-28-97; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5483-8]

### 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 18, 1997 Through August 22, 1997

Pursuant to 40 CFR 1506.9.

*EIS No. 970326*, Draft EIS, NPS, MI, Keweenaw National Historical Park General Management Plan, Implementation, Houghton County, MI, Due: October 30, 1997, Contact: Frank Fiala (906) 337-3168.

*EIS No. 970327*, Draft EIS, COE, DE, Delaware Coast from Cape Henlopen to Fenwick Island Feasibility Study and Bethany Beach and South Bethany Interim Feasibility Study, Storm Damage Reduction and to Construct a Protective Berm and Dune, Sussex County, DE, Due: October 14, 1997, Contact: Steven D. Allen (215) 656-6559.

*EIS No. 970328*, Draft EIS, AFS, AZ, Windmill Range Allotment Management Plan, Cattle Grazing Use, Implementation, Coconino National Forest, Mormon Lake, Peaks and Sedona Ranger Districts, Coconino and Yavapai County, AZ, Due: October 14, 1997, Contact: Mike Hanneman (520) 774-1147.

*EIS No. 970329*, Draft Supplement, COE, AR, Red River Waterway, Louisiana, Texas, Arkansas and Oklahoma and Related Projects, New and Updated Information, Red River Below Denison Dam Levee Rehabilitation, Implementation, Hempstead, Lafayette and Miller Counties, AR, Due: October 14, 1997, Contact: Stuart McLean (601) 631-5965.

*EIS No. 970330*, Draft EIS, USN, CA, San Diego Naval Training Center (NTC) Disposal and Reuse of Certain Real Properties, Implementation, City of San Diego, San Diego County, CA, Due: October 14, 1997, Contact: Robert Montana (619) 532-2004 ext 43.

*EIS No. 970331*, Final EIS, AFS, OR, Little River (DEMO) Demonstration of Ecosystem Management Options Timber Sale, Implementation, Umpqua National Forest, North Umpqua Ranger District, Douglas County, OR, Due: September 29, 1997, Contact: Debbie Anderson (541) 496-3532.

*EIS No. 970332*, Final EIS, AFS, AZ, Pocket/Baker Ecosystem and Land



Management Plan, Implementation, Mogollen Rim, Coconino National Forest, Coconino County, AZ, Due: September 29, 1997, Contact: John Gerritsma (520) 354-2216.

EIS No. 970333, Final EIS, AFS, ID, Fourmile Timber Sale, Timber Harvesting and Road Construction, Payette National Forest, New Meadow Ranger District, Adam County, ID, Due: September 29, 1997, Contact: Debbie Ellis (218) 347-0300.

Dated: August 26, 1997.

**B. Katherine Biggs,**

*Associate Director, Office of Federal Activities.*

[FR Doc. 97-23119 Filed 8-28-97; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[ER-FRL-5483-9]

**Environmental Impact Statements and Regulations; Availability of EPA Comments**

Availability of EPA comments prepared August 4, 1997 Through August 8, 1997 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 4, 1997 (62 FR 16154).

**Draft EISs**

ERP No. D-FHW-K40142-CA Rating EC2, CA-4 "GAP" Closure Project, Improvements between I-80 and Cunnings Skyway, Funding, NPDES Permit and COE Section 404 Permit, City of Hercules, Contra Costa County, CA.

*Summary:* EPA expressed environmental concerns due to: a need for additional information regarding wetlands, water and biological resources and air quality data and analysis.

ERP No. D-FHW-K40224-CA Rating EU3, I-880/CA-92 Interchange Reconstruction, I-880 from Winton Avenue to Tennyson Road and CA-92 from Hesperian Boulevard to Santa Clara Street, Funding, City of Hayward, Alameda County, CA.

*Summary:* EPA found the DEIS for the I-880/92 interchange project to have inadequate information because the DEIS did not account for the related SR

92 San Mateo-Hayward bridge widening project which had been analyzed in a separate document. EPA believes the two projects should be analyzed together as one since both are dependent on one another, and that the information did not present a complete picture of the impacts to the public and to the decisionmaker.

ERP No. D-FHW-K40225-CA Rating EC2, Marin US-101 High Occupancy Vehicle (HOV) Gap Closure Project, Construction from US 101 I-580 on US-101 from Lucky Drive to North San Pedro Road and I-580 from Irene Street to US-101, Funding, COE Section 404 and Bridge Permits, Marin County, CA.

*Summary:* EPA expressed environmental concerns regarding potential air quality impacts, relocation of the San Rafael Viaduct, impacts to the future rail project, minimization of impacts of coastal zone resources, and indirect impacts.

ERP No. D-TVA-E09803-MS Rating EC2, Exercise of Option Purchase Agreement with LSP Energy Limited Partnership for Supply of Electric Energy, Construction and Operation, Batesville Generation Facility, Funding, COE Section 10 and 404 Permits and NPDES Permit, City of Batesville, Coahoma, Panola, Quitman and Yalobusha Counties, MS.

*Summary:* EPA's primary concern involves the fact that the proposed power plant site is not close to waterbodies required for process water supply and discharge, so that pipeline interconnection with associated impacts (including loss of forested wetlands) are proposed.

**Final EISs**

ERP No. F-FHW-J40140-MT, US 93 Highway Transportation Improvements, between Hamilton (Milepost 49.0) to Lolo (Milepost 83.2), Funding and COE Section 404 Permit, Ravalli and Missoula Counties, MT.

*Summary:* EPA expressed environmental concerns regarding potential induced and hastened changes in the pattern of land use, population density or growth rate of the Bitterroot Valley resulting indirectly from the project and potential adverse effects to wetlands, riparian areas, wildlife habitat, and other natural systems, including ecosystems.

Dated: August 26, 1997.

**B. Katherine Biggs,**

*Associate Director, Office of Federal Activities.*

[FR Doc. 97-23120 Filed 8-28-97; 8:45 am]

BILLING CODE 6560-50-U

**ENVIRONMENTAL PROTECTION AGENCY**

[PF-758; FRL-5738-2]

**Notice of Filing of Pesticide Petitions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by the docket control number PF-758, must be received on or before September 29, 1997.

**ADDRESSES:** By mail submit written comments to: Public Information and Records Integrity Branch (7506C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not 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 Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** The contact person listed in the table below:

Contact Person	Office location/telephone number	Address
Beth Edwards, .....	Rm. 211, CM #2, 703-305-5400, e-mail:edwards.beth@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Amelia Acierto .....	4th floor, CS1, 703-308-8377, e-mail: acierto.amelia@epamail.epa.gov.	2800 Crystal Drive, Arlington, VA.
Bipin Gandhi, .....	Rm.4W53, CS1, 703-308-8380, e-mail: gandhi.bipin@epamail.epa.gov.	Do.

**SUPPLEMENTARY INFORMATION:** EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF-758] (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 CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:  
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment 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 docket number [PF-758] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

#### List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 20, 1997.

**James Jones,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

#### Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

#### 1. American Cyanamid Company

##### PP 3E4246

EPA has received a pesticide petition (PP 3E4246) from American Cyanamid Company, Agricultural Products Research Division, P.O. Box 400, Princeton, NJ 08543-0400, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for residues of Polyvinyl Chloride (PVC) when used as an inert ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, under 40 CFR 180.1001(c). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

##### A. Toxicity Data

As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without the data

that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. Cyanamid believes that the data and information described below is adequate to ascertain the toxicology and characterize the risk associated with the use of PVC as an inert ingredient in pesticide formulations applied to growing crops and raw agricultural commodities after harvest.

In the case of certain chemical substances that are defined as "polymers", the EPA has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The EPA believes that polymers meeting the criteria noted below will present minimal or no risk.

Polyvinyl chloride (PVC) conforms to the definition of polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low risk polymers:

1. PVC is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.
2. PVC contains as an integral part of its composition the atomic elements carbon, chlorine, and hydrogen.
3. PVC does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250 (d)(2)(ii).
4. PVC is not designed, nor is it reasonably anticipated to substantially degrade, decompose, or depolymerize.
5. PVC is not manufactured or imported from monomers and/or other reactants that are not already included on the Toxic Substance Control Act (TSCA) Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.
6. PVC is not a water absorbing polymer.

7. PVC does not contain any group as reactive functional groups.

8. The minimum number-average molecular weight of PVC is listed as 29,000 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

9. PVC has a minimum number-average molecular weight of 29,000 and contains less than 2 percent oligomeric material below molecular weight 500 and less than 5 percent oligomeric material below 1,000 molecular weight.

In addition, PVC is approved by the Food and Drug Administration (FDA) under 21 CFR for contact with food as a component in adhesives (21 CFR 175.105), coatings (21 CFR 175.320), and paper and paperboard (21 CFR 176.180). PVC is also approved by FDA as an indirect food additive used as a basic component of acrylic (21 CFR 177.1010) and cellophane (21 CFR 177.1200) polymers.

PVC is also cleared for use as water pipe for potable water as per FFDA 201(s).

#### B. Aggregate Exposure

PVC was one of the earliest and still most widely used plastics. The polymer is ubiquitous in our every day environment as it is commonly used in building materials, furniture, and textiles. It is also cleared by FDA as an indirect food additive due to its use in food packaging materials.

Although exposure to PVC may occur through dietary (e.g., PVC-containing food wrapping), non-occupational (e.g., contact with PVC furniture), and drinking water (e.g., potable water piping, water bottles, etc.) sources, the chemical characteristics of PVC lead to the conclusion that there is a reasonable certainty of no harm from aggregate exposure to the polymer. Given the existing widespread use of PVC, any additional exposure resulting from the approval of the use of PVC as an inert ingredient in pesticide formulations for use on growing crops or to raw agricultural commodities after harvest would be trivial.

#### C. Cumulative Effects

At this time there is no information to indicate that any toxic effects produced by PVC would be cumulative with those of any other chemical. Given the compound's categorization as a "low risk polymer" (40 CFR 723.250) and its

proposed used as an inert ingredient in pesticide formulations, there is no reasonable expectation of increased risk due to cumulative exposure to PVC.

#### D. International Tolerances

Cyanamid is petitioning that PVC be exempt from the requirement of a tolerance based upon its status as a low risk polymer as per 40 CFR 723.250. Therefore, an analytical method to determine residues of PVC in raw agricultural commodities treated with pesticide formulations containing PVC has not been proposed.

There are no Codex maximum residue levels (MRLs) established for PVC.

Residues of PVC are currently exempt from the requirement of a tolerance under 40 CFR 180.1001(e) for use in pesticide formulations applied to animals. (Bipin Gandhi)

#### 2. Merck Research Laboratories, Inc. (Merck)

##### PP 7F4845

EPA has received a pesticide petition (PP 7F4845) from Merck Research Laboratories, Inc. (Merck), P.O. Box 450, Hillsborough Road, Three Bridges, NJ 08887-0450, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of emamectin benzoate and certain of its degradates in or on the fruiting vegetables crop group (except cucurbits), which includes the raw agricultural commodities eggplants, groundcherries, pepinos, peppers (bell, chili, cooking, and sweet), tomatillos, and tomatoes. Emamectin benzoate is a new insecticide designed for use against the larvae of various Lepidoptera species when applied in the form of an emulsifiable concentrate formulation (PROCLAIM® 0.16 EC Insecticide) or a soluble granular formulation (PROCLAIM® 5% SG Insecticide).

Merck Research Laboratories, Inc. (Merck) previously has applied for the registration under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of three products containing emamectin benzoate: emamectin benzoate technical (EPA File Symbol 618-RNI); PROCLAIM 0.16 EC Insecticide (EPA File Symbol 618-RNT); and PROCLAIM 5% SG Insecticide (EPA File Symbol 618-RNA). Notice of filing of these applications was published in the **Federal Register** on July 10, 1996 (61 FR 36372). In the previous petition, Merck proposed that the end-use products be registered for use on broccoli, Brussels sprouts, cabbage, cauliflower, celery, and head lettuce. Merck has also submitted a

petition under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) for the establishment of permanent tolerances for residues of emamectin benzoate on the raw agricultural commodities (RACs) broccoli, Brussels sprouts, cabbage, cauliflower, celery, and head lettuce. EPA has assigned this petition the number PP 6F4628.

Merck is now submitting this new petition for the issuance of a tolerance for residues of emamectin on the "fruiting vegetables (except cucurbits)" crop group, which includes eggplants, groundcherries, pepinos, peppers (bell, chili, cooking, and sweet), tomatillos, and tomatoes.

The tolerances sought are for the total toxic residue, consisting of the parent insecticide (emamectin benzoate) and four other components that are plant metabolites or photodegradation products. For each RAC the proposed tolerance level is 0.02 ppm. The pesticide chemical that produces such residues is the parent insecticide emamectin benzoate. Further information on the chemical identity and composition of these compounds is set forth in the EPA files for the three applications discussed in the previous paragraph above.

#### A. Residue Chemistry

1. *Plant metabolism.* The metabolism of emamectin benzoate in plants has been studied in lettuce, cabbage, and sweet corn. The major portion of the residue is parent compound and its delta 8,9- photoisomer. Studies of the metabolism of emamectin in animals are not required because the commodities that are the subject of the petition are not significant animal feed items.

2. *Analytical method.* Adequate analytical methods (HPLC-fluorescence methods) are available for enforcement purposes.

3. *Magnitude of residues.* Twenty-three field trials have been conducted: 11 on peppers and 12 on tomatoes. A processing study was also carried out with tomatoes. These trials were conducted in the major U.S. growing areas for these crops.

All trials were conducted under maximum proposed use rates and conditions. Raw agricultural commodity (RAC) samples from all trials were collected a few hours after the last treatment (day 0) and on days 3, 7, and 14. In one trial samples were also collected for use in a processing study.

In day 7 (and later) whole tomato samples, the highest level of the B1a component and of the n-formyl component were each NQ (not quantifiable, less than 5 ng/g); for the

other two components the residues were less than 1 ng/g. In day 7 (and later) pepper samples, the highest B1a residue was 5 ng/g, the highest n-formyl residue was NQ (less than 5 ng/g), and the other two components were less than 1 ng/g in each sample. Thus, the maximum combined residue was less than 12 ng/g (less than 0.012 ppm) in each case. The processing study showed that the residues did not concentrate in tomato puree or paste.

These data support the proposed tolerance of 0.02 ppm for total toxic residues of emamectin benzoate on tomatoes, tomato puree, tomato paste, or peppers, and by extension to remaining members of the fruiting vegetables (except cucurbits) group.

#### B. Toxicological Profile

The primary toxic effect seen in animal studies of emamectin benzoate is neurotoxicity. No-observed-effect-levels (NOELs) for this effect have been well characterized in multiple studies. Emamectin benzoate has not been shown to be oncogenic or teratogenic in animal studies, it lacks mutagenic activity, and it is not selectively developmentally toxic. The petition refers to toxicity data that establish the following information about the toxicity of emamectin benzoate:

1. *Acute toxicity.* Acute oral LD<sub>50</sub>: rat, 76–89 mg/kg; CD-1 mouse 107–120 mg/kg; CF-1 mouse, 22–31 mg/kg. *Acute oral neurotoxicity:* rat, NOEL = 5 mg/kg, LOEL = 10 mg/kg. *Acute dermal LD<sub>50</sub>:* rat and rabbit, >2,000 mg/kg. *Dermal irritation:* rabbit, not irritating to skin. *Eye irritation:* rabbit, severe eye irritant. *Acute inhalation 4-hour LC<sub>50</sub>:* rat, 2.12–4.44 mg/l.

2. *Mutagenicity.* Emamectin benzoate was tested in a battery of *in vitro* and *in vivo* mutagenicity assays and showed no evidence of mutagenic potential. The photodegradates have also been tested in the Ames bacterial mutagenicity assay and show no mutagenic potential in this test system.

3. *Reproductive and developmental toxicity.* Developmental toxicity: rat, maternal NOEL = 2 mg/kg/day, developmental NOEL = 4 mg/kg/day, developmental LOEL = maternally toxic 8 mg/kg/day (HDT) for developmental delay; rabbit, maternal NOEL = 3 mg/kg/day, developmental NOEL = 6 mg/kg/day (maternally toxic HDT). Developmental neurotoxicity: rat, maternal NOEL = 3.6/2.5 mg/kg/day (HDT), developmental NOEL = 0.6 mg/kg/day, developmental LOEL = 3.6/2.5 mg/kg/day for signs of neurotoxicity in pups. 2-generation reproductive toxicity: rat, parental and reproductive NOEL = 0.6 mg/kg/day, parental LOEL

= 3.6/1.8 mg/kg/day (for decreased weight gain and neuronal lesions); reproductive toxicity LOEL = 3.6/1.8 mg/kg/day (for decreased fecundity and signs of neurotoxicity in pups).

4. *Subchronic and chronic toxicity and oncogenicity.* With the single exception of the chronic rat study, LOELs for the following studies are based on clinical signs and/or histopathological evidence of neurotoxicity (described further below). Subchronic (90-day) toxicity: rat, NOEL = 0.5 mg/kg/day, LOEL = 2.5 mg/kg/day; CD-1 mouse, NOEL = 5.4 mg/kg/day (TWA), LOEL = 0.5 mg/kg/day; dog, NOEL = 0.25 mg/kg/day, LOEL = 0.5 mg/kg/day. Subchronic (90-day) neurotoxicity: rat, NOEL = 1 mg/kg/day, LOEL = 5 mg/kg/day. Chronic (105-week) toxicity/oncogenicity, rat: NOEL = 0.25 mg/kg/day, LOEL = 1 mg/kg/day (based on decreased body weight and clinical chemistry changes), neurotoxicity NOEL = 1 mg/kg/day, not oncogenic. Chronic (79-week) toxicity/oncogenicity, CD-1 mouse: NOEL = 2.5 mg/kg/day, LOEL = 5 mg/kg (males), 7.5 mg/kg/day (females), not oncogenic. Chronic (53-week) toxicity, dog: NOEL = 0.25 mg/kg/day, LOEL = 0.5 mg/kg/day.

Exposure to sufficiently high doses of emamectin benzoate may be associated with clinical signs of central nervous system (CNS) toxicity and microscopic evidence of CNS/peripheral nervous system (PNS) damage. Neurotoxicity has generally been the most sensitive endpoint for toxicity in oral animal studies with emamectin benzoate. Clinical signs of CNS toxicity resulting from emamectin benzoate exposure include tremors, mydriasis, and changes in motor activity (e.g., lethargy, hyperactivity, and/or ataxia). Nervous system lesions (generally focal and of a low degree of severity) have been observed microscopically in white and gray matter in the brain stem, spinal cord, and peripheral nerves. Sporadic lesions of the optic nerve and/or retina have also been seen at higher dose levels. NOELs have been determined in all studies. The lowest toxic dose level of emamectin benzoate for CNS/PNS lesions (0.5 mg/kg/day) was identified in a 1-year study in dogs (NOEL of 0.25 mg/kg/day).

The CF-1 mouse is uniquely sensitive to emamectin benzoate-induced neurotoxicity. Studies have shown that a significant fraction of the members of this strain inherit an inability to produce a P-glycoprotein—one that most strains and species do produce—that functions to resist the entrance of avermectin-type compounds into the central nervous system. P-glycoprotein is also present in the gut of most species

and limits absorption of avermectin-type compounds following oral exposure. In a 16-day feeding study in the CF-1 mouse, tremors were seen at 0.3 mg/kg/day of emamectin benzoate with a NOEL of 0.1 mg/kg/day. No histopathologic evidence of neurotoxicity was seen in this study up to the highest dose tested (0.9 mg/kg/day).

Emamectin benzoate photodegrades on plants and in soil. The major photodegradates that are not animal metabolites were tested in a 15-day neurotoxicity study in CF-1 mice. Only one photodegradate showed neurotoxicity (Merck research number L-660,599, the N-formyl-N-methyl degradate). Its NOEL was found to be 0.075 mg/kg/day, slightly lower than the value for the parent compound in the same kind of study, and both clinical signs and peripheral nerve lesions were observed at levels of 0.1 mg/kg/day and higher.

5. *Endpoint selection.* Merck is proposing that the 0.075 mg/kg/day NOEL from the CF-1 mouse 15-day neurotoxicity study with the L-660,599 photodegradate be used as the basis for acute dietary risk assessment. For evaluation of chronic dietary risks, Merck is proposing that the 1-year dog chronic study NOEL of 0.25 mg/kg/day be used. The dog appears to be the most sensitive species to long-term exposure to emamectin benzoate. Accordingly, chronic exposure is compared against a RfD of 0.0025 mg/kg/day, based on the dog study results and an uncertainty factor of 100.

#### C. Aggregate Exposure

1. *Dietary exposure.* Except for a temporary tolerance associated with an experimental use permit, no tolerances for residues of emamectin benzoate have been established. Merck projects that by the year 2,001, emamectin benzoate will be used on approximately 17% of the acreage for the cole, leafy non-cole vegetable, and fruiting vegetable crops. Chronic dietary exposure analyses were conducted for the overall U.S. population and 26 population subgroups. Assuming 100% of the crops are treated, chronic exposure for the overall U.S. population was estimated to be 0.000005 mg/kg BW/day, and for the most highly exposed subgroup, children 1 to 6 years of age, 0.000007 mg/kg BW/day.

2. *Non-dietary exposure.* No products containing emamectin benzoate have yet been registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for any food or nonfood use. No significant nondietary,

nonoccupational exposure is anticipated.

3. *Drinking water.* The environmental fate of emamectin has been evaluated, and the compound is not expected to contaminate groundwater or surface water to any measurable extent.

#### D. Cumulative Effects

Emamectin is a member of the avermectin family of natural and synthetic compounds that includes the Merck products abamectin (a naturally occurring compound that is the active ingredient of several insecticides registered under FIFRA) and ivermectin (a human and animal drug made from abamectin). Emamectin is made from abamectin but is less similar to abamectin than is ivermectin. Other companies produce certain other drugs that are members of the avermectin family. Some of the effects seen in toxicity studies of abamectin and ivermectin are similar to some of the effects seen in toxicity studies of emamectin. See the discussion of abamectin and ivermectin in 61 FR 65043 (December 10, 1996). Merck is not aware of any information indicating what, if any, cumulative effect would result from exposure to two or more of these compounds.

#### E. Safety Determination

1. *U.S. population—i. Chronic risk.* Chronic exposures were analyzed with reference to the chronic effects RfD NOEL of 0.0025 mg/kg/day. Assuming 100% of the crops are treated, the chronic exposure estimate was 0.2% of the RfD for the overall U.S. population, and 0.3% of the RfD for the most highly exposed subgroup, children 1 to 6 years of age. If 25% crop treatment is assumed, exposure estimates were less than 0.1% of the RfD for all population groups.

ii. *Acute risk.* Acute exposure analyses were conducted for the overall U.S. population, and the population subgroups (1) women 13 years and older, (2) infants, and (3) children. In addition, Tier 2 and Tier 3 acute analyses were conducted assessing acute exposures against the 0.075 mg/kg/day NOEL. These analyses showed that the margins of exposure (MOEs) calculated from the proposed uses of emamectin benzoate are acceptable whether using a highly conservative approach (Tier 2) or a more realistic (Tier 3) methodology. In the Tier 2 analysis, MOEs were well over 1,000 up to the 95th percentile of exposure for all population groups. In the Tier 3 analysis and assuming 100% of the crops are treated, MOEs up to the 99.5th percentile of exposure were greater than

1,000. Assuming 25% of the crop treated, MOEs were greater than 1,000 up to the 99.9th percentile of exposure. Results of both the chronic and acute dietary exposure analyses clearly demonstrate a reasonable certainty that no harm will result from the proposed uses of emamectin benzoate.

2. *Infants and children.* It is Merck's position that the administration of emamectin benzoate has not been shown to cause developmental or reproductive effects at dose levels below those that are maternally toxic. Even if it were decided to use the 0.6 mg/kg NOEL from the rat developmental neurotoxicity study as an endpoint from which to calculate an RfD, the resulting RfD would not yield a different regulatory outcome unless a very high additional uncertainty factor were also employed. Use of such an extra uncertainty factor is not justified for several reasons. Emamectin benzoate is not a teratogen. In developmental toxicity testing, the compound caused no developmental effects in rabbits; in rats, it caused no malformations, and caused skeletal effects typical of developmental delay only at severely maternally toxic doses. Likewise, no reproductive toxicity or toxicity to pups was seen in the 2-generation reproductive toxicity study except at parentally toxic doses. In the developmental neurotoxicity study, tremors, hind-leg splay, and behavioral effects were seen in pups at a dose level (3.6/2.5 mg/kg/day) at which no maternal clinical signs were noted. However, the dams in the study were discarded after the lactation period without gross necropsy or microscopic examination. In studies in which rats dosed at similar levels were examined microscopically, effects (central and peripheral neural lesions) were seen.

The clinical signs of avermectin-family neurotoxicity seen in neonatal rats are unlikely to be useful predictors of human risk. Young rats are considerably more sensitive to avermectin-type compounds than either adult rats or humans and other primates. (In neonatal rats, unlike humans, the P-glycoprotein levels are only a small fraction of the levels seen in adult rats.) Moreover, data from clinical experience with ivermectin, a related human drug, and studies on ivermectin and abamectin, a related pesticide, demonstrate that both the neonatal rat and the CF-1 mouse overpredict the toxicity of the avermectin-type compounds to humans and to non-human primates.

#### F. International Tolerances

No Codex maximum residue levels (MRLs) have been established for residues of emamectin benzoate. (Beth Edwards)

#### 3. Milliken & Company

##### PP 5E4597

EPA has received a pesticide petition (PP 5E4597) from Milliken & Company, M-400, P.O. Box 1927, Spartanburg, SC 29304-1927, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.1001(c) to establish an exemption from the requirement of a tolerance for Poly(ethylene glycol) modified FD&C Blue No. 1, Methyl-Poly(ethylene glycol) modified FD&C Blue No. 1; Poly(ethylene glycol) modified Methyl Violet 2B; when used as inert ingredients at the rate not to exceed 0.6 parts per billion (ppb) to impart color to pesticidally-treated seeds. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

#### A. Residue Chemistry

1. *Plant metabolism.* No specific residue studies have been conducted on the colorants in raw agricultural commodities or in processed foods. However, the aggregate exposure estimates, discussed above, are based on the assumption that an exaggerative level of PEG-modified FD&C Blue No. 1, Methyl-PEG-modified FD&C Blue No. 1, and PEG-modified Methyl Violet 2B applied to seeds will be absorbed by growing plants and enter the diet. Even based on this exaggerative assumption, the maximum potential dietary exposure to the colorants is minuscule.

2. *Analytical method.* Section 408(c)(3)(B) provides for circumstances where no need exists for a practical method for detecting and measuring levels of pesticide residue in or on food. In this instance, because the colorants of interest are inert ingredients and since the exemption from the requirement of a tolerance has no numerical limitation, analytical methods are not required for enforcement purposes for these colorants.

#### B. Toxicological Profile

1. *Acute toxicity.* The results of acute oral toxicity studies indicate that PEG-modified FD&C Blue No. 1 has very low

toxicity by the oral route. Specifically, PEG-modified FD&C Blue No. 1 has an acute oral LD<sub>50</sub> of greater than 5,000 milligrams per kilogram in rats. An additional test material having slightly smaller side chain lengths than PEG-modified FD&C Blue No. 1 also showed an acute oral LD<sub>50</sub> of greater than 5,000 milligrams per kilogram in rats. PEG-modified FD&C Blue No. 1 is closely related to FD&C Blue No. 1; however, the PEG-modified FD&C Blue No. 1 is of a higher molecular weight than FD&C Blue No. 1. FD&C Blue No. 1, itself, is exempt from the requirement of a tolerance under 40 CFR 180.1001 and also is cleared by the Food and Drug Administration for use in coloring food and for coloring drugs under 21 CFR 74.101 and 74.1101, respectively. The acute oral LD<sub>50</sub> for FD&C Blue No. 1 has been determined to be greater than 2,000 mg/kg in rats (Lu and Lavalley, 1964). Thus, the acute toxicity data submitted in support of this petition support the conclusion that PEG-modified FD&C Blue No. 1 is of a lower order of toxicity than FD&C Blue No. 1, itself. Such a result could be expected since, in general, compounds of higher molecular weights are more poorly absorbed and consequently are typically less toxic than closely related lower molecular weight materials.

Along the same lines, it should be noted that Methyl-PEG-modified FD&C Blue No. 1, is another material that is closely related to FD&C Blue No. 1, but is of a higher molecular weight. Similarly, PEG-modified Methyl Violet 2B is closely related to Methyl Violet 2B, but is of a higher molecular weight. Methyl Violet 2B, itself, currently is exempted from the requirement of a tolerance under 40 CFR 180.1001.

Additional acute toxicity studies on the polymeric colorants of interest include skin and eye irritation studies. Primary dermal irritation studies in rabbits on PEG-modified FD&C Blue No. 1 show "minimally irritating" results and primary eye irritation studies in rabbits show "practically non-irritating" results. The dermal sensitization studies on PEG-modified FD&C Blue No. 1 show that this material is not a skin sensitizer. In addition, primary dermal irritation studies on the test material having slightly shorter side chain lengths than PEG-modified FD&C Blue No. 1, show no effects. Finally, primary dermal irritation studies in rabbits on PEG-modified Methyl Violet 2B show barely perceptible erythema on abraded sites only, and primary eye irritation studies in rabbits show "non-irritating" results.

**2. Genotoxicity. In Vitro** Transformation Studies and Mouse Lymphoma Forward Mutation Studies

on PEG-modified FD&C Blue No. 1 both show that this test material is inactive. Furthermore, an Ames study on Methyl-PEG-modified FD&C Blue No. 1 shows non-mutagenic results. Mutagenicity studies have not been conducted on Methyl Violet 2B, PEG Analog.

**3. Reproductive and developmental toxicity. In Vitro** Transformation Studies and Mouse Lymphoma Forward Mutation Studies on PEG-modified FD&C Blue No. 1 both show that this test material is inactive. Furthermore, an Ames study on Methyl-PEG-modified FD&C Blue No. 1 shows non-mutagenic results. Mutagenicity studies have not been conducted on Methyl Violet 2B, PEG Analog.

**4. Chronic toxicity.** Chronic toxicity studies have not been conducted on the three colorants of interest; however, studies have been conducted on FD&C Blue No. 1, which is closely related to the FD&C Blue No. 1 PEG and methyl PEG analogs. For this substance, a chronic dietary No-Observed-Adverse-Effect Level (NOAEL) in mice has been shown to be 7,354 milligrams per kilogram body weight per day for males, and 8,966 milligrams per kilogram per day for females. A chronic dietary NOAEL for rats has been shown to be 1,072 for milligrams per kilogram body weight per day for males and 631 milligrams per kilogram body weight per day for females, showing a low order of chronic toxicity.

#### C. Aggregate Exposure

**1. Dietary exposure.** Dietary exposure to the polymeric colorants, if at all, will be at *de minimis* levels. The colorants are intended to be used as inert ingredients in pesticides that will be applied to seeds. (The purpose of the colorants is to signal users that the seeds have been treated with a pesticide that is not the subject of a tolerance or an exemption from tolerance.) Because the colorants are polymeric, they are not expected to be taken up by the growing plants. Indeed, a determination of the octanol/water partition coefficient for a test material identical to PEG-modified FD&C Blue No. 1, but with slightly longer side chain lengths, resulted in low values that demonstrate that the colorant would have little or no tendency to concentrate in the fatty portions of animals or in plants. Even assuming, however, that the polymeric colorants are taken up by growing plants, the potential dietary exposure to these materials is less than 0.6 parts per billion (ppb) of the diet. This estimate is based on data presented in Knott's Handbook for Vegetable Growers, O. Lorenz and D. Maynard (c1988), which provides data with respect to the

"Approximate Number of Seeds per Ounce and per Gram and Seeding Rates for Traditional Plant Densities," and "Yields of Vegetable Crops."

Although the calculated dietary exposure to the colorants is minuscule, it is important to note that even this extremely low calculated exposure clearly is a gross overestimate, given the polymeric nature of the colorants. Furthermore, although an acceptable daily intake (ADI) for the colorants of interest has not been established, the Joint FAO/WHO Expert Committee on Food Additives (JECFA) has established an ADI for FD&C Blue No. 1 of 5 mg/kg body weight/day, or 100 ppm of the diet. Furthermore, JECFA has established an ADI for PEG of 10 mg/kg/person/day, or 200 ppm of the diet. (See "World Health Organization Technical Report Series", Nos. 557 and 648.) The estimated dietary exposure to the colorants of interest is over two orders of magnitude below these ADIs for related compounds.

Currently, there are no established tolerances or exemptions from tolerance for any of the colorants. However, the colorants are simply polyethylene glycol-modified versions of dyes that currently are exempt from the requirement of a tolerance (i.e., FD&C Blue No. 1 and Methyl Violet 2B).

**2. Drinking water.** There is no available information regarding exposure to PEG-modified FD&C Blue No. 1, Methyl-PEG-modified FD&C Blue No. 1, or PEG-modified Methyl Violet 2B via drinking water. However, aerobic soil metabolism studies on PEG-modified FD&C Blue No. 1 and PEG-modified Methyl Violet 2B demonstrate that these colorants are "inherently biodegradable." Furthermore, the results of aerobic soil metabolism studies on all three colorants show that between 19% and 25% of each colorant degrades within 42 days. Based on these results and the low use levels of the colorants, significant exposure to these colorants in drinking water is not anticipated. Furthermore, there is no established Maximum Concentration Level for the polymeric colorants in drinking water.

**3. Non-dietary exposure.** The proposed use of PEG-modified FD&C Blue No. 1, Methyl-PEG-modified FD&C Blue No. 1, and PEG-modified Methyl Violet 2B involves either application to turf grass seeds or application to seeds grown in an agricultural environment. Thus, there is no potential for significant non-occupational exposure of the colorants to the general population.

#### D. Cumulative Effects

There is no reason to suspect that toxic effects of PEG-modified FD&C Blue No. 1, Methyl-PEG-modified FD&C Blue No. 1, PEG-modified Methyl Violet 2B would be cumulative with those of any other pesticide inert or active chemical, and there are no data to indicate that this would be the case. Thus, Milliken considers it appropriate to evaluate the potential risks of the colorants solely in the context of the aggregate exposure assessment.

#### E. Safety Determination

1. *U.S. population.* Data from acute toxicity studies show FD&C Blue No. 1, PEG and Methyl PEG Analogs and PEG-modified Methyl Violet 2B to be of a very low order of toxicity. Furthermore, two compounds that are closely related to the colorants of interest, FD&C Blue No. 1 and Methyl Violet 2B, currently are exempt from the requirement of a tolerance under 40 CFR 180.1001 paragraphs (b) and (c), respectively. In addition, FD&C Blue No. 1 is cleared by FDA for use in coloring food and drugs. Use of the polymeric colorants of interest as inert ingredients in pesticides applied to turf grass seeds and seeds for edible plants such as beans, squash, and soybeans is not expected to result in significant dietary exposures. Furthermore, there currently are no other registered pesticidal uses in which these polymeric colorants are used.

Because of the *de minimis* potential dietary exposures to the polymeric colorants, there are no dietary risk concerns associated with the intended use of the colorants, and there is a reasonable certainty that no harm will result from such use.

2. *Infants and children.* The toxicity and exposure data in the petition are sufficiently complete to adequately address the potential for additional sensitivity to infants and children. Specifically, as discussed above, developmental and reproductive effects studies on PEG-modified and Methyl-PEG-modified FD&C Blue No. 1 have shown no developmental/reproductive effects. Based on these data, together with the low potential dietary exposure to the colorants, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to PEG-modified FD&C Blue No. 1, and Methyl-PEG-modified FD&C Blue No. 1. Furthermore, although developmental effects studies have not been conducted on PEG-modified Methyl Violet 2B, the potential dietary exposure to this colorant is sufficiently low as to establish that there is a reasonable certainty that no harm will

result to infants and children from aggregate exposure to PEG-modified Methyl Violet 2B.

#### F. International Tolerances

There are no Codex maximum residue levels established for residues of PEG-modified FD&C Blue No. 1, Methyl-PEG-modified FD&C Blue No. 1, or PEG-modified Methyl Violet 2B. (Amelia Acierto)

[FR Doc. 97-23097 Filed 8-28-97; 8:45 am]

BILLING CODE 6560-50-F

### ENVIRONMENTAL PROTECTION AGENCY.

[OPPTS-00222; FRL-5740-3]

#### Regional Training Courses on EPCRA Section 313 Reporting Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA will hold a series of 2-day training courses on the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) section 313. The training courses are intended primarily to introduce the reporting requirements to the staffs of recently added industry groups that will be subject to the reporting requirements of section 313 (62 FR 23834, May 1, 1997)(FRL-5578-3) beginning on January 1, 1998.

**DATES:** For the dates of the training courses see "SUPPLEMENTARY INFORMATION."

**ADDRESSES:** For the locations of the training courses see "SUPPLEMENTARY INFORMATION."

**FOR FURTHER INFORMATION CONTACT:** Michael Hart (202) 260-1576, or the EPCRA Information Hotline at (800) 535-0202. To register call the Hotline number.

**SUPPLEMENTARY INFORMATION:** EPA will hold a series of 2-day training courses on the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) section 313, which are intended primarily to introduce the reporting requirements to facility staff for facilities recently added (62 FR 23834 May 1, 1997). These newly added industries include Metal Mining (SIC code 10, except 1011, 1081, and 1094), Coal Mining (SIC code 12, except 1241), Electric Utilities (SIC codes 4911, 4931, and 4939 [limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce]), Commercial Hazardous Waste Treatment (SIC codes 4953 [limited to facilities regulated under

RCRA Subtitle C, 42 U.S.C. section 6921 et seq.]), Solvent Recovery Services (SIC code 7389 [limited to facilities primarily engaged in solvents recovery services on a contract or fee basis]), Chemical and Allied Products—Wholesale (SIC code 5169), and Petroleum Bulk Terminal and Stations—Wholesale (SIC code 5171). The training course consists of a series of presentations covering the basic requirements of EPCRA section 313 and the sections of the Pollution Prevention Act of 1990 (PPA) that relate to the EPCRA section 313 requirements. A variety of hands-on exercises using the EPCRA section 313 reporting Form R and associated guidance materials will be used to help participants understand the EPCRA section 313 reporting process. Guidance documents being developed to assist the new industries comply with EPCRA section 313 and PPA requirements will be made available at the training sessions. Persons who should consider attending are staff from facilities which operate in the newly added industry sectors, staff from facilities that may be affected by the recent changes to EPCRA section 313, and Federal and private sector facility staff responsible for completing their facilities TRI reporting form(s), and consulting firms who may be assisting them.

Registration for the training courses will be taken on a first-come-first-served basis until 2-weeks prior to the start date of each course. EPA intends to present sector-specific training modules for each of the new industry sectors added, but this may be modified for each of the training sessions based on responses received. There is limited space available.

To register, contact The EPCRA Information Hotline at the telephone number listed under "FOR FURTHER INFORMATION CONTACT." When registering, give your name, postal (and electronic, if any) mailing address, telephone and fax numbers, and the industry sector in which you are interested in receiving particular training. Guidance documents for each of the newly added industry groups will be made available at each of the training sessions whether the training session contains a reporting module for that industry or not. Notification will be sent to each applicant regarding their acceptance for the training session. There is no registration fee for this training. If there is insufficient interest in any of the course, those courses may be canceled. Registrants will be notified in the event a training course is canceled. The Agency bears no responsibility for attendees' decision to



purchase nonrefundable transportation tickets or accommodation reservations.

The training courses will be held on the following dates. To find out the times and specific locations of the training courses, call the person and telephone number listed under "FOR FURTHER INFORMATION CONTACT."

Dates	Location
September 17 and 18, 1997.	Region 1— Boston, MA
September 23 and 24, 1997.	Region 8— Denver, CO
September 25 and 26, 1997.	Region 10—Seattle, WA
October 7 and 8, 1997.	Region 3—Philadelphia, PA
October 15 and 16, 1997.	Region 4—Atlanta, GA
October 21 and 22, 1997.	Region 6—Dallas, TX
October 28 and 29, 1997.	Region 9—San Francisco, CA
November 4 and 5, 1997.	Region 7—Kansas City, KS
November 12 and 13, 1997.	Region 2—New York City, NY
November 18 and 19, 1997.	Region 5—Chicago, IL

#### List of Subjects

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: August 20, 1997.

**William H. Sanders, III,**

*Director, Office of Pollution Prevention and Toxics.*

[FR Doc. 97-23095 Filed 8-28-97; 8:45 am]

BILLING CODE 6560-50-F

#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-5885-3]

#### Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; Tulalip Landfill Superfund Site

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed administrative settlement and opportunity for public comment.

**SUMMARY:** The U.S. Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement to resolve claims under the

Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve past and estimated future liabilities of 8 *de minimis* parties for costs incurred, or to be incurred, by EPA at the Tulalip Landfill Superfund Site in Marysville, Washington.

**DATES:** Comments must be provided on or before September 29, 1997.

**ADDRESSES:** Comments should be addressed to Docket Clerk, U.S. Environmental Protection Agency, Region 10, ORC-158, 1200 Sixth Avenue, Seattle, Washington 98101, and should refer to In Re Tulalip Landfill Superfund Site, Marysville, Washington, U.S. EPA Docket No. 10-97-0034-CERCLA.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth McKenna, Office of Regional Counsel (ORC-158), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-0016.

**SUPPLEMENTARY INFORMATION:** In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Tulalip Landfill hazardous waste site located on Ebey Island between Steamboat Slough and Ebey Slough in the Snohomish River delta system between Everett and Marysville, Washington. The Site was listed on the National Priorities List ("NPL") on April 25, 1995. 60 FR 20350 (April 25, 1995). Subject to review by the public pursuant to this document, the agreement has been approved by the United States Department of Justice. Below are listed the 8 parties who have executed the proposed Administrative Order on Consent.

Associated Grocers, Inc./Thriftway Stores, Inc.; General Disposal Corporation; Goodwill Industries; Kaiser Gypsum Company, Inc.; R.M. Halfman Trucking; The Boeing Company; Safeway Inc.; Washington Iron Works (Ederer, Inc.).

The EPA is entering into this agreement under the authority of sections 122(g), 106 and 107 of CERCLA, 42 U.S.C. 9622(g), 9606 and 9607. Section 122(g) authorizes settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with parties in the Tulalip Landfill case who each are responsible for less than 1.0% of the volume of hazardous substances at the site.

General Disposal Corporation's volume is greater than 1.0%, but it is shared with a potentially responsible party for the site who is not a party to this agreement.

In February and March 1988, EPA contractor Ecology & Environment, Inc. ("E&E") performed a site inspection of the landfill for NPL evaluation. The inspection revealed groundwater contamination with unacceptably high levels of arsenic, barium, cadmium, chromium, lead, mercury, and silver. Water samples taken in the wetlands adjacent to the site showed exceedences of marine chronic criteria for cadmium, chromium, and lead, as well as exceedences in marine acute criteria for copper, nickel, and zinc. In addition, a variety of metals were found in on-site pools and leachate. The study concluded that contamination was migrating off site. On July 29, 1991, EPA proposed adding the Tulalip Landfill to the NPL, and on April 25, 1995, with the support of the Governor of the State of Washington and the Tulalip Tribes of Washington, EPA published the final rule adding the Site to the NPL.

EPA is performing a Remedial Investigation ("RI") and Feasibility Study ("FS") in two parts pursuant to an Administrative Order on Consent with several potentially responsible parties. The first part, which has been completed, evaluated various containment alternatives for the landfill source area, which includes approximately 147 acres in which waste was deposited. The second part evaluates the off-source areas, which include the wetlands and tidal channels that surround the landfill source area. On March 1, 1996, EPA issued a Record of Decision that selected an interim remedial action for the source area. The selected interim remedy requires installation of an engineered, low-permeability cover over the source area of the landfill, at an estimated cost of \$25.1 million.

The proposed settlement requires each settling party to pay a fixed sum of money based on their volumetric share. The total amount that may be recovered from the proposed settlement is \$1,624,406.42. The amount paid will be deposited in the Tulalip Landfill Special Account within the EPA Hazardous Substances Superfund to be used for the cover over the source area at the landfill. Upon full payment, each settling party will receive a release from further civil or administrative liabilities for the Site and statutory contribution protection under section 122(g)(5), 42 U.S.C. 9622(g)(5).

EPA will receive written comments relating to this proposed settlement for



a period of thirty (30) days from the date of this publication.

The proposed agreement may be obtained from Cindy Colgate, Office of Environmental Cleanup (ECL-113), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-1815. The Administrative Record for this settlement may be examined at the EPA's Region 10 office located at 1200 Sixth Avenue, Seattle, Washington 98101, by contacting Bob Phillips, Superfund Records Manager, Office of Environmental Cleanup (ECL-110), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-6699.

**Authority:** The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 41 U.S.C. 9601-9675.

**Charles E. Findley,**

*Acting Regional Administrator.*

[FR Doc. 97-23031 Filed 8-28-97; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-5885-2]

### 33 U.S.C. 1319(g); Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the City of Hillsboro, KS

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed administrative penalty assessment and opportunity to comment regarding the City of Hillsboro, Kansas.

**SUMMARY:** EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a

proposed Class II order is thirty (30) days after issuance of this public notice.

On May 9, 1997, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7630, the following Complaint: In the Matter of The City of Hillsboro, CWA Docket No. VII-97-W-0013.

The Complaint proposes to assess a penalty of Two Thousand One Hundred and Sixty-five dollars (\$2,165) against The City of Hillsboro for the failure to comply with the applicable recordkeeping, monitoring, vector attraction reduction and pathogen density requirements of section 405 of the Clean Water Act, and the regulations promulgated pursuant thereto and set forth at 40 CFR part 503.

#### FOR FURTHER INFORMATION CONTACT:

Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by The City of Hillsboro is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: August 14, 1997.

**William Rice,**

*Acting Regional Administrator.*

[FR Doc. 97-23032 Filed 8-28-97; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Approved by Office of Management and Budget

August 25, 1996.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the

Paperwork Reduction Act of 1995, Pub. L. 96-511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, 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. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418-0214.

#### Federal Communications Commission

*OMB Control No.:* 3060-0779.

*Expiration Date:* 8/31/2000.

*Title:* Amendment to Part 90 of the Commission's Rules to Provide for Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR 89-552.

*Form No.:* N/A.

*Estimated Annual Burden:* 112,450 annual hours; average 1-50 hours per respondent; 27,062 respondents.

*Description:* The *Third Report and Order (Third R&O)* adopts rules to govern the future operation and licensing of the 220-222 MHz band (220 MHz service). In establishing this new licensing plan, the Commission's goal is to establish a flexible regulatory framework that will allow for the efficient licensing of the 220 MHz service, eliminate unnecessary regulatory burdens, and enhance the competitive potential of the 220 MHz service in the mobile service marketplace. However, as with any licensing and operational plan for a radio service, a certain number of regulatory burdens are necessary.

The various information reporting and verification requirements, and the requirement that licensees coordinate and provide written consent, concurrence or agreement with other licensees will be used by the Commission to verify licensee compliance with Commission rules and regulation and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934. Such information has been used in the past and will continue to be used to minimize interference, verify that applicants are legally, technically, and financially qualified to hold licenses, and to determine compliance with Commission Rules.

*OMB Control No.:* 3060-0481.

*Expiration Date:* 8/31/2000.

*Title:* Application for Renewal of Private Radio Station License.

*Form No.:* FCC 452R.

*Estimated Annual Burden:* 448 annual hours; .166 hours per respondent; 2,700 respondents.

*Description:* Aviation Ground and Marine Coast Radio Station licensees are required to apply for renewal of their radio station authorization every five years. This form will be used for that purpose. The form is being revised to add spaces to collect the applicant's Internet or e-mail address and Taxpayer Identification Number (TIN) to comply with the Debt Collection Improvement Act of 1996. The Wireless Telecommunications Bureau has developed a generic renewal application for electronic filing, FCC Form 900. Once implemented, applicants for renewal of Aviation Ground and Marine Coast licenses will have the option to use FCC Form 452-R or electronically file for renewal using the FCC Form 900. The FCC staff will use the data to determine eligibility for a renewed radio station authorization, and to issue a radio station license. Data is also used by Compliance personnel in conjunction with field engineers for enforcement and interference resolution purposes.

*OMB Control No.:* 3060-0368.

*Expiration Date:* 8/31/2000.

*Title:* Question Pools Section 97.523.

*Form:* N/A.

*Estimated Annual Burden:* 480 total annual hours; average 3 hours per respondent; 160 responses.

*Description:* The recordkeeping requirement contained in Section 97.523 is necessary to permit question pools used in preparing amateur examinations to be maintained by Volunteer-Examiner Coordinators (VEC's). These question pools must be published and made available to the public before the questions are used in an examination. The information maintained by the VEC's is used to prepare amateur examinations. If this information was not maintained the amateur examination program would deteriorate and become outdated. These examinations would not adequately measure the qualifications of the applicants.

*OMB Control No.:* 3060-0068.

*Expiration Date:* 8/31/2000.

*Title:* Application for Consent to Assignment of Radio Station Construction Authorization or License for Stations in Services Other Than Broadcast.

*Form:* FCC 702.

*Estimated Annual Burden:* 13,220 total annual hours; average 5 hours per respondent; 2,644 responses.

*Description:* The FCC Form 702 is used to request Commission approval of

assignment of radio station construction authorization or license. The form was revised to increase the number of respondents and total annual burden hours as a result of the Third Report and Order, Redesignation of 27.5 GHz Frequency Band, Establishing Rules and Policies for Local Multipoint Distribution Service (LMDS). The Commission concluded that any LMDS licensee will be permitted to partition or disaggregate portions of its authorization. The fifth notice of Proposed Rulemaking proposes that this form will be used to complete the disaggregation and partitioning of LMDS. This form may also be used in the future disaggregation and partitioning for a variety of spectrum-based services licensed by the Commission. Specific rules will be adopted in Reports and Orders or by public notice for each service subject to disaggregation and partitioning.

The form has been revised to include a space for the applicant to provide an Internet or e-mail address is being added to the form as an alternative media for contacting the applicant with questions relating to the application. We are also requesting permission to collect the Taxpayer Identification Number (TIN) to comply with the Debt Collection Improvement Act of 1996. The drug certification question has been eliminated and text added to the certification block prior to signature in lieu of check a "yes/no" block. The application has been revised to include reference to Part 101 applicants. The data will be used by Commission staff to determine the financial, legal and technical qualifications of the applicant.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97-23038 Filed 8-28-97; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2221]

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

August 27, 1997.

Petitions for reconsideration have been filed in the Commission's rulemaking proceeding listed in this public notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's

copy contractor, ITS, Inc. (202) 857-3800. Oppositions to this petition must be filed September 15, 1997. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Canovanas, Culebra, Las Piedras, Mayaguez, Quebradillas, San Juan, and Vieques, Puerto Rico, and Christiansted and Frederiksted, Virgin Islands) (MM Docket No. 91-259, RM- 7309, 7942, 7943, 7944 and 7948).

*Number of Petitions Filed:* 1.

*Subject:* Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Rosendale, New York) (MM Docket No. 93-17, RM-8170).

*Number of Petitions Filed:* 1.

*Subject:* Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Mt. Juliet and Belle Meade, Tennessee) (MM Docket No. 97-97, RM-9047).

*Number of Petitions Filed:* 1.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97-23037 Filed 8-28-97; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL HOUSING FINANCE BOARD

### Sunshine Act Meeting; Announcing an Open Meeting of the Board

**TIME AND DATE:** 10:00 a.m. Wednesday, September 10, 1997.

**PLACE:** Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

**STATUS:** The entire meeting will be open to the public.

**MATTER TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:**

- Discussion of Legislation.
- Proposed Rule Amending Definition of "State" in Membership Regulation to Include American Samoa and the Northern Mariana Islands.
- Amendment to the Qualified Thrift Lender Regulation.
- Proposed Rule—Eligibility for Membership and Advances.
- Affordable Housing Program Application Approvals.
- Discussion of 1998-2002 GPRA Strategic Plan.

**CONTACT PERSON FOR MORE INFORMATION:**  
Elaine L. Baker, Secretary to the Board,  
(202) 408-2837.

**William W. Ginsberg,**  
*Managing Director.*

[FR Doc. 97-23178 Filed 8-27-97; 10:30 am]

BILLING CODE 6725-01-P

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Isabel C. Bacallao, 1180 West 33rd Street, Hialeah, FL 33012, Sole Proprietor

Industrial Connections, Inc., 1428 Saranell Avenue, Naperville, IL 60540, Ju Meng, President

Continuity Corporation d/b/a, Alamo Forwarding, 2305 Sage Road, Suite 39, Houston, TX 77056. Officers: Felton Overbey, President, Michael Overbey, Vice President

DAMAK Leasing & Financial Inc. d/b/a, DAMAK Enterprises Inc., 20 Commerce Street, Suite 14-15, Flemington, NJ 08822. Officers: Daniel Di Sisto, President, Ann Marie Di Sisto, Secretary.

Dated: August 26, 1997.

**Joseph C. Polking,**  
*Secretary.*

[FR Doc. 97-23026 Filed 8-28-97; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Federal Open Market Committee; Domestic Policy Directive of August 19, 1997.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 19, 1997.<sup>1</sup>

<sup>1</sup> Copies of the Minutes of the Federal Open Market Committee meeting of August 19, 1997, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System,

The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the economic expansion slowed substantially in the second quarter after surging in late 1996 and earlier this year. Private nonfarm payroll employment increased at a reduced pace in May, but the civilian unemployment rate fell slightly further to 4.8 percent. Industrial production registered another sizable gain in May. Personal consumption expenditures, in real terms, rose substantially in May after having changed little over the preceding three months. Housing activity appears to have been well maintained in recent months. Available indicators point to further sizable gains in business fixed investment. The nominal deficit on U.S. trade in goods and services narrowed somewhat in April from its downward-revised average rate in the first quarter. Price inflation has remained subdued.

Market interest rates generally have declined somewhat since the day before the Committee meeting on May 20, 1997; share prices in equity markets have risen considerably further. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies was up slightly on balance over the intermeeting period.

Growth of M2 and M3 fluctuated sharply from April to May in association with a swing in household balances related to large tax payments; on balance, both aggregates expanded at a moderate pace over the two months, and available data pointed to further moderate growth in June. For the year through June, M2 expanded at a rate near the upper bound of its range for the year and M3 at a rate somewhat above the upper bound of its range. Total domestic nonfinancial debt has continued to expand in recent months and is near the middle of its range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee reaffirmed at this meeting the ranges it had established in February for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1996 to the fourth quarter of 1997. The range for growth of total domestic nonfinancial debt was maintained at 3 to 7 percent for the year. For 1988, the Committee agreed on tentative ranges

Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

for monetary growth, measured from the fourth quarter of 1997 to the fourth quarter of 1998, of 1 to 5 percent for M2 and 2 to 6 percent for M3. The Committee provisionally set the associated range for growth of total domestic nonfinancial debt at 3 to 7 percent for 1998. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, somewhat greater reserve restraint would or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, August 22, 1997.

**Donald L. Kohn,**

*Secretary, Federal Open Market Committee.*  
[FR Doc. 97-23001 Filed 8-28-97; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:00 a.m. (EDT),  
September 8, 1997.

**PLACE:** 4th Floor, Conference Room,  
1250 H Street, N.W., Washington, D.C.

**STATUS:** Open.

#### MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the August 11, 1997, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of FY 1997 budget and projected expenditures, approval of FY 1998 proposed budget, and review of FY 1999 estimates.

**CONTACT PERSON FOR MORE INFORMATION:**  
Thomas J. Trabucco, Director, Office of  
External Affairs, (202) 942-1640.

Date: August 27, 1997.

**Roger W. Mehle,**

*Executive Director, Federal Retirement Thrift Investment Board.*

[FR Doc. 97-23193 Filed 8-27-97; 11:19 am]

BILLING CODE 6760-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**Centers for Disease Control and Prevention**
**Health Care Financing Administration**  
**[HSQ-219-GNC]**
**RIN 0938-AG87**
**CLIA Program; Fee Schedule Revision**
**AGENCY:** Health Care Financing Administration (HCFA), Centers for Disease Control and Prevention (CDC), HHS.

**ACTION:** General Notice with comment period.

**SUMMARY:** This notice updates the certificate fees for laboratories established under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) consistent with the methodology set forth in 42 CFR part 493. Section 353(m) of the Public Health Service Act requires that fees be collected to recoup costs of general administration of the CLIA Program. By economizing at every opportunity, the CLIA program has managed to maintain the fees established in 1992 and has absorbed all increases in costs. Revisions to the fees are necessary because the current fees are no longer sufficient to support the administration of the CLIA program. This restructuring of fees will more equitably distribute fees across all sizes and complexity of laboratories. For purposes of simplification, this notice announces a flat fee of \$100 for a certificate of registration.

**DATES:** *Effective Date:* The updated fee schedule is effective for certificate fees assessed as of January 1, 1998, unless we announce changes in response to public comments in a subsequent notice.

*Comments:* Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 28, 1997. We will not consider comments concerning any other issue.

**ADDRESSES:** Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-219-GNC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5-09-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HSQ-219-GNC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

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**FOR FURTHER INFORMATION CONTACT:** Judith Yost (410) 786-3531.

**SUPPLEMENTARY INFORMATION:**
**I. Background**

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Pub. L. 100-578. CLIA replaced in its entirety section 353 of the Public Health Service (PHS) Act and applies to

every laboratory in the United States and its territories that examines human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings subject to the requirements established by the Department of Health and Human Services (HHS). These requirements apply whether or not a laboratory receives reimbursement for services, participates in the Medicare or Medicaid program, and whether or not it tests specimens in interstate commerce. Section 353 of the PHS Act requires HHS to establish certification requirements for any laboratory that performs tests on human specimens. An amendment to the Social Security Act also requires laboratories to meet the CLIA requirements if they choose to participate in the Medicare or Medicaid programs.

On February 28, 1992, we published regulations (57 FR 7002) that contain the CLIA standards that all laboratories must meet. Also on that date, we issued regulations (57 FR 7188) concerning CLIA fees and their collection. Section 353(m) of the PHS Act requires HHS to impose fees sufficient to cover the general costs of administration incurred by HHS in implementing the CLIA program.

The preamble to the final regulations published on February 28, 1992, stated that, as experience was gained from administering the CLIA program, the fee schedules would be revised as necessary. The regulations themselves provide for periodic updating (§ 493.638(b)).

The statute requires that CLIA be a self-funded program with two separate types of fees: (1) Certificate fees and (2) additional fees for laboratory specific monitoring activities. Of these two types of fees, this notice revises only certificate fees, which is the only type of fee authorized by the statute to cover general administrative program costs.

- *Certificate fee* means a fixed charge for the issuance and renewal of certificates. Section 353(b) of the PHS Act requires that every laboratory have in effect a certificate issued by the Secretary applicable to the nature and scope of tests performed. The categories or types of certificates are described in the regulations at Part 493. Section 353(m) of the PHS Act requires that certificate fees must be sufficient to cover the Federal administrative costs of the program. These Federal administration costs to be recouped include costs incurred by HCFA, the Centers for Disease Control and Prevention (CDC) and contractors for both agencies. Administrative activities

include locating and registering laboratories, issuing and reissuing certificates, developing regulatory standards, evaluating States' requests for exemption and accrediting organizations' petitions for deemed status, reviewing, approving and monitoring proficiency testing programs, evaluating which procedures, tests, or examinations meet the criteria for inclusion in the appropriate complexity category, carrying out special public health research studies required by law, providing public information, training surveyors, developing and maintaining a comprehensive CLIA data system, and developing and overseeing the fiscal management of the program.

This notice updates the fees associated with issuance of certificates, consistent with the applicable statutory requirements and regulations. Certificate fees, as required in part 493 subpart F, support the Federal CLIA administration activities.

- *Additional fees* are the fees associated with the inspection of laboratories found in § 493.643 of the CLIA regulation. These fees are to be used for the costs associated with the inspection of laboratories and to assess compliance with CLIA requirements. This notice does not increase these fees.

## II. Current Types of Certificates and Fees

Laboratories must pay the following applicable fees biennially depending on the type of certificate they receive. (These fees and certificates do not apply to laboratories licensed in States which are CLIA-exempt under subpart E of this part. In this case the State pays a fee for CLIA administrative costs.)

- *Certificate of Waiver* (§ 493.638). A laboratory that performs only tests categorized as waived must obtain a certificate of waiver. The certificate of waiver fee, established in 1992, is \$100.

- *Certificate for Provider-Performed Microscopy (PPM) Procedures* (§ 493.638). A certificate for PPM procedures is required for a laboratory that performs:

1. Only tests specified as PPM procedures, or
2. Only tests specified as PPM procedures and tests categorized as waived.

The certificate fee for PPM procedures, set in 1993, is \$150, which is \$50 more than the fee for certificates of waiver and Schedules LVA, A, B, and C laboratories. (See Section IV Volume and Scope of Laboratory Services.) This fee reflects the additional expenses involved in reviewing moderate complexity tests to determine if they

meet the criteria for classification as PPM procedures. (NOTE: This subcategory was first established in a rule published January 19, 1993, (58 FR 5212) and subsequently revised in a rule published April 24, 1995 (60 FR 20035).)

- *Certificate of Registration* (part 493, subparts B and C)

The CLIA regulations, issued on February 28, 1992, and revised April 24, 1995, describe the fees charged for a certificate of registration. Every laboratory is required to obtain a certificate of registration (subparts B and C) except for the following: laboratories performing only those tests categorized as waived; laboratories performing only tests specified as PPM procedures or performing PPM procedures and waived tests; and laboratories located in and licensed by a State which has a CLIA exemption, as specified in subpart E. In the 1992 regulations the cost to the laboratory for the certificate of registration varied with the volume and specialties of services of the laboratory. The fees for the certificate of registration, established by the February 28, 1992 regulations, are: \$100 (Small volume laboratories), \$350 (Medium volume laboratories), and \$600 (Large volume laboratories). (See Table I)

- *Certificate of Accreditation* (§ 493.638). Any laboratory performing testing beyond waived and PPM procedures may request a certificate of accreditation based on its accreditation by a HCFA approved accrediting body. The laboratory must initially pay a fee for a certificate of registration. The certificate of registration fee is based on the laboratory's volume and number of specialties. The certificate of registration is valid for a period of no more than 2 years or until such time as the laboratory shows proof of compliance with the requirements of the accreditation organization. Once compliance is established through the accreditation program, the laboratory must pay the appropriate certificate fee based on volume and number of specialties, prior to the issuance of the certificate of accreditation. The fees, set in 1992, for these certificates are: \$100 (Small volume laboratories), \$350 (Medium volume laboratories), and \$600 (Large volume laboratories).

- *Certificate of Compliance* (§ 493.638). All laboratories performing testing beyond waived and PPM procedures and requesting a certificate of compliance must initially pay a fee for a certificate of registration. The certificate of registration fee is based on the laboratory's volume and number of specialties. The certificate of registration is valid for no more than 2 years or until

such time as an inspection by HCFA or a HCFA agent establishes compliance with the CLIA requirements. Once compliance is established, the laboratory must pay the appropriate certificate fee based on volume and number of specialties, prior to the issuance of the certificate of compliance. The fees for these certificates, set in 1992, are: \$100 (Small volume laboratories), \$350 (Medium volume laboratories), and \$600 (Large volume laboratories).

## III. Revisions to Certificates

If a laboratory issued a certificate, changes its name, location, or meets any conditions specified in § 493.639 of our regulations before the certificate expiration date, the administrative fee to issue the revised certificate is \$50. (The categorization of laboratories by scope and volume (see below) was discussed in detail in the preamble to the February 28, 1992 rule (at page 7194) and is specified in our regulations at § 493.643(c).)

## IV. CLIA Schedules Defined by Number of Specialties and Volume (See Table II)

Section 493.643(c), lists the schedules based on the laboratory's number of specialties and volume of testing (including PPM procedures but excluding tests performed for quality control, quality assurance, and proficiency testing purposes). These schedules, as set forth below, are used to establish the certificate fees, as well as fees associated with monitoring activities.

- *Schedule A Low Volume (LVA)*. The laboratory performs not more than 2,000 laboratory tests annually.

- *Schedule A*. The laboratory performs tests in no more than three specialties of service with a total annual volume of more than 2,000, but not more than 10,000 laboratory tests.

- *Schedule B*. The laboratory performs tests in at least four specialties of service with a total annual volume of more than 2,000, but not more than 10,000 laboratory tests.

- *Schedule C*. The laboratory performs tests in no more than three specialties of service with a total annual volume of more than 10,000, but not more than 25,000 laboratory tests.

- *Schedule D*. The laboratory performs tests in at least four specialties with a total annual volume of more than 10,000, but not more than 25,000 laboratory tests.

- *Schedule E*. The laboratory performs more than 25,000, but not more than 50,000 laboratory tests annually.

- *Schedule F*. The laboratory performs more than 50,000, but not

more than 75,000 laboratory tests annually.

- *Schedule G.* The laboratory performs more than 75,000, but not more than 100,000 laboratory tests annually.

- *Schedule H.* The laboratory performs more than 100,000, but not more than 500,000 laboratory tests annually.

- *Schedule I.* The laboratory performs more than 500,000, but not more than 1,000,000 laboratory tests annually.

- *Schedule J.* The laboratory performs more than 1,000,000 laboratory tests annually.

For purposes of assessing certificate fees in 1992, we considered laboratories in Schedules LVA through C as small volume (\$100 fee), in Schedules D through G as medium volume (\$350 fee), and Schedules H through J as large volume (\$600 fee).

#### V. Need for Increased Fees

After careful review of CLIA administration costs and revenues generated from the current certificate fees, we have concluded that current certificate fees are not sufficient to satisfy the requirements of section 353 of the PHS Act. According to our regulations at § 493.638, the total of fees collected must be sufficient to cover the general costs of administering the CLIA program. The total cost of the CLIA program is estimated to be approximately \$37.5 million annually. CLIA generates about \$25 million in total revenue annually, through a combination of certificate fees and additional fees, leaving a projected shortfall of approximately \$12.5 million annually.

The shortfall in revenue is the result of two factors. First, more than half of all registered laboratories now pay fees based on their performing only waived tests or performing only PPM procedures, or both. When the initial fees were established in February 1992, there were no national data available on the number or types of testing performed. We projected that only 15 percent of all laboratories would have a certificate of waiver, and the PPM procedures category had not yet been established. Second, our revenue projections were based on an initial estimate of 180,000 to 250,000 registered laboratories. In fact, less than 150,000 laboratories are currently registered. This number does not include laboratories in CLIA exempt States.

This shortfall has been exacerbated by the lack of appropriations for start up costs at the inception of the program in 1988. As a result, we have taken a

number of steps to curtail CLIA costs and administrative activities in order to meet the statutory mandate which requires CLIA revenues to cover the costs of administering the program. These steps have included:

implementing survey efficiencies, improving the fee collection process, limiting or postponing CLIA research projects, restricting hiring of additional staff and delaying some other Federal administrative activities. Overall Federal administrative costs have been reduced significantly by decreasing staff positions and reducing costs for travel, printing, subscriptions, and training.

Even though we have reduced administrative costs, a portion of CLIA's administrative expenditures remains fixed and cannot be reduced without seriously undermining the effectiveness of the program. These costs are associated with activities such as: evaluating test systems for appropriate complexity categorization under CLIA; revising survey procedures, such as instituting the Alternate Quality Assessment Survey (AQAS); providing training and consultation to States, other Federal agencies, professional organizations, and laboratories; mailing information and application materials to laboratories; and operating and maintaining the accounting and data systems needed to provide accurate and timely information about laboratory registration and about CLIA receipts and expenses. Other costs are those associated with collecting unpaid fees and administration of the enforcement process.

In order to comply with statutory requirements requiring that CLIA be self-funded, we have already made substantial efforts to decrease Federal administrative costs. Now, we must also seek additional revenues within the authority of the statute and existing regulations to eliminate an anticipated CLIA shortfall.

While this increase in fees will have a varying impact on laboratories, depending on the size and volume of testing performed and other market place factors, it will ultimately provide for a more effective and efficient management of the CLIA program and be a cost effective investment. For example, research projects will enable us to identify, expand and develop innovative, less burdensome survey processes, appropriate personnel qualifications, effective quality control requirements, and could ultimately reduce costs to individual laboratories.

#### VI. Revised Fees

The CLIA regulations require laboratories to pay a fee for the issuance

of a CLIA certificate. In updating the certificate fee levels to meet statutory revenue requirements, the methodology set forth in § 493.638(b) has been retained. This is consistent with the intent to allocate fees to avoid any undue burden and to maintain site neutrality among all laboratories. This means that laboratories performing similar types and volumes of testing despite the location of testing have the same fees imposed upon them.

Currently, there are three certificate fees for small, medium and large volume laboratories. This notice sets forth a \$150 certificate fee for Schedules LVA, A and B laboratories. It also establishes eight other certificate fees based on volume differences in laboratories.

*Registration Fee*—Currently, a laboratory pays the same amount for a certificate of registration and its certificate of compliance or certificate of accreditation. Schedules LVA, A, B, and C laboratories pay \$100. Schedules D, E, F, and G laboratories pay \$350; and Schedules H, I, and J laboratories pay \$600. To be consistent, a set registration fee of \$100 will be charged to every laboratory applying for a certificate of accreditation or certificate of compliance. Therefore, this notice provides for a reduction in certificate of registration fees for Schedules D through J laboratories. The fee for Schedules LVA, A, B, and C laboratories will remain \$100. (See Table I). We invite comments if there are other alternatives which might be adopted in place of this flat registration fee.

*Fee for Revised Certificates*—The regulations require laboratories to provide notification of certain changes such as name, location, director, and deleting or adding services as outlined in § 493.639. Prior to the expiration of the certificate, these changes require payment of a fee for the issuance of a revised certificate. Based on the costs involved to issue a revised certificate, this fee will increase from \$50 to \$75. It should be noted that, to date, no fees have been charged for issuing revised certificates, due to changes in the CLIA program such as the addition of PPM procedures; categorization of additional waived tests and revisions to other federal regulations pertaining to laboratory ownership.

*Biennial Certificate Fees*—The statute requires fees be imposed to cover the costs of administering the CLIA program. Even though significant cost reductions in the program have already occurred, the certificate fees must be increased to maintain program integrity. In order to equitably distribute the biennial certificate fees, the average annual testing volume for laboratories in

Schedules LVA through J were considered. Table III in this section lists average annual testing volumes for the various schedules of laboratories.

The regulations at § 493.643(c) require that certificate fees be based on the "number of specialties and volume of testing." It was determined that an equitable manner to spread costs while conforming to regulatory requirements would be to set certificate fees for Schedules C through J laboratories on an average per-test basis. Fees for Schedules LVA, A, and B laboratories would be set at a minimum amount—\$150. Use of this basis to determine fees is expected to result in a more appropriate allocation of cost across all fee schedules. (See Table III).

Economies of scale among laboratories are accounted for by applying reductions in the per-test rates as the number of specialties and volume of a laboratory increases. New fees for laboratory Schedules C through J are calculated by multiplying the average testing volume by the corresponding per-test rate. This will result in a fairer allocation of costs than the current flat fees for small, medium and large laboratories. The revised fees are summarized below.

- *Certificate of Waiver (§ 493.638).* The biennial fee for this certificate is being increased from \$100 to \$150. This increase is necessary to cover added administrative costs to the CLIA program as more tests are waived. Laboratories may perform these tests at any volume and pay only \$150 biennially.

- *Certificate for Provider-Performed Microscopy (PPM) Procedures*

(§ 493.638). The biennial fee for the certificate is being increased from \$150 to \$200. This increase in fees is required to cover administrative costs associated with this subcategory of testing. This certificate allows a laboratory to conduct both PPM procedures and waived tests, at any volume and pay no other fee.

- *Certificate of Compliance and Certificate of Accreditation (§ 493.638).*

- *Schedule A Low Volume.* If the laboratory performs not more than 2,000 laboratory tests annually, the biennial certificate fee will be \$150.

- *Schedule A.* If the laboratory performs tests in no more than three specialties of service with a total annual volume of more than 2,000, but not more than 10,000 laboratory tests, the biennial certificate fee will be \$150.

- *Schedule B.* If the laboratory performs tests in at least four or more specialties of service with a total annual volume of not more than 10,000 laboratory tests, the biennial certificate fee will be \$150.

- *Schedule C.* If the laboratory performs tests in no more than three specialties of service with a total annual volume of more than 10,000, but not more than 25,000 laboratory tests, the biennial certificate fee will be \$430.

- *Schedule D.* If the laboratory performs tests in at least four or more specialties with a total annual volume of more than 10,000, but not more than 25,000 laboratory tests, the biennial certificate fee will be \$440.

- *Schedule E.* If the laboratory performs more than 25,000, but not more than 50,000 laboratory tests annually, the biennial certificate fee will be \$650.

- *Schedule F.* If the laboratory performs more than 50,000, but not more than 75,000 laboratory tests annually, the biennial certificate fee will be \$1,100.

- *Schedule G.* If the laboratory performs more than 75,000, but not more than 100,000 laboratory tests annually, the biennial certificate fee will be \$1,550.

- *Schedule H.* If the laboratory performs more than 100,000, but not more than 500,000 laboratory tests annually, the biennial certificate fee will be \$2,040.

- *Schedule I.* If the laboratory performs more than 500,000, but not more than 1,000,000 laboratory tests annually, the biennial certificate fee will be \$6,220.

- *Schedule J.* If the laboratory performs more than 1,000,000 laboratory tests annually, the biennial certificate fee will be \$7,940. The revised certificate fees in schedule C through J are based on the average annual number of tests performed.

The following examples illustrate how these fees are determined:

- The average annual test volume for laboratories in Schedule D is 16,445 tests each year. The certificate fee, rounded to the nearest \$10, for those laboratories is \$0.0269 times 16,445 annual tests, or \$440.

- Similarly, the average annual test volume for Schedule J laboratories is 2,886,393. At a per-test rate of \$0.00275, Schedule J laboratories will pay a biennial certificate fee, rounded to the nearest \$10, of \$7,940.

TABLE I.—REDUCTIONS IN MOST REGISTRATION FEES

Type of lab	Current registration fee	Reduction in registration fee	New registration fee
Waived .....	N/A	N/A	N/A
PPM .....	N/A	N/A	N/A
Low Vol A .....	\$100	\$0	\$100
Schedule A .....	100	0	100
Schedule B .....	100	0	100
Schedule C .....	100	0	100
Schedule D .....	350	250	100
Schedule E .....	350	250	100
Schedule F .....	350	250	100
Schedule G .....	350	250	100
Schedule H .....	600	500	100
Schedule I .....	600	500	100
Schedule J .....	600	500	100

TABLE II.—CLIA LABORATORY SCHEDULE

Type of lab	Number of specialties	Annual test volume	Current biennial certificate fee	New biennial certificate fee
Waived .....	N/A .....	N/A .....	\$100	\$150
PPM .....	N/A .....	N/A .....	150	200

TABLE II.—CLIA LABORATORY SCHEDULE—Continued

Type of lab	Number of specialties	Annual test volume	Current biennial certificate fee	New biennial certificate fee
Low Vol A .....	N/A .....	Less than 2,000 .....	100	150
Sch. A .....	3 or Fewer .....	2,000–10,000 .....	100	150
Sch. B .....	4 or More .....	2,000–10,000 .....	100	150
Sch. C .....	3 or Fewer .....	10,001–25,000 .....	100	430
Sch. D .....	4 or More .....	10,001–25,000 .....	350	440
Sch. E .....	N/A .....	25,001–50,000 .....	350	650
Sch. F .....	N/A .....	50,001–75,000 .....	350	1,100
Sch. G .....	N/A .....	75,001–100,000 .....	350	1,550
Sch. H .....	N/A .....	100,001–500,000 .....	600	2,040
Sch. I .....	N/A .....	500,001–1,000,000 .....	600	6,220
Sch. J .....	N/A .....	Greater than 1,000,000 .....	600	7,940

TABLE III.—CLIA LABORATORIES BY TESTING VOLUME

Type of lab	Current biennial cert. fee	Number of labs as of 3/96	Average annual testing volume	Biennial per test rate	New biennial cert. fee
Waived .....	\$100	70948	N/A	N/A	\$150
PPM .....	150	26707	N/A	N/A	200
Low Vol A .....	100	18307	852	N/A	150
Sch. A .....	100	11204	4911	N/A	150
Sch. B .....	100	2864	5509	N/A	150
Sch. C .....	100	3599	15969	\$0.027	430
Sch. D .....	350	1840	16445	0.0269	440
Sch. E .....	350	2990	35928	0.0181	650
Sch. F .....	350	1417	61669	0.0179	1,100
Sch. G .....	350	938	87145	0.0178	1,550
Sch. H .....	600	3566	226237	0.0090	2,040
Sch. I .....	600	988	711213	0.00875	6,220
Sch. J .....	600	1058	2886393	0.00275	7,940

## VII. Comment Opportunities and Alternatives Considered

We are publishing this as a general notice with opportunity to comment because it relates only to the application of § 493.638 by the agency, and is limited to the issue of the amount of the CLIA certificate fee. While we will be accepting public comment on this notice, a fee increase is required by statute because section 353(m)(3)(A) of the PHS Act mandates that certificate fees cover the cost of general CLIA program administration. Moreover, we believe this fee increase is consistent with the methodology set forth in our regulations at §§ 493.638 and 493.649.

We will consider all comments received within 60 days of the date of publication of this notice, and if necessary, we may revise the certificate fees laid out in this notice based on issues raised by commenters. Other alternatives to the changes in fee schedules may exist, and we will consider options suggested by commenters. If we determine that changes in the certificate fees are required in response to public comments, we will announce the changes in a subsequent notice. Otherwise, the certificate fees

announced in this notice will become effective on January 1, 1998.

We considered several options before establishing the certificate fees. The first option we considered was to establish a single registration and certificate fee for all laboratories, regardless of their size. This option was first presented in the proposed rule on CLIA program fees in May 1990 (55 FR 31758). After further discussion and consideration of public comments, it was rejected because a single certificate fee would create an unfair burden on small laboratories.

The second option we considered was to retain separate registration and certificate fees for small, medium, and large laboratories, using the existing size categories; that is, for purposes of assessing fees, we considered laboratories in Schedules LVA through C as small volume, in Schedules D through G as medium volume, and in Schedules H through J as large volume. We dismissed this option because, in order to generate adequate revenue, the increase in fees from one category to another would be too extreme. Laboratories with nearly identical test volumes could, under this option, pay extremely disparate fees.

We also considered basing certificate fees on each laboratory's annual revenue, but dismissed this option

because accurate information regarding revenues for each laboratory is not readily available. Therefore, after careful evaluation of these options, it was determined that a set fee would be assessed for certificates of waiver, PPM procedures, registration and Schedules LVA, A and B laboratories. Certificate of compliance and certificate of accreditation fees, for Schedules C through J laboratories, are based on the average annual test volume and number of specialties. This was the most equitable and practical method for determining fees. This approach has the merit of assessing larger fees to large volume laboratories, while setting their cost per test performed at a lower rate than that of smaller laboratories to acknowledge economies of scale. This approach is based on the fee methodology already set forth in the CLIA regulations.

We will continue to review these certificate fees and may adjust the fee amounts in the future as additional experience in program implementation is gained. We are considering whether to establish a mechanism to adjust fees periodically for inflation and invite specific suggestions on mechanisms, including specific indices, which could be used to accommodate adjustments



based on inflation and changes to the program. Any future changes in the fees will be preceded by an announcement in the **Federal Register**.

### VIII. Impact Analysis

#### A. Regulatory Impact Statement

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 will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all laboratories are considered to be small entities. Individuals and States are not included in the definition of a small entity. Although this notice would not have a significant economic impact on a substantial number of small entities, we are preparing the following voluntary regulatory flexibility analysis.

This notice revises the fees for all CLIA certificates. The effect of this notice will vary widely among laboratories. This notice is projected to generate certificate fees of \$50 million on a biennial basis or \$25 million annually.

Section 353(m) of the PHS Act, as amended by CLIA, requires HHS to impose fees for the issuance and renewal of certificates and for determining program compliance. The statute requires that all certificate holders share in the costs that the government incurs in administering the CLIA program. The statute states that the fees imposed vary by group or classification of laboratory, based on such considerations as the Secretary determines are relevant. Hence, the imposition of fees is not a discretionary action on the part of HHS or HCFA.

The CLIA fee collection rule, published on February 28, 1992, established 12 classifications of laboratories based on volume and scope of services. (A thirteenth schedule, certificate for PPM procedures, was added January 19, 1993.) These classifications are unchanged by this notice. Previously, laboratories applying for certificate of waiver or certificate of PPM procedures paid a set fee. Laboratories applying for certificates of compliance or accreditation paid one of three registration and certificate fees determined by number of specialties and volume of services.

In developing the CLIA regulations and implementation policies, we were cognizant of the costs and attempted to avoid unnecessary burden on laboratories due to unreasonable costs of regulation, particularly on small providers in rural areas. The graduated

fee amounts also were adopted in order to avoid any undue burden on small laboratories and represented our best attempt, using the limited data available at the time, to apportion the estimated costs of administering CLIA while maintaining site neutrality among the projected universe of laboratories.

In the comprehensive regulatory impact analysis of the February 28, 1992, regulations implementing CLIA, we presented several assumptions regarding the universe of laboratories and the projected distribution of laboratories by certificate fee category. Our most conservative assumption estimated a universe of 180,000 laboratories, with 50 percent of the laboratories paying the lowest fee of \$100 by virtue of being classified as waived or small, and 50 percent paying either \$350 or \$600, depending on whether they were classified as medium or large.

Our 1992 projections have proven to be incorrect. At that time, there was no way to accurately predict that the total number of laboratories registering under CLIA would fall short of our estimate, and the number of waived and small laboratories would exceed our projection. Recent data indicate that approximately 90 percent of the registered laboratories pay minimum fees because they hold certificates of waiver, PPM procedures, or are categorized as small based on volume of testing. The remaining 10 percent (Schedules C through J) have average annual testing volumes greater than 10,000.

Current total CLIA revenues generated are approximately \$25 million annually and are not sufficient to fully support the continued operation of the CLIA program and retain the intended goals of the program. Even with the reduction in administrative activities, we estimate that the cost of the program will be approximately \$37.5 million annually or \$75 million biennially. After enactment of this certificate fee schedule, we estimate that annual CLIA revenues, through a combination of certificate fees and additional fees, will maintain the viability of the program.

Once this notice is effective, there will be a set fee for certificates of registration, waiver, PPM procedures and the certificates for Schedules LVA, A and B laboratories. For Schedules C through J laboratories, the certificate fee changes in this notice result in increases in fee amounts from one schedule to another, based on test volume. These changes also retain the policy of allowing the laboratories doing the least amount of testing to pay the lowest certificate fee necessary to cover the

costs of implementing the CLIA requirements. This is a minimal change because laboratories holding a certificate of waiver, certificate for PPM procedures, or laboratories falling in Schedules LVA through B will each see an increase of only \$50 over a 2 year period, amounting to less than \$.07 per day.

Currently, laboratories pay \$100, \$350, or \$600 for a certificate of registration, depending on their volume of testing. The new certificate of registration fee for all laboratories will be \$100, regardless of testing volume. We believe this approach is in keeping with our policy of attempting to minimize fee increases for laboratories performing a smaller volume of testing, and at the same time, simplifies the registration process.

A certificate of registration allows the laboratory to begin performing testing before compliance is assessed. We will maintain the policy of not requiring a certificate of registration for laboratories seeking a certificate of waiver or a certificate for PPM procedures; therefore, these laboratories' will not have to pay a certificate of registration fee. We will assess these laboratories fees biennially only for their respective certificate of waiver or certificate for PPM procedures.

We are soliciting comments on whether assessing even a new minimal \$100 registration fee for laboratories seeking a certificate of compliance or certificate of accreditation creates a barrier into the market place. If so, specifically how do such fees create a barrier into the market place?

When we examined total fees related to the volume of tests performed, we concluded that disproportionately small fees were being collected from large laboratories. Under the current certificate fees, laboratories holding a certificate of waiver, certificate for PPM procedures and laboratories falling in Schedules LVA, through B (approximately 130,000 or 89 percent of the total number of laboratories) pay 70 percent of the administrative costs of the CLIA program through the certificate fees. Under the new certificate fees, the same laboratories pay only 42 percent of the administrative costs. We were conservative in raising the certificate fees for small laboratories in order to be sensitive to their need to provide direct patient care and not impede access to quality laboratory testing. Larger laboratories, based on the volume of tests, reap a greater financial benefit than the smaller laboratories due to the conceivable economies of scale and, therefore, have unlimited potential to provide service to a larger share of the

market. In an effort to distribute costs more equitably among the various types and sizes of laboratories, while generating sufficient revenue, we now rely more heavily on average annual test volumes to determine certificate fees. The fees for certificate of waiver or PPM procedures have been, and will continue to be, a flat fee irrespective of volume of testing performed. The \$50 fee increase for these laboratories is based on expenditures related to these types of certificates. These costs include: reviewing test systems for categorization as waived or PPM procedures; maintaining and updating the data systems; issuing certificates; issuing test categorization notices; collecting fees; and analyzing data.

For other certificate types, instead of using the three-tiered fee schedule based on general ranges of test volume, we are maintaining the 11 laboratory schedules, LVA through J, previously established on February 28, 1992. The new biennial certificate fees for each schedule are computed using a decreasing per test rate as the volume of tests increases. This per-test rate is multiplied by the average annual test volume performed in each schedule, with the exception of the smallest laboratories, LVA through B, being charged a certificate fee of \$150. Laboratories in Schedules C through G, which encompass test volumes up to 100,000, each will pay a certificate fee based on the per-test rate. (See Table III) Between Schedules G and H laboratories, the per-test rate is being reduced by almost one half, because of the dramatic increase in volume for Schedule H laboratories. These test volumes range from more than 100,000 to 500,000. Another very large increase in volume occurs for Schedule J laboratories, which perform over 1 million tests annually. Between Schedules I and J laboratories, the per-test rate is being reduced by approximately three-fourths, in recognition of the large increase in the test volume of these laboratories.

The revisions to the CLIA certificate fees will significantly alter the biennial certificate fees for some laboratories. Table III presents the approximate number of laboratories in each laboratory type and their new biennial certificate fees.

The effect of this new fee schedule will vary widely among clinical laboratories. Nearly 62 percent of the laboratories now hold certificate of waiver or certificate for PPM procedures and pay a flat certificate fee. For certificates of waiver, laboratories will pay \$150 biennially and for certificates for PPM procedures, the biennial fee

will be \$200. These \$50 biennial increases amount to less than \$0.07 per day per laboratory. The new fees take into account the increased number of tests that may be performed under these types of certificates.

Laboratories with a change in name, location or in any of the conditions specified in § 493.639 of our regulations will find the fee for a revised certificate increased by \$25, from \$50 to \$75.

As previously stated, we are required by statute to establish fees to support the CLIA program. Although certificate fees increase proportionately, we believe that by relating the fee more precisely to the number of tests a laboratory performs each year, the costs of administering CLIA will be distributed more equitably across all laboratories. The laboratories bearing the largest increase in certificate fees, Schedules C through J, account for more than 90 percent of the annual test volume in this country. Because of their large test volumes we have applied the lowest possible per-test rates to those laboratories, consistent with generating sufficient revenues. We concluded that basing certificate fees on the average annual test volume for each schedule and a decreasing per-test rate was the most equitable and practical method for constructing the fee schedule. (See Table III) This approach has the merit of charging larger laboratories less per test performed, while still basing the overall fees directly on the volume of testing. These fees will result in large increases in certificate fees for the laboratories with the highest test volumes. These differences are directly proportional to test volumes, resulting in laboratories with similar volumes paying similar fees.

For the reasons given above, we certify that this proposed fee schedule would not have a significant effect on a substantial number of small entities and that a regulatory flexibility analysis is not needed.

#### *B. Rural Hospital Impact Statement*

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and certify, that this notice would not have a significant impact on

the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93-778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93-774, Medicare—Supplementary Medical Insurance Program)

Dated: December 20, 1996.

**Bruce C. Vladeck,**

*Administrator, Health Care Financing Administration.*

Dated: December 11, 1996.

**David A. Satcher,**

*Director, Centers for Disease Control and Prevention.*

Dated: March 26, 1997.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 97-23084 Filed 8-28-97; 8:45 am]

BILLING CODE 4210-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Translation Advisory Committee for Diabetes Prevention and Control Programs: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

*Name:* Translation Advisory Committee for Diabetes Prevention and Control Programs.

*Times and Dates:* 9 a.m.–6 p.m., September 16, 1997. 9 a.m.–12 noon, September 17, 1997.

*Place:* Crown Plaza Ravinia, 4355 Ashford-Dunwoody Road, Atlanta, Georgia 30346, telephone 770/395-7700.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

*Purpose:* This committee is charged with advising the Director, CDC, regarding policy issues and broad strategies for diabetes translation activities and control programs designed to reduce risk factors, health services utilization, costs, morbidity, and mortality associated with diabetes and its complications. The Committee identifies research advances and technologies ready for translation into widespread community practice; recommends broad public health strategies to be implemented through public health interventions; identifies opportunities for surveillance and epidemiologic assessment of diabetes and related complications; and for the purpose of assuring the most effective use and

organization of resources, maintains liaison and coordination of programs within the Federal, voluntary, and private sectors involved in the provision of services to people with diabetes.

*Matters to be Discussed:* Agenda items include a discussion of public health issues pertinent to the role of economic analysis in the Division of Diabetes Translation (DDT) priorities, as well as, the challenges of diabetes in Latino/Hispanic communities. Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Margaret Hurd, Committee Management Specialist, DDT, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, M/S K-10, Atlanta, Georgia 30341-3724, telephone 770/488-5505.

Dated: August 25, 1997.

**Carolyn J. Russell,**  
*Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).*

[FR Doc. 97-23189 Filed 8-28-97; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Proposed Information Collection Activity; Comment Request**

Proposed Projects: *Title:* Request for State Data to Determine the Tribal Family Assistance Grant Amount.

*OMB No:* New Request.

*Description:* This information collection will be used to request data from States that will be used to determine the amount of Tribal Family Assistance Grants. The data requested is the data required to be used by Section 412(a)(1)(B) of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

*Respondents:* State Govts.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Request .....	18	1	42	756.

Estimated Total Annual Burden Hours: 756

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

comments and suggestions submitted within 60 days of this publication.

Dated: August 25, 1997.

**Bob Sargis,**  
*Acting Reports Clearance Officer.*  
[FR Doc. 97-23088 Filed 8-28-97; 8:45 am]  
BILLING CODE 4184-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**Advisory Committee; Notice of Meeting**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee:* Immunology Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA regulatory issues.

*Date and Time:* The meeting will be held on September 19, 1997, 9:30 a.m. to 5 p.m.

*Location:* Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

*Contact Person:* Peter E. Maxim, Center for Devices and Radiological

Health (HFZ-440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-1293, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12516. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The committee will hear presentations from FDA staff regarding new review initiatives pertinent to types of submissions generally reviewed by the committee. FDA will also present a first year summary of activities associated with the down classification of tumor markers used for monitoring cancer patients. FDA seeks to obtain committee input on the data requirements for class II submissions of tumor markers with the intent of modifying the guidance document that serves as a special control for these class II products. Single copies of the guidance document entitled "Guidance For Submission Of Tumor Marker Premarket Notifications" can be obtained by contacting the Division of Small Manufacturers Assistance, 1350 Piccard Dr., Rockville, MD 20851, 1-800-638-2041 or 301-443-6597, or on the Internet using the World Wide Web (WWW) (<http://www.fda.gov/cdrh/draftgui.html>).

*Procedure:* On September 19, 1997, from 10 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending

before the committee. Written submissions may be made to the contact person by September 5, 1997. Oral presentations from the public will be scheduled between approximately 12:30 p.m. and 1:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 5, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

**Closed Committee deliberations:** On September 19, 1997, from 9:30 a.m. to 10 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). FDA staff will present to the committee confidential information regarding pending or future submissions.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 22, 1997.

**Michael A. Friedman,**

*Deputy Commissioner for Operations.*

[FR Doc. 97-23020 Filed 8-28-97; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[OPL-016-N]

#### Medicare Program; September 22, 1997, Meeting of the Practicing Physicians Advisory Council

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

**DATES:** The meeting is scheduled for September 22, 1997, from 9:00 a.m. until 5:00 p.m. e.d.t.

**ADDRESSES:** The meeting will be held in Room 800, 8th Floor, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Kang, M.D., Executive Director, Practicing Physicians Advisory Council, Room 435-H, Hubert H. Humphrey Building, 200 Independence Avenue,

S.W., Washington, DC 20201, (202) 690-7874.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians.

The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term.

The Council held its first meeting on May 11, 1992.

The current members are: Richard Bronfman, D.P.M.; Wayne R. Carlsen, D.O.; Gary C. Dennis, M.D.; Catalina E. Garcia, M.D.; Mary T. Herald, M.D.; Ardis Hoven, M.D.; Sandral Hullett, M.D.; Jerilynn S. Kaibel, D.C.; Marie G. Kuffner, M.D.; Marc Lowe, M.D.; Katherine L. Markette, M.D.; Derrick L. Latos, M.D.; Susan Schooley, M.D.; Maisie Tam, M.D.; and Kenneth M. Viste, Jr., M.D. The chairperson is Kenneth M. Viste, Jr., M.D.

Council members will receive an update on the Balanced Budget Act of 1997 as it relates to Medicare and Medicaid. The agenda will provide for discussion and comment on the following topic: the Office of the Inspector General's Chief Financial Officer's Audit of the Health Care Financing Administration for Fiscal Year 1996.

Individuals or organizations who wish to make 5-minute oral presentations on the agenda issue should contact the Executive Director by 12:00 noon, September 11, 1997, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director no later than 12:00 noon, September 15, 1997. Anyone who is not scheduled to speak may submit written comments to the Executive Director by 12:00 noon, September 17, 1997. The meeting is open to the public, but attendance is limited to the space available.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92-463 (5 U.S.C. App. 2, section 10(a)); 45 CFR Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 22, 1997.

**Bruce C. Vladeck,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 97-23090 Filed 8-28-97; 8:45 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Notice Regarding Section 602 of the Veterans Health Care Act of 1992 Rebate Option

**AGENCY:** Health Resources and Services Administration.

**ACTION:** Notice.

**SUMMARY:** Section 602 of Pub. L. 102-585, the "Veterans Health Care Act of 1992," enacted section 340B of the Public Health Service (PHS) Act, "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of HHS in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed that amount determined under a statutory formula.

The purpose of this notice is to request comments on the proposal of a rebate option for State AIDS Drug Assistance Programs (ADAPs) receiving funds under Title XXVI of the PHS Act.

**DATES:** The public is invited to submit comments on the proposed rebate

process by September 29, 1997. After consideration of comments submitted, the Secretary will issue the final guideline.

**ADDRESSES:** Comments should be submitted to: Annette Byrne, R. Ph., M.S., Director, Office of Drug Pricing, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, MD 20814, Phone (301) 594-4353; FAX (301) 594-4982.

**FOR FURTHER INFORMATION CONTACT:** Robert Staley, R. Ph., Senior Program Manager, Office of Drug Pricing, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, MD 20814, Phone (301) 594-4353; Fax (301) 594-4982.

**SUPPLEMENTARY INFORMATION:** Section 340B requires manufacturers, as a condition for the receipt of Medicaid matching funds with respect to their covered outpatient drugs, to charge participating entities no more than a ceiling price for such drugs. This price is determined by reducing the average manufacturer price of the drug by a rebate percentage. Entities eligible to access section 340B pricing (covered entities) include certain PHS grantees (e.g., federally-qualified health centers, certain family planning projects, AIDS assistance programs, black lung clinics, hemophilia treatment centers, Native Hawaiian health centers, and centers that treat sexually-transmitted disease and/or tuberculosis) and certain disproportionate share hospitals.

Section 340B has no explicit language as to whether the required reduction in price should be obtained by an initial reduction in the purchase price (i.e., a discount mechanism) or received as a required reduction in cost rebated after purchase, dispensing, and payment are completed (i.e., a rebate option). Section 340B(a)(1) of the PHS Act provides that the amount to be paid to the manufacturers for covered drugs takes "into account any rebate or discount, as provided by the Secretary. \* \* \*" Further, section 340B does not specify whether entities should receive the section 340B pricing "through a point of purchase discount, through a manufacturer rebate, or through some other mechanism. A mechanism that is appropriate to one type of "covered entity," such as community health centers, may not be appropriate to another type, such as State AIDS drug assistance programs \* \* \* [T]he Secretary of HHS \* \* \* will use the mechanism that is the most effective and most efficient. \* \* \*" H.R. Rep. No

102-384, 102d Cong., 2d Sess., pt. 2, at 16 (1992).

Initially, HRSA guidance for the section 340B program described only a discount process. Covered entities generally preferred a discount system, because they could negotiate lower prices and needed less initial outlay of drug purchasing money.

Although the discount system is functioning successfully for most covered entities, most ADAPs have drug purchasing systems that have prevented their participation in the section 340B discount program. The use of a rebate option (in addition to the discount mechanism) should allow these groups to access section 340B pricing.

The HRSA recognizes rebates obtained by the State ADAPs that equal or exceed the discount provided by the statutory ceiling price as a method of accessing the 340B program. State ADAPs wishing technical assistance in developing a rebate program should contact HRSA's Office of Drug Pricing at (301) 594-4353 or (800) 628-6297.

Section 340B(a)(5)(A) of the PHS Act reflects Congressional recognition that there is a potential for drugs purchased by a covered entity at the 340B discount price to be subject to a Medicaid rebate, if the drug is reimbursed by the Medicaid program. State ADAPs need to be aware that regardless of whether a discount mechanism or a rebate option is chosen to access 340B pricing, the standards preventing duplicate discounts on drugs still apply. Guidance regarding billing State Medicaid Agencies at actual acquisition cost plus a dispensing fee established by the State Medicaid agency, and the prevention of duplicate discounts, was first published in the **Federal Register** on May 7, 1993 (58 FR 27293) entitled "Duplicate Discounts and Rebates on Drug Purchases." Further guidance was published in the **Federal Register** on December 29, 1993 (58 FR 68922). State ADAPs may find it necessary to work with State Medicaid Agencies to adapt these guidelines to meet the unique circumstances of each individual State, such as provisions permitting retroactive reimbursement of drug purchases while Medicaid eligibility was pending. This will assure that the discount to the covered entity will be passed on to the State Medicaid Agency.

The HRSA is sensitive to concerns about diversion of covered drugs to individuals who are not patients of the covered entities. Guidelines have been issued to minimize this potential, and manufacturers have available to them specified remedies if they believe diversion has occurred. The HRSA believes that these guidelines and

remedies will apply fully to drugs purchased under a rebate option and that instituting rebates will not increase the potential for diversion.

Dated: August 22, 1997.

**Claude Earl Fox,**

*Acting Administrator.*

[FR Doc. 97-23019 Filed 8-28-97; 8:45 am]

BILLING CODE 4160-15-P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4235-N-18]

### 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.

**FOR FURTHER INFORMATION CONTACT:** Mark Johnston, room 7256, Department of Housing and Urban Development, 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 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to

HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B-41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the

appropriate landholding agencies at the following addresses: Army: Mr. Jeff Holste, CECPW-FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310-3862; (703) 428-6316; (This is not a toll-free number).

Dated: August 21, 1997.

**Fred Karnas, Jr.,**

*Deputy Assistant Secretary for Economic Development.*

**Title V, Federal Surplus Property Program Federal Register Report for 08/29/97**

*Suitable/Available Properties*

Buildings (by State)

Alabama

Bldg. 3702, Fort Rucker  
Ft. Rucker Co: Dale AL 36362-5138  
Landholding Agency: Army  
Property Number: 219340183  
Status: Unutilized  
Comment: 5310 sq. ft., 2-story wood, needs rehab, most recent use—barracks, off-site use only.

Bldg. 3703, Fort Rucker  
Ft. Rucker Co: Dale AL 36362-5138  
Landholding Agency: Army  
Property Number: 219340184  
Status: Unutilized  
Comment: 5310 sq. ft., 2-story wood, needs rehab, most recent use—barracks, off-site use only.

Bldg. 3704, Fort Rucker  
Ft. Rucker Co: Dale AL 36362-5138  
Landholding Agency: Army  
Property Number: 219340185  
Status: Unutilized  
Comment: 5310 sq. ft., 2-story wood, needs rehab, most recent use—barracks, off-site use only.

Bldg. 3705, Fort Rucker  
Ft. Rucker Co: Dale AL 36362-5138  
Landholding Agency: Army  
Property Number: 219340186  
Status: Unutilized  
Comment: 2975 sq. ft., 1-story wood, needs rehab, most recent use—general purpose, off-site use only.

Bldg. 3706, Fort Rucker  
Ft. Rucker Co: Dale AL 36362-5138  
Landholding Agency: Army  
Property Number: 219340187  
Status: Unutilized  
Comment: 2975 sq. ft., 1-story wood, needs rehab, most recent use—general purpose, off-site use only.

Bldg. 3707, Fort Rucker  
Ft. Rucker Co: Dale AL 36362-5138  
Landholding Agency: Army  
Property Number: 219340188  
Status: Unutilized  
Comment: 5310 sq. ft., 2-story wood, needs rehab, presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 3708, Fort Rucker  
Ft. Rucker Co: Dale AL 36362-5138  
Landholding Agency: Army  
Property Number: 219340189  
Status: Unutilized

Comment: 5310 sq. ft., 2-story wood, needs rehab, most recent use—barracks, off-site use only.

Bldg. 60100  
Shell Army Heliport  
Ft. Rucker Co: Dale AL 36362-5000  
Landholding Agency: Army  
Property Number: 219520152  
Status: Unutilized  
Comment: 6082 sq. ft., 1-story, most recent use—airfield fire station, off-site use only.

Bldg. 60100  
Shell Army Heliport  
Ft. Rucker Co: Dale AL 36362-5000  
Landholding Agency: Army  
Property Number: 219520153  
Status: Unutilized  
Comment: 64 sq. ft., metal structure, most recent use—sentry station, off-site use only.

Bldg. 60103  
Shell Army Heliport  
Ft. Rucker Co: Dale AL 36362-5000  
Landholding Agency: Army  
Property Number: 219520154  
Status: Unutilized  
Comment: 12516 sq. ft., 2-story, most recent use—admin., off-site use only.

Bldg. 60110  
Shell Army Heliport  
Ft. Rucker Co: Dale AL 36362-5000  
Landholding Agency: Army  
Property Number: 219520155  
Status: Unutilized  
Comment: 8319 sq. ft., 1-story, most recent use—admin., off-site use only.

Bldg. 60113  
Shell Army Heliport  
Ft. Rucker Co: Dale AL 36362-5000  
Landholding Agency: Army  
Property Number: 219520156  
Status: Unutilized  
Comment: 4000 sq. ft., 1-story, most recent use—admin., off-site use only.

Bldgs. 2802, 2805  
Fort Rucker  
Ft. Rucker Co: Dale AL 36362-  
Landholding Agency: Army  
Property Number: 219620662  
Status: Unutilized  
Comment: #2802=13,082 sq. ft., #2805=13,082 sq. ft., most recent use—admin., needs repair, off-site use only.

Alaska

Bldg. 400  
Fort Richardson  
Ft. Richardson AK 99505-  
Landholding Agency: Army  
Property Number: 219440400  
Status: Unutilized  
Comment: 13056 sq. ft., 2-story wood frame, presence of lead paint and asbestos, off-site use only.

Bldg. 402  
Fort Richardson  
Ft. Richardson AK 99505-  
Landholding Agency: Army  
Property Number: 219440401  
Status: Unutilized  
Comment: 13056 sq. ft., 2-story wood, presence of lead paint and asbestos, off-site use only.

Bldg. 407  
Fort Richardson

Ft. Richardson AK 99505–  
Landholding Agency: Army  
Property Number: 219440402  
Status: Unutilized  
Comment: 13056 sq. ft., 2-story woodframe,  
presence of lead paint and asbestos, off-site  
use only.

Bldg. 1168  
Fort Wainwright  
Ft. Wainwright Co: Fairbanks AK 99703–  
Landholding Agency: Army  
Property Number: 219610636  
Status: Underutilized  
Comment: 6455 sq. ft., concrete, presence of  
asbestos, most recent use—warehouse.

Bldg. 639  
Fort Richardson  
Ft. Richardson AK 99505–6500  
Landholding Agency: Army  
Property Number: 219720152  
Status: Unutilized  
Comment: 9246 sq. ft., concrete, most recent  
use—auditorium, poor condition, presence  
of asbestos/lead paint, off-site use only.

#### Arizona

Bldg. 81001  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240720  
Status: Unutilized  
Comment: 4386 sq. ft., 2 story wood frame,  
possible asbestos, most recent use—  
administrative, scheduled to become  
vacant in 6 months, off-site use only.

Bldg. 81020  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240722  
Status: Unutilized  
Comment: 4386 sq. ft., 2 story wood frame,  
possible asbestos, most recent use—  
administrative, scheduled to become  
vacant in 6 months, off-site use only.

Bldg. 67204  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240723  
Status: Unutilized  
Comment: 4332 sq. ft., 2 story wood frame,  
possible asbestos, most recent use—  
administrative, scheduled to become  
vacant in 6 months, off-site use only.

Bldg. 66151  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240728  
Status: Unutilized  
Comment: 4194 sq. ft., 2 story wood frame,  
possible asbestos, most recent use—  
barracks, scheduled to become vacant in 6  
months, off-site use only.

Bldg. 67108  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240733  
Status: Unutilized  
Comment: 2403 sq. ft., 1 story wood frame,  
possible asbestos, most recent use—  
classrooms, scheduled to become vacant in  
6 months, off-site use only.

Bldg. 71116  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240735  
Status: Unutilized  
Comment: 3470 sq. ft., 1 story wood frame,  
possible asbestos, most recent use—  
classrooms, scheduled to become vacant in  
6 months, off-site use only.

Bldg. 71215  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240736  
Status: Unutilized  
Comment: 4854 sq. ft., 1 story wood frame,  
possible asbestos, most recent use—  
classrooms, scheduled to become vacant in  
6 months, off-site use only.

Bldg. 70110  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240739  
Status: Unutilized  
Comment: 2675 sq. ft., 1 story wood frame,  
possible asbestos, scheduled to become  
vacant in 6 months, most recent use—  
offices, off-site use only.

Bldg. 70111  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240740  
Status: Unutilized  
Comment: 2800 sq. ft., 1 story wood frame,  
possible asbestos, scheduled to become  
vacant in 6 months, most recent use—  
offices, off-site use only.

Bldg. 70113  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240741  
Status: Unutilized  
Comment: 2800 sq. ft., 1 story wood frame,  
possible asbestos, scheduled to become  
vacant in 6 months, most recent use—  
offices, off-site use only.

Bldg. 70114  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240742  
Status: Unutilized  
Comment: 2544 sq. ft., 1 story wood frame,  
possible asbestos, scheduled to become  
vacant in 6 months, most recent use—  
offices, off-site use only.

Bldg. 70115  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240743  
Status: Unutilized  
Comment: 2544 sq. ft., 1 story wood frame,  
possible asbestos, scheduled to become  
vacant in 6 months, most recent use—  
offices, off-site use only.

Bldg. 70123  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240744

Status: Unutilized  
Comment: 3298 sq. ft., 1 story wood frame,  
possible asbestos, scheduled to become  
vacant in 6 months, most recent use—  
offices, off-site use only.

Bldg. 70124  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240745  
Status: Unutilized  
Comment: 3298 sq. ft., 1 story wood frame,  
possible asbestos, scheduled to become  
vacant in 6 months, most recent use—  
offices, off-site use only.

Bldg. 70126  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240746  
Status: Unutilized  
Comment: 3343 sq. ft., 1 story wood frame,  
possible asbestos, scheduled to become  
vacant in 6 months, most recent use—  
offices, off-site use only.

Bldg. 82013  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240752  
Status: Unutilized  
Comment: 2193 sq. ft., 1 story wood frame,  
possible asbestos, scheduled to become  
vacant in 6 months, most recent use—  
offices, off-site use only.

Bldg. 90327  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240753  
Status: Unutilized  
Comment: 279 sq. ft., 1 story wood frame,  
possible asbestos, scheduled to become  
vacant in 6 months, most recent use—  
offices, off-site use only.

Bldg. 82007  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240755  
Status: Unutilized  
Comment: 4386 sq. ft., 2 story wood frame,  
possible asbestos, scheduled to become  
vacant in 6 months, most recent use—  
storehouse, off-site use only.

Bldg. 82009  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219240756  
Status: Unutilized  
Comment: 2444 sq. ft., 2 story wood frame,  
possible asbestos, scheduled to become  
vacant in 6 months, most recent use—  
storehouse, off-site use only.

Bldg. 70217  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635–  
Landholding Agency: Army  
Property Number: 219310293  
Status: Excess  
Comment: 304 sq. ft., 1 story concrete block,  
presence of asbestos, most recent use—  
storage, off-site use only.

Bldg. 80010



- Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219310294  
Status: Excess  
Comment: 2318 sq. ft., 1-story wood,  
presence of asbestos, most recent use—  
admin.  
Bldg. 84103, Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219310296  
Status: Excess  
Comment: 984 sq. ft., 1-story, presence of  
asbestos and lead paint, most recent use—  
admin.  
Bldg. 67101, Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219310297  
Status: Excess  
Comment: 2216 sq. ft., 1-story wood,  
presence of asbestos and lead paint, most  
recent use—classroom.  
Bldg. 30012, Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219310298  
Status: Excess  
Comment: 237 sq. ft., 1-story block, most  
recent use—storage.  
Bldg. 67221  
U.S. Army Intelligence Center, Fort  
Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219330235  
Status: Unutilized  
Comment: 1068 sq. ft., 1-story wood,  
presence of asbestos, most recent use—  
office, off-site use only.  
Bldg. 83102  
U.S. Army Intelligence Center, Fort  
Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219330236  
Status: Unutilized  
Comment: 984 sq. ft., 1-story wood, presence  
of asbestos, most recent use—office, off-site  
use only.  
Bldg. 84010  
U.S. Army Intelligence Center, Fort  
Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219330237  
Status: Unutilized  
Comment: 2147 sq. ft., 1-story wood,  
presence of asbestos, most recent use—  
office, off-site use only.  
Bldg. 67116  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219410243  
Status: Unutilized  
Comment: 1784 sq. ft., 1-story; wood; most  
recent use—admin.; off-site use only.  
Bldg. 67205  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219410244  
Status: Unutilized  
Comment: 2166 sq. ft., 2-story; wood; most  
recent use—admin.; off-site use only.  
Bldg. 67207  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219410245  
Status: Unutilized  
Comment: 2166 sq. ft., 2-story; wood; most  
recent use—admin.; off-site use only.  
Bldg. 67213  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219410246  
Status: Unutilized  
Comment: 2594 sq. ft., 1-story; wood; most  
recent use—admin.; off-site use only.  
Bldg. 73913  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219410247  
Status: Unutilized  
Comment: 910 sq. ft., 1-story; wood; most  
recent use—admin.; off-site use only.  
Bldg. 80001  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219410248  
Status: Unutilized  
Comment: 1958 sq. ft., 2-story; wood; most  
recent use—admin.; off-site use only.  
Bldg. 83027  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219410249  
Status: Unutilized  
Comment: 1993 sq. ft., 2-story; wood; most  
recent use—admin.; off-site use only.  
Bldg. 84007  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219410250  
Status: Unutilized  
Comment: 2000 sq. ft., 2-story; wood; most  
recent use—admin.; off-site use only.  
Bldg. 68320  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219410251  
Status: Unutilized  
Comment: 1531 sq. ft.; 1-story; wood; most  
recent use—recreation center; off-site use  
only.  
Bldg. 30126  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219410252  
Status: Unutilized  
Comment: 9324 sq. ft., 1 story; wood; most  
recent use—maintenance; off-site use only.  
Bldg. 84014  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219410253  
Status: Unutilized  
Comment: 2260 sq. ft., 1 story; wood; most  
recent use—maintenance; off-site use only.  
Bldg. S-106  
Yuma Proving Ground  
Yuma Co: Yuma/La Paz AZ 85365-9104  
Landholding Agency: Army  
Property Number: 219420345  
Status: Unutilized  
Comment: 1101 sq. ft., 1 story, cold storage  
bldg., needs repair.  
Bldgs. 67210, 67217  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219420347  
Status: Unutilized  
Comment: 1165 sq. ft., 1 story wood,  
presence of asbestos, most recent use—  
office, off-site use only.  
Bldg. 80005  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219430245  
Status: Unutilized  
Comment: 1718 sq. ft., 1-story, wood frame,  
most recent use—instructional bldg., needs  
repair, off-site use only.  
Bldg. 80006  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219430246  
Status: Unutilized  
Comment: 1628 sq. ft., 1-story, wood frame,  
most recent use—instructional bldg., needs  
repair, off-site use only.  
Bldg. 83023  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219430247  
Status: Unutilized  
Comment: 1648 sq. ft., 1-story, wood frame,  
most recent use—instructional bldg., needs  
repair, off-site use only.  
Bldg. 81027  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219430248  
Status: Unutilized  
Comment: 2193 sq. ft., 2-story, wood frame,  
most recent use—admin., needs repairs,  
off-site use only.  
Bldg. 81028  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219430249  
Status: Unutilized  
Comment: 2193 sq. ft., 2-story, wood frame,  
most recent use—admin., needs repair, off-  
site use only.  
Bldg. 80111  
Fort Huachuca  
Sierra Vista Co: Cochise AZ 85635-  
Landholding Agency: Army  
Property Number: 219430250  
Status: Unutilized  
Comment: 2032 sq. ft., 1-story, wood frame,  
most recent use—instructional bldg., needs  
repair, off-site use only.  
Bldg. 503, Yuma Proving Ground



Yuma Co: Yuma AZ 85365-9104

Landholding Agency: Army

Property Number: 219520073

Status: Unutilized

Comment: 3789 sq. ft., 2-story, major structural changes required to meet floor loading & fire code requirements, presence of asbestos.

9 Classroom Facilities

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Location: Bldgs. 67111, 67118, 67124, 67209, 81005, 81006, 81008, 83024, 84003

Landholding Agency: Army

Property Number: 219520158

Status: Excess

Comment: 1044-2602 sq. ft., 1-2 story, presence of asbestos and lead base paint, off-site use only.

Bldg. 67214

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Landholding Agency: Army

Property Number: 219520159

Status: Excess

Comment: 955 sq. ft., 1-story, most recent use—rec. bldg., presence of asbestos & lead base paint, off-site use only.

2 Storage Facilities

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Location: Bldgs. 72320, 80017

Landholding Agency: Army

Property Number: 219520160

Status: Excess

Comment: 2340 sq. ft., 1-2 story, presence of asbestos & lead base paint, off-site use only.

10 Admin. Facilities

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Location: Bldgs. 80025, 80027, 80028, 80102, 81002, 81009, 81102, 83025, 83026, 84008

Landholding Agency: Army

Property Number: 219520161

Status: Excess

Comment: 996-2193 sq. ft., 1-2 story, presence of asbestos and lead base paint, off-site use only.

11 Admin. Facilities

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Location: Bldgs. 67110, 67115, 67121, 67122, 67226, 67228, 70122, 80008, 80009, 80013, 80024

Landholding Agency: Army

Property Number: 219520162

Status: Excess

Comment: 1041-3298 sq. ft., 1-2 story, presence of asbestos & lead base paint, off-site use only.

Bldg. 73902

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Landholding Agency: Army

Property Number: 219610638

Status: Unutilized

Comment: 5355 sq. ft., presence of asbestos, most recent use—maintenance, off-site use only.

9 Bldgs.

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Location: 82002, 82027, 82028, 83021, 83022, 85008, 85009, 85027, 85028

Landholding Agency: Army

Property Number: 219610639

Status: Unutilized

Comment: various sq. ft., presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 85005

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Landholding Agency: Army

Property Number: 219610640

Status: Unutilized

Comment: 3515 sq. ft., presence of asbestos, most recent use—dining off-site use only.

21 Bldgs.

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Location: 66057, 66152-66155, 66157-66159, 67201, 80020, 82105, 82106, 83013, 83017, 83020, 84002, 84017, 85015, 85017, 85102, 85105

Landholding Agency: Army

Property Number: 219610641

Status: Unutilized

Comment: various sq. ft., presence of asbestos, most recent use—admin., off-site use only.

Bldg. 66055

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Landholding Agency: Army

Property Number: 219610642

Status: Unutilized

Comment: 1946 sq. ft., presence of asbestos, most recent use—recreation, off-site use only.

7 Bldgs.

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Location: 71210, 71211, 80002, 80014, 82005, 82006, 85103

Landholding Agency: Army

Property Number: 219610644

Status: Unutilized

Comment: various sq. ft., presence of asbestos, most recent use—classrooms, off-site use only.

Bldgs. 13548, 72918

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Landholding Agency: Army

Property Number: 219620663

Status: Unutilized

Comment: #13548=2048 sq. ft., most recent use—maint. shop, #72918=2822 sq. ft., most recent use—storage, possible asbestos/lead based paint, off-site use only.

Bldg. 66156

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Landholding Agency: Army

Property Number: 219640196

Status: Unutilized

Comment: 2014 sq. ft., presence of asbestos/lead based paint, most recent use—admin., off-site use only.

Bldg. 71922

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Landholding Agency: Army

Property Number: 219640197

Status: Unutilized

Comment: 1013 sq. ft., presence of asbestos/lead based paint, most recent use—admin., off-site use only.

Bldg. 41410

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Landholding Agency: Army

Property Number: 219640508

Status: Unutilized

Comment: 582 sq. ft., presence of lead based paint, most recent use—admin., off-site use only.

Bldg. 71916

Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Landholding Agency: Army

Property Number: 219640509

Status: Unutilized

Comment: 1225 sq. ft., presence of asbestos/lead based paint, most recent use—storage, off-site use only.

11 Bldgs., Fort Huachuca

#31209, 31210, 31211, 81104, 82001, 82010,

84025, 84026, 84027, 84028, 84105

Sierra Vista Co: Cochise AZ 85635-

Landholding Agency: Army

Property Number: 219640510

Status: Unutilized

Comment: Various sq. ft., presence of asbestos/lead based paint, off-site use only

Colorado

Bldg. T-106

Fort Carson

Ft. Carson Co: El Paso CO 80913-5023

Landholding Agency: Army

Property Number: 219630125

Status: Unutilized

Comment: 25749 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—storage, off-site use only.

Bldg. T-222

Fort Carson

Ft. Carson Co: El Paso CO 80913-5023

Landholding Agency: Army

Property Number: 219630126

Status: Unutilized

Comment: 2750 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—storage, off-site use only.

Bldg. P-1008

Fort Carson

Ft. Carson Co: El Paso CO 80913-5023

Landholding Agency: Army

Property Number: 219630127

Status: Unutilized

Comment: 3362 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—service outlet, off-site use only.

Bldg. 1302

Fort Carson

Ft. Carson Co: El Paso CO 80913-5023

Landholding Agency: Army

Property Number: 219630128

Status: Unutilized

Comment: 18259 sq. ft., possible asbestos/lead based paint, most recent use—maintenance shop, off-site use only.

Bldg. T-1401

Fort Carson

Ft. Carson Co: El Paso CO 80913-5023

Landholding Agency: Army

Property Number: 219630129

Status: Unutilized

Comment: 327 sq. ft., poor condition, most recent use—storehouse, off-site use only.

Bldg. T-1441

Fort Carson

- Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630130  
Status: Unutilized  
Comment: 1500 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.
- Bldg. T-1827  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630132  
Status: Unutilized  
Comment: 2488 sq. ft., poor condition, possible asbestos, most recent use—service outlet, off-site use only.
- Bldg. T-2438  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630133  
Status: Unutilized  
Comment: 4020 sq. ft., fair condition, most recent use—instruction bldg., off-site use only.
- Bldg. T-2739  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630134  
Status: Unutilized  
Comment: 3880 sq. ft., possible asbestos, most recent use—maintenance shop, off-site use only.
- Bldg. T-2946  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630135  
Status: Unutilized  
Comment: 5830 sq. ft., poor condition, possible asbestos, most recent use—maintenance shop, off-site use only.
- Bldg. T-6043  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630136  
Status: Unutilized  
Comment: 10225 sq. ft., poor condition, possible asbestos, most recent use—storage, off-site use only.
- Bldg. T-6052  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630137  
Status: Unutilized  
Comment: 4458 sq. ft., poor condition, possible asbestos, most recent use—maintenance shop, off-site use only.
- Bldg. T-6084  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630138  
Status: Unutilized  
Comment: 10183 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—training, off-site use only.
- Bldg. T-6089  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army
- Property Number: 219630139  
Status: Unutilized  
Comment: 3150 sq. ft., poor condition, possible asbestos, most recent use—service outlet, off-site use only.
- Bldg. S-6221  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630140  
Status: Unutilized  
Comment: 5798 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—warehouse, off-site use only.
- Bldg. S-6226  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630141  
Status: Unutilized  
Comment: 13154 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.
- Bldg. S-6229  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630142  
Status: Unutilized  
Comment: 480 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—generator plant, off-site use only.
- Bldg. S-6230  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630143  
Status: Unutilized  
Comment: 13154 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.
- Bldg. S-6235  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630144  
Status: Unutilized  
Comment: 10038 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.
- Bldg. S-6240  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630145  
Status: Unutilized  
Comment: 9985 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.
- Bldg. S-6241  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630146  
Status: Unutilized  
Comment: 10038 sq. ft., poor condition, possible asbestos/lead based paint, off-site use only.
- Bldg. S-6243  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630147
- Status: Unutilized  
Comment: 12745 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—storage, off-site use only.
- Bldgs. 6244, 6247  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630148  
Status: Unutilized  
Comment: fair condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.
- Bldgs. S-6245, S-6246  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630149  
Status: Unutilized  
Comment: fair condition, possible asbestos/lead based paint, most recent use—barracks, off-site use only.
- Bldgs. S-6248, S-6249  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630150  
Status: Unutilized  
Comment: poor condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.
- Bldg. S-6251  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630151  
Status: Unutilized  
Comment: 11906 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—recreation, off-site use only.
- Bldg. S-6260  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630152  
Status: Unutilized  
Comment: 2953 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—comm. bldg., off-site use only.
- Bldg. S-6261  
Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219630153  
Status: Unutilized  
Comment: 7778 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—storage, off-site use only.
- Bldg. T-6016, Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219710136  
Status: Unutilized  
Comment: 2988 sq. ft., needs repair, most recent use—community center, off-site use only.
- Georgia  
Bldg. 5390  
Fort Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219010137  
Status: Unutilized  
Comment: 2432 sq. ft., most recent use—dining room; needs rehab.

Bldg. 5362  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219010147  
Status: Unutilized  
Comment: 5559 sq. ft., most recent use—  
service club; needs rehab.

Bldg. 5392  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219010151  
Status: Unutilized  
Comment: 2432 sq. ft., most recent use—  
dining room; needs rehab.

Bldg. 5391  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219010152  
Status: Unutilized  
Comment: 2432 sq. ft.; most recent use—  
dining room needs rehab.

Bldg. 4487  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219011681  
Status: Unutilized  
Comment: 1868 sq. ft., most recent use—  
telephone exchange bldg.; needs  
substantial rehabilitation; 1 floor.

Bldg. 4319  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219011683  
Status: Unutilized  
Comment: 2584 sq. ft., most recent use—  
vehicle maintenance shop; needs  
substantial rehabilitation; 1 floor.

Bldg. 3400  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219011694  
Status: Unutilized  
Comment: 2570 sq. ft., most recent use—fire  
station; needs substantial rehabilitation; 1  
floor.

Bldg. 2285  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219011704  
Status: Unutilized  
Comment: 4574 sq. ft., most recent use—  
clinic; needs substantial rehabilitation; 1  
floor.

Bldg. 4092  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219011709  
Status: Unutilized  
Comment: 336 sq. ft., most recent use—  
flammable materials storage; needs  
substantial rehabilitation; 1 floor.

Bldg. 4089  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219011710  
Status: Unutilized  
Comment: 176 sq. ft., most recent use—gas  
station; needs substantial rehabilitation; 1  
floor.

Bldg. 1235  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219014887  
Status: Unutilized  
Comment: 9367 sq. ft., 1 story building;  
needs rehab; most recent use—General  
Storehouse.

Bldg. 1236  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219014888  
Status: Unutilized  
Comment: 9367 sq. ft., 1 story building;  
needs rehab; most recent use—General  
Storehouse.

Bldg. 1251  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219014889  
Status: Unutilized  
Comment: 18385 sq. ft., 1 story building;  
needs rehab; most recent use—Arms Repair  
Shop.

Bldg. 4491  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219014916  
Status: Unutilized  
Comment: 18240 sq. ft., 1 story building;  
needs rehab; most recent use—Vehicle  
maintenance shop.

Bldg. 2150  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219120258  
Status: Unutilized  
Comment: 3909 sq. ft., 1 story, needs rehab,  
most recent use—general inst. bldg.

Bldg. 2590  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219120265  
Status: Unutilized  
Comment: 3132 sq. ft., 1 story, needs rehab,  
most recent use—vehicle maintenance  
shop.

Bldg. 3828  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219120266  
Status: Unutilized  
Comment: 628 sq. ft., 1 story, needs rehab,  
most recent use—general storehouse.

Bldg. 3086  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219220688  
Status: Unutilized  
Comment: 4720 sq. ft., 2 story, most recent  
use—barracks, needs major rehab, off-site  
removal only.

Bldg. 3089  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219220689  
Status: Unutilized  
Comment: 4720 sq. ft., 2 story, most recent  
use—barracks, needs major rehab, off-site  
removal only.

Bldg. 1252  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219220694  
Status: Unutilized  
Comment: 583 sq. ft., 1 story, most recent  
use—storehouse, needs major rehab, off-  
site removal only.

Bldg. 1733  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219220698  
Status: Unutilized  
Comment: 9375 sq. ft., 1 story, most recent  
use—storehouse, needs major rehab, off-  
site removal only.

Bldg. 3083  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219220699  
Status: Unutilized  
Comment: 1372 sq. ft., 1 story, most recent  
use—storehouse, needs major rehab, off-  
site removal only.

Bldg. 3856  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219220703  
Status: Unutilized  
Comment: 4111 sq. ft., 1 story, most recent  
use—storehouse, needs major rehab, off-  
site removal only.

Bldg. 4881  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219220707  
Status: Unutilized  
Comment: 2449 sq. ft., 1 story, most recent  
use—storehouse, need repairs, off-site  
removal only.

Bldg. 4963  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219220710  
Status: Unutilized  
Comment: 6077 sq. ft., 1 story, most recent  
use—storehouse, need repairs, off-site  
removal only.

Bldg. 2396  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219220712  
Status: Unutilized  
Comment: 9786 sq. ft., 1 story, most recent  
use—dining facility, needs major rehab,  
off-site removal only.

Bldg. 3085  
Fort Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219220715  
Status: Unutilized  
Comment: 2253 sq. ft., 1 story, most recent  
use—dining facility, needs major rehab,  
off-site removal only.

Bldg. 4882  
Fort Benning

- Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220727  
Status: Unutilized  
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.
- Bldg. 4967  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220728  
Status: Unutilized  
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.
- Bldg. 5396, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220734  
Status: Unutilized  
Comment: 10944 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.
- Bldg. 247, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220735  
Status: Unutilized  
Comment: 1144 sq. ft., 1 story, most recent use—offices, needs major rehab, off-site removal only.
- Bldg. 4977, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220736  
Status: Unutilized  
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only.
- Bldg. 4944, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220747  
Status: Unutilized  
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only.
- Bldg. 4960, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220752  
Status: Unutilized  
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.
- Bldg. 4969, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220753  
Status: Unutilized  
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.
- Bldg. 1758, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220755  
Status: Unutilized  
Comment: 7817 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.
- Bldg. 3817, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220758  
Status: Unutilized  
Comment: 4000 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.
- Bldg. 4884, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220762  
Status: Unutilized  
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.
- Bldg. 4964, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220763  
Status: Unutilized  
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.
- Bldg. 4966, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220764  
Status: Unutilized  
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.
- Bldg. 4679, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220767  
Status: Unutilized  
Comment: 8657 sq. ft., 1 story, most recent use—supply bldg., needs major rehab, off-site removal only.
- Bldg. 4883, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220768  
Status: Unutilized  
Comment: 2600 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.
- Bldg. 4965, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220769  
Status: Unutilized  
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.
- Bldg. 2513, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220770  
Status: Unutilized  
Comment: 9483 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.
- Bldg. 2526, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220771  
Status: Unutilized  
Comment: 11855 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.
- Bldg. 2589, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220772  
Status: Unutilized  
Comment: 146 sq. ft., 1 story, most recent use—training bldg., needs major rehab, off-site removal only.
- Bldg. 4945, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220779  
Status: Unutilized  
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only.
- Bldg. 4979, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219220780  
Status: Unutilized  
Comment: 400 sq. ft., 1 story, most recent use—oil house, needs repairs, off-site removal only.
- Bldg. 4118, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219310409  
Status: Unutilized  
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.
- Bldg. 4004, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219310418  
Status: Unutilized  
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.
- Bldg. 4108, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219310442  
Status: Unutilized  
Comment: 1171 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.
- Bldg. 1835, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219310443  
Status: Unutilized  
Comment: 1712 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.
- Bldg. 3072, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219310447  
Status: Unutilized  
Comment: 479 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.
- Bldg. 4019, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219310451  
Status: Unutilized  
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.
- Bldg. 4109, Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219310455  
Status: Unutilized

Comment: 2253 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4135, Fort Benning  
Ft. Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219310458  
Status: Unutilized

Comment: 3755 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4023, Fort Benning  
Ft. Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219310461  
Status: Unutilized

Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4024, Fort Benning  
Ft. Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219310462  
Status: Unutilized

Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4067, Fort Benning  
Ft. Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219310465  
Status: Unutilized

Comment: 4406 sq. ft., 1-story, needs rehab, most recent use—admin., off-site use only.

Bldg. 4122, Fort Benning  
Ft. Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219310468  
Status: Unutilized

Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 10847, Fort Benning  
Ft. Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219310476  
Status: Unutilized

Comment: 1056 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10768, Fort Benning  
Ft. Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219310477  
Status: Unutilized

Comment: 1230 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 2683, Fort Benning  
Ft. Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219310478  
Status: Unutilized

Comment: 1816 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 26306  
Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219320225  
Status: Unutilized

Comment: 1272 sq. ft., 1 story wood frame, possible asbestos, need repairs, off-site use only, most recent use—storage.

Bldg. 354, Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219330259  
Status: Unutilized

Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 355, Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219330260  
Status: Unutilized

Comment: 4237 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 356, Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219330261  
Status: Unutilized

Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, most recent use—offices, off-site use only.

Bldg. 377, Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219330263  
Status: Unutilized

Comment: 4768 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 19601, Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219330268  
Status: Unutilized

Comment: 2132 sq. ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 19602, Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219330269  
Status: Unutilized

Comment: 1555 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 332, Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219330289  
Status: Unutilized

Comment: 5340 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 333, Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219330290  
Status: Unutilized

Comment: 5340 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 334, Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219330291  
Status: Unutilized

Comment: 4279 sq. ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—medical admin., off-site use only.

Bldg. 335, Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219330292  
Status: Unutilized

Comment: 4300 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 353, Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219330293  
Status: Unutilized

Comment: 5,157 sq. ft., 1-story wood, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 352, Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219330294  
Status: Unutilized

Comment: 560 sq. ft., 1-story metal, presence of asbestos, most recent use—equip. storage, off-site use only.

Bldg. 10501  
Fort Gordon

Fort Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219410264  
Status: Unutilized

Comment: 2,516 sq. ft., 1-story; wood; needs rehab.; most recent use—office; off-site use only.

Bldg. 10601  
Fort Gordon

Fort Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219410265  
Status: Unutilized

Comment: 1,334 sq. ft., 1-story; wood; most recent use—office; off-site use only.

Bldg. 20303  
Fort Gordon

Fort Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219410266  
Status: Unutilized

Comment: 2,376 sq. ft., 1-story; wood; needs rehab.; most recent use—office; off-site use only.

Bldg. 11813  
Fort Gordon

Fort Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219410269  
Status: Unutilized

Comment: 70 sq. ft., 1-story; metal; needs rehab.; most recent use—storage; off-site use only.

Bldg. 21314  
Fort Gordon

Fort Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219410270  
Status: Unutilized

Comment: 85 sq. ft., 1-story; needs rehab.; most recent use—storage; off-site use only.

Bldg. 951  
Fort Gordon

Fort Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219410271  
Status: Unutilized

- Comment: 17,825 sq. ft., 1-story; wood; needs rehab.; most recent use—workshop; off-site use only.
- Bldg. 12809  
Fort Gordon  
Fort Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219410272  
Status: Unutilized  
Comment: 2,788 sq. ft., 1-story; wood; needs rehab.; most recent use—maintenance shop; off-site use only.
- Bldg. 10306  
Fort Gordon  
Fort Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219410273  
Status: Unutilized  
Comment: 195 sq. ft., 1-story; wood; most recent use—oil storage shed; off-site use only.
- Bldg. 2813, Ft. Benning  
Fort Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219520074  
Status: Unutilized  
Comment: 40,536 sq. ft., 1-story, most recent use—admin., needs major repair, off-site use only.
- Bldg. T-901  
Hunter Army Airfield  
Savannah Co: Chatham GA 31409–  
Landholding Agency: Army  
Property Number: 219520077  
Status: Unutilized  
Comment: 1,828 sq. ft., 1-story, needs major repair, most recent use—admin., off-site use only.
- Bldg. 2814, Fort Benning  
Ft. Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219520133  
Status: Unutilized  
Comment: 40,536 sq. ft., 4-story, most recent use—barracks w/dining, needs major repair, off-site use only.
- Bldg. 1755, Fort Benning  
Ft. Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219520170  
Status: Unutilized  
Comment: 3,142 sq. ft., needs rehab, most recent use—maint. shop, off-site use only.
- Bldg. 4051, Fort Benning  
Ft. Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219520175  
Status: Unutilized  
Comment: 967 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
- Bldg. A1618, Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219520184  
Status: Unutilized  
Comment: 2800 sq. ft., 1-story, needs rehab, most recent use—storage, presence of asbestos & lead base paint, off-site use only.
- Bldg. 2141  
Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219610655
- Status: Unutilized  
Comment: 2283 sq. ft., needs repair, most recent use—office, off-site use only.
- Bldg. 34300  
Fort Gordon  
Ft. Gordon Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219620664  
Status: Unutilized  
Comment: 2525 sq. ft., most recent use—auto svc store, possible asbestos, off-site use only.
- Bldg. T-425  
Hunter Army Airfield  
Savannah Co: Chatham GA 31409–  
Landholding Agency: Army  
Property Number: 219630155  
Status: Unutilized  
Comment: 1367 sq. ft., needs major rehab, most recent use—storage, off-site use only.
- Bldg. S-5608  
Fort Stewart  
Hinesville Co: Liberty GA 31314–  
Landholding Agency: Army  
Property Number: 219630159  
Status: Unutilized  
Comment: 2688 sq. ft., fair condition, most recent use—admin., off-site use only.
- Bldg. S-7332  
Fort Stewart  
Hinesville Co: Liberty GA 31314–  
Landholding Agency: Army  
Property Number: 219630160  
Status: Unutilized  
Comment: 1140 sq. ft., fair condition, most recent use—admin., off-site use only.
- Bldg. T-202  
Fort Stewart  
Hinesville Co: Liberty GA 31314–  
Landholding Agency: Army  
Property Number: 219630161  
Status: Unutilized  
Comment: 2444 sq. ft., needs rehab, most recent use—admin., off-site use only.
- Bldg. T-336  
Hunter Army Airfield  
Savannah Co: Chatham GA 31409–  
Landholding Agency: Army  
Property Number: 219640512  
Status: Unutilized  
Comment: 2284 sq. ft., needs major repair, most recent use—admin., off-site use only.
- Bldg. 1009  
Hunter Army Airfield  
Savannah Co: Chatham GA 31409–  
Landholding Agency: Army  
Property Number: 219710229  
Status: Excess  
Comment: 2341 sq. ft., wood, needs rehab, off-site use only.
- Bldg. T-293  
Fort Stewart  
Hinesville Co: Liberty GA 31314–  
Landholding Agency: Army  
Property Number: 219710230  
Status: Excess  
Comment: 5220 sq. ft., most recent use—admin., needs major repairs, off-site use only.
- Bldg. T-957  
Fort Stewart  
Hinesville Co: Liberty GA 31314–  
Landholding Agency: Army  
Property Number: 219710231
- Status: Excess  
Comment: 6072 sq. ft., most recent use—storage, needs major repairs, off-site use only.
- Bldg. T-963  
Fort Stewart  
Hinesville Co: Liberty GA 31314–  
Landholding Agency: Army  
Property Number: 219710232  
Status: Excess  
Comment: 3108 sq. ft., most recent use—veh. maint. shop, needs major repairs, off-site use only.
- Bldg. T-1055  
Fort Stewart  
Hinesville Co: Liberty GA 31314–  
Landholding Agency: Army  
Property Number: 219710233  
Status: Excess  
Comment: 3114 sq. ft., most recent use—storage, needs major repairs, off-site use only.
- Bldg. T-1092  
Fort Stewart  
Hinesville Co: Liberty GA 31314–  
Landholding Agency: Army  
Property Number: 219710234  
Status: Excess  
Comment: 180 sq. ft., most recent use—storage, needs major repairs, off-site use only.
- Bldg. 8072  
Fort Stewart  
Hinesville Co: Liberty GA 31314–  
Landholding Agency: Army  
Property Number: 219710235  
Status: Excess  
Comment: 109 sq. ft., most recent use—storage, needs major repairs, off-site use only.
- Bldg. 19109  
Fort Stewart  
Hinesville Co: Liberty GA 31314–  
Landholding Agency: Army  
Property Number: 219710236  
Status: Excess  
Comment: 600 sq. ft., most recent use—power plant, needs major repairs, off-site use only.
- Bldgs. 81-82, 85-87, 89  
Fort Benning  
Dahlonega Co: Lumpkin GA 30533–  
Landholding Agency: Army  
Property Number: 219720153  
Status: Unutilized  
Comment: 512 sq. ft. each, needs rehab, most recent use—hutments, off-site use only.
- Bldg. 107  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219720154  
Status: Unutilized  
Comment: 12823 sq. ft., needs rehab, most recent use—warehouse, off-site use only.
- Bldg. 239  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905–  
Landholding Agency: Army  
Property Number: 219720155  
Status: Unutilized  
Comment: 2817 sq. ft., needs rehab, most recent use—exchange service outlet, off-site use only.

- Bldg. 322  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720156  
Status: Unutilized  
Comment: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only.
- Bldg. 327  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720157  
Status: Unutilized  
Comment: 996 sq. ft., needs rehab, most recent use—storage, off-site use only.
- Bldg. 329  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720158  
Status: Unutilized  
Comment: 1001 sq. ft., needs rehab, most recent use—access cnt fac, off-site use only.
- Bldg. 1727  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720159  
Status: Unutilized  
Comment: 704 sq. ft., needs rehab, most recent use—storage, off-site use only.
- Bldg. 1728  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720160  
Status: Unutilized  
Comment: 7693 sq. ft., needs rehab, most recent use—storage, off-site use only.
- Bldg. 1737  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720161  
Status: Unutilized  
Comment: 1500 sq. ft., needs rehab, most recent use—storage, off-site use only.
- Bldg. 2512  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720162  
Status: Unutilized  
Comment: 4378 sq. ft., needs rehab, most recent use—admin., off-site use only.
- Bldg. 2515  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720163  
Status: Unutilized  
Comment: 4720 sq. ft., needs rehab, most recent use—admin., off-site use only.
- Bldgs. 2517-2518, 2521-2525  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720164  
Status: Unutilized  
Comment: 4720 sq. ft., each, needs rehab, most recent use—education facility, off-site use only.
- Bldgs. 2527-2531  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720165  
Status: Unutilized  
Comment: 4720 sq. ft., each, needs rehab, most recent use—admin., off-site use only.
- Bldg. 2592  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720166  
Status: Unutilized  
Comment: 11674 sq. ft., needs rehab, most recent use—gym, off-site use only.
- Bldg. 2593  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720167  
Status: Unutilized  
Comment: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only.
- Bldg. 2595  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720168  
Status: Unutilized  
Comment: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only.
- Bldgs. 2865, 2869, 2872  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720169  
Status: Unutilized  
Comment: approx. 1100 sq. ft. each, needs rehab, most recent use—shower fac., off-site use only.
- Bldgs. 4400-4402  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720170  
Status: Unutilized  
Comment: various sq. ft., needs rehab, most recent use—admin., off-site use only.
- Bldg. 4404  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720171  
Status: Unutilized  
Comment: 2723 sq. ft., needs rehab, most recent use—detached day room, off-site use only.
- Bldg. 4405  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720172  
Status: Unutilized  
Comment: 7670 sq. ft., needs rehab, most recent use—barracks, off-site use only.
- Bldg. 4406  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720173  
Status: Unutilized  
Comment: 1372 sq. ft., needs rehab, most recent use—storage, off-site use only.
- Bldg. 4407  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720174  
Status: Unutilized  
Comment: 1635 sq. ft., needs rehab, most recent use—admin., off-site use only.
- 11 Bldgs.  
Fort Benning  
4428-4429, 4433-4436, 4441-4443, 4447-4448  
Fort Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720175  
Status: Unutilized  
Comment: 4425 sq. ft., each, needs rehab, most recent use—barracks, off-site use only.
- 6 Bldgs.  
Fort Benning  
4450-4451, 4453-4454, 4456-4457  
Fort Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720176  
Status: Unutilized  
Comment: 4425 sq. ft. each, needs rehab, most recent use—barracks, off-site use only.
- 10 Bldgs.  
Fort Benning  
4460-4461, 4463-4464, 4468, 4470-4474  
Fort Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720177  
Status: Unutilized  
Comment: 4425 sq. ft. each, needs rehab, most recent use—barracks, off-site use only.
- Bldg. 4409  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720178  
Status: Unutilized  
Comment: 4241 sq. ft., needs rehab, most recent use—shower fac., off-site use only.
- Bldgs. 4432, 4440, 4445  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720179  
Status: Unutilized  
Comment: various sq. ft., needs rehab, most recent use—storage, off-site use only.
- 8 Bldgs.  
Fort Benning  
4425, 4431, 4438-4439, 4452, 4458-4459, 4465  
Fort Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720180  
Status: Unutilized  
Comment: 2498 sq. ft. each, needs rehab, most recent use—dining facility, off-site use only.
- 6 Bldgs.  
Fort Benning  
4430, 4437, 4449, 4455, 4462, 4467  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720181  
Status: Unutilized  
Comment: 1884 sq. ft. each, needs rehab, most recent use—admin., off-site use only.

- Bldg. 4444  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720182  
Status: Unutilized  
Comment: 2284 sq. ft., needs rehab, most recent use—medical clinic, off-site use only.
- Bldg. 4475  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720183  
Status: Unutilized  
Comment: 2213 sq. ft., needs rehab, most recent use—headquarters bldg., off-site use only.
- Bldg. 4476  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720184  
Status: Unutilized  
Comment: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only.
- Bldgs. 4478, 4485  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720185  
Status: Unutilized  
Comment: 3000 sq. ft. and 4366 sq. ft., needs rehab, most recent use—instruction bldg., off-site use only.
- Bldg. 4480  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720186  
Status: Unutilized  
Comment: 3000 sq. ft., needs rehab, most recent use—mobilization dining facility, off-site use only.
- Bldg. 4482  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720187  
Status: Unutilized  
Comment: 3000 sq. ft., needs rehab, most recent use—carpentry shop, off-site use only.
- Bldg. 4640  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720188  
Status: Unutilized  
Comment: 3800 sq. ft., needs rehab, most recent use—exchange branch, off-site use only.
- 8 Bldgs.  
Fort Benning  
4700-4701, 4704-4707, 4710-4711  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720189  
Status: Unutilized  
Comment: 6433 sq. ft. each, needs rehab, most recent use—unaccompanied personnel housing, off-site use only.
- Bldgs. 4703, 4708-4709  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720190  
Status: Unutilized  
Comment: 3570 sq. ft. each, needs rehab, most recent use—battalion headquarters bldg., off-site use only.
- Bldg. 4714  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720191  
Status: Unutilized  
Comment: 1983 sq. ft., needs rehab, most recent use—battalion headquarters bldg., off-site use only.
- Bldg. 4702  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720192  
Status: Unutilized  
Comment: 3690 sq. ft., needs rehab, most recent use—dining facility, off-site use only.
- Bldgs. 4712-4713  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219720193  
Status: Unutilized  
Comment: 1983 sq. ft. and 10270 sq. ft., needs rehab, most recent use—company headquarters bldg., off-site use only.
- Hawaii  
P-88  
Aliamanu Military Reservation  
Honolulu Co: Honolulu HI 96818-  
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.  
Landholding Agency: Army  
Property Number: 219030324  
Status: Unutilized  
Comment: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations.
- Bldg. S-823  
Wheeler Army Airfield  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219520082  
Status: Unutilized  
Comment: 3150 sq. ft., 2-story wood frame, most recent use—office, off-site use only.
- Bldg. P-125  
Tripler Army Medical Center  
Honolulu Co: Honolulu HI 96859-5000  
Landholding Agency: Army  
Property Number: 219540013  
Status: Excess  
Comment: 7987 sq. ft., needs major repairs, most recent use—boiler plant, off-site use only.
- Bldg. T-1191  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219610663  
Status: Unutilized  
Comment: 7186 gross sq. ft., termite damage, most recent use—range support, off-site use only.
- Bldg. T-723  
Fort Shafter  
Honolulu HI 96819-  
Landholding Agency: Army  
Property Number: 219620657  
Status: Unutilized  
Comment: 1751 sq. ft., most recent use—store house, off-site use only.
- Bldg. T-1629  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219620658  
Status: Unutilized  
Comment: 3287 sq. ft., most recent use—storage, possible termite infestation, off-site use only.
- Bldg. T-310  
Fort Shafter  
Honolulu HI 96819-  
Landholding Agency: Army  
Property Number: 219620660  
Status: Unutilized  
Comment: 400 sq. ft., most recent use—storage, off-site use only.
- Bldg. P-6082  
Fort Shafter  
Honolulu HI 96819-  
Landholding Agency: Army  
Property Number: 219630162  
Status: Unutilized  
Comment: 42 sq. ft., most recent use—storage, off-site use only.
- Bldg. T-587  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219640198  
Status: Unutilized  
Comment: 3448 sq. ft., most recent use—office, off-site use only.
- Bldg. P-591  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219640199  
Status: Unutilized  
Comment: 800 sq. ft., most recent use—storage, off-site use only.
- Bldg. P-592  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219640200  
Status: Unutilized  
Comment: 800 sq. ft., most recent use—storage, off-site use only.
- Bldg. T-674A  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219640201  
Status: Unutilized  
Comment: 4365 sq. ft., most recent use—office/classroom, off-site use only.
- Bldg. T-675A  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219640202  
Status: Unutilized  
Comment: 4365 sq. ft., most recent use—office, off-site use only.
- Bldg. T-337



- Fort Shafter  
Honolulu Co: Honolulu HI 96819-  
Landholding Agency: Army  
Property Number: 219640203  
Status: Unutilized  
Comment: 132 sq. ft., most recent use—  
storage, off-site use only.
- Bldg. T-527  
Fort Shafter  
Honolulu Co: Honolulu HI 96819-  
Landholding Agency: Army  
Property Number: 219640204  
Status: Unutilized  
Comment: 4131 sq. ft., most recent use—  
training center, off-site use only.
- Bldg. P-593  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219710119  
Status: Unutilized  
Comment: 882 sq. ft. metal, good condition,  
off-site use only.
- Bldg. P-594  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219710120  
Status: Unutilized  
Comment: 882 sq. ft., metal, good condition,  
off-site use only.
- Bldg. P-225  
Fort Shafter Military Reservation  
Honolulu Co: Honolulu HI 96819-  
Landholding Agency: Army  
Property Number: 219710121  
Status: Unutilized  
Comment: 330 sq. ft., most recent use—  
storage, requires complete cleaning, off-site  
use only.
- Bldg. T-69  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219720198  
Status: Unutilized  
Comment: 3039 sq. ft., most recent use—  
chapel, needs repair, off-site use only.
- Bldg. T-911  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219720199  
Status: Unutilized  
Comment: 4800 sq. ft., most recent use—  
office, needs repair, off-site use only.
- Bldg. T-912  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219720200  
Status: Unutilized  
Comment: 4800 sq. ft., most recent use—  
office, needs repair, off-site use only.
- Bldg. T-913  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219720201  
Status: Unutilized  
Comment: 4800 sq. ft., most recent use—  
office, needs repair, off-site use only.
- Bldg. T-914  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219720202  
Status: Unutilized  
Comment: 144 sq. ft., most recent use—  
storage, needs repair, off-site use only.
- Bldg. T-917  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219720203  
Status: Unutilized  
Comment: 1328 sq. ft., most recent use—  
office, needs repair, off-site use only.
- Bldg. T-918  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219720204  
Status: Unutilized  
Comment: 1306 sq. ft., most recent use—  
classroom, needs repair, off-site use only.
- Bldg. T-920  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219720205  
Status: Unutilized  
Comment: 1306 sq. ft., most recent use—  
office, needs repair, off-site use only.
- Bldg. T-921  
Schofield Barracks  
Wahiawa HI 96786-  
Landholding Agency: Army  
Property Number: 219720206  
Status: Unutilized  
Comment: 1427 sq. ft., most recent use—  
office, needs repair, off-site use only.
- Illinois  
Bldg. 54  
Rock Island Arsenal  
Rock Island Co: Rock Island IL 61299-  
Landholding Agency: Army  
Property Number: 219620666  
Status: Unutilized  
Comment: 2000 sq. ft., most recent use—oil  
storage, needs repair, off-site use only.
- Kansas  
Bldg. 166, Fort Riley  
Ft. Riley Co: Geary KS 66442-  
Landholding Agency: Army  
Property Number: 219410325  
Status: Unutilized  
Comment: 3803 sq. ft., 3-story brick  
residence, needs rehab, presence of  
asbestos, located within National  
Registered Historic District.
- Bldg. 184, Fort Riley  
Ft. Riley KS 66442-  
Landholding Agency: Army  
Property Number: 219430146  
Status: Unutilized  
Comment: 1959 sq. ft., 1-story, needs rehab,  
presence of asbestos, most recent use—  
boiler plant, historic district.
- Bldg. P-313, Fort Riley  
Ft. Riley KS 66442-  
Landholding Agency: Army  
Property Number: 219620668  
Status: Unutilized  
Comment: 6222 sq. ft., most recent use—  
admin. bldg., needs repair, possible  
asbestos.
- Louisiana  
Bldg. 7316, Fort Polk  
Ft. Polk Co: Vernon LA 71459-  
Landholding Agency: Army  
Property Number: 219620676  
Status: Underutilized  
Comment: 507 sq. ft., most recent use—BOQ  
Transient.
- Bldg. 7315, Fort Polk  
Ft. Polk Co: Vernon LA 71459-  
Landholding Agency: Army  
Property Number: 219620677  
Status: Underutilized  
Comment: 507 sq. ft., most recent use—BOQ  
Transient.
- Bldg. 7314, Fort Polk  
Ft. Polk Co: Vernon LA 71459-  
Landholding Agency: Army  
Property Number: 219620678  
Status: Underutilized  
Comment: 507 sq. ft., most recent use—BOQ  
Transient.
- Bldg. 7313, Fort Polk  
Ft. Polk Co: Vernon LA 71459-  
Landholding Agency: Army  
Property Number: 219620679  
Status: Underutilized  
Comment: 507 sq. ft., most recent use—BOQ  
Transient.
- Bldg. 7312, Fort Polk  
Ft. Polk Co: Vernon LA 71459-  
Landholding Agency: Army  
Property Number: 219620680  
Status: Underutilized  
Comment: 507 sq. ft., most recent use—BOQ  
Transient.
- Bldg. 7311, Fort Polk  
Ft. Polk Co: Vernon LA 71459-  
Landholding Agency: Army  
Property Number: 21962068  
Status: Underutilized  
Comment: 643 sq. ft., most recent use—BOQ  
Transient.
- Bldg. 7310, Fort Polk  
Ft. Polk Co: Vernon LA 71459-  
Landholding Agency: Army  
Property Number: 219620682  
Status: Underutilized  
Comment: 643 sq. ft., most recent use—BOQ  
Transient.
- Bldg. 5917 A, B, C, D  
Ft. Polk  
Ft. Polk Co: Vernon Parish LA 71459-7100  
Landholding Agency: Army  
Property Number: 219630164  
Status: Unutilized  
Comment: 3902 sq. ft., family housing, needs  
rehab.
- Bldg. 7805, Fort Polk  
Ft. Polk Co: Vernon Parish LA 71459-  
Landholding Agency: Army  
Property Number: 219640513  
Status: Unutilized  
Comment: 4172 sq. ft., 2-story, most recent  
use—barracks.
- Bldg. 7806, Fort Polk  
Ft. Polk Co: Vernon Parish LA 71459-



- Ft. Polk Co: Vernon Parish LA 71459—  
Landholding Agency: Army  
Property Number: 219640546  
Status: Underutilized  
Comment: 4172 sq. ft., most recent use—  
barracks.
- Bldg. 8463, Fort Polk  
Ft. Polk Co: Vernon Parish LA 71459—  
Landholding Agency: Army  
Property Number: 219640547  
Status: Underutilized  
Comment: 4172 sq. ft., most recent use—  
barracks.
- Bldg. 8501, Fort Polk  
Ft. Polk Co: Vernon Parish LA 71459—  
Landholding Agency: Army  
Property Number: 219640548  
Status: Underutilized  
Comment: 1687 sq. ft., most recent use—  
office.
- Bldg. 8502, Fort Polk  
Ft. Polk Co: Vernon Parish LA 71459—  
Landholding Agency: Army  
Property Number: 219640549  
Status: Underutilized  
Comment: 1029 sq. ft., most recent use—  
office.
- Bldg. 8540, Fort Polk  
Ft. Polk Co: Vernon Parish LA 71459—  
Landholding Agency: Army  
Property Number: 219640550  
Status: Underutilized  
Comment: 4172 sq. ft., most recent use—  
barracks.
- Bldg. 8541, Fort Polk  
Ft. Polk Co: Vernon Parish LA 71459—  
Landholding Agency: Army  
Property Number: 219640551  
Status: Underutilized  
Comment: 4172 sq. ft., most recent use—  
barracks.
- Bldg. 8542, Fort Polk  
Ft. Polk Co: Vernon Parish LA 71459—  
Landholding Agency: Army  
Property Number: 219640552  
Status: Underutilized  
Comment: 4172 sq. ft., most recent use—  
barracks.
- Bldg. 8543, Fort Polk  
Ft. Polk Co: Vernon Parish LA 71459—  
Landholding Agency: Army  
Property Number: 219640553  
Status: Underutilized  
Comment: 4172 sq. ft., most recent use—  
barracks.
- Bldg. 8544, Fort Polk  
Ft. Polk Co: Vernon Parish LA 71459—  
Landholding Agency: Army  
Property Number: 219640554  
Status: Underutilized  
Comment: 4172 sq. ft., most recent use—  
barracks.
- Bldg. 8545, Fort Polk  
Ft. Polk Co: Vernon Parish LA 71459—  
Landholding Agency: Army  
Property Number: 219640555  
Status: Underutilized  
Comment: 4172 sq. ft., most recent use—  
barracks.
- Bldg. 8546, Fort Polk  
Ft. Polk Co: Vernon Parish LA 71459—  
Landholding Agency: Army  
Property Number: 219640556  
Status: Underutilized
- Comment: 4172 sq. ft., most recent use—  
barracks.
- Bldg. 8547, Fort Polk  
Ft. Polk Co: Vernon Parish LA 71459—  
Landholding Agency: Army  
Property Number: 219640557  
Status: Underutilized  
Comment: 4172 sq. ft., most recent use—  
barracks.
- Bldg. 8548, Fort Polk  
Ft. Polk Co: Vernon Parish LA 71459—  
Landholding Agency: Army  
Property Number: 219640558  
Status: Underutilized  
Comment: 4,172 sq. ft., most recent use—  
barracks.
- Bldg. 8549, Fort Polk  
Ft. Polk Co: Vernon Parish LA 71459—  
Landholding Agency: Army  
Property Number: 219640559  
Status: Underutilized  
Comment: 4,172 sq. ft., most recent use—  
barracks.
- Maryland
- Bldg. E5878  
Aberdeen Proving Ground  
Edgewood Area  
Aberdeen City Co: Harford MD 21010-5425  
Landholding Agency: Army  
Property Number: 219012652  
Status: Unutilized  
Comment: 213 sq. ft., structural deficiencies;  
possible asbestos; and contamination.
- Bldg. E5879  
Aberdeen Proving Ground  
Edgewood Area  
Aberdeen City Co: Harford MD 21010-5425  
Landholding Agency: Army  
Property Number: 219012653  
Status: Unutilized  
Comment: 213 sq. ft., possible asbestos and  
contamination; no utilities; most recent  
use—igloo storage.
- Bldg. 10302  
Aberdeen Proving Ground  
Edgewood Area  
Aberdeen City Co: Harford MD 21010-5425  
Landholding Agency: Army  
Property Number: 219012666  
Status: Unutilized  
Comment: 42 sq. ft., possible asbestos; most  
recent use—pumping station.
- Bldg. E5975  
Aberdeen Proving Ground  
Edgewood Area  
Aberdeen City Co: Harford MD 21010-5425  
Landholding Agency: Army  
Property Number: 219012677  
Status: Unutilized  
Comment: 650 sq. ft., possible contamination;  
structural deficiencies; most recent use—  
training exercises/chemicals and  
explosives; potential use—storage.
- Bldg. 6687  
Fort George G. Meade  
Mapes and Zimbroski Roads  
Ft. Meade Co: Anne Arundel, MD 20755-  
5115  
Landholding Agency: Army  
Property Number: 219220446  
Status: Unutilized  
Comment: 1,150 sq. ft., presence of asbestos,  
wood frame, most recent use—veterinarian  
clinic, off-site removal only, sched. to be  
vacated 10/1/92.
- Bldgs. 2251, 2252  
Fort Meade  
Ft. Meade Co: Anne Arundel, MD 20755-  
5115  
Landholding Agency: Army  
Property Number: 219430180  
Status: Unutilized  
Comment: 648 and 3,594 sq. ft., 1-story,  
concrete/metal structure, needs rehab,  
presence of asbestos, most recent use—  
heating plant & admin.
- Bldg. E4144  
Aberdeen Proving Ground  
Aberdeen City Co: Harford MD 21010-5001  
Landholding Agency: Army  
Property Number: 219540001  
Status: Unutilized  
Comment: 1,632 sq. ft., concrete frame bath  
house, 1 story, presence of asbestos and  
lead paint.
- Missouri
- Bldg. T599  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-  
5000  
Landholding Agency: Army  
Property Number: 219230260  
Status: Underutilized  
Comment: 18,270 sq. ft., 1-story; presence of  
asbestos, most recent use—storehouse, off-  
site use only.
- Bldg. T1311  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-  
5000  
Landholding Agency: Army  
Property Number: 219230261  
Status: Underutilized  
Comment: 2,740 sq. ft., 1-story; presence of  
asbestos, most recent use—storehouse, off-  
site use only.
- Bldg. T427  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-  
5000  
Landholding Agency: Army  
Property Number: 219330299  
Status: Underutilized  
Comment: 10,245 sq. ft., 1-story; presence of  
asbestos, most recent use—post office, off-  
site use only.
- Bldg. T2368  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-  
5000  
Landholding Agency: Army  
Property Number: 219330306  
Status: Underutilized  
Comment: 3,663 sq. ft., 1-story; presence of  
asbestos, off-site use only.
- Bldg. T2171  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-  
5000  
Landholding Agency: Army  
Property Number: 219340212  
Status: Unutilized  
Comment: 1296 sq. ft., 1-story wood frame,  
most recent use—administrative, no  
handicap fixtures, lead base paint, off-site  
use only.
- Bldg. T2312

- Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219340217  
Status: Underutilized  
Comment: 1403 sq. ft., 1-story wood frame, most recent use—paint shop, no handicap fixtures, lead base paint, off-site use only.
- Bldg. T6822  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219340219  
Status: Underutilized  
Comment: 4000 sq. ft., 1-story wood frame, most recent use—storage, no handicap fixtures, off-site use only.
- Bldg. T1364  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219420393  
Status: Underutilized  
Comment: 1144 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.
- Bldg. T281  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219420397  
Status: Underutilized  
Comment: 4230 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
- Bldg. T282  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219420398  
Status: Underutilized  
Comment: 15923 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
- Bldg. T283  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219420431  
Status: Underutilized  
Comment: 6163 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
- Bldg. T408  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219420433  
Status: Underutilized  
Comment: 10296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
- Bldg. T412  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219420437
- Status: Underutilized  
Comment: 1296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
- Bldg. T429  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219420439  
Status: Underutilized  
Comment: 2475 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
- Bldg. T1497  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219420441  
Status: Underutilized  
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
- Bldg. T2139  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219420446  
Status: Underutilized  
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
- Bldg. T2191  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219440334  
Status: Excess  
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.
- Bldg. T-2197  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219440335  
Status: Excess  
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.
- Bldg. T403  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219510107  
Status: Excess  
Comment: 5818 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.
- Bldg. T460  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219510108  
Status: Excess  
Comment: 5428 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.
- Bldg. T464  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219510109  
Status: Excess  
Comment: 5310 sq. ft., 2-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.
- Bldg. T590  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219510110  
Status: Excess  
Comment: 3263 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.
- Bldg. T1246  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219510111  
Status: Excess  
Comment: 1144 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.
- Bldg. T2385  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219510115  
Status: Excess  
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.
- 4 Bldgs.  
Fort Leonard Wood  
83, 85, 89 Cable Street  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Landholding Agency: Army  
Property Number: 219710124  
Status: Unutilized  
Comment: 1236 sq. ft. each, needs repair, presence of asbestos, most recent use—family quarters.
- 38 Bldgs.  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Location: 1-16, 18, 20, 22, 24, 26-29, 31, 33-45 Depuy Street  
Landholding Agency: Army  
Property Number: 219710125  
Status: Unutilized  
Comment: 1083-1485 sq. ft. each, needs repair, presence of asbestos, most recent use—family quarters.
- 14 Bldgs.  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000  
Location: 1-5, 7, 22, 24, 26, 28, 30, 32, 34, 36 Diamond Street  
Landholding Agency: Army  
Property Number: 219710126  
Status: Unutilized  
Comment: 1083-1454 sq. ft. each, needs repair, presence of asbestos, most recent use—family quarters.
- 32 Bldgs.  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-5000

Location: 1-17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 52, 54, 56, 58, 60, 62 Elwood Street  
 Landholding Agency: Army  
 Property Number: 219710127  
 Status: Unutilized  
 Comment: 1083-1454 sq. ft. each, needs repair, presence of asbestos, most recent use—family quarters.

## 4 Bldgs.

Fort Leonard Wood  
 Ft. Leonard Wood Co: Pulaski MO 65473-5000

Location: 1, 3, 5, 7 Epps Street  
 Landholding Agency: Army  
 Property Number: 219710128  
 Status: Unutilized

Comment: 1083 sq. ft. each, needs repair, presence of asbestos, most recent use—family quarters.

## 46 Bldgs.

Fort Leonard Wood  
 Ft. Leonard Wood Co: Pulaski MO 65473-5000

Location: Indiana Street  
 Landholding Agency: Army  
 Property Number: 219710129  
 Status: Unutilized

Comment: 1083-1454 sq. ft. each, needs repair, presence of asbestos, most recent use—family quarters.

## 14 Bldgs.

Fort Leonard Wood  
 Ft. Leonard Wood Co: Pulaski MO 65473-5000

Location: Young Street  
 Landholding Agency: Army  
 Property Number: 219710130  
 Status: Unutilized

Comment: 1083 sq. ft. each, needs repair, presence of asbestos, most recent use—family quarters.

## Bldgs. T-2340 thru T2343

Fort Leonard Wood  
 Ft. Leonard Wood Co: Pulaski MO 65473-5000

Landholding Agency: Army  
 Property Number: 219710138  
 Status: Underutilized

Comment: 9267 sq. ft. each, most recent use—storage/general purpose.

## Nevada

## Bldgs. 00425-00449

Hawthorne Army Ammunition Plant  
 Schweer Drive Housing Area  
 Hawthorne Co: Mineral NV 89415-  
 Landholding Agency: Army  
 Property Number: 219011946  
 Status: Unutilized

Comment: 1310-1640 sq. ft., one floor residential, semi/wood construction, good condition.

## New Mexico

## Bldg. 357

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330335  
 Status: Unutilized

Comment: 3600 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only.

## Bldg. 1758

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-

Landholding Agency: Army  
 Property Number: 219330336  
 Status: Unutilized

Comment: 1620 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.

## Bldg. 1768

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330337  
 Status: Unutilized

Comment: 15,333 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.

## Bldg. 28281

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330338  
 Status: Unutilized

Comment: 1856 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.

## Bldg. 28282

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330339  
 Status: Unutilized

Comment: 1850 sq. ft., 3-story, Needs rehab, presence of asbestos, most recent use—admin., off-site use only.

## Bldg. 32980

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330340  
 Status: Unutilized

Comment: 451 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.

## Bldg. 34252

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330341  
 Status: Unutilized

Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.

## Bldg. 1348

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330345  
 Status: Unutilized

Comment: 720 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—storage, off-site use only.

## Bldg. 1765

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330347  
 Status: Unutilized

Comment: 600 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

## Bldg. 21542

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330348

Status: Unutilized

Comment: 945 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

## Bldg. 22118

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330349  
 Status: Unutilized

Comment: 1341 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

## Bldg. 22253

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330350  
 Status: Unutilized

Comment: 216 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

## Bldg. 28267

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330351  
 Status: Unutilized

Comment: 617 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

## Bldg. 29195

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330352  
 Status: Unutilized

Comment: 56 sq. ft., 1 story, presence of asbestos, most recent use—storage, off-site use only.

## Bldg. 34219

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330353  
 Status: Unutilized

Comment: 720 sq. ft., 1 story, presence of asbestos, most recent use—storage, off-site use only.

## Bldg. 34221

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330354  
 Status: Unutilized

Comment: 720 sq. ft., 1 story, presence of asbestos, most recent use—storage, off-site use only.

## Bldg. 145

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330355  
 Status: Unutilized

Comment: 2954 sq. ft., 1 story, presence of asbestos, most recent use—chapel, off-site use only.

## Bldg. 1754

White Sands Missile Range  
 White Sands Co: Dona Ana NM 88002-  
 Landholding Agency: Army  
 Property Number: 219330356  
 Status: Unutilized

Comment: 6974 sq. ft., 1 story, presence of asbestos, most recent use—maintenance shop, off-site use only.

Bldg. 19242

White Sands Missile Range  
White Sands Co: Dona Ana NM 88002–  
Landholding Agency: Army  
Property Number: 219330357  
Status: Unutilized

Comment: 450 sq. ft., 1 story, presence of asbestos, most recent use—maintenance shop, off-site use only.

Bldg. 34227

White Sands Missile Range  
White Sands Co: Dona Ana NM 88002–  
Landholding Agency: Army  
Property Number: 219330358  
Status: Unutilized

Comment: 675 sq. ft., 1 story, presence of asbestos, most recent use—maintenance shop, off-site use only.

Bldg. 34244

White Sands Missile Range  
White Sands Co: Dona Ana NM 88002–  
Landholding Agency: Army  
Property Number: 219330359  
Status: Unutilized

Comment: 720 sq. ft., 1 story, presence of asbestos, most recent use—maintenance shop, off-site use only.

Bldg. 21105

White Sands Missile Range  
White Sands Co: Dona Ana NM 88002–  
Landholding Agency: Army  
Property Number: 219330360  
Status: Unutilized

Comment: 239 sq. ft., presence of asbestos, most recent use—veterinary facility, off-site use only.

Bldg. 21106

White Sands Missile Range  
White Sands Co: Dona Ana NM 88002–  
Landholding Agency: Army  
Property Number: 219330361  
Status: Unutilized

Comment: 405 sq. ft., 1 story, presence of asbestos, most recent use—veterinarian facility, off-site use only.

Bldg. 21310

White Sands Missile Range  
White Sands Co: Dona Ana NM 88002–  
Landholding Agency: Army  
Property Number: 219330362  
Status: Unutilized

Comment: 1006 sq. ft., 1 story, presence of asbestos, most recent use—transmitter bldg., off-site use only.

Bldg. 29890

White Sands Missile Range  
White Sands Co: Dona Ana NM 88002–  
Landholding Agency: Army  
Property Number: 219330363  
Status: Unutilized

Comment: 450 sq. ft., 1 story, presence of asbestos, most recent use—frequency monitoring station, off-site use only.

Bldg. 1868

White Sands Missile Range  
White Sands Co: Dona Ana NM 88002–  
Landholding Agency: Army  
Property Number: 219330364  
Status: Unutilized

Comment: 41 sq. ft., 1 story, presence of asbestos, most recent use—scale house, off-site use only.

Bldg. 528

White Sands Missile Range  
White Sands Co: Dona Ana NM 88002–  
Landholding Agency: Army  
Property Number: 219330365  
Status: Unutilized  
Comment: 225 sq. ft., 1 story, presence of asbestos, most recent use—  
decontamination shelter, off-site use only.

Bldg. 1834

White Sands Missile Range  
White Sands Co: Dona Ana NM 88002–  
Landholding Agency: Army  
Property Number: 219330366  
Status: Unutilized  
Comment: 150 sq. ft., 1 story, presence of asbestos, most recent use—animal kennel, off-site use only.

Bldg. 23100

White Sands Missile Range  
White Sands Co: Dona Ana NM 88002–  
Landholding Agency: Army  
Property Number: 219330368  
Status: Unutilized  
Comment: 40 sq. ft., 1-story, presence of asbestos, most recent use—sentry station, off-site use only.

Bldg. 29196

White Sands Missile Range  
White Sands Co: Dona Ana NM 88002–  
Landholding Agency: Army  
Property Number: 219330369  
Status: Unutilized  
Comment: 38 sq. ft., 1-story, presence of asbestos, most recent use—power plant bldg., off-site use only.

Bldg. 30774

White Sands Missile Range  
White Sands Co: Dona Ana NM 88002–  
Landholding Agency: Army  
Property Number: 219330370  
Status: Unutilized  
Comment: 176 sq. ft., 1-story, presence of asbestos, off-site use only.

Bldg. 33136

White Sands Missile Range  
White Sands Co: Dona Ana NM 88002–  
Landholding Agency: Army  
Property Number: 219330371  
Status: Unutilized  
Comment: 18 sq. ft., off-site use only.

New York

Bldg. 100, Fort Hamilton  
Bellmore Co: Nassau NY 11710–  
Landholding Agency: Army  
Property Number: 219340254  
Status: Unutilized  
Comment: 155 sq. ft., 1-story, most recent use—storage.

Bldg. 200, Fort Hamilton

Bellmore Co: Nassau NY 11710–  
Landholding Agency: Army  
Property Number: 219340255  
Status: Unutilized  
Comment: 12000 sq. ft., 1-story, most recent use—office.

Bldg. 300, Fort Hamilton

Bellmore Co: Nassau NY 11710–  
Landholding Agency: Army  
Property Number: 219340256  
Status: Underutilized  
Comment: 11000 sq. ft., 1-story, most recent use—reserve center.

Bldg. 900, Fort Hamilton

Bellmore Co: Nassau NY 11710–

Landholding Agency: Army  
Property Number: 219430259  
Status: Underutilized  
Comment: 400 sq. ft., 1-story, needs rehab, most recent use—material storage.

Bldg. T-2407

Fort Drum  
Fort Drum Co: Jefferson NY 13602–  
Landholding Agency: Army  
Property Number: 219710013  
Status: Unutilized  
Comment: 3,737 sq. ft., needs repair, most recent use—health clinic, off-site use only.

Bldg. T-2419

Fort Drum  
Fort Drum Co: Jefferson NY 13602–  
Landholding Agency: Army  
Property Number: 219710014  
Status: Unutilized  
Comment: 2,638 sq. ft., needs repair, most recent use, fire station, off-site use only.

Bldg. T-2553

Fort Drum  
Fort Drum Co: Jefferson NY 13602–  
Landholding Agency: Army  
Property Number: 219710016  
Status: Unutilized  
Comment: 1,750 sq. ft., needs repair, most recent use—aviation operations, off-site use only.

Bldgs. 2400, 2402, 2404

Stewart Army Subpost  
New Windsor Co: Orange NY 12553–  
Landholding Agency: Army  
Property Number: 219710131  
Status: Unutilized  
Comment: various sq. ft., most recent use—  
storage/dog kennel, need repairs, off-site use only.

Bldgs. 2308, 2310

Stewart Army Subpost  
New Windsor Co: Orange NY 12553–  
Landholding Agency: Army  
Property Number: 219710132  
Status: Unutilized  
Comment: 425 & 1834 sq. ft., most recent use—gas pump house/office/motor pool, need repairs, off-site use only.

Bldgs. 1800, 1802, 1818

Stewart Army Subpost  
New Windsor Co: Orange NY 12553–  
Landholding Agency: Army  
Property Number: 219710133  
Status: Unutilized  
Comment: approx. 6500 sq. ft. each, most recent use—barracks/storage, needs repairs, off-site use only.

Bldgs. 2612, 2614, 2616

Stewart Army Subpost  
New Windsor Co: Orange NY 12553–  
Landholding Agency: Army  
Property Number: 219710134  
Status: Unutilized  
Comment: 10052 sq. ft. each, most recent use—family housing, need repairs, off-site use only.

Bldg. T-96, Fort Drum

Ft. Drum Co: Jefferson NY 13602–  
Landholding Agency: Army  
Property Number: 219710243  
Status: Unutilized  
Comment: 11283 sq. ft., most recent use—  
storage, needs rehab, off-site use only.

Bldg. T-4890, Fort Drum  
Ft. Drum Co: Jefferson NY 13602-  
Landholding Agency: Army  
Property Number: 219710244  
Status: Unutilized  
Comment: 2395 sq. ft., most recent use—  
admin., needs rehab, off-site use only.

## North Carolina

Bldg. 3-2331, Fort Bragg  
Ft. Bragg Co: Cumberland NC 28307-  
Landholding Agency: Army  
Property Number: 219610724  
Status: Unutilized  
Comment: 1027 sq. ft., needs repair, possible  
asbestos, most recent use—storage, off-site  
use only.

Bldg. N-3931, Fort Bragg  
Ft. Bragg Co: Cumberland NC 28307-  
Landholding Agency: Army  
Property Number: 219610725  
Status: Unutilized  
Comment: 3258 sq. ft., needs repair, possible  
asbestos, most recent use—admin., off-site  
use only.

Bldg. N-4921, Fort Bragg  
Ft. Bragg Co: Cumberland NC 28307-  
Landholding Agency: Army  
Property Number: 219610727  
Status: Unutilized  
Comment: 5676 sq. ft., needs repair, possible  
asbestos, most recent use—maintenance,  
off-site use only.

Bldg. 0-9064  
Fort Bragg  
Ft. Bragg Co: Cumberland NC 28307-  
Landholding Agency: Army  
Property Number: 219620686  
Status: Unutilized  
Comment: 480 sq. ft., most recent use—  
storage bldg., possible asbestos, needs  
repair, off-site use only.

Bldg. 0-9107  
Fort Bragg  
Ft. Bragg Co: Cumberland NC 28307-  
Landholding Agency: Army  
Property Number: 219620687  
Status: Unutilized  
Comment: 80 sq. ft., most recent use—storage  
shed, possible asbestos, off-site use only.

Bldg. D-1102  
Fort Bragg  
Ft. Bragg Co: Cumberland NC 28307-  
Landholding Agency: Army  
Property Number: 219630180  
Status: Unutilized  
Comment: 3812 sq. ft., needs rehab, most  
recent use—training, off-site use only.

Bldg. K1320  
Fort Bragg  
Ft. Bragg Co: Cumberland NC 28307-  
Landholding Agency: Army  
Property Number: 219630181  
Status: Unutilized  
Comment: 4725 sq. ft., needs rehab, most  
recent use—community bldg., off-site use  
only.

Bldg. 2-5411  
Fort Bragg  
Ft. Bragg Co: Cumberland NC 28307-  
Landholding Agency: Army  
Property Number: 219630183  
Status: Unutilized  
Comment: 3100 sq. ft., needs rehab, most  
recent use—heat plant, off-site use only.

Bldg. E-7429  
Fort Bragg  
Ft. Bragg Co: Cumberland NC 28307-  
Landholding Agency: Army  
Property Number: 219630184  
Status: Unutilized  
Comment: 3780 sq. ft., needs rehab, most  
recent use—training bldg., off-site use only.

Bldg. E-7530  
Fort Bragg  
Ft. Bragg Co: Cumberland NC 28307-  
Landholding Agency: Army  
Property Number: 219630185  
Status: Unutilized  
Comment: 3747 sq. ft., needs rehab, most  
recent use—training bldg., off-site use only.

Bldg. 8-3641  
Fort Bragg  
Ft. Bragg Co: Cumberland NC 28307-  
Landholding Agency: Army  
Property Number: 219710025  
Status: Unutilized  
Comment: 960 sq. ft., aluminum trailer,  
needs repair, possible asbestos and lead  
paint, off-site use only.

Bldg. A-3672  
Fort Bragg  
Ft. Bragg Co: Cumberland NC 28307-  
Landholding Agency: Army  
Property Number: 219710026  
Status: Unutilized  
Comment: 30 sq. ft., guard shack, needs  
repair, possible asbestos and lead paint,  
off-site use only.

North Dakota  
Bldg. 1101  
Stanley R. Mickelsen Safeguard Complex  
Nekoma Co: Ramsey ND 58355-  
Landholding Agency: Army  
Property Number: 219640213  
Status: Unutilized  
Comment: 2259 sq. ft., earth covered concrete  
bldg., needs rehab, off-site use only.

Bldg. 1110  
Stanley R. Mickelsen Safeguard Complex  
Nekoma Co: Ramsey ND 58355-  
Landholding Agency: Army  
Property Number: 219640214  
Status: Unutilized  
Comment: 11956 sq. ft., concrete, needs  
rehab, off-site use only.

Bldg. 2101  
Stanley R. Mickelsen Safeguard Complex  
Nekoma Co: Cavalier ND 58249-  
Landholding Agency: Army  
Property Number: 219640215  
Status: Unutilized  
Comment: 2259 sq. ft., earth covered concrete  
bldg., needs rehab, off-site use only.

Bldg. 2110  
Stanley R. Mickelsen Safeguard Complex  
Nekoma Co: Cavalier ND 58249-  
Landholding Agency: Army  
Property Number: 219640216  
Status: Unutilized  
Comment: 11956 sq. ft., concrete, needs  
rehab, off-site use only.

Bldg. 4101  
Stanley R. Mickelsen Safeguard Complex  
Nekoma Co: Walsh ND 58355-  
Landholding Agency: Army  
Property Number: 219640217  
Status: Unutilized  
Comment: 2259 sq. ft., earth covered concrete  
bldg., needs rehab, off-site use only.

Bldg. 4110  
Stanley R. Mickelsen Safeguard Complex  
Nekoma Co: Walsh ND 58355-  
Landholding Agency: Army  
Property Number: 219640218  
Status: Unutilized  
Comment: 11956 sq. ft., concrete, needs  
rehab, off-site use only.

## Ohio

15 Units  
Military Family Housing  
Ravenna Army Ammunition Plant  
Ravenna Co: Portage OH 44266-9297  
Landholding Agency: Army  
Property Number: 219230354  
Status: Excess  
Comment: 3 bedroom (7 units)—1824 sq. ft.  
each, 4 bedroom (8 units)—2430 sq. ft.  
each, 2-story wood frame, presence of  
asbestos, off-site use only.

7 Units  
Military Family Housing Garages  
Ravenna Army Ammunition Plant  
Ravenna Co: Portage OH 44266-9297  
Landholding Agency: Army  
Property Number: 219230355  
Status: Excess  
Comment: 1-4 stall garage and 6-3 stall  
garages, presence of asbestos, off-site use  
only.

## Oklahoma

Bldg. T-2606  
Fort Sill  
2606 Currie Road  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219011273  
Status: Unutilized  
Comment: 2722 sq. ft.; possible asbestos, one  
floor wood frame; most recent use—  
Headquarters Bldg.

Bldg. T-838, Fort Sill  
838 Macomb Road  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219220609  
Status: Unutilized  
Comment: 151 sq. ft., wood frame, 1 story,  
off-site removal only, most recent use—vet  
facility (quarantine stable).

Bldg. T-954, Fort Sill  
954 Quinette Road  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219240659  
Status: Unutilized  
Comment: 3571 sq. ft., 1 story wood frame,  
needs rehab, off-site use only, most recent  
use—motor repair shop.

Bldg. T-1050, Fort Sill  
1050 Quinette Road  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219240660  
Status: Unutilized  
Comment: 6240 sq. ft., 2 story wood frame,  
needs rehab, off-site use only, most recent  
use—barracks.

Bldg. T-1051, Fort Sill  
1051 Quinette Road  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219240661  
Status: Unutilized

- Comment: 6240 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.
- Bldg. T-2740, Fort Sill  
2740 Miner Road  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219240669  
Status: Unutilized  
Comment: 8210 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.
- Bldg. T-2633, Fort Sill  
2633 Miner Road  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219240672  
Status: Unutilized  
Comment: 19455 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—enlisted mess.
- Bldg. T-4050, Fort Sill  
4050 Pitman Street  
Lawton Co: OK 73503-5100  
Landholding Agency: Army  
Property Number: 219240676  
Status: Unutilized  
Comment: 3177 sq. ft., 1-story wood frame, needs rehab, off-site use only, most recent use—storage.
- Bldg. P-3032, Fort Sill  
3032 Haskins Road  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219240678  
Status: Unutilized  
Comment: 101 sq. ft., 1-story wood frame, needs rehab, off-site use only, most recent use—general storagehouse.
- Bldg. T-3325, Fort Sill  
3325 Naylor Road  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219240681  
Status: Unutilized  
Comment: 8832 sq. ft., 1-story wood frame, needs rehab, off-site use only, most recent use—warehouse.
- Bldg. T-260, Fort Sill  
260 Corral Road  
Lawton Co: Comanche OK 73503-5000  
Landholding Agency: Army  
Property Number: 219240776  
Status: Unutilized  
Comment: 4838 sq. ft., 2 story wood frame, needs rehab, off-site use only, possible asbestos, most recent use—admin.
- Bldg. P-6220, Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219320335  
Status: Unutilized  
Comment: 848 sq. ft., 1-story metal frame, possible asbestos, most recent use—construction bldge., off-site use only.
- Bldg. S-6228, Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219320336  
Status: Unutilized  
Comment: 352 sq. ft., 1-story wood frame, possible asbestos, most recent use—range house, off-site use only.
- Bldg. P-2610, Fort Sill
- Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219330372  
Status: Unutilized  
Comment: 512 sq. ft., 1-story, possible asbestos, most recent use—classroom, off-site use only.
- Bldg. T1652, Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219330380  
Status: Unutilized  
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
- Bldg. T1665, Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219330381  
Status: Unutilized  
Comment: 1305 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
- Bldg. T2034, Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219330383  
Status: Unutilized  
Comment: 401 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
- Bldg. T2705, Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219330384  
Status: Unutilized  
Comment: 1601 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.
- Bldg. T2756, Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219330390  
Status: Unutilized  
Comment: 5172 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
- Bldg. T2757, Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219330391  
Status: Unutilized  
Comment: 5172 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
- Bldg. T3026, Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219330392  
Status: Unutilized  
Comment: 2454 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
- Bldg. T4474, Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219330402  
Status: Unutilized  
Comment: 1159 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
- Bldg. T-5637, Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army
- Property Number: 219330419  
Status: Unutilized  
Comment: 1606 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.
- Bldg. T-5215  
Fort Sill  
Lawton Co: Comanche OK 73503-  
Landholding Agency: Army  
Property Number: 219440376  
Status: Unutilized  
Comment: 2797 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only.
- Bldg. T-5219  
Fort Sill  
Lawton Co: Comanche OK 73503-  
Landholding Agency: Army  
Property Number: 219440381  
Status: Unutilized  
Comment: 2662 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—classroom, off-site use only.
- Bldg. T-4226  
Fort Sill  
Lawton Co: Comanche OK 73503-  
Landholding Agency: Army  
Property Number: 219440384  
Status: Unutilized  
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.
- Bldg. P-1015, Fort Sill  
Lawton Co: Comanche OK 73501-5100  
Landholding Agency: Army  
Property Number: 219520197  
Status: Unutilized  
Comment: 15402 sq. ft., 1-story, most recent use—storage, off-site use only.
- Bldg. T-2648, Fort Sill  
2648 Tacy Street  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219540022  
Status: Excess  
Comment: 9407 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—general purpose warehouse.
- Bldg. T-2649, Fort Sill  
2649 Tacy Street  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219540024  
Status: Excess  
Comment: 9374 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—general storehouse.
- Bldg. T-4036, Fort Sill  
4036 Currie Road  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219540034  
Status: Excess  
Comment: 4532 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—classroom.
- Bldg. T-367, Fort Sill  
Lawton Co: Comanche OK 73503-  
Landholding Agency: Army  
Property Number: 219610736  
Status: Unutilized  
Comment: 9370 sq. ft., possible asbestos, most recent use—storage, off-site use only.



Bldg. P-366, Fort Sill  
Lawton Co: Comanche OK 73503-  
Landholding Agency: Army  
Property Number: 219610740  
Status: Unutilized  
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. T-4430  
Fort Sill  
Lawton Co: Comanche OK 73503-  
Landholding Agency: Army  
Property Number: 219620689  
Status: Unutilized  
Comment: 2974 sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only.

Bldg. T-4400  
Fort Sill  
Lawton Co: Comanche OK 73503-  
Landholding Agency: Army  
Property Number: 219620691  
Status: Unutilized  
Comment: 2974 sq. ft., most recent use—storage, possible asbestos/lead paint, off-site use only.

Bldg. T-2917  
Fort Sill  
Lawton Co: Comanche OK 73503-  
Landholding Agency: Army  
Property Number: 219620696  
Status: Unutilized  
Comment: 3746 sq. ft., most recent use—exchange svc outlet, possible asbestos/lead paint, off-site use only.

Bldg. T-2438  
Fort Sill  
Lawton Co: Comanche OK 73503-  
Landholding Agency: Army  
Property Number: 219620698  
Status: Unutilized  
Comment: 9002 sq. ft., most recent use—storage/office, possible asbestos/lead paint, off-site use only.

Bldg. P-1710  
Fort Sill  
Lawton Co: Comanche OK 73503-  
Landholding Agency: Army  
Property Number: 219620706  
Status: Unutilized  
Comment: 7668 sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only.

Bldg. P-1700  
Fort Sill  
Lawton Co: Comanche OK 73503-  
Landholding Agency: Army  
Property Number: 219620707  
Status: Unutilized  
Comment: 7574 sq. ft., most recent use—maint. shop/office, possible asbestos/lead paint, off-site use only.

Bldg. T-299  
Fort Sill  
Lawton Co: Comanche OK 73503-  
Landholding Agency: Army  
Property Number: 219620712  
Status: Unutilized  
Comment: 2974 sq. ft., most recent use—classroom, possible asbestos/lead paint, off-site use only.

Bldg. T-271  
Fort Sill  
Lawton Co: Comanche OK 73503-  
Landholding Agency: Army

Property Number: 219620713  
Status: Unutilized  
Comment: 283 sq. ft., most recent use—storage, possible asbestos/lead paint, off-site use only.

Bldg. T-298  
Fort Sill  
Lawton Co: Comanche OK 73503-  
Landholding Agency: Army  
Property Number: 219620714  
Status: Unutilized  
Comment: 2432 sq. ft., most recent use—classroom, possible asbestos/lead paint, off-site use only.

Bldg. T-266  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710027  
Status: Unutilized  
Comment: 2,419 sq. ft., possible asbestos and lead paint, most recent use—classroom, off-site use only.

Bldg. T-267  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710028  
Status: Unutilized  
Comment: 2,419 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. T-598  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710029  
Status: Unutilized  
Comment: 744 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. P-1016  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710030  
Status: Unutilized  
Comment: 115 sq. ft., possible asbestos and lead paint, most recent use—utility, off-site use only.

Bldg. P-1453  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710031  
Status: Unutilized  
Comment: 648 sq. ft., possible asbestos and lead paint, most recent use—range/target house, off-site use only.

Bldg. T-1601  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710032  
Status: Unutilized  
Comment: 5,258 sq. ft., possible asbestos and lead paint, most recent use—chapel, off-site use only.

Bldg. P-1800  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710033  
Status: Unutilized

Comment: 2,545 sq. ft., possible asbestos and lead paint, most recent use—military equipment, off-site use only.

Bldg. P-1805  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710034  
Status: Unutilized  
Comment: 106 sq. ft., possible asbestos and lead paint, most recent use—utility, off-site use only.

Bldg. P-1806  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710035  
Status: Unutilized  
Comment: 44 sq. ft., possible asbestos and lead paint, most recent use—utility, off-site use only.

Bldg. T-1942  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710036  
Status: Unutilized  
Comment: 1,549 sq. ft., possible asbestos and lead paint, most recent use—shop office, off-site use only.

Bldg. T-1960  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710037  
Status: Unutilized  
Comment: 10,309 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Building T-1961  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710038  
Status: Unutilized  
Comment: 7,128 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Building T-2035  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710039  
Status: Unutilized  
Comment: 18,157 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Building T-2181  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710040  
Status: Unutilized  
Comment: 2,805 sq. ft., possible asbestos and lead paint, most recent use—office, off-site use only.

Building T-2426  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710041  
Status: Unutilized  
Comment: 8,876 sq. ft., possible asbestos and lead paint, most recent use—office/storage, off-site use only.

Building T-2440  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710042  
Status: Unutilized  
Comment: 8,994 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. T-2451  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710043  
Status: Unutilized  
Comment: 9,470 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. T-2607  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710044  
Status: Unutilized  
Comment: 6,743 sq. ft., possible asbestos and lead paint, most recent use—classroom, off-site use only.

Bldg. T-2608  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710045  
Status: Unutilized  
Comment: 6,737 sq. ft., possible asbestos and lead paint, most recent use—classroom, off-site use only.

Bldg. T-2711  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710046  
Status: Unutilized  
Comment: 18,082 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. T-2952  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710047  
Status: Unutilized  
Comment: 4,327 sq. ft., possible asbestos and lead paint, most recent use—motor repair shop, off-site use only.

Bldg. T-2953  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710048  
Status: Unutilized  
Comment: 114 sq. ft., possible asbestos and lead paint, most recent use—storehouse, off-site use only.

Bldg. T-3002  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710049  
Status: Unutilized  
Comment: 9,359 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. T-3003  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710050  
Status: Unutilized  
Comment: 3,239 sq. ft., possible asbestos and lead paint, most recent use—office/storage, off-site use only.

Bldg. T-3152  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710051  
Status: Unutilized  
Comment: 3,151 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. T-3153  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710052  
Status: Unutilized  
Comment: 3,151 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Building T-3154  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710053  
Status: Unutilized  
Comment: 3,151 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Building T-3155  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710054  
Status: Unutilized  
Comment: 3,151 sq. ft., possible asbestos and lead paint, most recent use—repair shop, off-site use only.

Building T-3156  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710055  
Status: Unutilized  
Comment: 9,359 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Building T-4009  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710056  
Status: Unutilized  
Comment: 2,817 sq. ft., possible asbestos and lead paint, most recent use—classroom, off-site use only.

Building T-4010  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710057  
Status: Unutilized  
Comment: 2,815 sq. ft., possible asbestos and lead paint, most recent use—office, off-site use only.

Building T-4001  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710058  
Status: Unutilized  
Comment: 9,456 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Building T-4026  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710059  
Status: Unutilized  
Comment: 9,597 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Building T-4030  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710060  
Status: Unutilized  
Comment: 9,618 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Building T-4068  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710061  
Status: Unutilized  
Comment: 2,750 sq. ft., possible asbestos and lead paint, most recent use—office, off-site use only.

Building T-4069  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710062  
Status: Unutilized  
Comment: 2,750 sq. ft., possible asbestos and lead paint, most recent use—office, off-site use only.

Building T-4070  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710063  
Status: Unutilized  
Comment: 2,750 sq. ft., possible asbestos and lead paint, most recent use—office, off-site use only.

Building T-4468  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710064  
Status: Unutilized  
Comment: 2,262 sq. ft., possible asbestos and lead paint, most recent use—barracks, off-site use only.

Building T-4488  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710065  
Status: Unutilized  
Comment: 2,974 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.

Building P-5052  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710066  
Status: Unutilized

- Comment: 119 sq. ft., possible asbestos and lead paint, most recent use—heatplant, off-site use only.
- Building T-5093  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710067  
Status: Unutilized  
Comment: 9,361 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.
- Building T-5098  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710068  
Status: Unutilized  
Comment: 3,117 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.
- Building T-5099  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710069  
Status: Unutilized  
Comment: 9,279 sq. ft., possible asbestos and lead paint, most recent use—thriftshop, off-site use only.
- Building T-5613  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710070  
Status: Unutilized  
Comment: 3,205 sq. ft., possible asbestos and lead paint, most recent use—storage, off-site use only.
- Building T-6227  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710071  
Status: Unutilized  
Comment: 720 sq. ft., possible asbestos and lead paint, most recent use—range support, off-site use only.
- Building T-6234  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710072  
Status: Unutilized  
Comment: 816 sq. ft., possible asbestos and lead paint, most recent use—range/target house, off-site use only.
- Building T-6235  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710073  
Status: Unutilized  
Comment: 512 sq. ft., possible asbestos and lead paint, most recent use—range support, off-site use only.
- Building T-6236  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710074  
Status: Unutilized  
Comment: 512 sq. ft., possible asbestos and lead paint, most recent use—range support, off-site use only.
- Building T-6403  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710075  
Status: Unutilized  
Comment: 512 sq. ft., possible asbestos and lead paint, most recent use—range support, off-site use only.
- Building T-6404  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710076  
Status: Unutilized  
Comment: 512 sq. ft., possible asbestos and lead paint, most recent use—range support, off-site use only.
- Building T-6405  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710077  
Status: Unutilized  
Comment: 720 sq. ft., possible asbestos and lead paint, most recent use—range support, off-site use only.
- Building T-6407  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710078  
Status: Unutilized  
Comment: 240 sq. ft., possible asbestos and lead paint, most recent use—range /target house, off-site use only.
- Building T-6408  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710079  
Status: Unutilized  
Comment: 64 sq. ft., possible asbestos and lead paint, most recent use—range support, off-site use only.
- Building T-6409  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710080  
Status: Unutilized  
Comment: 816 sq. ft., possible asbestos and lead paint, most recent use—range support, off-site use only.
- Building T-6425  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710081  
Status: Unutilized  
Comment: 512 sq. ft., possible asbestos and lead paint, most recent use—range support, off-site use only.
- Building T-6427  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710082  
Status: Unutilized  
Comment: 720 sq. ft., possible asbestos and lead paint, most recent use—range support, off-site use only.
- Building S-6431  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710083  
Status: Unutilized  
Comment: 848 sq. ft., possible asbestos and lead paint, most recent use—training shelter, off-site use only.
- 10 Buildings  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Location: T-6432, T-6435, T-6436, T-6437, T-6438, S-6439, S-6440, T-6442, S-6444, T-6445  
Landholding Agency: Army  
Property Number: 219710084  
Status: Unutilized  
Comment: various sq. ft., possible asbestos and lead paint, most recent use—range support, off-site use only.
- 10 Buildings  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Location: T-6446, T-6447, P-6449, S-6451, T-6452, S-6453, S-6455, P-6460, P-6463, S-6450  
Landholding Agency: Army  
Property Number: 219710085  
Status: Unutilized  
Comment: various sq. ft., possible asbestos and lead paint, most recent use—range support, off-site use only.
- 4 Buildings  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Location: T-6465, T-6466, T-6467, T-6468  
Landholding Agency: Army  
Property Number: 219710086  
Status: Unutilized  
Comment: various sq. ft., possible asbestos and lead paint, most recent use—range support, off-site use only.
- Building P-6539  
Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219710087  
Status: Unutilized  
Comment: 1,483 sq. ft., possible asbestos and lead paint, most recent use—office, off-site use only.
- Bldg. T-2751, Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219720209  
Status: Unutilized  
Comment: 19510 sq. ft., most recent use—admin., possible asbestos/lead paint, off-site use only.
- Bldg. T-5096, Fort Sill  
Lawton Co: Comanche OK 73503-5100  
Landholding Agency: Army  
Property Number: 219720210  
Status: Unutilized  
Comment: 3131 sq. ft., most recent use—storage, possible asbestos/lead paint, off-site use only.
- South Carolina  
Bldg. 5412  
Fort Jackson  
Fort Jackson Co: Richland SC 29207-  
Landholding Agency: Army  
Property Number: 219510139  
Status: Excess

- Comment: 3900 sq. ft., 1-story, wood frame, needs rehab, most recent use—admin., off-site use only.
- Bldg. 4510  
Fort Jackson  
Fort Jackson Co: Richland SC 29207  
Landholding Agency: Army  
Property Number: 219510715  
Status: Unutilized  
Comment: 10424 sq. ft., needs repair, most recent use—craft shop, off-site use only.
- Texas
- Bldg. P-3824, Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219220398  
Status: Unutilized  
Comment: 2232 sq. ft., 1-story, concrete structure, within National Landmark Historic District, off-site removal only.
- Bldg. 440, Fort Bliss  
El Paso Co: El Paso TX 79916-  
Landholding Agency: Army  
Property Number: 219320355  
Status: Unutilized  
Comment: 1651 sq. ft., 1-story, brick, most recent use—education facility, off-site use only.
- Bldg. P-377, Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219330444  
Status: Unutilized  
Comment: 74 sq. ft., 1-story, brick needs rehab, most recent use—scale house, located in National Historic District off-site use only.
- Bldg. T-5901  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219330486  
Status: Unutilized  
Comment: 742 sq. ft., 1-story wood frame, most recent use—admin., off-site use only.
- Bldg. 4480, Fort Hood  
Ft. Hood Co: Bell TX 76544-  
Landholding Agency: Army  
Property Number: 219410322  
Status: Unutilized  
Comment: 2160 sq. ft., 1-story, most recent use—storage, off-site use only.
- Bldg. 2, Fort Hood  
Lubbock Co: Lubbock TX 79408-  
Landholding Agency: Army  
Property Number: 219440337  
Status: Unutilized  
Comment: 2818 sq. ft., 1 story, fair condition, to be vacated 6/30/95, off-site removal only, most recent use—army reserve center maintenance shop.
- Bldg. P-452  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219440449  
Status: Excess  
Comment: 600 sq. ft., 1 story stucco frame, lead paint, off-site removal only, most recent use—bath house.
- Bldg. P-6615  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army
- Property Number: 219440454  
Status: Excess  
Comment: 400 sq. ft., 1 story concrete frame, off-site removal only, most recent use—detached garage.
- Bldg. T-300, Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219520118  
Status: Excess  
Comment: 8352 gr. sq. ft., 1 story, presence of lead base paint and asbestos, most recent use—admin., off-site use only.
- Bldg. P-1059, Fort Sam Houston  
San Antonio Co: Bexar Tx 78234-5000  
Landholding Agency: Army  
Property Number: 219520121  
Status: Unutilized  
Comment: 700 gr. sq. ft., presence of lead base paint and asbestos, most recent use—admin., off-site use only.
- Bldg. 307, Fort Hood  
Ft. Hood Co: Bell TX 76544-  
Landholding Agency: Army  
Property Number: 219520198  
Status: Excess  
Comment: 1600 sq. ft., 1-story, most recent use—med. clinic, off-site use only.
- Bldg. 507, Fort Hood  
Ft. Hood Co: Bell TX 76544-  
Landholding Agency: Army  
Property Number: 219520199  
Status: Unutilized  
Comment: 1600 sq. ft., 1-story, presence of asbestos, off-site use only.
- Bldg. 4201, Fort Hood  
Ft. Hood Co: Bell TX 76544-  
Landholding Agency: Army  
Property Number: 219520201  
Status: Unutilized  
Comment: 9000 sq. ft., 1-story, off-site use only.
- Bldg. 4202, Fort Hood  
Ft. Hood Co: Bell TX 76544-  
Landholding Agency: Army  
Property Number: 219520202  
Status: Unutilized  
Comment: 5400 sq. ft., 1-story, most recent use—storage, off-site use only.
- Bldg. P-1030  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219520203  
Status: Excess  
Comment: 8212 sq. ft., 1-story, most recent use—storage, presence of asbestos & lead base paint, located in Historic District, off-site use only.
- Bldg. 832, Fort Hood  
Ft. Hood Co: Bell TX 76544-  
Landholding Agency: Army  
Property Number: 219540068  
Status: Excess  
Comment: 3983 sq. ft., 2 story, off-site removal only, most recent use—admin.
- Bldg. 56649  
Fort Hood  
Ft. Hood Co: Bell TX 76544-  
Landholding Agency: Army  
Property Number: 219610747  
Status: Unutilized  
Comment: 506.7 sq. ft., most recent use—dining, off-site use only.
- Bldg. 439  
Fort Hood  
Ft. Hood Co: Coryell TX 76544-  
Landholding Agency: Army  
Property Number: 219610754  
Status: Unutilized  
Comment: 3983 sq. ft., needs rehab, most recent use—admin., off-site use only.
- Bldg. 2046  
Fort Hood  
Ft. Hood Co: Coryell TX 76544-  
Landholding Agency: Army  
Property Number: 219610757  
Status: Unutilized  
Comment: 2700 sq. ft., needs rehab, most recent use—storage, off-site use only.
- Bldg. P-8224B  
Fort Sam Houston Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219610783  
Status: Unutilized  
Comment: 1126 gross sq. ft., needs rehab, presence of lead base paint, most recent use—family housing, for off-site use only.
- Bldg. 57016  
Fort Hood  
Ft. Hood Co: Coryell TX 76544-  
Landholding Agency: Army  
Property Number: 219620723  
Status: Unutilized  
Comment: 7680 sq. ft., needs rehab, most recent use—storage, off-site use only.
- Bldg. S-655  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219620728  
Status: Unutilized  
Comment: 3296 sq. ft., presence of asbestos/lead paint, most recent use—storage, possible National Historic Pres. Act requirements.
- 35 Units  
Fort Bliss  
Upper William Beaumont Army Medical Center  
El Paso Co: El Paso TX 79916-  
Location: 7401, 7404, 7405, 7408, 7412, 7422, 7425, 7426, 7429, 7430, 7441, 7444, 7445, 7448, 7461, 7464, 7465, 7481—A/B  
Landholding Agency: Army  
Property Number: 219630195  
Status: Unutilized  
Comment: 972 sq. ft., poor condition, most recent use—residential, off-site use only.
- Bldg. T-88  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640219  
Status: Unutilized  
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—showers, off-site use only.
- Bldg. P-197  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640220  
Status: Unutilized  
Comment: 13819 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
- Bldg. T-230

- Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640221  
Status: Unutilized  
Comment: 18102 sq. ft., presence of asbestos/  
lead paint, most recent use—printing plant  
and shop, off-site use only.
- Bldg. P-252  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640222  
Status: Unutilized  
Comment: 1830 sq. ft., needs rehab, presence  
of asbestos/lead paint, most recent use—  
admin., off-site use only.
- Bldg. P-606B  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640223  
Status: Unutilized  
Comment: 1296 sq. ft., presence of asbestos/  
lead paint, off-site use only.
- Bldg. P-607  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640224  
Status: Unutilized  
Comment: 12610 sq. ft., presence of asbestos/  
lead paint, most recent use—admin/  
classroom, off-site use only.
- Bldg. P-608  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640225  
Status: Unutilized  
Comment: 12676 sq. ft., presence of asbestos/  
lead paint, most recent use—admin/  
classroom, off-site use only.
- Bldg. P-608A  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640226  
Status: Unutilized  
Comment: 2914 sq. ft., presence of asbestos/  
lead paint, most recent use—admin/  
classroom, off-site use only.
- Bldg. P-1000  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640227  
Status: Unutilized  
Comment: 226374 sq. ft., presence of  
asbestos/lead paint, historic property, most  
recent use—hospital/medical center.
- Bldg. P-1023  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640228  
Status: Unutilized  
Comment: 2500 sq. ft., presence of lead paint,  
most recent use—greenhouse, off-site use  
only.
- Bldg. P-1058  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army
- Property Number: 219640229  
Status: Unutilized  
Comment: 180 sq. ft., presence of lead paint,  
most recent use—storage, off-site use only.
- Bldg. P-2270  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640230  
Status: Unutilized  
Comment: 14622 sq. ft., 2-story, historic  
bldg., presence of asbestos/lead paint, most  
recent use—auditorium.
- Bldg. T-2300  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640231  
Status: Unutilized  
Comment: 5883 sq. ft., presence of asbestos/  
lead paint, most recent use—post office,  
off-site use only.
- Bldg. P-2399  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640232  
Status: Unutilized  
Comment: 25922 sq. ft., poor condition,  
presence of asbestos/lead paint, most  
recent use—dining facility, off-site use  
only.
- Bldg. S-3898  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640235  
Status: Unutilized  
Comment: 4200 sq. ft., presence of asbestos/  
lead paint, most recent use—classroom,  
off-site use only.
- Bldg. S-3899  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640236  
Status: Unutilized  
Comment: 4200 sq. ft., presence of asbestos/  
lead paint, most recent use—classroom,  
off-site use only.
- Bldg. P-4190  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640237  
Status: Unutilized  
Comment: 88067 sq. ft., historic bldg.,  
presence of asbestos/lead paint, most  
recent use—admin/warehouse.
- Bldg. P-4191  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640238  
Status: Unutilized  
Comment: 88067 sq. ft., historic bldg.,  
presence of asbestos/lead paint, most  
recent use—admin/warehouse.
- Bldg. T-5105  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640239  
Status: Unutilized
- Comment: 3521 sq. ft., presence of asbestos/  
lead paint, most recent use—dining  
facility, off-site use only.
- Bldg. P-5126  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640240  
Status: Unutilized  
Comment: 189 sq. ft., off-site use only.
- Bldg. P-6201  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640241  
Status: Unutilized  
Comment: 3003 sq. ft., presence of asbestos/  
lead paint, most recent use—officers family  
quarters, off-site use only.
- Bldg. P-6202  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640242  
Status: Unutilized  
Comment: 1479 sq. ft., presence of lead paint,  
most recent use—officers family quarters,  
off-site use only.
- Bldg. P-6203  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640243  
Status: Unutilized  
Comment: 1381 sq. ft., presence of lead paint,  
most recent use—military family quarters,  
off-site use only.
- Bldg. P-6204  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219640244  
Status: Unutilized  
Comment: 1454 sq. ft., presence of asbestos/  
lead paint, most recent use—military  
family quarters, off-site use only.
- Bldg. 1  
Fort Hood Co: Bell TX 76544-  
Landholding Agency: Army  
Property Number: 219640245  
Status: Unutilized  
Comment: 12660 sq. ft., 2-story, most recent  
use—admin., off-site use only.
- Bldg. 2906, Fort Bliss  
El Paso Co: El Paso TX 79916  
Landholding Agency: Army  
Property Number: 219640561  
Status: Unutilized  
Comment: 35,737 sq. ft., 3-story, most recent  
use—housing, off-site use only.
- Bldg. 2907, Fort Bliss  
El Paso Co: El Paso TX 79916-  
Landholding Agency: Army  
Property Number: 219640562  
Status: Unutilized  
Comment: 35,737, 3-story, most recent use—  
housing, off-site use only.
- Bldg. 2908, Fort Bliss  
El Paso Co: El Paso TX 79916-  
Landholding Agency: Army  
Property Number: 219640563  
Status: Unutilized  
Comment: 41,979 sq. ft., 3-story, most recent  
use—housing, off-site use only.

- Bldg. 7137, Fort Bliss  
El Paso Co: El Paso TX 79916-  
Landholding Agency: Army  
Property Number: 219640564  
Status: Unutilized  
Comment: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only.
- Bldg. 2305, Fort Hood  
Ft. Hood Co: Coryell TX 76544-  
Landholding Agency: Army  
Property Number: 219640565  
Status: Unutilized  
Comment: 8043 sq. ft., 2-story, needs repair, most recent use—guest house, off-site use only.
- Bldg. 4630  
Fort Hood  
Ft. Hood Co: Bell TX 76544-  
Landholding Agency: Army  
Property Number: 219710088  
Status: Unutilized  
Comment: 21,833 sq. ft., most recent use—Admin., off-site use only.
- Bldg. P-4224  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219720213  
Status: Excess  
Comment: 293 sq. ft., concrete, possible lead based paint, off-site use only.
- Bldg. 2909, Fort Bliss  
El Paso Co: El Paso TX 79916-  
Landholding Agency: Army  
Property Number: 219720214  
Status: Unutilized  
Comment: 35,736 sq. ft., most recent use—housing, off-site use only.
- Virginia
- Bldg. T-99  
Fort Monroe  
Ft. Monroe VA 23651-  
Landholding Agency: Army  
Property Number: 219620732  
Status: Unutilized  
Comment: 7410 sq. ft., most recent use—storage, off-site use only.
- Bldg. T-193  
Fort Monroe  
Ft. Monroe VA 23651-  
Landholding Agency: Army  
Property Number: 219620733  
Status: Unutilized  
Comment: 2415 sq. ft., most recent use—training, off-site use only.
- Bldg. T-194  
Fort Monroe  
Ft. Monroe VA 23651-  
Landholding Agency: Army  
Property Number: 219620734  
Status: Unutilized  
Comment: 1950 sq. ft., most recent use—office, off-site use only.
- Bldg. T-195  
Fort Monroe  
Ft. Monroe VA 23651-  
Landholding Agency: Army  
Property Number: 219620735  
Status: Unutilized  
Comment: 1830 sq. ft., most recent use—office, off-site use only.
- Bldg. T-196  
Fort Monroe  
Ft. Monroe VA 23651-  
Landholding Agency: Army  
Property Number: 219620736  
Status: Unutilized  
Comment: 1500 sq. ft., most recent use—office/storage, off-site use only.
- Bldg. T-248  
Fort Monroe  
Ft. Monroe VA 23651-  
Landholding Agency: Army  
Property Number: 219620737  
Status: Unutilized  
Comment: 1894 sq. ft., most recent use—office, off-site use only.
- Bldg. T-249  
Fort Monroe  
Ft. Monroe VA 23651-  
Landholding Agency: Army  
Property Number: 219620738  
Status: Unutilized  
Comment: 1909 sq. ft., most recent use—office, off-site use only.
- Bldg. T-259  
Fort Monroe  
Ft. Monroe VA 23651-  
Landholding Agency: Army  
Property Number: 219620739  
Status: Unutilized  
Comment: 1938 sq. ft., most recent use—office, off-site use only.
- Bldg. 162, Fort Monroe  
Ft. Monroe VA 23651-  
Landholding Agency: Army  
Property Number: 291640247  
Status: Unutilized  
Comment: 1300 sq. ft., needs repair, presence of lead paint, most recent use—admin., off-site use only.
- Bldg. T-171, Fort Monroe  
Ft. Monroe VA 23651-  
Landholding Agency: Army  
Property Number: 219640568  
Status: Underutilized  
Comment: 1740 sq. ft., most recent use—storage, off-site use only.
- Bldg. 642, Fort Eustis  
Ft. Eustis VA 23604-  
Landholding Agency: Army  
Property Number: 219640569  
Status: Unutilized  
Comment: 800 sq. ft., metal, most recent use—bath house, off-site use only.
- Bldg. 2436, Fort Belvoir  
Ft. Belvoir Co: Fairfax VA 22060-5402  
Landholding Agency: Army  
Property Number: 219720215  
Status: Excess  
Comment: 3200 sq. ft., most recent use—storage, needs extensive repair, possible asbestos/lead paint, off-site use only.
- Washington
- 13 Bldgs., Fort Lewis  
A0402, CO723, CO726, CO727, CO902, CO903, CO906, CO907, CO922, CO923, CO926, CO927, C1250  
Ft. Lewis Co: Pierce WA 98433-9500  
Landholding Agency: Army  
Property Number: 219630199  
Status: Unutilized  
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.
- 7 Bldgs., Fort Lewis  
AO438, AO439, CO901, CO910, CO911, CO918, CO919  
Ft. Lewis Co: Pierce WA 98433-9500  
Landholding Agency: Army  
Property Number: 219630200  
Status: Unutilized  
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom bldgs., off-site use only.
- Bldg. AO608, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-9500  
Landholding Agency: Army  
Property Number: 219630201  
Status: Unutilized  
Comment: 2285 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—dining, off-site use only.
- 6 Bldgs., Fort Lewis  
CO908, CO728, CO921, CO928, C1008, C1108  
Ft. Lewis Co: Pierce WA 98433-9500  
Landholding Agency: Army  
Property Number: 219630204  
Status: Unutilized  
Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only.
- Bldg. CO909, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-9500  
Landholding Agency: Army  
Property Number: 219630205  
Status: Unutilized  
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.
- Bldg. CO920, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-9500  
Landholding Agency: Army  
Property Number: 219630206  
Status: Unutilized  
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.
- Bldg. C1249, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-9500  
Landholding Agency: Army  
Property Number: 219630207  
Status: Unutilized  
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
- Bldg. 1164, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-9500  
Landholding Agency: Army  
Property Number: 219630213  
Status: Unutilized  
Comment: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only.
- Bldg. 1220, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-9500  
Landholding Agency: Army  
Property Number: 219630214  
Status: Unutilized  
Comment: 1386 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.
- Bldg. 1228, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-9500  
Landholding Agency: Army  
Property Number: 219630215  
Status: Unutilized  
Comment: 10413 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.
- Bldg. 1307, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-9500

Landholding Agency: Army  
Property Number: 219630216  
Status: Unutilized  
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1309, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-9500

Landholding Agency: Army  
Property Number: 219630217  
Status: Unutilized  
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 2167, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-9500

Landholding Agency: Army  
Property Number: 219630218  
Status: Unutilized  
Comment: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 4078, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-9500

Landholding Agency: Army  
Property Number: 219630219  
Status: Unutilized  
Comment: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 9599, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-9500

Landholding Agency: Army  
Property Number: 219630220  
Status: Unutilized  
Comment: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. A1404, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-

Landholding Agency: Army  
Property Number: 219640570  
Status: Unutilized  
Comment: 557 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. A1419, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-

Landholding Agency: Army  
Property Number: 219640571  
Status: Unutilized  
Comment: 1307 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. A1420, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-

Landholding Agency: Army  
Property Number: 219640572  
Status: Unutilized  
Comment: 5234 sq. ft., needs rehab, most recent use—vehicle maintenance shop, off-site use only.

#### 11 Buildings

Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-  
Location: #EO103-EO106, EO306, EO315-  
EO316, EO343-EO344, EO353-EO354

Landholding Agency: Army  
Property Number: 219710143  
Status: Unutilized  
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldgs. EO109, EO350  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-

Landholding Agency: Army  
Property Number: 219710144  
Status: Unutilized  
Comment: 1165 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldgs. EO120, EO321, EO338  
Fort Lewis

Ft. Lewis Co: Pierce WA 98433-  
Landholding Agency: Army  
Property Number: 219710145  
Status: Unutilized  
Comment: 3810 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

5 Bldgs.  
Fort Lewis

Ft. Lewis Co: Pierce WA 98433-  
Location: #EO127, EO136, EO302, EO204,  
EO330  
Landholding Agency: Army  
Property Number: 219710146  
Status: Unutilized  
Comment: 2284 sq. ft., possible asbestos/lead paint, most recent use—offices, off-site use only.

Bldg. EO136  
Fort Lewis

Ft. Lewis Co: Pierce WA 98433-  
Landholding Agency: Army  
Property Number: 219710147  
Status: Unutilized  
Comment: 3885 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldgs. EO158, EO303  
Fort Lewis

Ft. Lewis Co: Pierce WA 98433-  
Landholding Agency: Army  
Property Number: 219710148  
Status: Unutilized  
Comment: 1675 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO202  
Fort Lewis

Ft. Lewis Co: Pierce WA 98433-  
Landholding Agency: Army  
Property Number: 219710149  
Status: Unutilized  
Comment: 922 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO312  
Fort Lewis

Ft. Lewis Co: Pierce WA 98433-  
Landholding Agency: Army  
Property Number: 219710150  
Status: Unutilized  
Comment: 3885 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldg. EO322  
Fort Lewis

Ft. Lewis Co: Pierce WA 98433-  
Landholding Agency: Army  
Property Number: 219710151  
Status: Unutilized  
Comment: 2250 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. EO325  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-

Landholding Agency: Army  
Property Number: 219710152  
Status: Unutilized  
Comment: 3336 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldg. EO329  
Fort Lewis

Ft. Lewis Co: Pierce WA 98433-  
Landholding Agency: Army  
Property Number: 219710153  
Status: Unutilized  
Comment: 1843 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO334  
Fort Lewis

Ft. Lewis Co: Pierce WA 98433-  
Landholding Agency: Army  
Property Number: 219710154  
Status: Unutilized  
Comment: 3779 sq. ft., possible asbestos/lead paint, most recent use—recreation, off-site use only.

Bldg. EO335  
Fort Lewis

Ft. Lewis Co: Pierce WA 98433-  
Landholding Agency: Army  
Property Number: 219710155  
Status: Unutilized  
Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining facility, off-site use only.

Bldg. EO347  
Fort Lewis

Ft. Lewis Co: Pierce WA 98433-  
Landholding Agency: Army  
Property Number: 219710156  
Status: Unutilized  
Comment: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldgs. EO349, EO110  
Fort Lewis

Ft. Lewis Co: Pierce WA 98433-  
Landholding Agency: Army  
Property Number: 219710157  
Status: Unutilized  
Comment: 1296 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

4 Bldgs.  
Fort Lewis

Ft. Lewis Co: Pierce WA 98433-  
Location: #EO351, EO308, EO207, EO108  
Landholding Agency: Army  
Property Number: 219710158  
Status: Unutilized  
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldgs. EO352, EO307  
Fort Lewis

Ft. Lewis Co: Pierce WA 98433-  
Landholding Agency: Army  
Property Number: 219710159  
Status: Unutilized  
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO355  
Fort Lewis

Ft. Lewis Co: Pierce WA 98433-  
Landholding Agency: Army

Property Number: 219710160  
 Status: Unutilized  
 Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—training facility, off-site use only.

Bldg. B1008, Fort Lewis  
 Fort Lewis Co: Pierce WA 98433–  
 Landholding Agency: Army  
 Property Number: 219720216  
 Status: Unutilized

Comment: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only.

Bldgs. B1011–B1012, Fort Lewis  
 Ft. Lewis Co: Pierce WA 98433–  
 Landholding Agency: Army  
 Property Number: 219720217  
 Status: Unutilized

Comment: 992 sq. ft. and 1144 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only.

Bldgs. 5922–5931, Fort Lewis  
 Parkway Family Housing Area  
 Fort Lewis Co: Pierce WA 98433–  
 Landholding Agency: Army  
 Property Number: 219720218  
 Status: Unutilized

Comment: 10 family housing bldgs. totaling 78 units, brick, 2-story plus basement, needs rehab, possible asbestos/lead paint, off-site use only.

#### Wisconsin

Bldg. 7176, Fort McCoy  
 Fort McCoy Co: Monore WI 54656–  
 Landholding Agency: Army  
 Property Number: 219320373  
 Status: Underutilized

Comment: 5415 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse.

Bldg. 7261, Fort McCoy  
 Fort McCoy Co: Monore WI 54656–  
 Landholding Agency: Army  
 Property Number: 219320374  
 Status: Unutilized

Comment: 4800 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse.

Bldg. 2673

Fort McCoy  
 Ft. McCoy Co: Monroe WI 54656–  
 Landholding Agency: Army  
 Property Number: 219430226  
 Status: Unutilized

Comment: 13515 sq. ft., 1-story, needs rehab, most recent use—theater.

Bldg. 850

Fort McCoy  
 Ft. McCoy Co: Monroe WI 54656–  
 Landholding Agency: Army  
 Property Number: 219430243  
 Status: Unutilized

Comment: 2350 sq. ft., 1-story, needs rehab, most recent use—dining facility.

#### Land (by State)

##### Alaska

Harding Lake Recreation Area  
 Fort Richardson  
 Anchorage AK  
 Landholding Agency: Army  
 Property Number: 219540009

Status: Underutilized  
 Comment: 25.5 acres, most recent use—recreation.

##### Georgia

Land (Railbed)  
 Fort Benning  
 Ft. Benning Co: Muscogee GA 31905–  
 Landholding Agency: Army  
 Property Number: 219440440  
 Status: Unutilized

Comment: 17.3 acres extending 1.24 miles, no known utilities potential.

##### Minnesota

Land  
 Twin Cities Army Ammunition Plant  
 New Brighton Co: Ramsey MN 55112–  
 Landholding Agency: Army  
 Property Number: 219120269  
 Status: Underutilized

Comment: Approx. 49 acres, possible contamination, secured area with alternate access.

##### Nevada

Parcel A  
 Hawthorne Army Ammunition Plant  
 Hawthorne Co: Mineral NV 89415–  
 Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane

Landholding Agency: Army  
 Property Number: 219012049  
 Status: Unutilized

Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.

##### Parcel B

Hawthorne Army Ammunition Plant  
 Hawthorne Co: Mineral NV 89415–  
 Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane

Landholding Agency: Army  
 Property Number: 219012056  
 Status: Unutilized

Comment: 1920 acres; road and utility easements; no utility hookup; possible flooding problem.

##### Parcel C

Hawthorne Army Ammunition Plant  
 Hawthorne Co: Mineral NV 89415–  
 Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359.

Landholding Agency: Army  
 Property Number: 219012057  
 Status: Unutilized

Comment: 85 acres; road & utility easements; no utility hookup.

##### Parcel D

Hawthorne Army Ammunition Plant  
 Hawthorne Co: Mineral NV 89415–  
 Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359.

Landholding Agency: Army  
 Property Number: 219012058  
 Status: Unutilized

Comment: 955 acres; road & utility easements; no utility hookup.

##### New York

Land—6.965 Acres  
 Dix Avenue  
 Queensbury Co: Warren NY 12801–

Landholding Agency: Army  
 Property Number: 219540018  
 Status: Unutilized

Comment: 6.96 acres of vacant land, located in industrial area, potential utilities.

##### Tennessee

Holston Army Ammunition Plant  
 Kingsport Co: Hawkins TN 61299–6000  
 Landholding Agency: Army  
 Property Number: 219012338  
 Status: Unutilized

Comment: 8 acres; unimproved; could provide access; 2 acres unusable; near explosives.

##### Texas

Old Camp Bullis Road  
 Fort Sam Houston  
 San Antonio Co: Bexar TX 78234–5000  
 Landholding Agency: Army  
 Property Number: 219420461  
 Status: Unutilized

Comment: 7.16 acres, rural gravel road.

##### Castner Range

Fort Bliss  
 El Paso Co: El Paso TX 79916–  
 Landholding Agency: Army  
 Property Number: 219610788  
 Status: Unutilized

Comment: Approx. 56.81 acres, portion in floodway, most recent use—recreation picnic park.

#### Suitable/Unavailable Properties

##### Buildings (by State)

##### Arizona

Bldg. S–306  
 Yuma Proving Ground  
 Yuma Co: Yuma/La Paz AZ 85365–9104  
 Landholding Agency: Army  
 Property Number: 219420346  
 Status: Unutilized

Comment: 4103 sq. ft., 2-story, needs major rehab, scheduled to be vacated on or about 2/95.

##### California

Stevens Hall  
 U.S. Army Reserve Center  
 Modesto Co: Stanislaus CA 95351–0408  
 Landholding Agency: Army  
 Property Number: 219640511  
 Status: Unutilized

Comment: 12836 sq. ft., most recent use—office/training.

##### Colorado

Bldg. P–1388  
 Fort Carson  
 Colorado Springs Co: El Paso CO 80913–  
 Landholding Agency: Army  
 Property Number: 219430134  
 Status: Unutilized

Comment: 240 sq. ft., 1-story steel structure, needs rehab, secure area with alternate access, off-site use only.

##### Georgia

Bldg. T201, Fort Stewart  
 Hinesville Co: Liberty GA 31314–  
 Landholding Agency: Army  
 Property Number: 219420357  
 Status: Unutilized

Comment: 2929 sq. ft., 1-story wood frame, needs repair, most recent use—offices, off-site use only.



- Bldg. T-902, Fort Stewart  
Hinesville Co: Liberty GA 31314-  
Landholding Agency: Army  
Property Number: 219420360  
Status: Unutilized  
Comment: 2990 sq. ft., 1-story wood frame,  
needs repair, most recent use—offices, off-  
site use only.
- Bldg. 704, Fort Stewart  
Hinesville Co: Liberty GA 31314-  
Landholding Agency: Army  
Property Number: 219420364  
Status: Unutilized  
Comment: 2028 sq. ft., 1-story, needs major  
repair, most recent use—admin.
- Bldg. TT0791  
Fort Stewart  
Hinesville Co: Liberty GA 31314-  
Landholding Agency: Army  
Property Number: 219440408  
Status: Unutilized  
Comment: 1440 sq. ft., 1-story aluminum  
frame, needs rehab, most recent use—aces.  
facility, off-site use only.
- Bldg. TT0792  
Fort Stewart  
Hinesville Co: Liberty GA 31314-  
Landholding Agency: Army  
Property Number: 219440409  
Status: Unutilized  
Comment: 1440 sq. ft., 1-story aluminum  
frame, needs rehab, most recent use—aces.  
facility, off-site use only.
- Bldg. TT0793  
Fort Stewart  
Hinesville Co: Liberty GA 31314-  
Landholding Agency: Army  
Property Number: 219440410  
Status: Unutilized  
Comment: 1440 sq. ft., 1-story aluminum  
frame, needs rehab, most recent use—aces.  
facility, off-site use only.
- Bldg. 4090  
Fort Benning  
Ft. Benning Co: Muscogee GA 31905-  
Landholding Agency: Army  
Property Number: 219630007  
Status: Underutilized  
Comment: 3530 sq. ft., most recent use—  
chapel, off-site use only.
- Hawaii  
Bldg. S-275  
Fort DeRussy  
Honolulu HI 96815-  
Landholding Agency: Army  
Property Number: 219540014  
Status: Unutilized  
Comment: 26047 gross sq. ft., some termite  
damage, most recent use—office/workshop,  
limitations on use (PL90-110, Sec. 809).
- Illinois  
WARD Army Reserve Center  
1429 Northmoor Road  
Peoria Co: Peoria IL 61614-3498  
Landholding Agency: Army  
Property Number: 219430254  
Status: Unutilized  
Comment: 2 bldgs. on 3.15 acres, 36451 sq.  
ft., reserve center & warehouse, presence of  
asbestos, most recent use—office/storage/  
training.
- Louisiana  
Bldg. 3322, Fort Polk  
Texas Avenue  
Ft. Polk Co: Vernon Parish LA 71459-  
Landholding Agency: Army  
Property Number: 219440441  
Status: Underutilized  
Comment: 480 sq. ft., 1 story, need repairs,  
most recent use—offices.
- Maryland  
Bldgs. TMA4, TMA5, TMA8, TMA9  
Fort George G. Meade  
Ft. Meade Co: Anne Arundel MD 20755-5115  
Landholding Agency: Army  
Property Number: 219320292  
Status: Unutilized  
Comment: approx. 800 sq. ft., steel plate,  
gravel base ammunition storage area, fair  
condition.
- Montana  
USARC Bozeman Reserve Center  
32 South Tracy Ave.  
Bozeman Co: Gallatin MT  
Landholding Agency: Army  
Property Number: 219420391  
Status: Unutilized  
Comment: 15236 sq. ft., 3-story reserve center  
on .54 acres, bldg. on National Register of  
Historic Places, secured with alternate  
access  
GSA Number: 7-D-MT-0605.
- New Jersey  
Bldg. 1392  
Armament Research, Dev. & Eng. Center  
Picatinny Arsenal Co: Morris NJ 07806-5000  
Landholding Agency: Army  
Property Number: 219540008  
Status: Unutilized  
Comment: 1128 sq. ft., 1 story, fire/electrical/  
safety code violations, need repairs, most  
recent use—family housing.
- New York  
Reserve Center  
PFC. Robert J. Manville USARC  
1205 Lafayette Street  
Ogdensburg Co: St. Lawrence NY 13669-  
Landholding Agency: Army  
Property Number: 219710241  
Status: Unutilized  
Comment: 11,540 sq. ft., good condition.  
Motor Repair Shop  
PFC. Robert J. Manville USARC  
1205 Lafayette Street  
Ogdensburg Co: St. Lawrence NY 13669-  
Landholding Agency: Army  
Property Number: 219710242  
Status: Unutilized  
Comment: 2524 sq. ft., good condition.
- Texas  
Bldg. P-2000, Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219220389  
Status: Underutilized  
Comment: 49,542 sq. ft., 3-story brick  
structure, within National Landmark  
Historic District.  
Bldg. P-2001, Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219220390  
Status: Underutilized  
Comment: 16,539 sq. ft., 4-story brick  
structure, within National Landmark  
Historic District.
- T-189, Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219220402  
Status: Underutilized  
Comment: 11,949 sq. ft., 4-story brick  
structure, within National Landmark  
Historic District, possible lead  
contamination.  
Bldg. 1, Fort Hood  
Lubbock Co: Lubbock TX 79408-  
Landholding Agency: Army  
Property Number: 219440336  
Status: Unutilized  
Comment: 11440 sq. ft., 1 story, fair  
condition, to be vacated 6/30/95, off-site  
removal only, most recent use—army  
reserve center.  
Bldg. P-8249  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219440455  
Status: Excess  
Comment: 2775 sq. ft., 1 story wood frame,  
lead paint, off-site removal only, most  
recent use—family housing.  
Bldg. S-1461  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219610772  
Status: Unutilized  
Comment: 11568 gross sq. ft., presence of  
asbestos/lead base paint, most recent use—  
admin., off-site use only.  
Bldg. T-5114  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219610777  
Status: Unutilized  
Comment: 3612 gross sq. ft., presence of  
asbestos/lead base paint, most recent use—  
dining hall, off-site use only.  
Bldgs. P-6088 thru P-6091  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219610781  
Status: Unutilized  
Comment: 465 gross sq. ft. each, presence of  
lead base paint, needs repair, most recent  
use—storage, off-site use only.  
Bldg. T-6101  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219610782  
Status: Unutilized  
Comment: 400 sq. ft., presence of lead base  
paint, most recent use—dispatch office, off-  
site use only.
- Virginia  
Bldg. T-179  
Fort Monroe  
Ft. Monroe VA 23651-  
Landholding Agency: Army  
Property Number: 219630001  
Status: Underutilized  
Comment: 1798 sq. ft., most recent use—  
storage, off-site use only.  
Bldg. T-181  
Fort Monroe

Ft. Monroe VA 23651—  
Landholding Agency: Army  
Property Number: 219630002  
Status: Underutilized  
Comment: 1835 sq. ft., most recent use—  
office, off-sight use only.

Bldg. T-182  
Fort Monroe  
Ft. Monroe VA 23651—  
Landholding Agency: Army  
Property Number: 219630003  
Status: Underutilized  
Comment: 1997 sq. ft., most recent use—  
office, off-sight use only.

Bldg. T-183  
Fort Monroe  
Ft. Monroe VA 23651—  
Landholding Agency: Army  
Property Number: 219630004  
Status: Underutilized  
Comment: 1760 sq. ft., most recent use—  
office, off-sight use only.

Bldg. T-184  
Fort Monroe  
Ft. Monroe VA 23651—  
Landholding Agency: Army  
Property Number: 219630005  
Status: Underutilized  
Comment: 1750 sq. ft., most recent use—  
office, off-sight use only.

Bldg. T-185  
Fort Monroe  
Ft. Monroe VA 23651—  
Landholding Agency: Army  
Property Number: 219630006  
Status: Underutilized  
Comment: 861 sq. ft., most recent use—office,  
off-sight use only.

Land (by State)

#### Illinois

Bridge Ramp & Property  
Rock Island Arsenal  
Rock Island Co: Rock Island IL 61299—  
Landholding Agency: Army  
Property Number: 219620665  
Status: Underutilized  
Comment: Bridge Ramp 24 ft. wide, 600 ft.  
long.

#### North Carolina

.92 Acre—Land  
Military Ocean Terminal, Sunny Point  
Southport Co: Brunswick NC 28461-5000  
Landholding Agency: Army  
Property Number: 219610728  
Status: Underutilized  
Comment: municipal drinking waterwell,  
restricted by explosive safety regs., New  
Hanover County Buffer Zone.

10 Acre—Land  
Military Ocean Terminal, Sunny Point  
Southport Co: Brunswick NC 28461-5000  
Landholding Agency: Army  
Property Number: 219610729  
Status: Underutilized  
Comment: municipal park, restricted by  
explosive safety regs., New Hanover  
County Buffer Zone.

257 Acre—Land  
Military Ocean Terminal, Sunny Point  
Southport Co: Brunswick NC 28461-5000  
Landholding Agency: Army  
Property Number: 219610730  
Status: Underutilized

Comment: state park, restricted by explosive  
safety regs., New Hanover County Buffer  
Zone.

24.83 acres—Tract of Land  
Military Ocean Terminal, Sunny Point  
Southport Co: Brunswick NC 28461-5000  
Landholding Agency: Army  
Property Number: 219620685  
Status: Underutilized  
Comment: 24.83 acres, municipal park, most  
recent use—New Hanover County  
explosive buffer zone.

#### Texas

Vacant Land, Fort Sam Houston  
All of Block 1800, Portions of Blocks 1900,  
3100 and 3200  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219220438  
Status: Unutilized  
Comment: 210.83 acres, 85% located in  
floodplain, presence of unexploded  
ordnance, 2 land fill areas.

#### Suitable/To Be Excessed

##### *Buildings (by State)*

#### Idaho

Moore Hall U.S. Army Rsvce Ctr  
1575 N. Skyline Dr.  
Idaho Falls Co: Bonneville ID 83401—  
Landholding Agency: Army  
Property Number: 219720207  
Status: Unutilized  
Comment: 12582 sq. ft. dental clinic in  
mobile home, 1138 sq. ft. maint. shop,  
good condition, possible asbestos.

#### Illinois

Stenafich Army Reserve Center  
1600 E. Willow Road  
Kankakee Co: Kankakee IL 60901-2631  
Landholding Agency: Army  
Property Number: 219430255  
Status: Unutilized  
Comment: 2 bldgs.—reserve center & vehicle  
maint. shop on 3.68 acres, 5641 sq. ft.,  
most recent use—office/storage/training,  
presence of asbestos.

#### Indiana

Bldg. 27, USARC Paulsen  
North Judson Co: Starke IN 46366—  
Landholding Agency: Army  
Property Number: 219610669  
Status: Unutilized  
Comment: 10379 sq. ft., presence of asbestos,  
most recent use—office/storage/training.

Bldg. 36, USARC Paulsen  
North Judson Co: Starke IN 46366—  
Landholding Agency: Army  
Property Number: 219610670  
Status: Unutilized  
Comment: 1802 sq. ft., presence of asbestos,  
most recent use—vehicle maintenance

#### Kansas

U.S. Army Reserve Center Annex  
800 South 29th St.  
Parsons KS  
Landholding Agency: Army  
Property Number: 219720208  
Status: Unutilized  
Comment: 3157 sq. ft., 1-story, reserve center  
annex and storage.

#### Maine

Reserve Ctr. Bldg. & Land  
Bridgeton Memorial US Army Reserve Center  
Depot Street  
Bridgton Co: Cumberland ME 04009-1211  
Landholding Agency: Army  
Property Number: 219710122  
Status: Unutilized  
Comment: 4484 sq. ft., 1-story, brick on 3.65  
acres.

Maintenance Bldg.  
Bridgeton Memorial US Army Reserve Center  
Depot Street  
Bridgton Co: Cumberland ME 04009-1211  
Landholding Agency: Army  
Property Number: 219710123  
Status: Unutilized  
Comment: 1325 sq. ft., 1-story, brick, most  
recent use—vehicle maintenance shop.

#### New York

Bldg. P-1  
Glen Falls Reserve Center  
Glen Falls Co: Warren NY 12801—  
Location: 67-73 Warren Street  
Landholding Agency: Army  
Property Number: 219540015  
Status: Unutilized  
Comment: 19613 sq. ft., 2 story w/basement,  
concrete block/brick frame on .475 acres.

Bldgs. P-1 & P-2  
Elizabethtown Reserve Center  
Corner of Water and Cross Streets  
Elizabethtown Co: Esses NY 12932—  
Landholding Agency: Army  
Property Number: 219540016  
Status: Unutilized  
Comment: 4316 sq. ft. reserve center/1325 sq.  
ft. motor repair shop, 1 story each, concrete  
block/brick frame, on 5.05 acres.

Bldgs. P-1 & P-2  
Olean Reserve Center  
423 Riverside Drive Olean Co: Cattaraugus  
NY 14760—  
Landholding Agency: Army  
Property Number: 219540017  
Status: Unutilized  
Comment: 4464 sq. ft. reserve center/1325 sq.  
ft. motor repair shop, 1 story each, concrete  
block/brick frame, on 3.9 acres.

#### Reserve Center

Sgt. H. Grover H. O'Connor USARC  
303 N. Lackwarna Street  
Wayland Co: Steuber NY 14572—  
Landholding Agency: Army  
Property Number: 219710239  
Status: Unutilized  
Comment: 17102 sq. ft., good condition.

#### Motor Repair Shop

Sgt. H. Grover H. O'Connor USARC  
303 N. Lackwarna Street  
Wayland Co: Steuber NY 14572—  
Landholding Agency: Army  
Property Number: 219710240  
Status: Unutilized  
Comment: 1325 sq. ft., good condition.

#### Oklahoma

Reserve Training  
James T. Coker Reserve Center  
1500 N First Street  
Durant Co: Bryan OK  
Landholding Agency: Army  
Property Number: 219710245  
Status: Unutilized

Comment: 14086 sq. ft., good condition.

Maintenance Shop  
James T. Coker Reserve Center  
1500 N First Street  
Durant Co: Bryan OK  
Landholding Agency: Army  
Property Number: 219710246  
Status: Unutilized  
Comment: needs repair.

#### Oregon

Santo Hall U.S. Army Rsvs Ctr  
701 N. Columbus Ave.  
Medford Co: Jackson OR 97501-  
Landholding Agency: Army  
Property Number: 219720211  
Status: Unutilized  
Comment: 12907 sq. ft. admin. bldg., 2332 sq.  
ft. maintenance shop, good condition.

#### Wisconsin

U.S. Army Reserve Center  
2310 Center Street  
Racine Co: Racine WI 53403-3330  
Landholding Agency: Army  
Property Number: 219620740  
Status: Unutilized  
Comment: 3 bldgs. (14,137 sq. ft.) on 3 acres,  
needs repair, most recent use—office/  
storage/training.

#### Land (by State)

##### California

U.S. Army Reserve Center  
Mountain Lakes Industrial Park  
Redding Co: Shasta CA  
Landholding Agency: Army  
Property Number: 219610645  
Status: Unutilized  
Comment: 5.13 acres within a light industrial  
park.

##### New Hampshire

Land—7.97  
Industrial Park  
Belmont Co: Belnap NH  
Landholding Agency: Army  
Property Number: 219710118  
Status: Unutilized  
Comment: 7.97 acres, severe sloping.

##### Texas

Camp Bullis, Tract 9  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219420462  
Status: Unutilized  
Comment: 1.07 acres of undeveloped land.

#### Unsuitable Properties

##### Buildings (by State)

##### Alabama

196 Bldgs.  
Redstone Arsenal  
Redstone Arsenal Co: Madison AL 35898-  
Landholding Agency: Army  
Property Number: 219014015, 219014018,  
219014036, 219014060, 219014292,  
219230190, 219330002, 219430266-  
219430277, 219430284-219430290,  
219440078-219440082, 219530010-  
219530048, 219610272-219610280,  
219630015-219630018, 219710161-  
219710171, 219720002-219720015  
Status: Unutilized

Reason: Secured Area. (Some are extensively  
deteriorated.)

113 Bldgs., Fort Rucker  
Ft. Rucker Co: Dale AL 36362  
Landholding Agency: Army  
Property Number: 219220343-219220344,  
219310016, 219320001, 219330003-  
219330010, 219340116, 219340118,  
219340124-219340125, 219410022,  
219430261-219430263, 219440083,  
219440094-219440095, 219520057-  
219520058, 219530008, 219620371-  
219620374, 219620802, 219630009-  
219630014, 219640001-219640004,  
219640440, 219710091, 219730008-  
219730013

Status: Unutilized

Reason: Extensive deterioration.

Bldgs. 25203, 25205-25207, 25209, 25501,  
25503, 25505, 25507, 25510

##### Fort Rucker

##### Stagefield Areas

Fort Rucker Co: Dale AL 36362-5138  
Landholding Agency: Army  
Property Number: 219410020-219410021  
Status: Unutilized  
Reason: Secured area.

27 Bldgs.

##### Phosphate Development Works

Muscle Shoals Co: Colbert AL 35660-1010  
Landholding Agency: Army  
Property Number: 219220789-219220815  
Status: Unutilized  
Reason: Extensive deterioration.

Bldg. 402-C

Alabama Army Ammunition Plant  
Childersburg Co: Talladega AL 35044  
Landholding Agency: Army  
Property Number: 219420124  
Status: Unutilized  
Reason: Secured Area.

##### Alaska

17 Bldgs.

##### Fort Greely

Ft. Greely AK 99790-  
Landholding Agency: Army  
Property Number: 219210124-219210125,  
219220320-219220332, 219520064  
Status: Unutilized  
Reason: Extensive deterioration.

9 Bldgs., Fort Wainwright

Ft. Wainwright AK 99703

Landholding Agency: Army  
Property Number: 219640006-219640007,  
219710090, 219710195-219710198

Status: Underutilized

Reason: Within 2000 ft. of flammable or  
explosive material. Secured Area.  
Floodway.

Bldg. 1501, Fort Greely

Ft. Greely AK 99505

Landholding Agency: Army  
Property Number: 219240327  
Status: Unutilized  
Reason: Secured Area.

Sullivan Roadhouse, Fort Greely

Ft. Greely AK

Landholding Agency: Army  
Property Number: 219430291  
Status: Unutilized  
Reason: Extensive deterioration.

31 Bldgs., Fort Richardson

Ft. Richardson AK 99505

Landholding Agency: Army

Property Number: 219620370, 219710199-  
219710220, 219720001, 219730001-  
219730007

Status: Unutilized

Reason: Extensive deterioration.

##### Arizona

32 Bldgs.

##### Navajo Depot Activity

Bellemont Co: Coconino AZ 86015-  
Location: 12 miles west of Flagstaff, Arizona  
on I-40

Landholding Agency: Army

Property Number: 219014560-219014591

Status: Underutilized

Reason: Secured Area.

10 properties: 753 earth covered igloos; above  
ground standard magazines

##### Navajo Depot Activity

Bellemont Co: Coconino AZ 86015-

Location: 12 miles west of Flagstaff, Arizona  
on I-40.

Landholding Agency: Army

Property Number: 219014592-219014601

Status: Underutilized

Reason: Secured Area.

9 Bldgs.

##### Navajo Depot Activity

Bellemont Co: Coconino AZ 86015-5000

Location: 12 miles west of Flagstaff on I-40

Landholding Agency: Army

Property Number: 219030273-219030274,  
219120175-219120181

Status: Unutilized

Reason: Secured Area.

Bldgs. 68054, 64013

##### Fort Huachuca

Sierra Vista Co: Cochise AZ 85635-

Landholding Agency: Army

Property Number: 219430315, 219640479

Status: Excess

Reason: Extensive deterioration.

Bldg. S-2085

##### Yuma Proving Ground

Yuma Co: Yuma/LaPaz AZ 85365-9104

Landholding Agency: Army

Property Number: 219330020

Status: Unutilized

Reason: Secured Area.

Bldgs. T-231

##### Yuma Proving Ground

Yuma Co: LaPaz AZ 85365-9104

Landholding Agency: Army

Property Number: 219510093

Status: Unutilized

Reason: Extensive deterioration.

##### Arkansas

6 Bldgs.

##### Pine Bluff Arsenal

Pine Bluff Co: Jefferson AR 71602-9500

Landholding Agency: Army

Property Number: 219420138-219420142,  
219440077

Status: Unutilized

Reason: Secured Area. Extensive  
deterioration.

194 Bldgs., Fort Chaffee

Ft. Chaffee Co: Sebastian AR 72905-5000

Landholding Agency: Army

Property Number: 219630019-219630029,  
219640445-219640477

Status: Unutilized

Reason: Extensive deterioration.

- California  
Bldgs. P-177, P-178, 325, S-308, S-308A, T-308B  
Fort Hunter Liggett  
Jolon Co: Monterey CA 93928-  
Landholding Agency: Army  
Property Number: 219012414-219012415,  
219012600, 219240284-219240285,  
219240287  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material. (Some are in a secured  
area.)  
Bldg. 18  
Riverbank Army Ammunition Plant  
5300 Claus Road  
Riverbank Co: Stanislaus CA 95367-  
Landholding Agency: Army  
Property Number: 219012554  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material. Secured Area.  
11 Bldgs., Nos. 2-8, 156, 1, 120, 181  
Riverbank Army Ammunition Plant  
Riverbank Co: Stanislaus CA 95367-  
Landholding Agency: Army  
Property Number: 219013582-219013588,  
219013590, 219240444-219240446  
Status: Underutilized  
Reason: Secured Area.  
9 Bldgs.  
Oakland Army Base  
Oakland Co: Alameda CA 94626-5000  
Landholding Agency: Army  
Property Number: 219013903-219013906,  
219120051, 219340008-219340011  
Status: Unutilized  
Reason: Secured Area. (Some are extensively  
deteriorated.)  
Bldg. S-184  
Fort Hunter Liggett  
Ft. Hunter Liggett Co: Monterey CA 93928-  
Landholding Agency: Army  
Property Number: 219014602  
Status: Underutilized  
Reason: Secured Area.  
Bldg. 173  
Roth Road—Sharpe Army Depot  
Lathrop Co: San Joaquin CA  
Landholding Agency: Army  
Property Number: 219014940  
Status: Unutilized  
Reason: Secured Area.  
Bldgs. 13, 171, 178 Riverbank Ammun Plant  
5300 Claus Road  
Riverbank Co: Stanislaus CA 95367-  
Landholding Agency: Army  
Property Number: 219120162-219120164  
Status: Underutilized  
Reason: Secured Area.  
Bldgs. T-187, 194 Fort Hunter Liggett  
Ft. Hunter Liggett Co: Monterey CA 93928  
Landholding Agency: Army  
Property Number: 219240321, 219610287  
Status: Unutilized  
Reason: Secured Area. Extensive  
deterioration.  
Bldg. 36, Tracy Facility  
Tracy Co: San Joaquin CA 95376  
Landholding Agency: Army  
Property Number: 219330023  
Status: Unutilized  
Reason: Secured Area.  
10 Bldgs., Fort Irwin  
Ft. Irwin Co: San Bernardino CA 92310  
Landholding Agency: Army  
Property Number: 219330026-219330035  
Status: Unutilized  
Reason: Secured Area. Extensive  
Deterioration.  
12 Bldgs.  
DDDRW Sharpe Facility  
Tracy Co: San Joaquin CA 95331  
Landholding Agency: Army  
Property Number: 219430025-219430026,  
219430032-219430033, 219610289-  
219610296  
Status: Unutilized  
Reason: Secured Area.  
6 Buildings  
Oakland Army Base  
Oakland Co: Alameda CA 94626  
Location: Include: 90, 790, 792, 807, 829, 916  
Landholding Agency: Army  
Property Number: 219510097  
Status: Unutilized  
Reason: Secured Area. Within 2000 ft. of  
flammable or explosive material.  
Bldg. 43; Bunkers 41, 42, 45, 46, 47  
Santa Rosa High Frequency Radio Station  
Santa Rosa CA  
Landholding Agency: Army  
Property Number: 219520036  
Status: Excess  
Reason: Secured Area.  
Bldgs. 29, 39, 73, 154, 155 193, 204, 257  
Los Alamitos Co: Orange CA 90720-5001  
Landholding Agency: Army  
Property Number: 219520040  
Status: Unutilized  
Reason: Extensive deterioration.  
Bldgs. 1103, 1131  
Parks Reserve Forces Training Area  
Dublin Co: Alameda CA 94568-5201  
Landholding Agency: Army  
Property Number: 219520056  
Status: Unutilized  
Reason: Extensive deterioration.  
Bldgs. 144, 429-430  
National Training Center, Fort Irwin  
Ft. Irwin Co: San Bernardino CA 92310  
Landholding Agency: Army  
Property Number: 219530066  
Status: Unutilized  
Reason: Secured Area. Extensive  
deterioration.  
19 Bldgs.  
National Training Center, Fort Irwin  
Ft. Irwin Co: San Bernardino CA 92310  
Location: #556, 558, 562, 564, 578, 581, 584, 586,  
609, 474, 600, 410, 427, 485, 483, 579, 583, 570,  
568  
Landholding Agency: Army  
Property Number: 219530067  
Status: Unutilized  
Reason: Secured Area, Extensive  
Deterioration.  
20 Buildings  
National Training Center  
Fort Irwin Co: San Bernardino CA 92311-  
5097  
Location: 426, 428, 435-437, 439, 441, 462,  
464, 466, 510, 527, 529, 537, 539, 544-545,  
547, 549, 608  
Landholding Agency: Army  
Property Number: 219610288  
Status: Unutilized  
Reason: Secured Area.
- Bldg. T-386, National Training Center  
Fort Irwin  
Ft. Irwin Co: San Bernardino CA 92310  
Landholding Agency: Army  
Property Number: 219640008  
Status: Unutilized  
Reason: Extension deterioration.  
Bldg. 401  
Sierra Army Depot  
Herlong Co: Lassen CA 96113  
Landholding Agency: Army  
Property Number: 219620382  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or  
explosive material. Secured Area.  
Bldgs. 18013, 18030  
Camp Roberts  
Camp Roberts Co: San Obispo CA  
Landholding Agency: Army  
Property Number: 219730014  
Status: Excess  
Reason: Extensive deterioration.  
Colorado  
Bldgs. T-412, 431, 433  
Rocky Mountain Arsenal  
Commerce Co: Adams CO 80022-2180  
Landholding Agency: Army  
Property Number: 219320014-219320016  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material; Secured Area.  
Extensive deterioration.  
69 Bldgs. Fort Carson  
Ft. Carson Co: El Paso CO 80913-5023  
Landholding Agency: Army  
Property Number: 219610297-219610318,  
219620384-219620409, 219640009,  
219710093, 219710172-219710179,  
219730015-219730017  
Status: Unutilized  
Reason: Extensive deterioration.  
Georgia  
Fort Stewart  
Sewage Treatment Plant  
Ft. Stewart Co: Hinesville GA 31314-  
Landholding Agency: Army  
Property Number: 219013922  
Status: Unutilized  
Reason: Sewage treatment.  
Facility 12304  
Fort Gordon  
Augusta Co: Richmond GA 30905-  
Location: Located off Lane Avenue  
Landholding Agency: Army  
Property Number: 219014787  
Status: Unutilized  
Reason: Wheeled vehicle grease/inspection  
rack.  
152 Bldgs.  
Fort Gordon  
Augusta Co: Richmond GA 30905-  
Landholding Agency: Army  
Property Number: 219220269, 219220293,  
219320026, 219410039-219410072,  
219410089, 219410091-219410115,  
219410120, 219410122, 219410125,  
219410131, 219440199, 219520067,  
219610330-219610333, 219610336,  
219630042-219630069, 219640011-  
219640037, 219710094-219710095,  
219730018-219730020  
Status: Unutilized  
Reason: Extensive deterioration.  
Bldgs. 11726-11727

- Fort Gordon  
Augusta Co: Richmond GA 30905–  
Landholding Agency: Army  
Property Number: 219210138–219210139  
Status: Unutilized  
Reason: Secured Area.
- 4 Bldgs., Fort Benning  
Ft. Benning Co: Muscogee GA 31905  
Landholding Agency: Army  
Property Number: 219220334–219220337  
Status: Unutilized  
Reason: Detached lavatory.
- 21 Bldgs., Fort Benning  
Ft. Benning Co: Muscogee GA 31905  
Landholding Agency: Army  
Property Number: 219520150, 219610319–  
219610324, 219620808, 219640040–  
219640044, 219640046, 219720017–  
219720024  
Status: Unutilized  
Reason: Extensive deterioration.
- 33 Bldgs.  
Fort Gillem  
Forest Park Co: Clayton GA 30050  
Landholding Agency: Army  
Property Number: 219310091, 219310093–  
219310094, 219310099, 219310107,  
219320030, 219320033, 219620416–  
219620421, 219620815–219620824,  
219730021–219730030  
Status: Unutilized  
Reason: (Some are extensively deteriorated.)  
(Most are in a secured area.)
- 8 Bldgs., Fort Stewart  
Hinesville Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 219420162, 219630072–  
219630077, 219710237  
Status: Unutilized  
Reason: Extensive Deterioration.
- 14 Bldgs., Hunter Army Airfield  
Savannah Co: Chatham GA 31409  
Landholding Agency: Army  
Property Number: 219430319, 219610326,  
219620413, 219630031–219630039,  
219640038, 219730031  
Status: Unutilized  
Reason: Extensive deterioration.
- 6 Bldgs., Fort McPherson  
Ft. McPherson Co: Fulton GA 30330–5000  
Landholding Agency: Army  
Property Number: 219620803, 219630070,  
219640010, 219730032–219730034  
Status: Underutilized  
Reason: Secured Area.
- Hawaii  
PU–01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11  
Schofield Barracks  
Kolekole Pass Road  
Wahiawa Co: Wahiawa HI 96786–  
Landholding Agency: Army  
Property Number: 219014836–219014837  
Status: Unutilized  
Reason: Secured Area.
- P–3384  
Schofield Barracks  
Wahiawa Co: Wahiawa HI 96786–  
Landholding Agency: Army  
Property Number: 219030361  
Status: Unutilized  
Reason: Secured Area.
- 4 Bldgs., Fort Shafter  
Honolulu Co: Honolulu HI 96819  
Landholding Agency: Army  
Property Number: 219610349–219610350,  
219730035–219730036  
Status: Unutilized  
Reason: Extensive deterioration.
- 6 Bldgs.  
Schofield Barracks  
Wahiawa Co: Wahiawa HI 96786  
Landholding Agency: Army  
Property Number: 219420154, 219520063,  
219610347, 219630080, 219640050–  
219640051  
Status: Unutilized  
Reason: Extensive deterioration.
- 5 Bldgs.  
Wheeler Army Airfield  
Wahiawa HI 96857  
Landholding Agency: Army  
Property Number: 219520039, 219610348,  
219630078–219630079, 219640052  
Status: Unutilized  
Reason: Secured Area. (Some are extensively  
deteriorated.)
- Bldgs. P–33, P–30  
Dillingham Military Reservation  
Waialua HI 96791  
Landholding Agency: Army  
Property Number: 219620423–219620424  
Status: Unutilized  
Reason: Extensive deterioration.
- Illinois  
609 Bldgs. and Groups  
Joliet Army Ammunition Plant  
Joliet Co: Will IL 60436–  
Landholding Agency: Army  
Property Number: 219010153–219010317,  
219010319–219010407, 219010409–  
219010413, 219010415–219010439,  
219011750–219011879, 219011881–  
219011908, 219012331, 219013076–  
219013138, 219014722–219014781,  
219030277–219030278, 219040354,  
219140441–219140446, 219210146,  
219240457–219240465, 219330062–  
219330094  
Status: Unutilized  
Reason: Secured Area; many within 2000 ft.  
of flammable or explosive materials; some  
within floodway.
- Bldgs. 58, 59 and 72, 69, 64, 105, 135  
Rock Island Arsenal  
Rock Island Co: Rock Island IL 61299–5000  
Landholding Agency: Army  
Property Number: 219110104–219110108,  
219620427  
Status: Unutilized  
Reason: Secured Area.
- Bldgs. 133, 141 Rock Island Arsenal  
Gillespie Avenue  
Rock Island Co: Rock Island IL 61299–  
Landholding Agency: Army  
Property Number: 219210100, 219620428  
Status: Unutilized  
Reason: Extensive deterioration.
- 13 Bldgs. Savanna Army Depot Activity  
Savanna Co: Carroll IL 61074  
Landholding Agency: Army  
Property Number: 219230126–219230127,  
219430326–219430335, 219430397  
Status: Unutilized  
Reason: Extensive deterioration.
- Bldgs. 103, 114, 417, 110, S–234  
Charles Melvin Price Support Center  
Granite City Co: Madison IL 62040  
Landholding Agency: Army  
Property Number: 219420182–219420184,  
219510008, 219710096  
Status: Unutilized  
Reason: Secured Area. Extensive  
deterioration.
- Indiana  
328 Bldgs.  
Indiana Army Ammunition Plant (INAAP)  
Charlestown Co: Clark IN 47111–  
Landholding Agency: Army  
Property Number: 219010913–219010920,  
219010924–219010936, 219010952,  
219010955, 219010957, 219010959–  
219010960, 219010962–219010964,  
219010966–219010967, 219010969–  
219010970, 219011449, 219011454,  
219011456–219011457, 219011459–  
219011464, 219013764, 219013848,  
219014608–219014653, 219014655–  
219014661, 219014663–219014683,  
219030315, 219120168–219120171,  
219140425–219140440, 219210152–  
219210155, 219230034–219230037,  
219320036–219320111, 219420170–  
219420181, 219440159–219440163,  
219610367–219610413, 219620435–  
219620452  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material. (Most are within a  
secured area.)
- 172 Bldgs.  
Newport Army Ammunition Plant  
Newport Co: Vermillion IN 47966–  
Landholding Agency: Army  
Property Number: 219011584, 219011586–  
219011587, 219011589–219011590,  
219011592–219011627, 219011629–  
219011636, 219011638–219011641,  
219210149–219210151, 219220220,  
219230032–219230033, 219430336–  
219430338, 219520033, 219520042,  
219530075–219530097  
Status: Unutilized  
Reason: Secured Area. (Some are extensively  
deteriorated.)
- 2 Bldgs.  
Atterbury Reserve Forces Training Area  
Edinburgh Co: Johnson IN 46124–1096  
Landholding Agency: Army  
Property Number: 219230030–219230031  
Status: Unutilized  
Reason: Extensive deterioration.
- Bldg. 2635, Indiana Army Ammunition Plant  
Charlestown Co: Clark IN 47111  
Landholding Agency: Army  
Property Number: 219240322  
Status: Unutilized  
Reason: Secured Area. Extensive  
deterioration.
- 22 Bldgs., Camp Atterbury  
Edinburgh IN 46124  
Landholding Agency: Army  
Property Number: 219610351–219610366,  
219620429–219620434  
Status: Unutilized  
Reason: Secured Area. Extensive  
deterioration.
- Iowa  
96 Bldgs.  
Iowa Army Ammunition Plant  
Middletown Co: Des Moines IA 52638–  
Landholding Agency: Army  
Property Number: 219012605–219012607,  
219012609, 219012611, 219012613,

219012615, 219012620, 219012622, 219012624, 219013706-219013738, 219120172-219120174, 219440112-219440158, 219510089, 219520002, 219520070, 219610414

Status: Unutilized

Reason: (Many are in a Secured Area) (Most are within 2000 ft. of flammable or explosive material.)

30 Bldgs., Iowa Army Ammunition Plant  
Middletown Co: Des Moines IA 52638

Landholding Agency: Army

Property Number: 219230005-219230029, 219310017, 219330061, 219340091, 219520053, 219520151

Status: Unutilized

Reason: Extensive deterioration.

Kansas

37 Bldgs.

Kansas Army Ammunition Plant  
Production Area

Parsons Co: Labette KS 67357-

Landholding Agency: Army

Property Number: 219011909-219011945

Status: Unutilized

Reason: Secured Area. (Most are within 2000 ft. of flammable or explosive material.)

244 Bldgs.

Sunflower Army Ammunition Plant  
35425 W. 103rd Street

DeSoto Co: Johnson KS 66018-

Landholding Agency: Army

Property Number: 219040039, 219040045,

219040048-219040051, 219040053, 219040055, 219040063-219040067, 219040072-219040080, 219040086-219040099, 219040102, 219040111-219040112, 219040118-219040119, 219040121-219040124, 219040126, 219040128-219040133, 219040136-219040137, 219040139-219040140, 219040143, 219040149-219040154, 219040156, 219040160-219040165, 219040168-219040170, 219040180, 219040182-219040185, 219040190-219040191, 219040202, 219040205-219040207, 219040208, 219040210-219040221, 219040234-219040239, 219040241-219040254, 219040256-219040257, 219040260, 219040262-219040267, 219040270-219040279, 219040282-219040319, 219040321-219040323, 219040325-219040327, 219040330-219040335, 219040349, 219040353, 219110073, 219140569-219140577, 219140580-219140591, 219140594, 219140599-219140601, 219140606-219140612, 219420185-219420187, 219610415-219610437

Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material. Floodway. Secured Area.

21 Bldgs.

Sunflower Army Ammunition Plant  
35425 W. 103rd Street

DeSoto Co: Johnson KS 66018-

Landholding Agency: Army

Property Number: 219040007-219040008, 219040010-219040012, 219040014-219040027, 219040030-219040031

Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material. Floodway.

54 Bldgs.

Fort Riley

Ft. Riley Co: Geary KS 66442-

Landholding Agency: Army

Property Number: 219430040, 219530100-219530101, 219530112-219530125, 219610451-219610468, 219610613-219610626, 219620453-219620455, 219620825-219620826, 219630085

Status: Unutilized

Reason: Extensive deterioration.

11 Latrines

Sunflower Army Ammunition Plant

35425 West 103rd

Desota Co: Johnson KS 66018-

Landholding Agency: Army

Property Number: 219140578-219140579, 219140593, 219140595-219140598, 219140602-219140605

Status: Unutilized

Reason: Detached Latrine.

68 Bldgs., Sunflower Army Ammunition Plant

Desota Co: Johnson KS 66018

Landholding Agency: Army

Property Number: 219240333-219240383, 219240387, 219240389, 219240390, 219240394, 219240402, 219240410-219240416, 219240420, 219240434-219240437

Status: Unutilized

Reason: Secured Area. Within 2000 ft. of flammable or explosive material. Extensive deterioration.

121 Bldgs.

Kansas Army Ammunition Plant

Parsons Co: Labette KS 67357

Landholding Agency: Army

Property Number: 219620518-219620638

Status: Unutilized

Reason: Secured Area.

Kentucky

Bldg. 126

Lexington-Blue Grass Army Depot

Lexington Co: Fayette KY 40511-

Location: 12 miles northeast of Lexington, Kentucky

Landholding Agency: Army

Property Number: 219011661

Status: Unutilized

Reason: Secured Area. Sewage treatment facility.

Bldg. 12

Lexington-Blue Grass Army Depot

Lexington Co: Fayette KY 40511-

Location: 12 miles Northeast of Lexington, Kentucky

Landholding Agency: Army

Property Number: 219011663

Status: Unutilized

Reason: Industrial waste treatment plant.

5 Bldgs., Fort Knox

Ft. Know Co: Hardin KY 40121-

Landholding Agency: Army

Property Number: 219320113-219320115, 219410146, 219630081

Status: Unutilized

Reason: Extensive deterioration.

32 Bldgs., Fort Campbell

Ft. Campbell Co: Christian KY 42223

Landholding Agency: Army

Property Number: 219730038-219730069

Status: Unutilized

Reason: Extensive deterioration.

Louisiana

509 Bldgs.

Louisiana Army Ammunition Plant

Doylin Co: Webster LA 71023-

Landholding Agency: Army

Property Number: 219011668-219011670, 219011714-219011716, 219011735-219011737, 219012112, 219013571-219013572, 219013863-219013869, 219110127, 219110131, 219110136, 219120290, 219240138-219240150, 219420332, 219610049-219610263, 219620001-219620200, 219620745-219620801

Status: Unutilized

Reason: Secured Area. (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated).

Staff Residences

Louisiana Army Ammunition Plant

Doyline Co: Webster LA 71023-

Landholding Agency: Army

Property Number: 219120284-219120286

Status: Excess

Reason: Secured Area.

19 Bldgs., Fort Polk

Ft. Polk Co: Vernon Parish LA 71459-7100

Landholding Agency: Army

Property Number: 219430339, 219520059, 219620458-219620466, 219640053-219640060

Status: Unutilized

Reason: Extensive deterioration. (Some are in Floodway.)

Maine

Reserve Ctr. Bldg. & 5 acres

Slager Memorial USAR Center

Union Street

Bangor Co: Penobscot ME 04401-3011

Landholding Agency: Army

Property Number: 219710097

Status: Unutilized

Reason: Within airport runway clear zone.

Maintenance Bldg.

Slager Memorial USAR Center

Union Street

Bangor Co: Penobscot ME 04401-3011

Landholding Agency: Army

Property Number: 219710098

Status: Unutilized

Reason: Within airport runway clear zone.

Maryland

114 Bldgs.

Aberdeen Proving Ground

Aberdeen City Co: Harford MD 21005-5001

Landholding Agency: Army

Property Number: 219011406-219011417,

219012608, 219012610, 219012612, 219012614, 219012616-219012617, 219012619, 219012623, 219012625-219012629, 219012631, 219012633-219012635, 219012637-219012642, 219012645-219012651, 219012655-219012664, 219013773, 219014711-219014712, 219030316, 219110140, 219240329, 219530128-219530131, 219610476-219610483, 219610485, 219610489-219610492, 219620467-219620471, 219630091-219630095, 219640062, 219710099, 219730070-219730084

Status: Unutilized

Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive

- material.) (Some are in a floodway.) (Some are extensively deteriorated.)
- Bldg. 10401  
Aberdeen Proving Ground  
Aberdeen Area  
Harford Co: Harford MD 21005-5001  
Landholding Agency: Army  
Property Number: 219110138  
Status: Unutilized  
Reason: Sewage treatment plant.
- Bldg. 10402  
Aberdeen Proving Ground  
Aberdeen Area  
Aberdeen City Co: Harford MD 21005-5001  
Landholding Agency: Army  
Property Number: 219110138  
Status: Unutilized  
Reason: Sewage pumping station.
- 25 Bldgs. Ft. George G. Meade  
Ft Meade Co: Anne Arundel MD 20755-  
Landholding Agency: Army  
Property Number: 219130059, 219140460-  
219140461, 219220147, 219220173,  
219220190, 219310031, 219330116,  
219330118, 219420334, 219530167-  
219530168, 219630088-219630090,  
219710183-219710192  
Status: Unutilized  
Reason: Extensive deterioration.
- Bldgs. 132, 135 Fort Ritchie  
Ft. Ritchie Co: Washington MD 21719-5010  
Landholding Agency: Army  
Property Number: 219330109-219330110  
Status: Underutilized  
Reason: Secured Area.
- Bldgs. T-116, 703 Fort Detrick  
Frederick Co: Frederick MD 21762-5000  
Landholding Agency: Army  
Property Number: 219340012, 219640063  
Status: Unutilized  
Reason: Extensive deterioration.
- Massachusetts  
Material Technology Lab  
405 Arsenal Street  
Watertown Co: Middlesex MA 02132-  
Landholding Agency: Army  
Property Number: 219120161  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or  
explosive material. Floodway. Secured  
Area.
- Bldg. 3462, Camp Edwards  
Massachusetts Military Reservation  
Bourne Co: Barnstable MA 024620-5003  
Landholding Agency: Army  
Property Number: 219230095  
Status: Unutilized  
Reason: Secured Area. Extensive  
deterioration.
- Bldgs. 3596, 1209-1211 Camp Edwards  
Massachusetts Military Reservation  
Bourne Co: Barnstable MA 02462-5003  
Landholding Agency: Army  
Property Number: 219230096, 219310018-  
219310020  
Status: Unutilized  
Reason: Secured Area.
- Bldg. 101  
Hudson Family Housing  
U.S. Army Soldier Systems Command  
Hudson Co: Middlesex MA 01749  
Landholding Agency: Army  
Property Number: 219730037  
Status: Unutilized
- Reason: Extensive deterioration.  
Michigan  
Detroit Arsenal Tank Plant  
28251 Van Dyke Avenue  
Warren Co: Macomb MI 48090-  
Landholding Agency: Army  
Property Number: 219014605  
Status: Underutilized  
Reason: Secured Area.  
Bldgs. 5755-5756  
Newport Weekend Training Site  
Carleton Co: Monroe MI 48166  
Landholding Agency: Army  
Property Number: 219310060-219310061  
Status: Unutilized  
Reason: Secured Area. Extensive  
deterioration.
- 25 Bldgs.  
Fort Custer Training Center  
2501 26th Street  
Augusta Co: Kalamazoo MI 49102-9205  
Landholding Agency: Army  
Property Number: 219014947-219014963,  
219140447-219140454  
Status: Unutilized  
Reason: Secured Area.  
Bldgs. 914, 925, 927-928, 939  
U.S. Army Garrison-Selfridge  
Selfridge Air National Guard  
Mt. Clemens MI 48045-5018  
Landholding Agency: Army  
Property Number: 219730085-219730089  
Status: Unutilized  
Reason: Secured Area.
- Bldgs. 2044, 2066  
U.S. Army Tank Aramaments Command  
Seville Manor  
Chesterfield Township MI 48047  
Landholding Agency: Army  
Property Number: 219730090  
Status: Unutilized  
Reason: Extensive deterioration.
- Minnesota  
169 Bldgs.  
Twin Cities Army Ammunition Plant  
New Brighton Co: Ramsey MN 55112-  
Landholding Agency: Army  
Property Number: 219120165-219120166,  
219210014-219210015, 219220227-  
21922035, 219240328, 219310055-  
219310056, 219320145-219320156,  
219330096-219330108, 219340015,  
219410159-219410189, 219420195-  
219420284, 219430059-219430064  
Status: Unutilized  
Reason: Secured Area. (Most are within 2000  
ft. of flammable or explosive material.)  
(Some are extensively deteriorated.)
- Mississippi  
Bldg. 8301  
Mississippi Army Ammunition Plant  
Stennis Space Center Co: Hancock MS  
39529-7000  
Landholding Agency: Army  
Property Number: 219040438  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material. Secured Area.
- Missouri  
Lake City Army Ammo. Plant  
59, 59A, 59C, 59B, 18, 94, 149, T201, 6A, 6C,  
6D, 6E, 6F  
Independence Co: Jackson MO 64050-  
Landholding Agency: Army  
Property Number: 219013666-219013669,  
219530134-219530138  
Status: Unutilized  
Reason: Secured Area. (Some are within 2000  
ft. of flammable or explosive material.)
- 9 Bldgs.  
St. Louis Army Ammunition Plant  
4800 Goodfellow Blvd.  
St. Louis Co: St. Louis MO 63120-1798  
Landholding Agency: Army  
Property Number: 219120067-219120068,  
219610469-219610475  
Status: Unutilized  
Reason: Secured Area. (Some are extensively  
deteriorated.)
- 10 Bldgs.  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-  
5000  
Landholding Agency: Army  
Property Number: 219140422-219140423,  
219430070-219430078  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or  
explosive material.
- Montana  
Bldgs. T0033, T0451, T0452  
Fort Harrison  
Ft. Harrison Co: Lewis/Clark MT 59636  
Landholding Agency: Army  
Property Number: 219620473-219620475  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material. Extensive deterioration.
- Nevada  
7 Bldgs.  
Hawthorne Army Ammunition Plant  
Hawthorne Co: Mineral NV 89415-  
Landholding Agency: Army  
Property Number: 219011953, 219011955,  
219012061-219012062, 219012106,  
219013614, 219230090  
Status: Unutilized  
Reason: Secured Area.
- Bldg. 396  
Hawthorne Army Ammunition Plant  
Bachelor Enlisted Qtrs W/Dining Facilities  
Hawthorne Co: Mineral NV 89415-  
Location: East side of Decatur Street—North  
of Maine Avenue  
Landholding Agency: Army  
Property Number: 219011997  
Status: Unutilized  
Reason: Within airport runway clear zone.  
Secured Area.
- 51 Bldgs.  
Hawthorne Army Ammunition Plant  
Hawthorne Co: Mineral NV 89415-  
Landholding Agency: Army  
Property Number: 219012009, 219012013,  
219012021, 219012044, 219013615-  
219013651, 219013653-219013656,  
219013658-219013661, 219013663,  
219013665  
Status: Underutilized  
Reason: Secured Area. (Some within airport  
runway clear zone; many within 2000 ft. of  
flammable or explosive material.)
- 62 Concrete Explo. Mag. Stor.  
Hawthorne Army Ammunition Plant  
Bachelor Enlisted Qtrs W.Dining Facilities  
Hawthorne Co: Mineral NV 89415-  
Location: North Mag. Area

Landholding Agency: Army  
Property Number: 219120150  
Status: Unutilized  
Reason: Secured Area.  
259 Concrete Explo. Mag. Stor.  
Hawthorne Army Ammunition Plant  
Hawthorne Co: Mineral NV 89415-  
Location: South & Central Mag. Areas  
Landholding Agency: Army  
Property Number: 219120151  
Status: Unutilized  
Reason: Secured Area.  
Facility No. 00A38  
Hawthorne Army Ammunition Plant  
Hawthorne Co: Mineral NV 89415  
Landholding Agency: Army  
Property Number: 219330119  
Status: Unutilized  
Reason: Extensive deterioration.

New Jersey  
213 Bldgs.  
Armament Res. Dev. & Eng. Ctr.  
Picatinny Arsenal Co: Morris NJ 07806-5000  
Location: Route 15 north  
Landholding Agency: Army  
Property Number: 219010440-219010474,  
219010476, 219010478, 219010639-  
219010665, 219010669-219010721,  
219012423-219012424, 219012426-  
219012428, 219012430-219012431,  
219012433-219012466, 219012469-  
219012472, 219012474-219012475,  
219012758-219012760, 219012763-  
219012767, 219013787, 219014306-  
219014307, 219014311, 219014313-  
219014321, 219140617, 219230119-  
219230125, 219240315, 219420001-  
219420002, 219420006-219420008,  
219510003-219510004, 219540002-  
219540007, 219620476, 219640480-  
219640482  
Status: Excess  
Reason: Secured Area (Most are within 2000  
ft. of flammable or explosive material.)  
(Some are extensively deteriorated) (Some  
are in a floodway).

2 Bldgs.  
Fort Monmouth  
Wall Co: Monmouth NJ 07719-  
Landholding Agency: Army  
Property Number: 219420335, 219440206  
Status: Unutilized  
Reason: Secured Area (Some are extensively  
deteriorated) (Some are in a floodway).

13 Bldgs., Military Ocean Terminal  
Bayonne Co: Hudson NJ 07002-  
Landholding Agency: Army  
Property Number: 219013890-219013896,  
219330141-219330143, 219430001,  
219440200, 219520149  
Status: Unutilized  
Reason: Floodway, Secured Area.  
Structure 403B  
Armament Research, Dev. & Eng. Center  
Picatinny Arsenal Co: Morris NJ 07806-5000  
Landholding Agency: Army  
Property Number: 219510001  
Status: Unutilized  
Reason: Drop Tower.

9 Bldgs.  
Armament Rsch., Dev., & Eng. Center  
Picatinny Arsenal Co: Morris NJ 07806-5000  
Landholding Agency: Army  
Property Number: 219530142-219530151  
Status: Unutilized  
Reason: Extensive deterioration (Most are in  
a secured area.)  
7 Bldgs., Fort Dix  
Ft. Dix Co: Burlington NJ 08640-5505  
Landholding Agency: Army  
Property Number: 219730091-219730097  
Status: Unutilized  
Reason: Extensive deterioration.

New Mexico  
6 Bldgs.  
White Sands Missile Range  
White Sands Co: Dona Ana NM 88802  
Landholding Agency: Army  
Property Number: 219330144-219330147,  
219430126-219430127  
Status: Unutilized  
Reason: Extensive Deterioration.

New York  
Bldgs. 110, 143, 2084, 2105, 2110  
Seneca Army Depot  
Romulus Co: Seneca NY 14541-5001  
Landholding Agency: Army  
Property Number: 219240439, 219240440-  
219240443  
Status: Unutilized  
Reason: Secured Area, Extensive  
deterioration.

Bldgs. 124, 1332  
U.S. Military Academy  
West Point Co: Orange NY 10996  
Landholding Agency: Army  
Property Number: 219330148, 219610494  
Status: Unutilized  
Reason: Extensive deterioration.

Bldgs. 3008, 2623  
Stewart Army Subpost  
New Windsor Co: Orange NY 12553  
Landholding Agency: Army  
Property Number: 219420285, 219710221  
Status: Unutilized  
Reason: Extensive deterioration.

2 Bldgs., Fort Drum  
Ft. Drum Co: Jefferson NY 13602  
Landholding Agency: Army  
Property Number: 219710115, 219710117  
Status: Unutilized  
Reason: Extensive deterioration.

Bldg. 1184  
Constitution Island, U.S. Military Academy  
Cold Springs Co: Putman NY 10516  
Landholding Agency: Army  
Property Number: 219630096  
Status: Underutilized  
Reason: Extensive deterioration.

Bldg. 1537, Camp Buckner  
U.S. Military Academy—West Point  
Highlands Co: Orange NY 10996  
Landholding Agency: Army  
Property Number: 219630097  
Status: Underutilized  
Reason: Extensive deterioration.

Parcel 19  
Steward Army Subpost, U.S. Military  
Academy  
New Windsor Co: Orange NY 12553  
Landholding Agency: Army  
Property Number: 219730098  
Status: Unutilized  
Reason: Within airport runway clear zone.

Bldgs. 12, 107  
Watervliet Arsenal  
Watervliet NY  
Landholding Agency: Army  
Property Number: 219730099-219730100  
Status: Unutilized  
Reason: Extensive deterioration.

North Carolina  
188 Bldgs. Fort Bragg  
Ft. Bragg Co: Cumberland NC 28307  
Landholding Agency: Army  
Property Number: 219440295, 219530156-  
219530165, 219610495-219610508,  
219610512-219610514, 219610517-  
219610520, 219610524-219610526,  
219620477-219620480, 219630099-  
219630108, 219640064-219640128,  
219710100-219710112, 219710222-  
219710224, 219730101-219730103  
Status: Unutilized  
Reason: Extensive deterioration.

Bldg. 16  
Military Ocean Terminal  
Southport Co: Brunswick NC 28461-5000  
Landholding Agency: Army  
Property Number: 219530155  
Status: Unutilized  
Reason: Secured Area.  
Bldgs. 4-2402, A-AREA  
Simmons Army Airfield  
Fort Bragg Co: Cumberland NC 28307  
Landholding Agency: Army  
Property Number: 219620482-219620483  
Status: Unutilized  
Reason: Extensive deterioration.

Ohio  
63 Bldgs.  
Ravenna Army Ammunition Plant  
Ravenna Co: Portage OH 44266-9297  
Landholding Agency: Army  
Property Number: 219012476-219012507,  
219012509-219012513, 219012515,  
219012517-219012518, 219012520,  
219012522-219012523, 219012525-  
219012528, 219012530-219012532,  
219012534-219012535, 219012537,  
219013670-219013677, 219013781,  
219210148  
Status: Unutilized  
Reason: Secured Area.

12 Bldgs., Ravenna Army Ammunition Plant  
Ravenna Co: Portage OH 44266-9297  
Landholding Agency: Army  
Property Number: 219320399-219320410  
Status: Unutilized  
Reason: Extensive deterioration.

7 Bldgs.  
Lima Army Tank Plant  
Lima OH 45804-1898  
Landholding Agency: Army  
Property Number: 219730104-219730110  
Status: Unutilized  
Reason: Secured Area.

Oklahoma  
546 Bldgs.  
McAlester Army Ammunition Plant  
McAlester Co: Pittsburg OK 74501-5000  
Landholding Agency: Army  
Property Number: 219011674, 219011680,  
219011684, 219011687, 219012113,  
219013981-219013991, 219013994,  
219014081-219014102, 219014104,  
219014107-219014137, 219014141-  
219014159, 219014162, 219014165-  
219014216, 219014218-219014274,  
219014336-219014559, 219030007-  
219030127, 219040004



- Status: Underutilized  
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material).  
9 Bldgs.  
Fort Sill  
Lawton Co: Comanche OK 73503-  
Landholding Agency: Army  
Property Number: 219140529, 219140545, 219140548, 219140550, 219320337, 219440309, 219510023, 219610529  
Status: Unutilized  
Reason: Extensive deterioration.
- 30 Bldgs.  
McAlester Army Ammunition Plant  
McAlester Co: Pittsburg OK 74501  
Landholding Agency: Army  
Property Number: 219310050-219310053, 219320170-219320171, 219330149-219330160, 219430122-219430125, 219620485-219620490, 219630110-219630111  
Status: Unutilized  
Reason: Secured Area (Some are extensively deteriorated).
- Oregon  
11 Bldgs.  
Tooele Army Depot  
Umatilla Depot Activity  
Hermiston Co: Morrow/Umatilla OR 97838-  
Landholding Agency: Army  
Property Number: 219012174-219012176, 219012178-219012179, 219012190-219012191, 219012197-219012198, 219012217, 219012229  
Status: Underutilized  
Reason: Secured Area.
- 24 Bldgs.  
Tooele Army Depot  
Umatilla Depot Activity  
Hermiston Co: Morrow/Umatilla OR 97838-  
Landholding Agency: Army  
Property Number: 219012177, 219012185-219012186, 219012189, 219012195-219012196, 219012199-219012205, 219012207-219012208, 219012225, 219012279, 219014304-219014305, 219014782, 219030362-219030363, 219120032, 219320201  
Status: Unutilized  
Reason: Secured Area.
- Pennsylvania  
Hays Army Ammunition Plant  
300 Mifflin Road  
Pittsburgh Co: Allegheny PA 15207-  
Landholding Agency: Army  
Property Number: 219011666  
Status: Excess  
Reason: Secured Area.  
Bldg. 82001, Reading USARC  
Reading Co: Berks PA 19604-1528  
Landholding Agency: Army  
Property Number: 219320173  
Status: Unutilized  
Reason: Extensive deterioration.
- 6 Bldgs.  
Letterkenny Army Depot  
Chambersburg Co: Franklin PA 17201  
Landholding Agency: Army  
Property Number: 219420400, 219430098, 219610531-219610536, 219610544  
Status: Unutilized  
Reason: Secured Area, Extensive deterioration.
- 6 Bldgs., Carlisle Barracks  
Carlisle Co: Cumberland PA 17013  
Landholding Agency: Army  
Property Number: 219610530, 219730111-219730115  
Status: Unutilized  
Reason: Extensive deterioration.  
Bldg. 19  
Scranton Army Ammunition Plant  
Scranton Co: Lackawana PA 18505  
Landholding Agency: Army  
Property Number: 219630112  
Status: Unutilized  
Reason: Secured Area, Extensive deterioration.
- 190 Bldgs.  
Fort Indiantown Gap  
Annville Co: Lebanon PA 17003-5011  
Landholding Agency: Army  
Property Number: 219640249-219640322, 219640326, 219640334, 219640337, 219640339-219640354, 219640357-219640368, 219640370-219640376, 219640380-219640398, 219640401-219640426, 219640429-219640438, 219720093-219720094, 219730116-219730128  
Status: Unutilized  
Reason: Extensive deterioration.
- South Carolina  
111 Bldgs., Fort Jackson  
Ft. Jackson Co: Richland SC 29207  
Landholding Agency: Army  
Property Number: 219440237, 219440239, 219510017, 219530175, 219620306, 219620311-219620312, 219620317-219620322, 219620333, 219620347-219620351, 219620358, 219620368, 219640129-219640168, 219640483-219640489, 219720095-219720107, 219730129-219730159  
Status: Unutilized  
Reason: Extensive deterioration.
- Tennessee  
38 Bldgs.  
Volunteer Army Ammo. Plant  
Chattanooga Co: Hamilton TN 37422-  
Landholding Agency: Army  
Property Number: 219010475, 219010483, 219010490-219010493, 219010497-219010499, 219240127-219240136, 2192420304-2192420307, 219430099-219430104, 219610545, 219640169-219640170, 219710255-219710226, 219720109  
Status: Unutilized/Underutilized  
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated).
- 32 Bldgs.  
Holston Army Ammunition Plant  
Kingsport Co: Hawkins TN 61299-6000  
Landholding Agency: Army  
Property Number: 219012304-219012309, 219012311-219012312, 219012314, 219012316-219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334-219012335, 219012337, 219013789-219013790, 219030266, 219140613, 219330178, 219440212-219440216, 219510025-219510028  
Status: Unutilized  
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material).
- 9 Bldgs.  
Milan Army Ammunition Plant  
Milan Co: Gibson TN 38358  
Landholding Agency: Army  
Property Number: 219240447-219240449, 219320182-219320184, 219330176-219330177, 219520034  
Status: Unutilized  
Reason: Secured Area.  
Bldg. Z-183A  
Milan Army Ammunition Plant  
Milan Co: Gibson TN 38358  
Landholding Agency: Army  
Property Number: 219240783  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material.  
Memphis USARC #2  
360 W. California Ave.  
Memphis Co: Shelby TN 38106  
Landholding Agency: Army  
Property Number: 219720108  
Status: Excess  
Reason: Extensive deterioration.
- Texas  
18 Bldgs.  
Lone Star Army Ammunition Plant  
Highway 82 West  
Texarkana Co: Bowie TX 75505-9100  
Landholding Agency: Army  
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539-219012540, 219012542, 219012544-219012545, 219030337-219030345  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.
- 95 Bldgs.  
Longhorn Army Ammunition Plant  
Karnack Co: Harrison TX 75661-  
Location: State highway 43 north  
Landholding Agency: Army  
Property Number: 219012546, 219012548, 219610553-219610584, 219610635, 219620243-219620291, 219620827-219620837  
Status: Unutilized  
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material).
- 33 Bldgs., Red River Army Depot  
Texarkana Co: Bowie TX 75507-5000  
Landholding Agency: Army  
Property Number: 219120064, 219130002, 219140255, 219230109-219230115, 219320193-219320194, 219330163, 219420314-219420327, 219430093-219430097, 219440217  
Status: Unutilized  
Reason: Secured Area (Some are extensively deteriorated).
- Bldg. T-5000  
Camp Bullis  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219220100  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or explosive material.  
Bldg. 57012, Fort Hood  
Ft. Hood Co: Bell TX 76544  
Landholding Agency: Army  
Property Number: 219520061  
Status: Unutilized  
Reason: Extensive deterioration.

- 47 Bldgs., Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219330473, 219340095,  
219530176-219530177, 219610549-  
219610551, 219640171-219640172,  
219640174-219640175, 219640177,  
219640182-219640185, 219730187-  
219730201  
Status: Unutilized  
Reason: Extensive deterioration.
- Bldgs. T-2916, T-3180, T-3192, T-3398, T-  
2915  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219330476-219330479,  
219640181  
Status: Unutilized  
Reason: Detached latrines.
- 59 Bldgs. Fort Bliss  
El Paso Co: El Paso TX 79916  
Landholding Agency: Army  
Property Number: 219620239, 219640490-  
219640493, 219710089, 219730160-  
219730186  
Status: Unutilized  
Reason: Extensive deterioration.
- Starr Ranch, Bldg. 703B  
Longhorn Army Ammunition Plant  
Karnack Co: Harrison TX 75661  
Landholding Agency: Army  
Property Number: 219640186, 219640494  
Status: Unutilized  
Reason: Floodway.
- Utah  
3 Bldgs.  
Tooele Army Depot  
Tooele Co: Tooele UT 84074-5008  
Landholding Agency: Army  
Property Number: 219012153, 219012166,  
219030366,  
Status: Unutilized  
Reason: Secured Area.
- 11 Bldgs.  
Tooele Army Depot  
Tooele Co: Tooele UT 84074-5008  
Landholding Agency: Army  
Property Number: 219012143-219012144,  
219012148-219012149, 219012152,  
219012155, 219012156, 219012158,  
219012742, 219012751, 219240267  
Status: Underutilized  
Reason: Secured Area.
- 3 Bldgs.  
Dugway Proving Ground  
Dugway Co: Toole UT 84022-  
Landholding Agency: Army  
Property Number: 219013997, 219130012,  
219130015  
Status: Underutilized  
Reason: Secured area.
- 16 Bldgs.  
Dugway Proving Ground  
Dugway Co: Toole UT 84022-  
Landholding Agency: Army  
Property Number: 219330181-219330182,  
219330185, 219420328-219420329,  
219710227-219710228  
Status: Unutilized  
Reason: Secured area.
- Bldg. 4520  
Tooele Army Depot, South Area  
Tooele Co: Tooele UT 84074-5008  
Landholding Agency: Army  
Property Number: 219240268  
Status: Unutilized  
Reason: Extensive deterioration.
- Virginia  
175 Bldgs.  
Radford Army Ammunition Plant  
Radford Co: Montgomery VA 24141-  
Location: State Highway 114  
Landholding Agency: Army  
Property Number: 219010833, 219010836,  
219010839, 219010842, 219010844,  
219010847-219010890, 219010892-  
219010912, 219011521-219011577,  
219011581-219011583, 219011585,  
219011588, 219011591, 219013559-  
219013570, 219110142-219110143,  
219120071, 219140618-219140633,  
219440219-219440225, 219510031-  
219510033, 219610607-219610608  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material, Secured Area.
- 13 Bldgs.  
Radford Army Ammunition Plant  
Radford Co: Montgomery VA 24141-  
Location: State Highway 114  
Landholding Agency: Army  
Property Number: 219010834-219010835,  
219010837-219010838, 219010840-  
219010841, 219010843, 219010845-  
219010846, 219010891, 219011578-  
219011580  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material, Secured Area, Latrine,  
detached structure.
- 97 Bldgs.  
U.S. Army Combined Arms Support  
Command  
Fort Lee Co: Prince George VA 23801-  
Landholding Agency: Army  
Property Number: 219240107, 219330202-  
219330203, 219330206, 219330210-  
219330211, 219330219-219330220,  
219330225-219330228, 219520062,  
219610590-219610597, 219620497-  
219620499, 219620503, 219620505,  
219620507, 219620856, 219620863-  
219620877, 219630114-219630115,  
219640188-219640192, 219640496-  
219640503  
Status: Unutilized  
Reason: Extensive deterioration (Some are in  
a secured area.)
- 16 Bldgs.  
Radford Army Ammunition Plant  
Radford VA 24141  
Landholding Agency: Army  
Property Number: 219220210-219220218,  
219230100-219230103, 219520037  
Status: Unutilized  
Reason: Secured Area.
- Bldg. B7103-01, Motor House  
Radford Army Ammunition Plant  
Radford VA 24141  
Landholding Agency: Army  
Property Number: 219240324  
Status: Unutilized  
Reason: Secured Area, Within 2000 ft. of  
flammable or explosive material, Extensive  
deterioration.
- Bldgs. 171, T-105 Fort Monroe  
Ft. Monroe VA 23651  
Landholding Agency: Army  
Property Number: 219520051, 219640495  
Status: Unutilized  
Reason: Extensive deterioration.
- 56 Bldgs.  
Red Water Field Office  
Radford Army Ammunition Plant  
Radford VA 24141  
Landholding Agency: Army  
Property Number: 219430341-219430396  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material, Secured Area.
- Bldgs. SS1238, TT806, T00399  
Fort A.P. Hill  
Bowling Green Co: Caroline VA 22427  
Landholding Agency: Army  
Property Number: 219510030, 219610588,  
219630113  
Status: Underutilized  
Reason: Secured Area, Extensive  
deterioration.
- Bldgs. 2013-00, B2013-00, A1601-00  
Radford Army Ammunition Plant  
Radford VA 24141  
Landholding Agency: Army  
Property Number: 219520052, 219530194  
Status: Unutilized  
Reason: Extensive deterioration.
- 10 Bldgs., Fort Eustis  
Ft. Eustis VA 23604  
Landholding Agency: Army  
Property Number: 219610586-219610587,  
219640507, 219730203-219730204  
Status: Unutilized  
Reason: Extensive deterioration.
- Bldgs. 1426-1428, 1430-1431  
Fort Belvoir  
Ft. Belvoir Co: Fairfax VA 22060-5116  
Landholding Agency: Army  
Property Number: 219610609-219610610  
Status: Unutilized  
Reason: Extensive deterioration.
- 12 Bldgs.  
Fort Story  
Ft. Story Co: Princess Ann VA 23459  
Landholding Agency: Army  
Property Number: 219630116-219630117,  
219640506, 219710193, 219730205-  
219730206  
Status: Unutilized  
Reason: Extensive deterioration.
- Washington  
70 Bldgs., Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-5000  
Landholding Agency: Army  
Property Number: 219440233-219440234,  
219510036, 219610001-21961002,  
219610006-219610007, 21961009-  
219610010, 219610012-219610013,  
219610042-219610048, 219620509-  
219620517, 219640193, 219710194,  
219720142-219720151  
Status: Unutilized  
Reason: Secured Area, Extensive  
deterioration.
- Moses Lake U.S. Army Rsv Ctr  
Grant County Airport  
Moses Lake Co: Grant WA 98837  
Landholding Agency: Army  
Property Number: 219630118  
Status: Unutilized  
Reason: Within airport runway clear zone.

## Wisconsin

## 6 Bldgs.

Badger Army Ammunition Plant  
Baraboo Co: Sauk WI 53913-  
Landholding Agency: Army  
Property Number: 219011094, 219011209-  
219011212, 219011217

Status: Underutilized

Reason: Within 2000 ft. of flammable or  
explosive material Friable asbestos,  
Secured Area.

## 154 Bldgs.

Badger Army Ammunition Plant  
Baraboo Co: Sauk WI 53913-  
Landholding Agency: Army  
Property Number: 219011104, 219011106,  
219011108-219011113, 219011115-  
219011117, 219011119-219011120,  
219011122-219011139, 219011141-  
219011142, 219011144, 219011148-  
219011208, 219011213-219011216,  
219011218-219011234, 219011236,  
219011238, 219011240, 219011242,  
219011244, 219011247, 219011249,  
219011251, 219011254, 219011256,  
219011259, 219011263, 219011265,  
219011268, 219011270, 219011275,  
219011277, 219011280, 219011282,  
219011284, 219011286, 219011290,  
219011293, 219011295, 219011297,  
219011300, 219011302, 219011304-  
219011311, 219011317, 219011319-  
219011321, 219011323

Status: Unutilized

Reason: Within 2000 ft. of flammable or  
explosive material, Friable asbestos,  
Secured Area.

## 4 Bldgs.

Badger Army Ammunition Plant  
Baraboo Co: Sauk WI  
Landholding Agency: Army  
Property Number: 219013871-219013873,  
219013875

Status: Underutilized

Reason: Secured Area.

## 31 Bldgs.

Badger Army Ammunition Plant  
Baraboo Co: Sauk WI  
Landholding Agency: Army  
Property Number: 219013876-219013878,  
219220295-219220311, 219510058-  
219510068

Status: Unutilized

Reason: Secured Area.

Bldgs. 6513-27, 6823-2, 6861-4

Badger Army Ammunition Plant  
Baraboo Co: Sauk WI 53913-  
Landholding Agency: Army  
Property Number: 219210097-219210099

Status: Unutilized

Reason: Within 2000 ft. of flammable or  
explosive material Secured Area.

86 Bldgs., Fort McCoy

US Hwy. 21  
Ft. McCoy Co: Monroe WI 54656-  
Landholding Agency: Army  
Property Number: 219240206-219240236,  
219240243, 219310209, 219310213-  
219310225, 219620294-219620295,  
219630119-219630123, 219640195,  
219730207

Status: Unutilized

Reason: Extensive deterioration.

Bldg. 6513-3

Badger Army Ammunition Plant

Baraboo Co: Sauk WI 53913

Landholding Agency: Army

Property Number: 219510057

Status: Unutilized

Reason: Detached Latrine.

124 Bldgs.

Badger Army Ammunition Plant

Baraboo Co: Sauk WI 53913

Landholding Agency: Army

Property Number: 219510069-219510077

Status: Unutilized

Reason: Secured Area, Extensive  
deterioration.

Bldg. GASCH

Fort McCoy

Ft. McCoy Co: Monroe WI 54656-5163

Landholding Agency: Army

Property Number: 219730208

Status: Unutilized

Reason: Gas Chamber.

*Land (by State)*

## Alabama

23 acres and 2284 acres

Alabama Army Ammunition Plant

110 Hwy. 235

Childersburg Co: Talladega AL 35044-

Landholding Agency: Army

Property Number: 219210095-219210096

Status: Excess

Reason: Secured Area.

## Alaska

Campbell Creek Range

Fort Richardson

Anchorage Co: Greater Anchorage AK 99507

Landholding Agency: Army

Property Number: 219230188

Status: Unutilized

Reason: Inaccessible.

## California

69 acres

Santa Rosa High Frequency Radio Station

Santa Rosa CA

Landholding Agency: Army

Property Number: 219720219

Status: Underutilized

Reason: Secured Area.

## Illinois

Group 66A

Joliet Army Ammunition Plant

Joliet Co: Will IL 60436-

Landholding Agency: Army

Property Number: 219010414

Status: Unutilized

Reason: Within 2000 ft. of flammable or  
explosive material, Secured Area.

Parcel 1

Joliet Army Ammunition Plant

Joliet Co: Will IL 60436-

Location: South of the 811 Magazine Area,  
adjacent to the River Road.

Landholding Agency: Army

Property Number: 219012810

Status: Excess

Reason: Within 2000 ft. of flammable or  
explosive material, Floodway.

Parcel No. 2, 3

Joliet Army Ammunition Plant

Joliet Co: Will IL 60436-

Landholding Agency: Army

Property Number: 219013796-219013797

Status: Underutilized

Reason: Within 2000 ft. of flammable or  
explosive material, Floodway.

Parcel No. 4, 5, 6

Joliet Army Ammunition Plant

Joliet Co: Will IL 60436-

Landholding Agency: Army

Property Number: 219013798-219013800

Status: Unutilized

Reason: Within 2000 ft. of flammable or  
explosive material, Floodway.

## Indiana

Newport Army Ammunition Plant

East of 14th St. & North of S. Blvd.

Newport Co: Vermillion IN 47966-

Landholding Agency: Army

Property Number: 219012360

Status: Unutilized

Reason: Within 2000 ft. of flammable or  
explosive material, Secured Area.

Land-Plant 2

Indiana Army Ammunition Plant

Charlestown Co: Clark In 47111

Landholding Agency: Army

Property Number: 219330095

Status: Unutilized

Reason: Within 2000 ft. of flammable or  
explosive material.

## Maryland

Carroll Island, Graces Quarters

Aberdeen Proving Ground

Edgewood Area

Aberdeen City Co: Harford MD 21010-5425

Landholding Agency: Army

Property Number: 219012630, 219012632

Status: Underutilized

Reason: Floodway, Secured Area.

## Minnesota

Portion of R.R. Spur

Twin Cities Army Ammunition Plant

New Brighton Co: Ramsey MN 55112

Landholding Agency: Army

Property Number: 219620472

Status: Unutilized

Reason: Landlocked.

## New Jersey

Land

Armament Research Development & Eng.  
Center

Route 15 North

Picatinny Arsenal Co: Morris NJ 07806-

Landholding Agency: Army

Property Number: 219013788

Status: Unutilized

Reason: Secured Area.

Spur Line/Right of Way

Armament Rsch., Dev., & Eng. Center

Picatinny Arsenal Co: Morris NJ 07806-5000

Landholding Agency: Army

Property Number: 219530143

Status: Unutilized

Reason: Floodway.

## Ohio

0.4051 acres, Lot 40 & 41

Ravenna Army Ammunition Plant

Ravenna Co: Portage OH 44266-9297

Landholding Agency: Army

Property Number: 219630109

Status: Excess

Reason: Within 2000 ft. of flammable or  
explosive material.

## Oklahoma

McAlester Army Ammo. Plant

McAlester Army Ammunition Plant

McAlester Co: Pittsburg OK 74501-

Landholding Agency: Army  
 Property Number: 219014603  
 Status: Underutilized  
 Reason: Within 2000 ft. of flammable or explosive material.

Texas

Land—Approx. 50 acres  
 Lone Star Army Ammunition Plant  
 Texarkana Co: Bowie TX 75505-9100  
 Landholding Agency: Army  
 Property Number: 219420308  
 Status: Unutilized  
 Reason: Secured Area.

Land—all of block 1800  
 Fort Sam Houston  
 Portions of 1900, 3100, 3200  
 San Antonio Co: Bexar TX 78234-5000  
 Landholding Agency: Army  
 Property Number: 219530184  
 Status: Excess  
 Reason: Floodway.

Land—Harrison Bayou  
 Longhorn Army Ammunition Plant  
 Karnack Co: Harrison TX 75661  
 Landholding Agency: Army  
 Property Number: 219640187  
 Status: Unutilized  
 Reason: Within 2000 ft. of flammable or explosive material, Floodway.

Land—.036 acres  
 Fort Sam Houston  
 San Antonio Co: Bexar TX 78234-5000  
 Landholding Agency: Army  
 Property Number: 219730202  
 Status: Unutilized  
 Reason: Within 2000 ft. of flammable or explosive material.

Virginia

Fort Belvoir Military Reservation—5.6 Acres  
 South Post located West of Pohick Road  
 Fort Belvoir Co: Fairfax VA 22060-  
 Location: Right side of King Road  
 Landholding Agency: Army  
 Property Number: 219012550  
 Status: Unutilized  
 Reason: Within airport runway clear zone, Secured Area.

Wisconsin

Land  
 Badger Army Ammunition Plant  
 Baraboo Co: Sauk WI 53913-  
 Location: Vacant land within plant boundaries.  
 Landholding Agency: Army  
 Property Number: 219013783  
 Status: Unutilized  
 Reason: Secured Area.

[FR Doc. 97-22706 Filed 8-28-97; 8:45 am]

BILLING CODE 4210-29-M

## DEPARTMENT OF THE INTERIOR

**Office of the Assistant Secretary—Water and Science; Central Utah Project Completion Act; Notice of Intent to Negotiate a Repayment Contract Among the South Utah Valley Municipal Water Association, the Central Utah Water Conservancy District, and the Department of the Interior for Municipal and Industrial Water From the Bonneville Unit of the Central Utah Project, Utah**

**AGENCIES:** The Office of the Assistant Secretary—Water and Science, Department of the Interior.

**ACTION:** Notice of intent to negotiate a repayment contract among the South Utah Valley Municipal Water Association (Association), the Central Utah Water Conservancy District (CUWCD), and the Department of the Interior (DOI) for municipal and industrial (M&I) water from the Bonneville Unit of the Central Utah Project, Utah.

**SUMMARY:** It is the intent of DOI to utilize a water repayment contract with the Association and the CUWCD to provide for repayment of the appropriate costs associated with the development of the Bonneville Unit M&I water for use by the cities and/or municipalities that comprise the Association. The Association will enter into water sales contracts with the cities and/or municipalities in accordance with the repayment contract. The Association and the CUWCD will be required to pay DOI the appropriate reimbursable costs, including interest, allocated to each block of Bonneville Unit M&I water as identified in development block notices issued to the Association by DOI pursuant to the repayment contract.

**DATES:** Dates for the public negotiation sessions will be announced in the local newspapers.

**FOR FURTHER INFORMATION:** Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, Utah 84606-6154. Telephone: (801) 379-1237, E-mail address: rmurray@uc.usbr.gov

Dated: August 25, 1997.

**Ronald Johnston,**

*CUP Program Director, Department of the Interior.*

[FR Doc. 97-23045 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-RK-P

## DEPARTMENT OF THE INTERIOR

**Office of the Assistant Secretary—Water and Science; Central Utah Project Completion Act; Notice of Intent To Negotiate a Contract Between the Central Utah Water Conservancy District and Department of the Interior for Prepayment of Costs Allocated to Municipal and Industrial Purposes From the Bonneville Unit of the Central Utah Project, Utah**

**AGENCY:** Office of the Assistant Secretary, Water and Science, Department of the Interior.

**ACTION:** Notice of intent to negotiate a contract between the Central Utah Water Conservancy District (CUWCD) and Department of the Interior (DOI) for prepayment of costs allocated to municipal and industrial purposes from the Bonneville Unit of the Central Utah Project, Utah.

**SUMMARY:** Public Law 102-575, Central Utah Project Completion Act, Section 210, as amended through Pub. L. 104-286, stipulates that: "The Secretary shall allow for prepayment of the repayment contract between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and supplemented on November 26, 1985, providing for repayment of municipal and industrial water delivery facilities for which repayment is provided pursuant to such contract, under terms and conditions similar to those contained in the supplemental contract that provided for the prepayment of the Jordan Aqueduct dated October 28, 1993. The prepayment may be provided in several installments to reflect substantial completion of the delivery facilities being prepaid and may not be adjusted on the basis of the type of prepayment financing utilized by the District." In accordance with the above referenced legislation CUWCD intends to prepay the costs obligated under repayment contract No. 14-06-400-4286, as supplemented, associated with:

Special Block No. 1  
 Development Block No. 2  
 Development Block No. 3  
 Development Block No. 4A  
 Development Block No. 4B

The terms of the prepayment are to be publicly negotiated between CUWCD and DOI.

**DATES:** Dates for public negotiation sessions will be announced in local newspapers.

**FOR FURTHER INFORMATION:** Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Program

Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606-6154. Telephone: (801) 379-1237, E-Mail address: rmurray@uc.usbr.gov

Dated: August 25, 1997.

**Ronald Johnston,**

CUP Program Director, Department of the Interior.

[FR Doc. 97-23046 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-RK-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Decision and Availability of Decision Documents on the Issuance of Permits for Incidental Take of Threatened and Endangered Species**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that between April 1, 1996, and August 19, 1997, Region 1 of the Fish and Wildlife Service issued the following permits for incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). Each permit was granted only after the Service determined that the application had been submitted in good faith; that all permit issuance criteria were met, including the requirement that granting the permit will not jeopardize the continued existence of the species; and that the permit was consistent with the Act and applicable regulations, including a thorough review of the environmental effects of the action and alternatives, pursuant to the National Environmental Policy Act of 1969. Copies of these permits and associated decision documents are available upon request. Decision documents for each permit include a set of Findings and Recommendations, a Biological Opinion, and either a Finding of No Significant Impact or a Record of Decision.

Name	Permit No.	Issuance date
Scofield Corporation	811110	4/3/96
D.B.O. Development Company	808240	4/25/96
Les York/Parkside Homes	811259	7/8/96
Pacific Gas and Electric Company	817075	9/4/96
Shell Western E&P, Inc. and Metropolitan Water District of Southern California	784571	11/7/96

Name	Permit No.	Issuance date
A.C. Teichert and Son, Inc	820643	1/9/97
Washington Department of Natural Resources	812521	1/30/97
Palos Verdes Land Holdings Company and Zuckerman Building Company	799348	2/4/97
Kendall Grover	830269	7/15/97
City of San Diego	830421	7/18/97
Graniterock Company Shelter Systems, Inc., and Lampert Properties	749347	8/18/97
Raley's	829945	8/20/97

**ADDRESSES:** Individuals wishing copies of any of the above permits and associated decision documents should contact the Fish and Wildlife Service, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, 4th Floor East, Portland, Oregon 97232.

**FOR FURTHER INFORMATION CONTACT:** Laura Hill, Fish and Wildlife Biologist, at the above address; telephone (503) 231-6241.

Dated: August 22, 1997.

**Don Weathers,**

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97-23044 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-55-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**Final Determination To Acknowledge the Snoqualmie Tribal Organization**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of final determination.

**SUMMARY:** This notice is published in the exercise of authority delegated to the Assistant Secretary—Indian Affairs (Assistant Secretary) by 209 DM 8.

Pursuant to 25 CFR 83.10(m), notice is hereby given that the Assistant Secretary acknowledges that the Snoqualmie Tribal Organization, c/o Andy de los Angeles, 3946 Tolt Avenue, P.O. Box 280, Carnation, Washington 98014, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group satisfies all seven criteria for acknowledgment in 25 CFR 83.7, as modified by 25 CFR 83.8.

**DATES:** This determination is final and is effective November 28, 1997 pursuant to 25 CFR 83.10(l)(4), unless a request for reconsideration is filed with the

Interior Board of Indian Appeals pursuant to 25 CFR 83.11.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary's proposed finding to acknowledge the Snoqualmie Tribal Organization (STO) was published in the **Federal Register** on May 6, 1993. The proposed finding was prepared under the 1978 acknowledgment regulations. This final determination is made under revised acknowledgment regulations which became effective March 28, 1994, during the comment period on the proposed finding.

The original comment period was suspended until March 31, 1994, when documentary materials that were used for the proposed finding were provided to the Tulalip Tribes. The 180-day comment period provided under the 1994 regulations ended September 27, 1994. The Snoqualmie Tribal Organization was given until September 9, 1995, to respond under section 83.10(k) to third party comments. The extended period was granted because of the voluminous nature of the comments submitted by the Tulalip Tribes and because of the extended period of time that third parties had to comment on the proposed finding.

Third party comments were received on September 27, 1994, in opposition to acknowledgment from the Tulalip Tribes, Inc., and from Les Wahl and Dorothy Cohn, members of a separate petitioner called the Snoqualmoo tribe. Comments were received from the Snoqualmie Tribal Organization on September 5, 1995.

This final determination is based on the documentary and interview evidence which formed the basis for the proposed finding and an analysis of the information and argument received in response to the proposed finding. Additional factual conclusions were reached after a review and reanalysis of the existing record in light of the additional evidence.

The 1994 regulations required an evaluation of whether the Snoqualmie were a previously acknowledged tribe within the meaning of the regulations. Because it has been determined that the Snoqualmie Tribal Organization meets the definition of unambiguous previous Federal acknowledgment in section 83.1, it has been evaluated under modified requirements provided in section 83.8 of the regulations. Conclusions concerning previous acknowledgment under 83.8 are solely for the purposes of a determination of previous acknowledgment under 25 CFR 83, and are not intended to reflect conclusions concerning successorship in interest to a particular treaty or other rights.

Although the 1978 regulations made no provision for taking into account unambiguous previous Federal acknowledgment, the proposed finding made detailed factual conclusions that the STO had been previously treated as an acknowledged tribe.

Substantial evidence showed that the Snoqualmie Tribal Organization had unambiguous previous Federal acknowledgment under 25 CFR 83.8 until January 1953. The Snoqualmie tribe was acknowledged by the Treaty of Point Elliott in 1855 and continued to be acknowledged after that point. The Snoqualmie Tribal Organization was acknowledged as a separate, nonreservation tribal entity by 1934. There were multiple, consistent Federal dealings with the non-reservation Snoqualmie Band between 1934 and January 1953 which treated it as a recognized tribe under the jurisdiction of the Federal Government. Evidence includes consistent identification in Indian agency documents which clearly identified the tribes under the jurisdiction of the Western Washington Agency as well as in other Federal documents. Agency and central office documents describe and characterize the STO as a tribe and distinguish it from voluntary organizations created for claims. Between 1937 and 1944, agency and central office officials developed plans to provide a reservation for the band under the 1934 Indian Reorganization Act.

Criterion 83.7(a), as modified by the application of section 83.8, requires external identification of the petitioner as an Indian entity from the date of last Federal acknowledgment. It also requires that this identification makes clear that the group is being identified as the same as the entity which had been previously Federally acknowledged.

The requirement for 83.7(a) as modified by 83.8 is clearly met. The STO since 1953 has been identified in a variety of Federal records as well as other sources as the same entity as the group known as the Snoqualmie Band, or "Jerry Kanim's Band," as it existed and was acknowledged before 1953. The Tulalip Tribes' 1994 comments do not dispute that the STO as identified in Federal records after 1953 up until the present is the same entity as was dealt with before that time.

Under 83.8(d)(2), a demonstration of meeting the criterion for community is required only for the present day, or modern, community. Community need not be demonstrated from 1953, the last point of unambiguous Federal acknowledgment until the present day. Modern community has been defined

for the proposed finding and final determination as 1981 to the present.

The proposed finding's general conclusion that the modern community meets the requirements of criterion 83.7(b) is strengthened by additional evidence that family line groupings are widely recognized in both social and political contexts. The social recognition and definition of these family line groupings result from informal social interaction over an extended period of time and thus provide good evidence for community. Demonstration of political processes was also evidence for community in the proposed finding, which noted that significant, non-coercive political processes occurred among the Snoqualmie. These processes require and are based on the existence of social ties and communication to operate. Significantly stronger additional evidence which demonstrates political processes in the modern community exists for this final determination than for the proposed finding (see also criterion 83.7(c)). This additional evidence provides greater detail over a longer period of time about communication and social relationships as a basis for political processes and shows significant interaction and social ties between family line groupings.

Evidence for community is found in significant cultural differences, particularly participation in Indian religions, which were maintained by a significant minority of the Snoqualmie membership, and were broadly distributed among family lines. The Snoqualmie do not occupy a distinct settlement area, but the geographic distribution of Snoqualmie members is close enough that a significant level of social interaction among most of the group is easily possible. The distribution is not close enough to raise any presumption of significant social interaction, but is close enough that it raises no question about conclusions, based on other evidence, that social interaction and social ties are being maintained. This final determination rejects comments from the Tulalip Tribes which asserted that a tribe could not exist without occupying a distinct, exclusive geographical area and without exercising the powers of a sovereign group. These arguments were rejected as requiring a more restrictive standard than is called for by the regulations and the legal precedents behind the regulations, as well as being contrary to the precedents established in applying the 1978 and 1994 regulations to previous cases.

Criterion 83.7(b) requires that a petitioner show that its members are

identified as distinct from non-members. The proposed finding concluded that although there were not strong social distinctions made by non-Indians, the Snoqualmie clearly met the requirements of the regulations concerning distinction, identifying themselves and being identified by outsiders as Snoqualmie. The STO membership requirement of 1/8th degree Snoqualmie ancestry as it has been viewed and implemented by the leaders and membership embodies a significant social distinction from non-members as well as providing some evidence of community cohesion. A review of the comments on the proposed finding, along with the evidence and comments for the final determination, confirms these conclusions of the proposed finding. Distinction is also shown by the cultural differences described above.

The STO meets the requirements of 83.7(b) as modified by 83.8(d) from 1981 to the present to demonstrate modern community.

Substantial additional information which demonstrated political influence within the STO from 1953 to the present was presented for the final determination by the petitioner. The additional information confirmed and expanded the proposed finding's conclusion that from the 1930's to 1956 Snoqualmie Chief Jerry Kanim had been a strong leader. Kanim's leadership provided the foundation and the reference point for subsequent leaders. The period before 1953 provides a context for interpreting continuity of political influence after Kanim's death, including the continued leadership of Ed Davis.

This final determination revises the conclusion of the proposed finding that Snoqualmie political activity lessened for about a decade after 1956 because the Snoqualmie political system did not immediately adjust to the changed conditions of no longer being recognized and no longer having the strong leadership figure it had had for decades. While overall the level of political activity between 1956 and 1968 declined, the degree of decline is less than appeared for the proposed finding and represents a natural process of change and response to external conditions, not a weakening of political authority per se. Some of the changes observed were the result of limitations due to changes in Federal policy and others were a manifestation of a political transition between generations which began in the early 1940's and continued until the 1960's.

The influence and activities of specific political leaders in the first decade after Kanim's death is

documented more strongly than for the proposed finding. There was direct, clear evidence, not available for the proposed finding, that Ed Davis, a key leader and ally of Jerry Kanim before his death, and a very influential leader in the 1970's and early 1980's, was also a key leader in the decade immediately after Jerry Kanim's death. In addition, the leadership cadre that was active after 1956 was considerably larger than the proposed finding indicated and their roles more clearly spelled out than had been possible for the proposed finding.

The proposed finding concluded that fishing rights was a political issue of importance to a broad portion of the membership from 1953 to the present. It concluded that the STO activities in the decades before 1953 showed fishing rights to be a strong political issue which formed the basis of the continued interest in fishing rights after 1953. The Tualip Tribes challenged this finding, contending that fishing was only a claims issue and that there was little interest in fishing. A review of new and existing documentation strengthened the finding that this was a significant political issue to a broad spectrum of the membership within the STO both from the 1930's to 1953 and after 1953.

Substantial additional demonstration of political processes, leadership and influence from 1968 to the present was made possible by the additional information submitted by the Snoqualmie and by the review and reanalysis of the existing record. This evidence demonstrates recurring political conflict over significant issues such as maintenance of tradition in the style of governance, the chairman's versus the council's role, and how to approach fishing rights. These conflicts involved the communication of issues broadly among the membership and the mobilization of community opinion. For this final determination, there is a stronger and more detailed demonstration, over a longer period of time, of the existence of family line groupings and their political role. There is a stronger and more detailed demonstration that important avenues of influence exist to bring forward candidates and establish support by mobilizing public opinion and political support.

A prime conclusion of the proposed finding was that the general council (general meeting of the membership) exercised major political influence since at least the 1960's as final arbiter of political questions. It was the means by which political disputes were settled and the actions of the tribal council reviewed and ratified. There was some additional evidence to support this

finding. This conclusion is therefore affirmed.

The Tualip Tribes presented extensive specific arguments together with documentary and affidavit evidence to support their fundamental argument that the STO was only a voluntary organization which was formed solely for the purposes of pursuing land and other claims against the Government. A careful review of their comments and evidence did not support their conclusion that the STO was an organization whose members had no connection with each other except to enroll to receive claims or that its issues were not of political importance to the membership. The STO meets the requirements of 83.7(c) as modified by 83.8(d)(3).

The Tualip Tribe's comments do not specifically challenge the proposed finding that the STO membership is descended from the historical Snoqualmie tribe and therefore met the requirements of criterion 83.7(e). They did present extensive evidence to support an argument that the family lines within the STO represents an insignificant portion of the total number of historical Snoqualmie family lines. The Tualip Tribes also argued that the STO only represents a small portion of the descendants of those lines that are included in its membership. This does not constitute an argument that criterion 83.7(e), descent from a historical tribe, has not been met. There is no requirement under the regulations that a petitioner be descended from most of the historical tribe. The present membership of the STO is descended from a large number of historical Snoqualmie families and thus meets the requirement to show descent as a tribe. The STO membership descends from the historical Snoqualmie tribe. The STO therefore meets criterion 83.7(e).

The STO met criteria 83.7 (d), (f), and (g) for the proposed finding. Significant comment or evidence was not submitted to refute the finding concerning these criteria. Consequently, this final determination confirms that the STO meets these criteria.

Dated: August 22, 1997.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 97-23018 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-02-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Notice of Prioritizing the 1995 Facilities Needs Assessments for the Repair and Improvement of Bureau of Indian Affairs Law Enforcement Facilities

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice is published to inform all American Indian tribes that the Department of the Interior, Bureau of Indian Affairs, Office of Law Enforcement Services has prioritized the 1995 Facilities Needs Assessments for the Repair and Improvement of Bureau of Indian Affairs Law Enforcement Facilities. The Bureau of Indian Affairs will use this prioritized list to determine which project location will proceed into planning, design or construction based on appropriations received from Congress. The prioritization of the facilities was accomplished in part by consideration of age, condition and whether or not the facility was able to meet the current detention standards and codes. Some of these projects will require extensive renovation or total replacement of the facility.

**FOR FURTHER INFORMATION CONTACT:** Theodore Quasula, Director, Office of Law Enforcement Services, P.O. Box 66, Albuquerque, New Mexico 87103-0066. His phone number is (505) 248-7937.

**SUPPLEMENTARY INFORMATION:** This notice is published in exercise of authority delegated to the Assistant Secretary-Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8. In compliance with Recommendation 1, Action 9, of the U.S. Department of the Interior, Office of Inspector General Audit Report, "Maintenance of Detention Facilities, Bureau of Indian Affairs, Report No. 94-1-1131, August 1994," Correction Action Plan, the Office of Law Enforcement Services has prioritized the 1995 Facilities Needs Assessments as listed below:

1. Blackfoot Law Enforcement Center
2. Red Lake Law Enforcement Center
3. Pine Ridge Correctional Facility
4. Wellpinit Law Enforcement Center
5. Supai Jail
6. Medicine Root Detention Center
7. White Mountain Law Enforcement Center
8. Crow Law Enforcement Center
9. Zuni Police Department
10. Fort Belknap Law Enforcement Center
11. Turtle Mountain Law Enforcement Center
12. San Carlos Law Enforcement Center

13. Wind River Police Department
14. Fort Totten Municipal Center
15. Nett Lake Law Enforcement Center
16. Rosebud Law Enforcement Center
17. Quinault Police Department
18. Northern Cheyenne Law Enforcement Center
19. Sacaton Adult Detention Center
20. Owyhee Detention Center
21. Warm Springs Detention
22. Fort Peck Police Department
23. Sacaton Juvenile Detention Center
24. Peach Springs Detention Center
25. Hopi Rehabilitation Center
26. Menominee Tribal Jail
27. Fort Thompson Jail
28. Omaha Tribal Police Department
29. Sells Adult Detention Center
30. Standing Rock Law Enforcement Center
31. Chemawa Indian School
32. Fort Peck Indian Youth Service Center
33. Walter Miner Law Enforcement Center-Adult
34. Walter Miner Law Enforcement Center-Juvenile

Dated: August 20, 1997.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 97-22990 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-02-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Tribal-State Gaming Compacts Taking Effect.

**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, is publishing the Tribal-State Compacts between the following Tribe/Pueblos and the State of New Mexico executed on July 9, 1997. The Mescalero Apache Tribe, Pueblo of San Felipe, Pueblo of Pojoaque, Pueblo of Tesuque, Pueblo of Laguna, Pueblo of Santa Clara, Pueblo of Sandia, Pueblo of Taos, Pueblo of Acoma, and Pueblo of Isleta. By the terms of IGRA these Compacts are considered approved, but only to the extent the compacts are consistent with the provisions of IGRA.

**SUPPLEMENTARY INFORMATION:** The Department believes that the decision to

let the 45-day statutory deadline for approval or disapproval of the Compacts expire without taking action is the most appropriate course of action given the unique history of state and federal court cases and legislative actions that have shaped the course of Indian gaming in New Mexico. A letter further explaining the Department's decision is available from the Bureau of Indian Affairs, Indian Gaming Management Staff at the address below.

**DATES:** This action is effective August 29, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Paula L. Hart, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, 1849 C Street NW, MS 2070-MIB, Washington, DC 20240, (202) 219-4068.

Dated: August 23, 1997.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 97-22989 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-02-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[HE-952-9911-00]

#### Information Collection Associated With Contracts for Sale of In-Kind Crude Helium

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the provisions of the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request approval for the collection of information from those persons who have entered into enforceable contracts to purchase an equivalent amount of crude helium from the Secretary. The BLM uses the information to balance crude helium sales with sales to Federal agencies. **DATES:** Comments in the proposed collection must be received by October 28, 1997 to be considered.

**ADDRESSES:** Comments may be mailed or hand delivered to: Bureau of Land Management, Helium Operations, 801 S. Fillmore, Suite 500, Amarillo, TX 79101-3545. Comments will be available for public review at the Fillmore address during regular business hours (7:30 a.m. to 4:00 p.m.), Monday through Friday. You may also send comments electronically by way of the Internet to Cneely@he.blm.gov. Please submit comments as an ASCII

file to avoid the use of special characters and any form of encryption.

**FOR FURTHER INFORMATION CONTACT:**

Connie H. Neely, Helium Sales Officer, (806) 324-2635.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 1320.12(a), BLM is required to provide a 60-day notice in the **Federal Register** concerning a collection of information contained in proposed rules or other documents to solicit comments on: (a) Whether the collection of information is necessary for proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or technological collection techniques or other forms of information technology.

The Helium Privatization Act of 1996 requires the Department of Defense, the Atomic Energy Commission, the National Aeronautics and Space Administration and other Federal agencies to purchase their major requirements for helium from people who have entered into enforceable contracts to purchase an equivalent amount of crude helium from the Secretary. The Act requires BLM to change its current helium regulations at 30 CFR 601 and 602. In advance of the regulatory changes, however, BLM must prepare a new standard contract to meet the "enforceable contract" provision of the Act. This information collection meets the requirements of that provision.

The proposed contract will contain the following information and recordkeeping requirements: Information pertaining to definitions, effective date and term of contract, delivery, pricing, charges, billing and payment of crude helium, and reports of sales to Federal agencies.

BLM will use the information to account for helium sold to Federal agencies and crude helium purchased from BLM. Upon request, BLM will furnish information as to which companies are in-kind crude helium customers and which Federal agencies might have a major helium requirement. If BLM did not collect this information, there could be no accurate accounting of BLM helium to Federal agencies from Federal helium suppliers. The information, which is required by law, is mandatory for reporting purposes.



There is no other source of the information, and failure to provide the information is grounds for terminating the contract.

Based on past experience in administering previous helium distribution contracts, BLM estimates that there will be approximately 10 respondents annually and that it will take each respondent an average of approximately 30 minutes to supply the requested information. This includes a range of from 15 minutes to 2 hours. The frequency of response is quarterly. The estimated total annual burden is 20 hours. These numbers may change as BLM gains experience in administering Act and the new contract.

Any interested member of the public may obtain a copy of the proposed contract, without charge, by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

BLM will summarize and include all responses to this notice in the request for approval to the Office of Management and Budget. All comments will also become part of the public record.

Dated: August 26, 1997.

**Carole Smith,**

*Bureau of Land Management, Information Clearance Officer.*

[FR Doc. 97-23052 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-84-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV-930-1430-01; N-16095]

#### Determination Regarding Opening of Nellis Air Force Range Withdrawn Lands to Mineral Exploration and Development; NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with Section 12 of Pub. L. 99-606, as amended by Pub. L. 100-338 in 1988, the Nevada State Director has determined, after conferring with the Commander, Nellis Air Force Base, that no withdrawn lands within the Nellis Air Force Range are suitable to opening for operation under the Mining Law of 1872, The Mineral Leasing Act of 1920, as amended, the Mineral Leasing Act for Acquired Lands of 1947, the Geothermal Steam Act of 1970, or any one or more of such Acts. The Nellis Air Force Range is used as high hazard tactical and weapons training area and is closed to the public. **FOR FURTHER INFORMATION CONTACT:** Mike Dwyer, District Manager, Bureau

of Land Management, Las Vegas Field Office, 4765 West Vegas Drive, Las Vegas, Nevada 89108.

**SUPPLEMENTARY INFORMATION:** The Military Lands Withdrawal Action of 1986 (Pub. L. 99-606), as amended, provided for the withdrawal of lands for military purposes in four states, including 2,209,326 acres in Clark, Lincoln, and Nye Counties of Nevada for the Nellis Air Force Range (See 53 FR 25694-25696 July 8, 1988, for the legal description of the affected lands). Section 12(a) requires that the Secretary of the Interior, with the concurrence of the Secretary of the appropriate military department, determine which, if any, of the withdrawn lands may be considered for opening to operation under the Mining Law of 1872, the Mineral Leasing Act of 1920, as amended, the Mineral Leasing Act for Acquired Lands of 1947, the Geothermal Steam Act of 1970, or any one or more of such Acts. The Department of the Air Force has closed the Nellis Air Force Range from public access. The intent of the closure is threefold: to protect the public from injury due to ordnance hazards; to ensure that national security is not compromised; and to ensure that military programs can be conducted without disruption. Therefore, it has been determined that no withdrawn lands within Nellis Air Force Range are suitable to opening for mineral exploration and development.

Dated: August 14, 1997.

**Jean Rivers-Council,**

*Associate State Director, Nevada.*

[FR Doc. 97-22998 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-HC-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[(WY-060-1620-01), WYW136142, WYW136458]

#### Notice of Availability of a Draft Environmental Impact Statement and Notice of Public Hearing on Two Separate Coal Lease Applications for Federal Coal in the Decertified Powder River Federal Coal Production Region, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Availability of a Draft Environmental Impact Statement (DEIS) pursuant to 40 CFR 1500-1508 for the Powder River (WYW136142) and Thundercloud (WYW136458) Coal Lease Applications

in the Wyoming Powder River Basin, and announces the scheduled date and place for a public hearing pursuant to 43 CFR 3425.4. The purpose of the hearing is to receive comments on the DEIS, and on the fair market value, the maximum economic recovery, and the proposed separate competitive sales of coal from the two tracts. The Powder River tract is being considered for sale as a result of a coal lease application received from Powder River Coal Company on March 23, 1995 (WYW136142), for approximately 4,020 acres containing approximately 515 million tons of coal in an area adjacent to the company's North Antelope and Rochelle Mines in Campbell County, Wyoming. The Thundercloud tract is being considered for sale as a result of a coal lease application received from Kerr-McGee Coal Corporation on April 14, 1995 (WYW136458), for approximately 3,400 acres containing approximately 427 million tons of coal in an area adjacent to the company's Jacobs Ranch Mine in Campbell County, Wyoming. The two application areas are about 9 miles apart.

**DATES:** A public hearing will be held at 7 p.m. on Wednesday, October 8, 1997, at the Holiday Inn, 2009 S. Douglas Highway, Gillette, Wyoming. An open house will start at 6:30 p.m., prior to the hearing, to answer questions related to the Lease by Application (LBA) process and these coal lease applications. The DEIS is scheduled to be available to the public on August 22, 1997. In order to assure that comments are considered in the Final Environmental Impact Statement, they should be postmarked no later than October 28, 1997.

**ADDRESSES:** Please address questions, comments or requests for copies of the DEIS to the Casper District Office, Bureau of Land Management, Attn: Nancy Doelger, 1701 East E Street, Casper, Wyoming 82601, or FAX them to 307-234-1525.

**FOR FURTHER INFORMATION CONTACT:** Nancy Doelger or Mike Karbs at the above address, or phone: 307-261-7600.

**SUPPLEMENTARY INFORMATION:** Both applications were filed as maintenance tract LBAs under the provisions of 43 Code of Federal Regulations (CFR) 3425.1.

On March 23, 1995, Powder River Coal Company filed a coal lease application with the Bureau of Land Management (BLM) for a maintenance tract LBA for the following lands, which contain an estimated 515 million tons of Federal coal:

T. 41 N., R. 70 W., 6th P.M., Wyoming  
Section 6: Lots 10 thru 13, and 18 thru 21;  
Section 7: Lots 6, 11, 14, and 19;

Section 18: Lots 5, 12, 13, and 20;  
*T. 42 N., R. 70 W., 6th P.M., Wyoming*  
 Section 31: Lots 5 thru 20;  
 Section 32: Lots 1 thru 16;  
 Section 33: Lots 1 thru 16;  
 Section 34: Lots 1 thru 16;  
 Section 35: Lots 1 thru 16;  
*T. 41 N., R. 71 W., 6th P.M., Wyoming*  
 Section 1: Lots 5, 6, 11, and 12;  
 Containing 4,023.460 acres more or less.

The BLM has recommended that the following lands be excluded from the tract to enhance the value of remaining unleased Federal coal in the area:

*T. 41 N., R. 71 W., 6th P.M., Wyoming*  
 Section 1: Lots 5, 6, 11, and 12;  
 Containing 161.24 acres more or less.

The BLM further recommended that the following lands be included in the tract to avoid a potential bypass situation in the future:

*T. 41 N., R. 71 W., 6th P.M., Wyoming*  
 Section 19: Lot 5, and Lot 12 (N<sup>1/2</sup>);  
 Section 20: Lots 1 thru 4, Lot 5 (N<sup>1/2</sup>), Lot 6 (N<sup>1/2</sup>), Lot 7 (N<sup>1/2</sup>), and Lot 8 (N<sup>1/2</sup>);  
 Section 21: Lot 4, and Lot 5 (N<sup>1/2</sup>);  
 Containing 362.005 acres more or less.

The tract as amended by the BLM contains a total of 4,224.225 acres and approximately 534 million tons of Federal coal and includes the following lands:

*T. 41 N., R. 70 W., 6th P.M., Wyoming*  
 Section 6: Lots 10 thru 13 and 18 thru 21;  
 Section 7: Lots 6, 11, 14, and 19;  
 Section 18: Lots 5, 12, 13, and 20;  
 Section 19: Lot 5, and Lot 12 (N<sup>1/2</sup>);  
 Section 20: Lots 1 thru 4, Lot 5 (N<sup>1/2</sup>), Lot 6 (N<sup>1/2</sup>), Lot 7 (N<sup>1/2</sup>), and Lot 8 (N<sup>1/2</sup>);  
 Section 21: Lot 4, and Lot 5 (N<sup>1/2</sup>);  
*T. 42 N., R. 70 W., 6th P.M., Wyoming*  
 Section 31: Lots 5 thru 20;  
 Section 32: Lots 1 thru 16;  
 Section 33: Lots 1 thru 16;  
 Section 34: Lots 1 thru 16;  
 Section 35: Lots 1 thru 16.

The North Antelope and Rochelle Mines are contiguous mines which are both adjacent to the lease application area. Both mines have approved mining and reclamation plans. The Rochelle Mine has an air quality permit approved by the Wyoming Department of Environmental Quality, Air Quality Division (WDEQ/AQD) to mine up to 30 million tons of coal per year. The North Antelope Mine has an air quality permit approved by the WDEQ/AQD to mine up to 35 million tons of coal per year. According to the application, Powder River Coal Company plans no production increase at either mine solely from the acquisition of the proposed lease; the additional tonnage would extend the life of both mines.

Powder River Coal Company previously acquired a maintenance coal lease (WYW119554, issued effective 10/1/92) containing approximately 3,064

acres adjacent to the North Antelope and Rochelle Mines using the LBA process.

On April 14, 1995, Kerr-McGee Coal Corporation filed a coal lease application with the BLM for a maintenance tract LBA for the following lands, which contain an estimated 427 million tons of Federal coal:

*T. 43 N., R. 70 W., 6th P.M., Wyoming*  
 Section 4: Lots 8, 9, and 15 thru 18;  
 Section 5: Lots 5 thru 20;  
 Section 6: Lots 8 thru 23;  
 Section 7: Lots 5 thru 7, Lot 8 (N<sup>1/2</sup>), Lots 9 thru 12; Lot 13 (N<sup>1/2</sup> and SE<sup>1/4</sup>), and Lot 19 (NE<sup>1/4</sup>);  
 Section 8: Lots 1 thru 16;  
 Section 9: Lots 3 thru 6 and 11 thru 14;  
*T. 43 N., R. 71 W., 6th P.M., Wyoming*  
 Section 1: Lots 5 thru 15, 19, and SE<sup>1/4</sup> NE<sup>1/4</sup>;  
 Containing 3,395.915 acres more or less.

The BLM has recommended that the following acreage be included in the tract to avoid a potential bypass situation in the future:

*T. 43 N., R. 71 W., 6th P.M., Wyoming*  
 Section 1: Lot 16 (N<sup>1/2</sup>), Lots 17 and 18;  
 Section 12: Lot 1, and Lot 2 (NE<sup>1/4</sup>);  
 Containing 149.588 acres more or less.

The tract as amended by the BLM contains a total of 3,545.503 acres and approximately 450 million tons of Federal coal and includes the following lands:

*T. 43 N., R. 70 W., 6th P.M., Wyoming*  
 Section 4: Lots 8, 9, and 15 thru 18;  
 Section 5: Lots 5 thru 20;  
 Section 6: Lots 8 thru 23;  
 Section 7: Lots 5 thru 7, Lot 8 (N<sup>1/2</sup>), Lots 9 thru 12, Lot 13 (N<sup>1/2</sup> and SE<sup>1/4</sup>), and Lot 19 (NE<sup>1/4</sup>);  
 Section 8: Lots 1 thru 16;  
 Section 9: Lots 3 thru 6 and 11 thru 14;  
*T. 43 N., R. 71 W., 6th P.M., Wyoming*  
 Section 1: Lots 5 thru 15, Lot 16 (N<sup>1/2</sup>), Lots 17 thru 19, and SE<sup>1/4</sup>NE<sup>1/4</sup>;  
 Section 12: Lot 1, and Lot 2 (NE<sup>1/4</sup>).

The acreage applied for in Kerr McGee's application is known as the Thundercloud tract. It is described in a 1983 BLM document entitled "Powder River Coal Region Tract Summaries," which was prepared in anticipation of a Federal coal sale proposed for 1984 that did not take place.

The Jacobs Ranch Mine has an air quality permit approved by the WDEQ/AQD to mine up to 35 million tons of coal per year. According to Kerr-McGee, the additional coal reserves would extend the life of the current mining operations at the Jacobs Ranch Mine.

Kerr-McGee previously acquired a maintenance coal lease (WYW117924, issued effective 10/1/92) containing approximately 1,709 acres adjacent to the Jacobs Ranch Mine under the LBA process.

The Powder River Regional Coal Team reviewed both competitive lease applications at their meeting on April 23, 1996, in Cheyenne, Wyoming, and recommended that both be processed.

The DEIS analyzes three alternatives. The Proposed Action is to lease one or both tracts as applied for to the successful bidder at separate, competitive sales. The second alternative, Alternative 1, is the No Action Alternative, which assumes that neither tract will be leased. The third alternative, Alternative 2, is to lease one or both tracts as modified by BLM to the successful bidder at separate, competitive sales.

The U.S. Forest Service (USFS) is a cooperating agency in the preparation of the EIS because the surface of some of the land included in both tracts is owned by the Federal government and administered by the USFS as part of the Thunder Basin National Grasslands. The Office of Surface Mining Reclamation and Enforcement is also a cooperating agency in the preparation of the EIS because it is the Federal agency that would review the mining plans for the two tracts if they are leased, and recommend approval or disapproval of the mining plans to the Secretary of the Interior.

Dated: August 20, 1997.

**Alan R. Pierson,**  
 State Director.

[FR Doc. 97-23064 Filed 8-28-97; 8:45 am]  
 BILLING CODE 4310-22-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV-030-97-1020-00-24-1 A]

### Sierra Front/Northwest Great Basin Resource Advisory Council—Notice of Meeting Location and Times

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Resource advisory council meeting locations and times.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA) the Department of the Interior, Bureau of Land Management (BLM) Council meetings will be held as indicated below. The agenda includes a business meeting, public comment period and a tour of the new BLM facilities.

All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time

allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Joan Sweetland, Carson City District Office, 1535 Hot Springs Road, Carson City, NV 89706 (702) 885-6107 or 5665 Morgan Mill Road, Carson City 89701 after September 15, 1997 (702) 885-6107.

**DATES:** The date is September 26, 1997. The council will meet at the Carson City District Office, 5665 Morgan Mill Road, Carson City, Nevada at 8 a.m. on September 26. The Agenda will include a business meeting, approval of the Minutes of the previous meeting, a review of scoping comments proposed for the Black Rock Desert Management Plan, discussion of management alternatives for the proposed plan, and discussion of the role of the Council in developing the Black Rock Desert Management Plan. The public comment period will be at 4:30 p.m. and adjournment at 5 p.m. There will be an option tour of the BLM new office and wareyard after adjournment.

**FOR FURTHER INFORMATION CONTACT:** John Singlaub, Carson City District Manager, 1535 Hot Springs Road, Carson City, Nevada 89706-0638 (702) 885-6000.

Dated: August 18, 1997.

**Kelly Madigan,**

*Associate District Manager for Support Services.*

[FR Doc. 97-22999 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-HC-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-050-1220-00]

#### Front Range Resource Advisory Council (Colorado) Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on September 18, 1997 in Canon City, Colorado.

The meeting is scheduled to begin at 9:15 a.m. at the Bureau of Land Management's (BLM) Canon City District Office, 3170 East Main Street, Canon City, Colorado. The meeting will be a continuation of the last meeting and will focus on developing recreation guidelines and will include a presentation on the Cochetopa Hills Travel Management Plan.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

**DATES:** The meeting is scheduled for Thursday, September 18, 1997 from 9:15 a.m. to 4 p.m.

**ADDRESSES:** For further information, contact Ken Smith, Bureau of Land Management (BLM), Canon City District Office, 3170 East Main Street, Canon City Colorado 81212; Telephone (719) 269-8500; TDD (719) 269-8597.

**SUPPLEMENTARY INFORMATION:** Summary minutes for the Council meeting will be maintained in the Canon City District Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

**Donnie R. Sparks,**

*District Manager.*

[FR Doc. 97-23078 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-JB-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NM-060-1010-00 (0005)]

#### Southwest New Mexico Playa Lakes Coordinating Committee Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Southeast New Mexico Playa Lakes coordinating committee meeting.

**DATES:** September 24, 1997, beginning at 9:00 am.

**FOR FURTHER INFORMATION CONTACT:** Edwin L. Roberson, District Manager, Bureau of Land Management, 2909 W. 2nd Street, Roswell, NM 88201, (505) 627-0242.

**SUPPLEMENTARY INFORMATION:** The Committee is responsible for coordinating investigations and mitigation measures needed to resolve the issue of wildlife mortality on the playas in southeastern New Mexico. The

agenda will include review and discussion of the final "Investigation of Avian Mortality on Playa Lakes in SE New Mexico" report and what direction the Committee should take to address issues and concerns contained in this report. The meeting will be held at the Carlsbad Resource Area Office, 620 E. Green, Carlsbad, NM, beginning at 9:00 a.m. Summary minutes will be maintained in the Roswell District Office and will be available for public inspection during regular business hours (7:45 a.m.-4:30 p.m.) within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: August 20, 1997.

**Edwin L. Roberson,**

*District Manager.*

[FR Doc. 97-23081 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-VA-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-985-0777-66]

#### Seasonal Road Closure to Motorized Vehicles on the Outlaw Cave Road, Johnson County, WY

**SUMMARY:** Notice is hereby given that pursuant to the provisions of Title 43 Code of Federal Regulations 8364.1, the Outlaw Cave Road (BLM Road No. 6217), as listed below, is hereby closed to motorized vehicles from November 16th until April 15th or until conditions permit.

#### Outlaw Cave Road (BLM No. 6217)

**Johnson County, Wyoming, 6th Principal Meridian**

T. 42N., R. 84W.

Section 21

Section 22

Section 23, NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>.

**EFFECTIVE DATES:** This seasonal closure will remain in effect between November 16 through April 15 of each year until further notice.

**FOR FURTHER INFORMATION CONTACT:** Neil O. Schiche, Casper District (Buffalo Resource Area), 1425 Fort Street, Buffalo, Wyoming 82834, (307-684-1100).

**SUPPLEMENTARY INFORMATION:** This action was analyzed in environmental assessment No. WY-061-5-52. The decision record was signed on March 28, 1996. This seasonal road closure was implemented between November 16, 1996 through April 15, 1997 for a trial basis. The seasonal closure will now become permanent until further notice. The seasonal road closure was established to help prevent damage to

the road and adjacent areas; and to help prevent the public from becoming stuck and stranded during the winter months. The seasonal road closure does not restrict any Federal, State or local law enforcement officers, BLM or Wyoming Game and Fish Department employees in performance of their duties, or any person authorized by the BLM through permit, lease or contract.

Dated: August 15, 1997.

**James Murkin,**

*Acting Casper District Manager.*

[FR Doc. 97-23060 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-84-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NM-930-1310-01]; (NMNM 89026)]

#### New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease NMNM 89026 for lands in San Juan County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 1997, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of \$10.00 per acre or fraction thereof and 16 $\frac{2}{3}$  percent, respectively. The lessee has paid the required \$500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 USC 188), and the Bureau of Land Management is proposing to reinstate the lease effective June 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

#### FOR FURTHER INFORMATION CONTACT:

Lourdes B. Ortiz, Bureau of Land Management, New Mexico State Office, (505) 438-7586.

Dated: August 22, 1997.

**Lourdes B. Ortiz,**

*Land Law Examiner.*

[FR Doc. 97-23082 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-FB-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NM-070-5101-00-GO19; NMNM97487]

#### Notice of Right-of-Way Application

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of right-of-way application; New Mexico.

**SUMMARY:** An application, serialized as NMNM97487, was received for a pipeline.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), El Paso Field Services Company applied for a 30 inch diameter pipeline right-of-way, 3.2 miles in length with an additional 1.6 miles located on State or private land in New Mexico. The project is associated with 15 other pipeline segments of various diameters (looping existing lines to relieve pressure and increase the volume of natural gas being produced) and five compressor stations. The proposed line crosses the following lands in Rio Arriba and San Juan Counties.

#### New Mexico Principal Meridian

- T. 29 N., R. 8 W.,  
 Sec. 3, NW $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
 Sec. 4, SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
 Sec. 9, NW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ NE $\frac{1}{4}$ .  
 T. 30 N. R. 8 W.,  
 Sec. 30, SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
 Sec. 34, S $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 Sec. 35, NE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ .

The purpose of this notice is to inform the public that the Bureau will make a decision on approving the right-of-way, and if so, the terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the Assistant District Manager for Lands and Renewable Resources, Bureau of Land Management, 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401.

Dated: August 22, 1997.

**Ilyse K. Auringer,**

*Land Resources Team Leader.*

[FR Doc. 97-23047 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-FB-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-958-0777-63; GP7-0065; OR-19164]

#### Public Land Order No. 7279; Revocation of Secretarial Order Dated March 23, 1935; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes in its entirety a Secretarial order which withdrew 120 acres of public land for the Bureau of Land Management's Powersite Classification No. 287. The land is no longer needed for the purpose for which it was withdrawn. This action will open the land to surface entry. The land has been and will remain open to mining and mineral leasing.

**EFFECTIVE DATE:** November 28, 1997.

#### FOR FURTHER INFORMATION CONTACT:

Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-952-6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated March 23, 1935, which established Powersite Classification No. 287, is hereby revoked in its entirety:

#### Willamette Meridian

*Revested Oregon and California Railroad Grant Land*

T. 18 S., R. 6 W.,

Sec. 5, SE $\frac{1}{4}$ NE $\frac{1}{4}$  and E $\frac{1}{2}$ SE $\frac{1}{4}$ .

The area described contains 120 acres in Lane County.

2. The State of Oregon has a preference right for public highway right-of-way or material sites for a period of 90 days from the date of publication of this order and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994).

3. At 8:30 a.m. on November 28, 1997, the land described in paragraph 1 will be opened to such forms of disposition as may by law be made of Revested Oregon and California Railroad Grant Land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on November 28, 1997, will be considered as simultaneously filed at

that time. Those received thereafter will be considered in the order of filing.

Dated: August 12, 1997.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 97-23079 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-33-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AZ-050-07-1430-01; AZA 30123]

#### Arizona: Notice of Realty Action: Noncompetitive Sales of Public Lands in Yuma County, Arizona: Correction

**AGENCY:** Bureau of Land Management, Interior

**ACTION:** Correction.

**SUMMARY:** This notice corrects the information published on page 36571 in the issue of Tuesday, July 8, 1997 (Vol. 62, No. 130). Certain lands in San Luis, Arizona, were found suitable for direct sale to the Shay Oil Company. The following described parcel has since been found unsuitable for direct sale:

#### Gila and Salt River Meridian, Arizona

T. 11 S., R. 25 W.,

Sec. 12, lot 6, block 30 of the San Luis Townsite.

Containing 0.273 acres, more or less.

**FOR FURTHER INFORMATION CONTACT:** Realty Specialist Dave Curtis at (520) 317-3237.

Dated: August 20, 1997.

**Gail Acheson,**

*Field Manager.*

[FR Doc. 97-23014 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-32-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[COC-60083; CO-057-1430-01]

#### Notice of Realty Action; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action; Recreation and Public Purposes (R&PP) Act Classifications; Colorado.

**SUMMARY:** The following public lands in Crowley County, Colorado have been examined and found suitable for classification for lease and conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

#### Sixth Principal Meridian

T. 21 S., R. 56 W., Section 5, lot 4-6, Containing 187.83 acres in Crowley County.

Crowley County proposes to use these lands for recreational purposes at Lake Henry and in association with the Lake Henry State Wildlife Area. Primary plans are to control vehicular use, provide parking, and allow access to the reservoir. All valid existing rights shall be protected, including the rights of the Colorado Canal Company for reservoir and ditches under right of way P-010243 and Crowley County Road. The lands are not needed for Federal purposes. Lease and conveyance of these lands for recreational purposes is consistent with the Royal Gorge Resource Management Plan of 1996 and would be in the public interest.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act.

**DATES:** Interested parties may submit comments regarding the proposed lease and conveyance or the classification of these lands before October 15, 1997. Reference the case file number COC-60083 in all correspondence. In the absence of any adverse comments, the classification will become effective October 28, 1997.

**ADDRESSES:** District Manager, Canon City District Office, Bureau of Land Management, 3170 East Main St., Canon City, CO 81212.

**FOR FURTHER INFORMATION CONTACT:** David Hallock, Realty Specialist at (719) 269-8500.

#### SUPPLEMENTARY INFORMATION:

Classification comments—interested parties may submit comments involving the suitability of land for the purposes stated. Restrict comments to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application comments—interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not

directly related to the suitability of the land for the proposal.

**Donnie R. Sparks,**

*District Manager.*

[FR Doc. 97-22869 Filed 8-27-97; 8:45 am]

BILLING CODE 4310-JB-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-985-0777-66]

#### Implementation of a One Day Camping Limit at Mosier Gulch Picnic Area, Johnson County, WY

**SUMMARY:** Notice is hereby given that pursuant to the provisions of Title 43 Code of Federal Regulations 8365.1-2, camping will be limited to one day in any 7 day period, on public lands in the vicinity of Mosier Gulch Picnic Area, more particularly described as:

#### Johnson County, Wyoming 6th Principal Meridian,

T.50N.,R.83W, Section 2 N½SW¼.

**EFFECTIVE DATES:** Camping limitations are effective upon publication of this notice and will remain in effect until further notice.

#### FOR FURTHER INFORMATION CONTACT:

Neil O. Schiche, Casper District (Buffalo Resource Area), 1425 Fort St., Buffalo, Wyoming 82834, (307-684-1100).

**SUPPLEMENTARY INFORMATION:** The Moiser Gulch Picnic Area is designed as a road side rest area and picnic site with limited parking area and facilities. Water, pit toilets, picnic tables and fire rings are available.

Dated: August 15, 1997.

**James Murkin,**

*Acting Casper District Manager.*

[FR Doc. 97-23059 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-84-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Delta Region Preservation Commission; Notice of a Meeting

**AGENCY:** National Park Service, DOI.

**ACTION:** Meeting of the Delta Region Preservation Commission.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at the following place and time.

**DATES:** Wednesday, August 27, 1997, at 7 p.m.

**ADDRESSES:** The meeting will be held at the Student Union, University of New Orleans, Lakefront Campus, New Orleans, Louisiana.

**FOR FURTHER INFORMATION CONTACT:** Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 2400, New Orleans, Louisiana 70130-1136, telephone (504) 589-3882, extension 108.

**SUPPLEMENTARY INFORMATION:** The Delta Region Preservation Commission was established pursuant to Section 907 of Pub. L. 95-625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of a natural, historic, and cultural resources of the region.

The matters to be discussed at this meeting include:

- Old Business
- New Business
- General Park Update

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the headquarters office of Jean Lafitte National Historical Park and Preserve.

Dated: August 7, 1997.

**Daniel W. Brown,**

*Acting Regional Director, Southeast Region.*

[FR Doc. 97-23087 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Joshua Tree National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Joshua Tree National Park Advisory Commission will be held at 8:00 a.m. (PDT) on Tuesday, September 23, 1997, at the Helen Gray Center, on Whitefeather Drive in Joshua Tree, California to hear

presentations on issues related to the Backcountry and Wilderness Management Plan, an amendment to the General Management Plan for Joshua Tree National Park.

The Advisory Commission was established by Public Law 103-433, section 407 to advise the Secretary concerning the development and implementation of a new or revised comprehensive management plan for Joshua Tree National Park.

Members of the Commission are as follows:

Chuck Bell, P.O. Box 193, Lucerne Valley, CA 92356  
 Diane Benson, c/o Diivas Jewelry, 56129 Twentynine Palms Highway, Yucca Valley, CA 92284  
 Cyndie Bransford, 61673 Kessler Place, Joshua Tree, CA 92252  
 Richard L. Russell, 12475 Central Ave., #352, Chino, CA 91710  
 Gary Daigneault, 6804 Quail Springs Ave., Twentynine Palms, CA 92277  
 Brian Huse, NPCA, Director, Pacific Region, P.O. Box 1289, Oakland, CA 94604-1289  
 Michael McCormack, 70175 Juanita Drive, Twentynine Palms, CA 92277  
 Roger Melanson, 57626 Ross Road, Yucca Valley, CA 92284  
 Ramon Mendoza, 58692 Los Coyotes Rd., Yucca Valley, CA 92284  
 Leslie J. Mouriquad, 52-500 Calhoun, Coachella Valley, CA 92236  
 Dr. Byron M. Walls, M.D., 19732 Lancewood Plaza, Yorba Linda, Ca 92686  
 Gilbert G. Zimmerman, Chairman/CEO, California Deserts Tourism Association, P.O. Box 364, Rancho Mirage, CA 92270  
 The Honorable Roy Wilson, Supervisor, Fourth District, Riverside County, 46209 Oasis St. Room 414, Indio, CA 92201  
 The Honorable Kathy A. Davis, County Supervisor, First District, 385 North Arrowhead Ave., Fifth Floor, San Bernardino, CA 92415-0110  
 Mr. Spence McIntyre, President, The Desert Protective Council, P.O. Box 2312, Valley Center, CA 92082

Included on the agenda for this public meeting will be:

1. Review of Commission Purpose and Responsibilities.
2. Commission Oath of Office.
3. Selection of a Commission Chair.
4. Overview, Discussion and recommendations of the Draft Wilderness and Backcountry Management Plan.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. For copies Park Drive, Twentynine Palms, California 92277.

Dated: August 19, 1997.

**Ernest Quintana,**

*Superintendent, Joshua Tree National Park.*

[FR Doc. 97-23086 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Inventory Completion for Native American Human Remains, Associated Funerary Objects, and Unassociated Funerary Objects from the Vicinity of Cronise Basin, San Bernardino County, CA in the Possession of the California State Office, Bureau of Land Management, Sacramento, CA

**AGENCY:** National Park Service

**ACTION:** Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains, associated funerary objects, and unassociated funerary objects from the vicinity of Cronise Basin, San Bernardino County, CA in the possession of the California State Office, Bureau of Land Management, Sacramento, CA.

A detailed assessment of the human remains was made by Bureau of Land Management and San Diego Museum of Man professional staff in consultation with representatives of the San Manuel Band of Mission Indians.

In 1928, human remains representing three individuals were recovered from site M-2 along the shoreline of Cronise Basin, San Bernardino County, CA during legally authorized excavations by Malcolm Rogers, San Diego Museum of Man. No known individuals were identified. The 99 associated funerary objects include projectile points, a stone knife, shell beads, a bone awl fragment, a bird bone whistle fragment, shell pendants, pottery sherds, burnt faunal material, and burnt cordage.

In 1931, human remains representing five individuals were recovered from site M-4 along the shoreline of Cronise Basin, San Bernardino County, CA during legally authorized excavations by Malcolm Rogers, San Diego Museum of Man. No known individuals were identified. The 145 associated funerary objects include flaked stone knives, projectile points, vesicular basalt abrader and smoothers, bone awls, bone pressure flaker, ceramic vessels and sherds, shell beads, shell ornaments, burnt faunal remains, cordage and net,

stone arrow shaft straightener, obsidian nodules, quartz nodule, and ochre.

In 1932, human remains representing two individuals were recovered from site M-5 along the shoreline of Cronise Basin, San Bernardino County, CA during legally authorized excavations by Malcolm Rogers, San Diego Museum of Man. No known individuals were identified. The six associated funerary objects include shell beads, a clam shell fragment, and burnt faunal material.

In 1932, human remains representing one individual were recovered from site M-10 along the shoreline of Cronise Basin, San Bernardino County, CA during legally authorized excavations by Malcolm Rogers, San Diego Museum of Man. No known individuals were identified. The five associated funerary objects include shell beads, a biconically drilled stone tube, ochre, and a projectile point.

The eighteen cultural items include ceramic vessels, sherds, a bone tube, shell beads, projectile points, an olivella bead, limpet shell bead, and a chipped stone knife. Between 1928 and 1932, these cultural items were recovered from disturbed cremations at Cronise Basin sites M-1, M-10, M-13, and M-14 during legally authorized excavations by Malcomb Rogers of the San Diego Museum of Man. The human remains with these items were not collected.

Based on the common occurrence of brown and buff ware ceramics, type of projectile points, and presence of shell beads from the southern coastal California area, these human remains may be dated to the Shoshonean Period of this area, c. 1550-1650 A.D. Archeological evidence indicates a clear continuity between the cultures present in this area during this period and the Serrano and Vanyume peoples present in the area at the time of European contact as noted in Spanish exploration documents. Oral tradition evidence presented by representatives of the San Manuel Band of Mission Indians indicates this area is recognized as the ancestral homeland.

Based on the above mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of twelve individuals of Native American ancestry. Officials of the Bureau of Land Management have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 255 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the Bureau of Land Management have determined

that, pursuant to 25 U.S.C. 3001 (3)(B), these eighteen cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Lastly, officials of the Bureau of Land Management have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains, associated funerary objects, and unassociated funerary objects and the San Manuel Band of Mission Indians.

This notice has been sent to officials of the San Manuel Band of Mission Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains, associated funerary objects, and unassociated funerary objects should contact Russell Kaldenberg, Cultural Program Lead, Division of Ecosystems Sciences and Lands, California State Office, Bureau of Land Management, 2135 Butano Drive, Sacramento, CA 95825; telephone: (916) 979-2840, before September 29, 1997. Repatriation of the human remains, associated funerary objects, and unassociated funerary objects to the San Manuel Band of Mission Indians may begin after that date if no additional claimants come forward.

Dated: August 25, 1997.

**Francis P. McManamon,**

*Departmental Consulting Archeologist,  
Manager, Archeology and Ethnography  
Program.*

[FR Doc. 97-23108 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-70-F

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Army Corps of Engineers, Tulsa District, Tulsa, OK**

**AGENCY:** National Park Service

**ACTION:** Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. 3003(d), of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Army

Corps of Engineers, Tulsa District, Tulsa, OK.

A detailed inventory and assessment of the human remains and associated funerary objects was done by the U.S. Army Corps of Engineers in consultation with representatives of the Muscogee (Creek) Nation of Oklahoma, the Alabama-Quassarte Tribal Town, Thlopthlocco Tribal Town, Kialigee Tribal Town, and the Seminole Nation of Oklahoma.

Between 1988 and July, 1990, human remains representing a minimum of twelve individuals were exposed by shoreline erosion at site 34MI121, Eufaula Lake, McIntosh County, OK and removed by U.S. Army Corps of Engineers, Tulsa District personnel. No known individuals were identified. The 361 associated funerary objects include a shell fragment, corroded nails, blue glass faceted cut beads; green, white, and black glass beads; old glass, a coarse piece of wood, a metal button, and a corroded piece of metal.

Based on the associated funerary objects, these burials are estimated to date from immediately after Removal to before the Civil War (1832-1861). These individuals have been determined to be Native American based on the age and types of associated funerary objects. Site 34MI121 is located within the boundaries of the Muscogee (Creek) and Seminole Nations who jointly occupied this area between 1833 and 1855.

In 1987, human remains representing one individual were exposed by shoreline erosion at site 34MI139, Eufaula Lake, McIntosh County, OK and removed by U.S. Army Corps of Engineers, Tulsa District personnel. No known individual was identified. No associated funerary objects were present.

Morphological evidence, including post-bregmatic depression, oval external auditory meatus, frontal bossing, and a high-rounded skull, shows this individual exhibits Native American, African American, and European American features. Oral history information received by the Corps in the early 1960s indicates that a post-Civil War Freedman Creek cemetery is located at site 34MI139. Muscogee (Creek) Nation records show that site 34MI139 was originally allotted to Mr. Alexander Brown (Enrollment no. 2570) in 1902. Mr. Brown resided in the Arkansas Colored Tribal Town, one of three Muscogee (Creek) Freedmen Tribal Towns. The Muscogee (Creek) Freedmen Roll is an internal record of Muscogee citizens who were slaves or decedents of slaves held by Muscogee prior to and during the Civil War. Following the Civil War, the Freedmen



became full Muscogee (Creek) citizens. (Prior to the Civil War, any person whose mother was Muscogee and whose father was African or of African descent was a full Muscogee citizen.) This historical context establishes the cultural affiliation of the enrollees of the Muscogee Freedmen Roll to the present-day Muscogee (Creek) Nation.

In 1987, human remains representing one individual were exposed by shoreline erosion at site 34MI144, Eufuala Lake, McIntosh County, OK and removed by U.S. Army Corps of Engineers, Tulsa District personnel. No known individual was identified. The 53 associated funerary objects include blue shell, edged plates, transfer-printed ceramics, undecorated whiteware, ironstone ceramics, mold-decorated whiteware, porcelain, stoneware ceramics, old glass fragments, rusted machine-cut nails, a wire nail, garden-type iron hoe, iron buckles, metal fragments, a quartzite hammer stone, metal and ceramic buttons, a boar tusk, and a piece of turtle carapace.

This individual has been determined to be Native American based on the associated funerary objects. The burial has been dated to between 1866 and 1890, also based on the associated funerary objects. These dates fall within the time of exclusive Muscogee (Creek) and Seminole Nations' occupation of this area, 1832 to 1890.

Between 1988 and June 1990, human remains representing three individuals were exposed by shoreline erosion at site 34MI313, Eufuala Lake, McIntosh County, OK and removed by U.S. Army Corps of Engineers, Tulsa District personnel. No known individual was identified. The 241 associated funerary objects include a stoneware glazed elbow pipe, a brass belt buckle, a metal planter's hoe, glass beads and bead fragments, a small piece of lead shot, old green glass fragments, a metal finger ring, a piece of red cotton cloth, stone flakes, animal bone fragments, silver ear bobs with loops and pendent, a silver finger ring, pottery sherds, and one small piece of coal.

Based on the types of associated funerary objects, these individuals have been determined to be Native American. The associated funerary objects place the dates of the burials to the post-1832—pre-1861 period. During this time period, site 34MI313 and the surrounding area were exclusively used and occupied by the Muscogee (Creek) and Seminole Nations.

Based on the above mentioned information, officials of the U.S. Army Corps of Engineers, Tulsa District have determined that, pursuant to 43 CFR 10 (d)(1), the human remains listed above

represent the physical remains of at least seventeen individuals of Native American ancestry. The U.S. Army Corps of Engineers, Tulsa District officials has also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 655 cultural items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, the U.S. Army Corps of Engineers, Tulsa District officials have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and associated funerary objects and the Muscogee (Creek) Nation of Oklahoma, the Alabama-Quassarte Tribal Town, Thlopthlocco Tribal Town, Kialigee Tribal Town, and the Seminole Nation of Oklahoma.

This notice has been sent to the Muscogee (Creek) Nation of Oklahoma, the Alabama-Quassarte Tribal Town, Thlopthlocco Tribal Town, Kialigee Tribal Town, and the Seminole Nation of Oklahoma. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Mr. Robert W. Jobson, NAGPRA Coordinator, Planning Division, U.S. Army Corps of Engineers, Tulsa district, P.O. Box 61, Tulsa, OK 74121-0061, telephone (918) 669-7193 before September 29, 1997. Repatriation of these human remains and associated funerary objects to the Muscogee (Creek) Nation of Oklahoma, the Alabama-Quassarte Tribal Town, Thlopthlocco Tribal Town, Kialigee Tribal Town, and the Seminole Nation of Oklahoma may begin after this date if no additional claimants come forward.

Dated: August 25, 1997.

**Francis P. McManamon,**

*Departmental Consulting Archeologist,  
Manager, Archeology and Ethnography  
Program.*

[FR Doc. 97-23107 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-70-F

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Notice of Inventory Completion for Native American Human Remains from New Mexico in the Possession of the Fort Burgwin Research Center, Southern Methodist University, Dallas, TX**

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains from New Mexico in the possession of the Fort Burgwin Research Center, Southern Methodist University, Dallas, TX.

A detailed assessment of the human remains was made by Southern Methodist University professional staff in consultation with representatives of the Pueblo of Picuris and the Pueblo of Taos.

In 1957, human remains representing one individual were recovered from site TA-8 during legally authorized excavations by the Fort Burgwin Research Center. No known individual was identified. No associated funerary objects are present. Site TA-8 has been identified as a pithouse occupation site likely dating to ca. 1000-1200 AD, based on construction and material culture.

During 1957-1959, human remains representing 42 individuals were excavated from Pot Creek Pueblo site (TA-1, LA 260) during archeological excavations supervised by G. Willis and R. Wetherington. No known individuals were identified. No associated funerary objects are present.

During the late 1950s through 1984, human remains representing fifteen individuals were excavated from Pot Creek Pueblo. In 1995, these remains were returned to Southern Methodist University from the University of Michigan Museum of Anthropology. No known individuals were identified. No associated funerary objects are present.

In 1961, human remains representing two individuals were excavated from Pot Creek Pueblo site (TA-1, LA 260) during archeological excavations supervised by E. Green. No known individuals were identified. No associated funerary objects were present.

In 1962, human remains representing 18 individuals were excavated from site TA-47 during Southern Methodist University archeological field school excavations supervised by E. Green. No known individuals were identified. No associated funerary objects are present. Site TA-47 has been identified as a pithouse occupation site likely dating to ca. 1100-1300 AD, based on construction and material culture.

In 1963, human remains representing one individual were recovered from a burial washing out of an arroyo bank near Pot Creek Pueblo site (TA-1, LA 260) and curated at the Fort Burgwin facility. No known individual was



identified. No associated funerary objects are present.

In 1965, human remains representing five individuals were excavated from Pot Creek Pueblo site during Southern Methodist University field school. No known individuals were identified. No associated funerary objects were present.

In 1967, human remains representing three individuals were excavated at Pot Creek Pueblo during Southern Methodist field school excavations. No known individuals were identified. No associated funerary objects are present.

In 1967, human remains representing one individual were excavated from site TA-26 by Stephanie Holschlag. No known individual was identified. No associated funerary objects are present. Site TA-26 has been identified as a small unit pueblo occupied between 1200-1300 AD based on ceramics and cultural material recovered during excavations of this site.

In 1968, human remains representing two individuals were recovered from the Sagebrush Pueblo site (TA-500) by Dr. James Sciscenti. No known individuals were identified. No associated funerary objects were present. The Sagebrush Pueblo site (TA-500) has been identified as a small unit pueblo occupied between 1150-1225 AD based on ceramics and cultural material recovered during excavations of this site.

During 1969-1976, human remains representing 60 individuals were recovered at Pot Creek Pueblo (TA-1, LA 260) during archeological field schools conducted by Southern Methodist University. No known individuals were identified. No associated funerary objects are present.

During 1979-1982, human remains representing fourteen individuals were recovered during excavations of the Cerrita pithouse site on the Fort Burgwin campus conducted by Dr. Anne Woosley. No known individuals were identified. No associated funerary objects are present. Based on cultural materials and construction, this pithouse site was probably occupied during 1100-1200 AD.

During 1981-1984, human remains representing 21 individuals were recovered during field school excavations at the Pot Creek Pueblo (TA-1, LA 260) conducted by Dr. Anne Woosley and Dr. David Meltzer of Southern Methodist University. No known individuals were identified. No associated funerary objects are present.

At unknown dates, human remains representing eight individuals were removed from precontact sites in the Taos area by Ms. Helen Blumenschein

and donated to the Fort Burgwin Research Center sometime after 1970. No known individuals were identified. No associated funerary objects are present. Although these individuals have poor provenience information due to the lack of field records from the archeological work, the appearance and apparent age of the human remains is similar to documented precontact human remains in the Taos area.

At an unknown date, human remains representing three individuals were excavated under unknown circumstances from site TA-18, a pithouse village located in the Taos area. No known individuals were identified. No associated funerary objects are present. TA-18 has been identified as a pithouse village site occupied between 1100-1200 A.D. based on cultural material.

Since the 1960s, human remains representing one individual were part of the collections at the Fort Burgwin Research Center. No known individual was identified. No associated funerary objects are present. Although unproven, this individual is known to have been recovered during excavations in the Pot Creek area, and shows similar characteristics to other human remains recovered in the Pot Creek area. There are no indications that this individual could have been recovered from any other sites.

The human remains listed above are all from sites within the Fort Burgwin campus or surrounding area. All were recovered prior to the establishment of Carson National Forest. Based on oral traditions, continuities of material culture, religious and cultural ties, and anthropological and ethnographic documentation, Northern Tiwa-speaking peoples, represented by the present-day Pueblo of Taos and Pueblo of Picuris, have occupied this area since approximately 1100 A.D.

At some time between 1961-1965, human remains representing one individual was removed from Picuris Pueblo during excavations conducted by Dr. Herbert Dick. No known individual was identified. No associated funerary objects are present.

Picuris Pueblo is a continuously occupied village site dating from 1100 AD until the present day. Continuities of technology and material culture indicate this site has been occupied by Northern Tiwa people for this time period.

Based on the above mentioned information, officials of Southern Methodist University have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of at least 195

individuals of Native American ancestry. Officials of Southern Methodist University have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Pueblo of Picuris and the Pueblo of Taos.

This notice has been sent to officials of the Pueblo of Picuris and the Pueblo of Taos. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Michael A. Adler, Department of Anthropology, Southern Methodist University, Dallas, TX 75275; telephone: (214) 768-2940, before September 29, 1997. Repatriation of the human remains to the Pueblo of Picuris and the Pueblo of Taos may begin after that date if no additional claimants come forward.

Dated: August 25, 1997.

**Francis P. McManamon,**

*Departmental Consulting Archeologist,  
Manager, Archeology and Ethnography  
Program.*

[FR Doc. 97-23109 Filed 8-29-97; 8:45 am]

BILLING CODE 4310-70-F

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Zion National Park, Utah; Proposed Exchange of Federally-Owned Land for Privately-Owned Land, Both Within Washington County, Utah

**AGENCY:** National Park Service, DOI.

**ACTION:** Notice of realty action.

**SUMMARY:** Pursuant to the authority contained in the Act of November 12, 1996 (Pub. L. 104-333, 110 Stat. 4105), the Secretary of the Interior has been authorized to acquire certain lands by exchange, and is authorized, upon completion of said exchange, to revise the boundaries of Zion National Park accordingly.

**DATES:** The effective date for this notice is August 29, 1997.

**FOR FURTHER INFORMATION CONTACT:** Realty Officer, Land Resources Program Center, Intermountain Region, P.O. Box 25287, Denver Colorado 80225-0287, (303) 969-2611.

**SUPPLEMENTARY INFORMATION:** The above-cited Act authorizes the Secretary of the Interior to exchange certain privately-owned lands adjacent to Zion National Park for Federally-owned lands within the park boundary. The lands to be exchanged are of approximately equal size. Upon completion of this exchange, the boundaries of Zion

National Park will be revised to add the parcel now adjacent to the park and to exclude the parcel now inside the park. Land added to the park shall be administered as part of the park in accordance with the laws and regulations applicable thereto. The lands to be exchanged are generally described as follows:

*Federally-owned parcel.*

A parcel of land in Lot 2, Section 5, Township 41 South, Range 11 West, Salt Lake Base and Meridian, containing 5.33 acres, more or less.

*Privately-owned parcel.*

A parcel of land in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28, Township 41 South, Range 10 West, Salt Lake Base and Meridian containing 5.40 acres more or less.

The value of the properties exchanged shall be determined by a current fair market value appraisal and if they are not approximately equal, the values shall be equalized by payment of cash as circumstances require.

For a period of 45 calendar days from the date of this notice, interested parties may submit comments to the above address. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of Interior.

Dated: August 7, 1997.

**Michael D. Snyder,**

*Acting Director, Intermountain Region.*

[FR Doc. 97-23085 Filed 8-28-97; 8:45 am]

BILLING CODE 4310-70-U

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Partial Consent Decree in *United States v. Consolidated Rail Corp.*, Civil Action No. 94-1437 (E.D.Pa.), was lodged on August 21, 1997, with the United States District Court for the Eastern District of Pennsylvania. The decree addresses Conrail's violations of Section 112 of the Clean Air Act (the "Act"), 42 U.S.C. 7412, and the National Emission Standards for Hazardous Air Pollutants for asbestos ("Asbestos NESHAP") which occurred in 1993 at its Port Richmond Grain Elevator facility located at 2870 E. Allegheny Avenue, Philadelphia, PA. Conrail's violations included failure to notify the City of Philadelphia or EPA of asbestos removal activities involved in the renovation,

failure to wet adequately the asbestos that was being removed from the facility, and failure to assure that no visible emissions were released into the outdoor atmosphere.

Under the proposed Partial Consent Decree, Conrail has agreed to pay a civil penalty of \$389,100 to resolve its liability in the instant District Court action as well as its liabilities in an unrelated administrative asbestos NESHAP action involving another Conrail facility in Philadelphia. Conrail has agreed, in addition, to perform Supplemental Environmental Projects ("SEPs") valued at \$410,900. The SEPs are referred to in Section VII of the new Decree and described in detail in the Settlement Conditions Document attached to the Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Consolidated Rail Corp.*, DOJ Ref. #90-5-2-1-1883.

The proposed Agreement may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1300, Philadelphia, PA 19106; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$15.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Walker B. Smith,**

*Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 97-23115 Filed 8-28-97; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that on August 18, 1997, a proposed Settlement Agreement for an adversary complaint

filed by the United States and the State of Michigan in *In Re Richard Thomas*, Civil Action No. 395-38143-RCM-7, was lodged with the United States District Bankruptcy Court for the Northern District of Texas.

In their adversary complaint, the United States and the State of Michigan sought a declaration that Thomas was not entitled to a homestead exemption for a condominium owned by him in Dallas, Texas, and sought imposition of an equitable lien on this property. The basis of the claims of the United States and Michigan was that Thomas had allegedly purchased the property with funds transferred from companies owned by Thomas in an effort to protect his assets from the claims of the United States and Michigan brought under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.* The CERCLA suit giving rise to the Governments' claims was brought in the Federal District Court for the Western District of Michigan, *Kelley v. Thomas Solvent Co.*, Civil Action Nos. K86-167 CA8 & K86-164 CA8, and concerned contamination of the Verona Well Field located near Battle Creek, Michigan.

Pursuant to the settlement between the Governments and Thomas, Thomas will pay \$160,000 to the United States and \$45,000 to the State of Michigan upon the sale of the condominium or within two years of the entry of the Settlement Agreement, whichever comes first. In return, the Governments will release their claims against the property owned by Thomas. Furthermore, the Governments agree that Thomas is no longer subject to the personal judgments entered against him through an earlier settlement between Thomas and the Governments.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Richard Thomas*, No. 395-38143-RCM-7, D.J. Ref. 90-11-2-140A.

The Settlement Agreement may be examined at the Office of the United States Attorney, 1100 Commerce Street, Suite 300, Dallas, Texas 75242, at U.S. EPA Region V, Office of Regional Counsel, 200 West Adams Street, Chicago, Illinois 60606, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the Settlement Agreement may be obtained in person or by mail from the Consent

Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of \$4.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Bruce Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 97-23016 Filed 8-28-97; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

#### DNA Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the DNA Advisory Board (DAB) will meet on September 23, 1997, from 10:00 am until 5:00 pm at The Marriott Residence Inn, Pentagon Ballroom, 550 Army Navy Drive, Arlington, Virginia 22202. All attendees will be admitted only after displaying personal identification which bears a photograph of the attendee.

The DAB's scope of authority is: To develop, and if appropriate, periodically revise, recommended standards for quality assurance to the Director of the FBI, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analysis of DNA; To recommend standards to the Director of the FBI which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analysis used by forensic laboratories, including statistical and population genetics issues affecting the evaluation of the frequency of occurrence of DNA profiles calculated from pertinent population database(s); To recommend standards for acceptance of DNA profiles in the FBI's Combined DNA Index System (CODIS) which take account of relevant privacy, law enforcement and technical issues; and, To make recommendations for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

The topics to be discussed at this meeting include: a review of minutes from the February 22, 1997, meeting; discussion of draft standards for convicted offender DNA databasing; introduction of new members; and a discussion of topics for the next DNA Advisory Board meeting.

The meeting is open to the public on a first-come, first seated basis. Anyone wishing to address the DAB must notify

the Designated Federal Employee (DFE) in writing at least twenty-four hours before the DAB meets. The notification must include the requestor's name, organizational affiliation, a short statement describing the topic to be addressed, and the amount of time requested. Oral statements to the DAB will be limited to five minutes and limited to subject matter directly related to the DAB's agenda, unless otherwise permitted by the Chairman.

Any member of the public may file a written statement for the record concerning the DAB and its work before or after the meeting. Written statements for the record will be furnished to each DAB member for their consideration and will be included in the official minutes of a DAB meeting. Written statements must be type-written on 8½" × 11" xerographic weight paper, one side only, and bound only by a paper clip (not stapled). All pages must be numbered. Statements should include the Name, Organizational Affiliation, Address, and Telephone number of the author(s). Written statements for the record will be included in minutes of the meeting immediately following the receipt of the written statement, unless the statement is received within three weeks of the meeting. Under this circumstance, the written statement will be included with the minutes of the following meeting. Written statements for the record should be submitted to the DFE.

Inquiries may be addressed to the DFE, Dr. Dwight E. Adams, Chief, Forensic Science Research and Training Center, Laboratory Division, Federal Bureau of Investigation, FBI Academy, Quantico, VA 22135, (703) 640-1181, FAX (703) 640-1394.

Dated: August 13, 1997.

**Dwight E. Adams,**

*Chief, Forensic Science Research and Training Center, Federal Bureau of Investigation.*

[FR Doc. 97-22984 Filed 8-28-97; 8:45 am]

BILLING CODE 4410-02-P

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Request OMB emergency approval; employment eligibility confirmation pilot programs employer data collection and reporting.

The Department of Justice, Immigration and Naturalization Service

(INS) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the section 1320.13 (a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. This information collection is needed prior to the expiration of established time periods as set forth in Title IV, Subtitle A of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The Attorney General requires the INS to conduct three pilot programs of employment eligibility confirmation beginning September 30, 1997. Without expedited approval for the collection of necessary data from employers for initial sign-up for a pilot, the programs cannot proceed. Therefore, OMB approval has been requested by August 29, 1997. If granted, the emergency approval is only valid for 90 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202-395-7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be telefaxed to Ms. Bond at 202-395-6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments are encouraged and will be accepted until October 28, 1997. During the 60-day regular review all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Your comments should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Employment Eligibility Conformation Pilot Programs Employer Data Collection and Reporting.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I-876. Files and Forms Management—SAVE Program, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit, and Federal Government. The information gathered from employers using this form will assist the INS in allocating resources and priorities in conducting the three pilot programs mandated by Title IV, Subtitle A of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200,000 respondents at 1.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300,000 annual burden hours.

If additional information is required during the first 60 days of this same regular review period contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 28, 1997.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 97-22986 Filed 8-28-97; 8:45 am]

BILLING CODE 4410-18-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97-127]

### National Environmental Policy Act; Notice of Cassini Mission Record Decision

In furtherance of the Council on Environmental Quality regulation at 40 CFR 1505.2 and the National Aeronautics and Space Administration (NASA) regulation at 14 CFR 1216.311, public notice is hereby provided that on August 12, 1997, a Record of Decision (ROD) was rendered pertaining to the Supplemental Environmental Impact Statement (SEIS) for the Cassini Mission to Saturn. While the ROD completes the National Environmental Policy Act process, the "Go/No-Go" decision for launch of the Cassini spacecraft will not be made until all of the mission and flight readiness reviews are completed.

By way of background, in July 1995, NASA issued a Final Environmental Impact Statement, dated June 1995. In April 1997, the Draft SEIS was made available to the public. NASA responded to the comments on the Draft SEIS and issued the Final SEIS on June 27, 1997, with publication of the notice of availability of the Final SEIS on July 3, 1997. The prescribed 30-day waiting period ended on August 4, 1997. Five comment letters (1 Federal agency, 4 individuals) were received on the Final SEIS. The comments were evaluated and determined not to present significant new information or data relevant to environmental concerns and bearing on the proposed action or its environmental impacts.

After consideration of all of the information, as updated in the final SEIS, the alternatives evaluated, public comments received, and other technical and programmatic factors, the decision (documented in the ROD) is the selection of the preferred alternative. This alternative consists of completing preparations for the Cassini Mission to Saturn, launching the spacecraft on a Titan IV (SRMU)/Centaur from the U.S. Air Force Cape Canaveral Air Station, Florida, and operating the mission. The launch is planned to take place during the primary launch opportunity beginning in early October 1997, with a secondary opportunity beginning in late November 1997 and a backup opportunity beginning in March 1999.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Mark R. Dahl, NASA Headquarters, Code SD, Washington, DC 20546-0001; telephone 202-358-1544.

**Benita A. Cooper,**

*Associate Administrator for Management Systems and Facilities.*

[FR Doc. 97-23111 Filed 8-28-97; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97-125)]

### NASA Advisory Council; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, (Public Law 92-463, as amended), the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

**DATES:** September 16, 1997, 8:30 a.m. to 3:30 p.m.; and September 17, 1997, 8:30 a.m. to 3:00 p.m.

**ADDRESSES:** NASA Goddard Space Flight Center, Building 8, 3rd Floor Management Conference Center, Greenbelt Road, Greenbelt, MD 20771.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anne L. Accola, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-2096.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. Advanced notification of attendance is requested by calling the NASA Advisory Council Staff office in the Office of Policy and Plans on 202/358-2096. The agenda for the meeting is as follows:

- Update on Activities at NASA
- Research Grants Management
- Integrated Financial Management Project
- Institutional and Programmatic Changes and Challenges at GSFC
- Shuttle Upgrades
- Reusable Launch Vehicle Mission Model
- Radiation-hardened, Radiation-tolerant Electronics
- Technology Development in the Mission to Planet Earth Strategic Enterprise
- Environmental Research Aircraft and Sensor Technology Program
- Committee Reports
- Discussion of Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key

participants. Visitors will be requested to sign a visitor's register. Visitors will be requested to provide photo identification (e.g., driver's license) and sign for a visitor's badge from the Goddard Space Flight Center Main Gate Receptionist in Building 9.

Dated: August 25, 1997.

**Leslie M. Nolan,**

*Advisory Committee Management Officer,  
National Aeronautics and Space  
Administration.*

[FR Doc. 97-23050 Filed 8-28-97; 8:45 am]

BILLING CODE 7510-01-M

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

[Notice (97-126)]

**NASA Advisory Council, Advisory  
Committee on the International Space  
Station (ACISS); Meeting**

**AGENCY:** National Aeronautics and  
Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the  
Federal Advisory Committee Act, Public  
Law 92-463, as amended, the National  
Aeronautics and Space Administration  
announces a meeting of the NASA  
Advisory Council, Advisory Committee  
on the International Space Station.

**DATES:** Tuesday, September 9, 1997,  
from 8:00 a.m. to 2:00 p.m.; and  
Wednesday, September 10, 1997, from  
8:00 a.m. to 10:00 a.m. and from noon  
to 1:00 p.m.

**ADDRESSES:** SSPF Conference Room, 3rd  
Floor, Space Station Processing Facility,  
Industry Drive, Kennedy Space Center,  
FL 32899.

**FOR FURTHER INFORMATION CONTACT:**

Mr. W. Michael Hawes, Code M-4,  
National Aeronautics and Space  
Administration, Washington, DC 20546,  
202/358-0242.

**SUPPLEMENTARY INFORMATION:** The  
meeting will be open to the public up  
to the seating capacity of the room. The  
agenda for the meeting is as follows:

- Extravehicular Activity/ISS Assembly  
and Maintenance
- Sustaining Engineering
- Test and Verification
- Task Group Reports

It is imperative that the meeting be  
held on these dates to accommodate the  
scheduling priorities of the key  
participants. Visitors will be requested  
to sign a visitor's register.

Dated: August 25, 1997.

**Leslie M. Nolan,**

*Advisory Committee Management Officer,  
National Aeronautics and Space  
Administration.*

[FR Doc. 97-23051 Filed 8-28-97; 8:45 am]

BILLING CODE 7510-01-M

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

[Notice (97-124)]

**NASA Advisory Council (NAC), Space  
Science Advisory Committee (SScAC),  
Structure and Evolution of the  
Universe Advisory Subcommittee;  
Meeting**

**AGENCY:** National Aeronautics and  
Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the  
Federal Advisory Committee Act, Pub.  
L. 92-463, as amended, the National  
Aeronautics and Space Administration  
announces a forthcoming meeting of the  
NASA Advisory Council, Space Science  
Advisory Committee, Structure and  
Evolution of the Universe  
Subcommittee.

**DATES:** Monday, September 29, 1997,  
8:30 a.m. to 5:00 p.m., and Tuesday,  
September 30, 1997, 8:30 a.m. to 4:30  
p.m.

**ADDRESSES:** NASA Headquarters,  
Conference Room MIC 5-A/B West, 300  
E Street, SW, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:**

Dr. Alan N. Bunner, Code SA, National  
Aeronautics and Space Administration,  
Washington, DC 20546, 202/358-0364.

**SUPPLEMENTARY INFORMATION:** The  
meeting will be open to the public up  
to the capacity of the room. The agenda  
for the meeting includes the following  
topics:

- News from NASA Headquarters
- Summary Of Strategic Plan and  
Budget Situation
- Report from SScAC and Other  
Committees
- TGSAA Summary
- Update on OSS Missions
- Public Relations
- Long Duration Balloon Program  
Update

It is imperative that the meeting be  
held on these dates to accommodate the  
scheduling priorities of the key  
participants. Visitors will be requested  
to sign a visitor's register.

Dated: August 25, 1997.

**Leslie M. Nolan,**

*Advisory Committee Management Officer,  
National Aeronautics and Space  
Administration.*

[FR Doc. 97-23049 Filed 8-28-97; 8:45 am]

BILLING CODE 7510-01-M

**NATIONAL SCIENCE FOUNDATION**

**Notice of Permit Applications Received  
Under the Antarctic Conservation Act  
of 1978 (Pub. L. 95-541)**

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications  
received under the Antarctic  
Conservation Act of 1978, Public Law  
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  
reviews with respect to these permit  
applications by September 23, 1997.  
Permit applications may be inspected by  
interested parties at the Permit Office,  
address below.

**ADDRESSES:** Comments should be  
addressed to Permit Office, Room 775,  
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 Antarctica Conservation  
Act of 1978 (Pub. L. 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 Antarctic  
and designation of certain animals and  
certain geographic areas requiring  
special protection. The regulations  
established such a permit system to  
designate Specially Protected Areas and  
Sites of Special Scientific Interest.

The application received is as follows:

Permit Application No. 98-007

1. *Applicant:* Arthur L. DeVries,  
Department of Physiology, 524 Burrill

Hall, University of Illinois, 407 South Goodwin Avenue, Urbana, Illinois 61801-3704

*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 physico-chemical 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 cod will be sacrificed and preserved in 10% formalin.

*Location:* McMurdo Station, Ross Island, Antarctica.

*Dates:* October 1, 1996–March 31, 1997.

Permit Application: 98-008

2. *Applicant:* Ian Whillans, Department of Ecological Sciences, Ohio State University, 125 South Oval Mall, Columbus, OH 43210

*Activity for Which Permit is*

*Requested:* Enter Specially Protected Area.

The applicant proposes to enter Beaufort Island, Specially Protected Area No. 5, to measure the motion of the island with respect to the Transantarctic Mountains due to mountain building activity and related processes. Access to the area will be by twin otter or helicopter to an area above sea level to install GPS receivers. The GPS will operate for 5 days or less and then be removed. Small markers will be left

behind for reoccupation in 1998/99 and again 10 years later. Every effort will be made to avoid disturbance to wildlife.

*Location:* Beaufort Island, Specially Protected Area No. 5, Ross Sea.

*Dates:* November 1, 1997–February 25, 1998.

Permit Application: 98-009

3. *Applicant:* Thomas A. Day, Department of Botany, Arizona State University, Box 871601, Tempe, AZ 85287-1601

*Activity for Which Permit is*

*Requested:* Taking, Enter Specially Protected Areas and Sites of Special Scientific Interest, and Import into the U.S. Strong evidence indicates the climate of the Antarctic Peninsula has changed appreciably this century. In addition, springtime ozone depletion events have resulted in well-documented increases in UV-B radiation levels. The applicant's previous work with two plant species collected near Palmer Station, indicate both species are sensitive to higher air temperatures and limited in ability to acclimate photosynthetically to warmer temperatures. The applicant proposes to enter Biscoe Point (SSSI #20) and Admiralty Bay (SSSI #8) to collect up to 50 shoots and up to 500 seeds of antarctic grass hair (*Deschampsia antarctica*) of antarctic periwort (*Colobanthus quitensis*). Both plant species will be grown in the lab to examine changes in photosynthesis, growth and reduction following warming or exclusion of different UV components. The species collected from the Specially Protected areas will be used to determine whether different populations from contrasting weather regimes differ in their acclimation abilities. In addition, the applicant plans to visit Litchfield Island (SPA #17) on a site visit to assess animal damage to plant communities. The need for both shoots and seeds of each species is that in all but very favorable growing seasons, the vast majority of seeds produced by these plants are not viable. If seeds are not viable, plants must be propagated from shoots.

*Location:* Biscoe Point (SSSI #20), Admiralty Bay (SSSI #8), and Litchfield Island (SPA #17), Antarctic Peninsula.

*Dates:* October 15, 1997 to April 30, 1999.

Permit Application No. 98-010

4. *Applicant:* Donald Croll, Institute of Marine Science, University of California, Santa Cruz, CA 95064

*Activity for Which Permit is*

*Requested:* Taking; Import into the U.S.; and, Enter Site of Special Scientific Interest.

The applicant proposes to collect blood, tracheal swabs, and coecal swab samples from 125 adult Adelie penguins per colony (10 colonies total) for analysis of antibody presence.

Additional blood will be taken from 10 Adelies per colony to test for the presence of trace metal or trace organic contamination. The objectives of this study are to test the hypothesis that introduced avian diseases are more likely to be present in penguins whose rookeries are located in areas of high human use than those located in areas of low human use. A second hypothesis will be tested predicting penguins in high human use colonies will have higher contaminate levels than those in lower human use colonies. While visiting the colonies, the applicant also proposes to collect up to 30 adult Adelie carcasses and 15 South Polar Skua carcasses, if found, for contaminant analysis and archival storage for future research needs.

*Location:* From 5 of the six high human contact colonies and 5 of the eight low human contact colonies listed below:

*High Human Contact:* Pt. Thomas, King George Island, Lions Rump (SSSI #34), King George Island, Arthur Harbor, Anvers Island, Hope Bay, Trinity Peninsula, Paulet Island, Petermann Island

*Low Human contact:* Cone Island, Margueritte Bay, Barcroft Island, Fish Island, Grandidier Channel, Avian Island, Margueritte Bay, Andressen Island, Crystal Sound, North Pitt Island, Grandidier Channel, Danger Island, Three Sisters Point, King George Island

*Dates:* December 1, 1997–March 1, 1999.

Permit Application No. 98-011

5. *Applicant:* Bill J. Baker, Department of Chemistry, Florida Institute of Technology, Melbourne FL 32901

*Activity for Which Permit is*

*Requested:* Introduce Non-indigenous species into Antarctica.

The applicant proposes to introduce 2 slants each of the following species;

*Bacillus cereus*, *Bacillus subtilis*, *Escherichia coli*, *Micrococcus luteus*, *Pseudomonas aeruginosa*, *Staphylococcus aureus*, *Aspergillus niger*, and *Saccharomyces cerevisiae*.

These eight species of non-pathogenic microorganisms will be used for bioassay of marine invertebrate extracts. The microorganisms will be propagated for each bioassay, then disposed of by sterilization at the conclusion of the field season. Sterile techniques will be used to handle the microbes to ensure they remain contained.

*Location:* Crary Lab, McMurdo Station, Antarctica.

*Dates:* October 1, 1997–December 31, 1997.

Permit Application No. 98–012

6. *Applicant:* Donald B. Siniff, Dept. of Ecology, Evolution and Behavior, 100 Ecology Building, University of Minnesota, St. Paul, Minnesota 55108

*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 300 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. Aspects 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; (2) to update estimates of population parameters annually, using mark-recapture surveys, to continue the analyses and test of hypotheses associated with this data base; (3) collect blood and tissue samples for research examining the social structure and behavioral ecology of Weddell seals. The samples will be analyzed at the Universities of Minnesota and Alberta for DNA fingerprinting; (4) 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 (performed under supervision of a marine mammal veterinarian) offer a non-lethal technique of obtaining this data; and (5) VHF radio transmitters will be used to monitor the activity of territorial males during the breeding season in conjunction with the studies of behavioral ecology and paternity. The radio transmitters will be attached with marine epoxy and removed after use. If animals cannot be recaptured, the radios will fall off during their annual molt.

*Location:* McMurdo Sound vicinity, Antarctica.

*Dates:* October 1, 1997–September 30, 1998.

Permit Application No. 98–013

7. *Applicant:* Donald B. Siniff, Dept. of Ecology, Evolution and Behavior, 100 Ecology Building, University of Minnesota, St. Paul, Minnesota 55108  
*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 5–8 Weddell pups, as part of a continuing population biology 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, 1997–September 30, 1998.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. 97–22985 Filed 8–28–97; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

### Wisconsin Electric Power Company; Point Beach Nuclear Plant, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–24 and DPR–27, issued to Wisconsin Electric Power Company, (the licensee), for operation of the Point Beach Nuclear Plant, Units 1 and 2, located in Manitowoc County, Wisconsin.

#### Environmental Assessment

##### Identification of the Proposed Action

By letter dated January 21, 1997, the licensee proposed to change Technical Specification (TS) 15.6.11, "Radiation Protection Program" by revising all references to 10 CFR part 20, section

20.203 to section 20.1601, and by revising the footnote associated with this TS to indicate dose rates are those measured at no more than 30 centimeters from the source of radioactivity in accordance with 10 CFR 20.1601(a)(1).

#### The Need for the Proposed Action

The proposed action is needed for the licensee to be consistent with 10 CFR part 50, Appendix I, in implementing the revised 10 CFR part 20.

#### Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS and concludes that the administrative changes associated with updating the references to 10 CFR part 20 will not increase the types or amounts of effluents that may be released offsite, nor increase individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, no changes are being made to the authorized power level, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

#### Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.



*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Point Beach Nuclear Plant, Units 1 and 2.

*Agencies and Persons Consulted*

In accordance with its stated policy, on July 29, 1997, the staff consulted with the Wisconsin State official, Ms. Sarah Jenkins of the Wisconsin Public Service Commission, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 21, 1997, 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 Lester Public Library, 1001 Adams Street, Two Rivers, WI 54241.

Dated at Rockville, Maryland, this 22nd day of August 1997.

For the Nuclear Regulatory Commission.

**Linda L. Gundrum,**

*Project Manager, Project Directorate III-1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 97-23042 Filed 8-28-97; 8:45 am]

BILLING CODE 7590-01-P

**NUCLEAR REGULATORY COMMISSION**

[Docket Nos. 50-266 and 50-301]

**Wisconsin Electric Power Company; Point Beach Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering granting an exemption from the requirements of 10 CFR 70.24(a) to Wisconsin Electric Power Company, (the licensee), in connection with the operation of the Point Beach Nuclear Plant (PBNP), Units 1 and 2, located in Manitowoc County, Wisconsin, under Facility Operating Licenses Nos. DPR-24 and DPR-27.

**Environmental Assessment***Identification of Proposed Action*

The proposed action would exempt the licensee from the requirements of 10 CFR 70.24(a), which requires a monitoring system that will energize clear audible alarms if accidental criticality occurs in each area in which special nuclear material is handled, used, or stored. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated June 7, 1997.

*The Need for the Proposed Action*

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and features designed to prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24, therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental

criticality will be precluded through compliance with the PBNP, Units 1 and 2, Technical Specifications, the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures. Technical Specifications requirements specify reactivity limits for the fuel storage racks and minimum spacing between the fuel assemblies in the storage racks.

Appendix A of 10 CFR Part 50, "General Design Criteria for Nuclear Power Plants," Criterion 62, requires that criticality in the fuel storage and handling system shall be prevented by physical systems or processes, preferably by use of geometrically safe configurations. This is met at PBNP, as identified in the Technical Specifications and the Final Safety Analysis Report (FSAR). PBNP Technical Specifications Section 15.5.4, "Fuel Storage," states that "The new and spent fuel storage racks are designed so that it is impossible to store assemblies in other than the prescribed storage locations. The fuel is stored vertically in an array with sufficient center-to-center distance between assemblies to assure  $K_{eff} < 0.95 * * *$ ." FSAR Section 9.5, "Fuel Handling System," Subsection 9.5.1, "Design Basis," states the Point Beach general design criterion for prevention of fuel storage criticality is "Criticality in the new and spent fuel storage pits shall be prevented by physical systems or processes. Such means as geometrically safe configurations shall be emphasized over procedural controls."

The proposed action would not result in any significant radiological impacts. The proposed action would not affect radiological plant effluents nor cause any significant occupational exposures since the Technical Specifications, design controls (including geometric spacing of fuel assembly storage spaces), and administrative controls preclude inadvertent criticality. The amount of radioactive waste would not be changed by the proposed action.

The proposed action does not result in any significant nonradiological environmental impacts. The proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.



*Alternatives to the Proposed Action*

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of Point Beach Nuclear Plant," dated May 1972.

*Agencies and Persons Consulted*

In accordance with its stated policy, on July 29, 1997, the staff consulted with the Wisconsin State official, Ms. Sarah Jenkins of the Wisconsin Public Service Commission, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 6, 1997, which is available for public inspection at the Commission's Public Document Room, which is located at The Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at The Lester Public Library, 1001 Adams Street, Two Rivers, WI 54241.

Dated at Rockville, Maryland, this 22nd day of August 1997.

For the Nuclear Regulatory Commission.

**Linda L. Gundrum,**

*Project Manager, Project Directorate III-1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 97-23043 Filed 8-28-97; 8:45 am]

BILLING CODE 7590-01-U

**SECURITIES AND EXCHANGE COMMISSION**

[Rel. No. IC-22795; 812-10718]

**First American Investment Funds, Inc., et al.; Notice of Application**

August 22, 1997.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**SUMMARY OF APPLICATION:** Applicants request an order under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) to permit a common trust fund sponsored by U.S. Bank National Association ("U.S. Bank") to transfer securities to a series of First American Investment Funds, Inc. ("FAIF"), in exchange for shares of the series.

**APPLICANTS:** FAIF, Large Companies Value Trust Fund ("LCVT"), and U.S. Bank.

**FILING DATE:** The application was filed on July 11, 1997. 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 17, 1997, 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 writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants c/o James D. Alt, Esq., Dorsey & Whitney LLP, 220 South Sixth Street, Minneapolis, Minnesota 55402.

**FOR FURTHER INFORMATION CONTACT:** John K. Forst, Attorney Advisory, at (202) 942-0569, or Mary Kay Frech, 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 may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth

Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

**Applicants' Representations**

1. U.S. Bank is a national banking association and a wholly-owned subsidiary of U.S. Bancorp. ("USB"), a publicly held bank holding company. U.S. Bank, through its First Asset Management group, acts as investment adviser to each series of FAIF. USB maintains a defined benefit pension plan ("Parent Company Plan") for the benefit of employees of USB and its subsidiaries. The Parent Company Plan owns more than 5% of the outstanding voting shares of the Stock Fund series of FAIF (the "Fund"). The Fund is a multiple class fund.

2. FAIF is a Maryland corporation registered under the Act as an open-end management investment company. FAIF currently offers its shares to the public in several series with varying investment objectives and policies.

3. LCVT is a common trust fund as defined in Section 584(a) of the Internal Revenue Code of 1986, as amended. LCVT is maintained by U.S. Bank exclusively for the collective investment and reinvestment of moneys contributed by U.S. Bank in its capacity as a trustee, executor, administrator, or guardian. The persons and entities for which U.S. Bank acts in such capacity are referred to as "Participants" in LCVT. LCVT is excluded from the definition of investment company under section 3(c)(3) of the Act.

4. Applicants propose to transfer to transfer the assets held by LCVT to the Fund in exchange for Class C shares of the Fund. Class C shares are offered without a front-end or deferred sales charge, are not subject to any redemption fees, and do not bear any rule 12b-1 distribution fees or any shareholder servicing fees. LCVT assets to be transferred to the Fund will be valued in accordance with the provisions of rule 71a-7(b), and the Fund's shares issued will have an aggregate net asset value equal to the value of the LCVT assets transferred. Following the proposed transaction, LCVT will be terminated, and the Fund shares issued will be held by U.S. Bank directly as trustee, executor, administrator, or guardian. The Fund shares held by U.S. Bank, as fiduciary, will be credited to the benefit of each Participant, *pro rata*, according to each Participant's interest in LCVT immediately prior to the transfer.

5. The proposed transaction will be carried out in accordance with procedures previously adopted by FAIF's board of directors pursuant to rule 17a-7(e), and the provisions of rule

17a-7(c), (d), and (f) will be satisfied with respect to FAIF. FAIF's board of directors was advised by U.S. Bank that the investment objectives and policies of LCVT and the Fund, and the securities they hold, are generally similar. In addition, FAIF's board of directors, including a majority of the directors of FAIF who are not interested persons, has determined that participation by the Fund in the proposed transaction is in the best interests of the Fund and the interests of existing Fund shareholders will not be diluted as a result of the transaction. These findings, and the basis upon which they were made, will be recorded fully in the minute books of the Fund.

6. U.S. Bank, as LCVT's trustee, will determine in accordance with its fiduciary duties that the proposed transaction is in the best interests of Participants in LCVT. In making this determination, U.S. Bank will consider the anticipated benefits which are expected to flow to Participants, including increased liquidity, the availability of daily pricing, the accessibility of performance and other information concerning the Fund, the similarity of LCVT's and the Fund's investment objectives and policies, the anticipated tax treatment of the proposed transaction, and the aggregate fee levels experienced and expected to be experienced by Participants before and after the proposed transaction.

7. In some instances, U.S. Bank will be required to obtain the consent or direction of the party having investment discretion regarding a Participant's inclusion in the transaction. In those instances where an account party of the Participant does not exercise investment discretion but can terminate or transfer the fiduciary relationship with U.S. Bank, such account party can direct U.S. Bank to withdraw the Participant's investment from LCVT before the proposed transaction takes place. In all instances, detailed information concerning the terms of the proposed transaction, the Fund, applicable fee schedules, and other related information will be provided to Participants before the proposed transaction takes place.

8. Applicants also request relief for any future transactions in which a common or collective trust fund for which U.S. Bank, or another bank under common control with U.S. Bank, acts as trustee, proposes to transfer all of its assets to a registered investment company (or series thereof) that is (a) advised by U.S. Bank, or by any entity controlling, controlled by, or under common control with U.S. Bank; and (b) 5% or more owned by a defined benefit pension plan or other employee benefit

plan sponsored by U.S. Bank or by an entity controlling, controlled by or under common control with U.S. Bank (the "Future Transactions"). Applicants state that they will rely on the requested relief for Future Transactions only in accordance with the terms and conditions contained in the application.

#### **Applicants' Legal Analysis**

1. Section 17(a) of the Act provides that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly (a) to sell any security or other property to such registered company, or (b) to purchase from such registered company any security or other property. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include (a) any person owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person controlling, controlled by, or under common control with, such other person; and (c) if such other person is an investment company, any investment adviser thereof.

2. Because LCVT might be viewed as acting as principal in the proposed transaction, and because LCVT and the Fund might be viewed as being under common control of U.S. Bank within the meaning of section 2(a)(3) of the Act, the proposed transaction may be subject to the prohibitions of section 17(a). Accordingly, applicants request an order from the SEC pursuant to sections 6(c) and 17(b) exempting them from section 17(a) of the Act on the terms and subject to the conditions set forth in the application.

3. Section 17(b) provides that the SEC shall exempt a transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Rule 17a-7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if, among other requirements, the transactions are effected at an "independent market price" and the investment company's board of directors reviews the transactions for fairness. Rule 17a-8 exempts certain mergers and consolidations from section 17(a) if, among other requirements, the investment company's board of

directors determines that the transactions are fair.

4. Applicants will comply with rules 17a-7 and 17a-8 to the extent possible, as stated in the conditions to the requested order. The proposed transaction contemplates in-kind transfers from LCVT to the Fund, rather than cash transactions. Applicants assert that if the proposed transaction were effected in cash instead of through an in-kind transfer of assets, LCVT and the Participants would have to bear unnecessary expense and inconvenience in transferring assets to the Fund.

5. Section 6(c) provides that the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder 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.

6. Applicants submit that the proposed transaction meets the standards for relief under sections 6(c) and 17(b). Applicants assert that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any party; the investment objectives, policies, and restrictions of LCVT are compatible with and substantially similar to the Fund's investment objectives, policies, and restrictions; and, the transaction and the requested exemption are in the public interest, consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

#### **Applicants' Conditions**

1. The proposed transaction will comply with the terms of rule 17a-7 (b) through (f).

2. The proposed transaction will not occur unless and until the board of directors of the Fund (including a majority of the board's disinterested members) find that participation by the Fund in the proposed transaction is in the best interests of such Fund and that the interests of existing shareholders of such Fund will not be diluted as a result of the transaction. These findings, and the bases upon which they are made, will be recorded fully in the minute books of the Fund.

3. The proposed transaction will not occur unless and until U.S. Bank, as trustee, has determined in accordance with its fiduciary duties as trustee for LCVT and fiduciary for the Participants, that the proposed transactions is in the best interests of the Participants.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-23006 Filed 8-28-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22796; 812-10420]

### New England Funds Trust I, et al.; Notice of Application

August 22, 1997.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from the provisions of section 15(a) of the Act and rule 18f-2 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order permitting TNE Advisers, Inc. ("TNE Advisers") and New England Fund Management, L.P. ("NEFM"), as investment advisers of certain funds, to enter into sub-advisory contracts on behalf of the funds without receiving prior shareholder approval.

**APPLICANTS:** New England Funds Trust I, New England Funds Trust II, New England Funds Trust III, New England Cash Management Trust, New England Tax Exempt Money Market Trust (collectively, the "New England Funds"), New England Zenith Fund (collectively with the New England Funds, the "Trusts"), TNE Advisers, and NEFM (together with TNE Advisers, the "Advisers").

**FILING DATES:** The application was filed on November 12, 1996, and amended on July 1, 1997 and August 22, 1997.

**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 16, 1997, 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 writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. New England Funds and NEFM, 399 Boylston Street, 4th Floor, Boston, Massachusetts 02116. New England Zenith Fund and TNE Advisers, 501 Boylston Street, Boston, Massachusetts 02116.

**FOR FURTHER INFORMATION CONTACT:** Kathleen L. Knisely, Staff Attorney, at (202) 942-0517, or Mary Kay Frech, 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 may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W. Washington, D.C. 20549 (tel. 202-942-8090).

#### Applicants' Representations

1. Each of the New England Funds is organized as a Massachusetts business trust and registered under the Act as an open-end management investment company with one of more series. NEFM, a limited partnership, is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). NEFM serves as investment adviser to each of the New England Funds (except New England Growth Fund Series).

2. New England Zenith Fund (the "Zenith Fund") is organized as a Massachusetts business trust and registered under the Act as an open-end management investment company with one or more series. The Zenith Fund serves as a funding vehicle for certain variable annuity and variable life insurance products issued by Metropolitan Life Insurance Company ("MetLife") and its subsidiary New England Life Insurance Company ("NELICO"). TNE Advisers is registered as an investment adviser under the Advisers Act. TNE Advisers serves as investment adviser for each series of the Zenith Fund (except the Capital Growth Series).

3. Each series for the Zenith Fund (except the Capital Growth Series) and each series of the New England Funds (except the New England Growth Fund Series) (together, the "Series") utilizes the adviser/subadviser management structure.<sup>1</sup> Under this two-tiered

<sup>1</sup> Applicants also request relief for any Series of the Trusts organized in the future, and any open-end management investment companies in the future advised by NEFM or TNE Advisers or by a person controlling, controlled by, or under common control with NEFM or TNE Advisers that operates in substantially the same manner as the Trusts and

structure, NEFM (in the case of the New England Funds) or TNE Advisers (in the case of the Zenith Fund) acts as each Series' investment adviser, delegating the day-to-day portfolio management for each Series to one or more sub-advisers.

4. The New England Funds have entered into an advisory agreement with NEFM, which states that NEFM will provide both portfolio management services and administrative services to the New England Funds. TNE Advisers has entered into an advisory agreement with the Zenith Fund, which states that TNE Advisers will provide both portfolio management services and administrative services for each Series of the Zenith Fund for which TNE Advisers is the adviser. NEFM and TNE Advisers are responsible for: (a) Evaluating existing and prospective sub-advisers; (b) submitting recommendations to the boards of trustees of the Trusts concerning sub-advisers to be engaged by the Series; (c) monitoring and reporting to the Trusts' boards concerning investment results of the sub-advisers; (d) monitoring the sub-advisers' compliance with the Series' investment objectives, policies, and restrictions; and (e) when appropriate, recommending that the trustees of the relevant Trust terminate the services of a Series' sub-advisers.

5. NEFM and TNE Advisers have entered into sub-advisory agreements with one or more advisory firms (sub-advisers) with respect to each Series, pursuant to which the sub-advisers provide day-to-day portfolio management services. Each sub-advisory agreement requires the relevant sub-advisers to manage the investment and reinvestment of the assets of the Series, subject to the supervision of either NEFM or TNE Advisers and oversight by the trustees. The sub-advisers' responsibilities include effecting portfolio transactions and reporting periodically to NEFM or TNE Advisers, their agents, and the trustees of the Trusts.

6. Under their advisory agreements, NEFM and TNE Advisers receive from the relevant Series compensation at a specified annual percentage of the corresponding Series' average daily net assets. NEFM and TNE Advisers, in turn, compensate the relevant sub-advisers at specified annual percentage rates of the Series' average daily net assets. The sub-advisory fee paid to the sub-advisers is payable by NEFM or TNE Advisers, and not by the Series.

7. The Advisers have contractual rights under their applicable advisory

complies with the conditions to the requested order as set forth in the application.

agreements to delegate their duties to provide administrative services to a sub-adviser or third party. The Advisers agree that no such Series will utilize the relief granted under the requested order until such time as the Advisers have waived such rights with respect to such Series. The Advisers, however, may continue to delegate to a third party routine accounting and legal functions (e.g., legal work performed in connection with periodic filings and other routine legal matters) that do not include establishing investment policies or the selection, evaluation, or termination of sub-advisers. The Advisers, under their advisory agreements, retain all responsibility for the performance of these delegated duties.

### Applicants' Legal Analysis

1. Applicants request an exemption from section 15(a) of the Act and rule 18f-2 under the Act to permit NEFM and TNE Advisers to enter into new or amended agreements with sub-advisers without obtaining shareholder approval. Such relief would include any sub-advisory agreement necessitated because the prior sub-adviser was terminated as a result of an "assignment," as defined in section 2(a)(4) of the Act.

2. Section 15(a) of the Act makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f-2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

3. Applicants state that adviser/sub-adviser arrangements differ from conventionally managed mutual funds. Unlike conventional mutual funds, adviser/sub-adviser managed funds divide responsibility for general management and investment advice between the adviser and the sub-adviser. The adviser provides general management and administrative services to the funds, including monitoring the sub-adviser. The adviser selects the sub-adviser it believes is most likely to make portfolio securities selections that will achieve the funds' objectives. The sub-adviser, in turn, selects portfolio investments. Applicants believe that the shareholders in an adviser/sub-adviser fund rely on the fund's adviser to perform the selecting and monitoring of sub-advisers and to respond promptly to any

significant change in the sub-advisory services provided to the fund.

4. Applicants believe that without the ability to employ promptly a new sub-adviser, investors' expectation may be frustrated and the Trusts and their shareholders could be disadvantaged when a sub-adviser has resigned or has been terminated because its performance was unsatisfactory or where there has been an "assignment" of a sub-advisory agreement.

5. Applicants assert that the ability to enter into sub-advisory agreements without shareholder approval would enable the Trusts and their Series that employ an adviser/sub-adviser structure to act promptly upon the Adviser's recommendations with respect to the sub-adviser, as well as save the Series and their shareholders the expense of convening shareholder meetings. Applicants further assert that the Trusts' investors will be able to exercise control over their relationship with the Adviser because the Trusts' advisory agreements with NEFM or TNE Advisers, as applicable, will be subject to the shareholder voting requirements of section 15(a) of the Act.

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. Applicants state that the requested exemption is in accordance with the standards of section 6(c).

### Applicants' Conditions

Applicants agree that the order shall be subject to the following conditions:

1. The Advisers will provide general management and administrative services to the Trusts, including overall supervisory responsibility for the general management and investment of the Trusts' securities portfolios that employ an adviser/sub-adviser structure, and subject to review and approval by each Trust's board with respect to its respective Series that employ an adviser/sub-adviser structure, will (i) set the Series' overall investment strategies; (ii) select sub-advisers; (iii) monitor and evaluate the performance of the sub-advisers; (iv) allocate, and when appropriate, reallocate a Series' assets among its sub-advisers in those cases where a Series has more than one sub-adviser; and (v) implement procedures reasonably designed to ensure that the sub-advisers comply with the relevant Trust's

investment objectives, policies, and restrictions.

2. Before a Series may rely on the order requested in the application, the operation of the Series in the manner described in the application will be approved by a majority of its outstanding voting securities,<sup>2</sup> as defined in the Act, or, in the case of a new Series whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by 4. below, by the sole shareholder before the offering of shares of such Series to the public.

3. Within 90 days after the hiring of any new sub-adviser or the implementation of any proposed material change in a sub-advisory agreement, the Trusts will furnish shareholders the information about a new sub-adviser or sub-advisory agreement that would be included in a proxy statement. Such information will include any change in such disclosure caused by the addition of a new sub-adviser or any proposed material change in the sub-advisory agreement of a Series. The Series will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 ("Exchange Act"). The information statement also will meet the requirements of Item 22 of Schedule 14A under the Exchange Act. The Zenith Fund will ensure that the information statement is furnished to the unitholders of any separate account for which the Zenith Fund serves as a funding vehicle.

4. The Trusts will disclose in all prospectuses relating to any Series the existence, substance and effect of any order granted pursuant to the application. In addition, each Series will hold itself out to the public as employing the adviser/sub-adviser approach described in the application. The prospectus will prominently disclose that the adviser has ultimate responsibility to oversee sub-advisers and recommend their hiring, termination, and replacement.

<sup>2</sup>NELICO and MetLife are the legal owners of shares attributable to variable life insurance and variable annuity contracts issued by separate accounts of NELICO and MetLife. As such, they are required to vote their shares in accordance with the instructions received from the owners of variable life and variable annuity contracts issued by separate accounts that are registered under the Act. All Zenith Fund shares held by separate accounts that are registered under the Act for which no timely instructions are received are voted for, voted against, or withheld from voting on any proposition in the same proportion as the shares held in that separate account for all contracts for which voting instructions are received.

5. The Advisers will not enter into a sub-advisory agreement with any sub-adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, the advisers, or the Trusts other than by reason of serving as sub-adviser to one or more Series ("Affiliated Sub-Adviser") without such agreement, including compensation to be paid thereunder, being approved by the shareholders of the applicable Series.

6. At all times, a majority of the trustees of the Trusts will be persons each of whom is not an "interested person" of each of the Trusts (as defined in section 2(a)(19) of the Act) (the "Independent Trustees"), and the nomination of new or additional Independent Trustees will be committed to the discretion of then existing Independent Trustees.

7. When a sub-adviser change is proposed for a Series having an Affiliated Sub-Adviser, the trustees of the Trusts, including a majority of the Independent Trustees, will make a separate finding, reflected in such Trust's board minutes, that the change is in the best interests of the Series and its shareholders and does not involve a conflict of interest from which the Advisers or the Affiliated Sub-Adviser derives an inappropriate advantage.

8. No trustee or officer of the Trusts, or the Advisers will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such trustee or officer) any interest in a sub-adviser except for: (a) Ownership of interests in the Advisers or any entity that controls the Advisers; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a sub-adviser or an entity that controls, is controlled by, or is under common control with a sub-adviser.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-23007 Filed 8-28-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22797; International Series Release No. 1098; File No. 812-10376]

### Tele-Communications International, Inc.; Notice of Application

August 22, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**SUMMARY OF APPLICATION:** Applicant Tele-Communications International, Inc. requests an order under section 6(c) of the Act that would permit applicant and its controlled companies to participate in certain foreign tele-media ventures without being subject to the provisions of the Act.

**FILING DATES:** The application was filed on October 2, 1996, and amended on June 30, 1997 and August 18, 1997.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 16, 1997 by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. General Counsel, Applicant, 5619 DTC Parkway, Englewood, CO 80111.

**FOR FURTHER INFORMATION CONTACT:** David W. Grim, Staff Attorney, at (202) 942-0571, or Mary Kay Frech, 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 may be obtained for a fee at the SEC's Public Reference Branch [450 Fifth Street, N.W., Washington, D.C. 20549; (202) 942-8090].

### Applicant's Representations

1. Applicant, a Delaware corporation, was incorporated in 1994 as a wholly-owned subsidiary of Tele-Communications, Inc. ("TCI"), a Delaware corporation. TCI, through its subsidiaries and affiliates (other than applicant), is principally engaged in the construction, acquisition, ownership, and operation of cable television systems in the United States and the provision of cable and satellite-delivered video entertainment, information, and home shopping programming services to various distribution media.

2. Applicant was formed by TCI as a holding company for the purpose of consolidating TCI's international cable and telecommunications and certain of its international programming businesses under one corporation, pending an initial public offering of stock by applicant in mid-1995. Applicant was formed with its own management team, which largely consisted of those executive officers of TCI who had been responsible for the operations of TCI's international divisions. During the fourth quarter of 1994 and the first quarter of 1995, TCI contributed its ownership interests in substantially all of its international cable and telephony assets and certain of its international programming assets to applicant (the "TCI Contributions"). TCI currently owns approximately 85% of the outstanding shares of all series of common stock of applicant and approximately 92% of the combined voting power of all series of outstanding shares of common stock of applicant.

3. Applicant has expanded and built upon the assets it received through the TCI Contributions and has established ventures in new markets. Today applicant, directly and through joint ventures and controlled companies, is engaged in the business of acquiring, developing, operating, and managing broadband distribution, telecommunications, and programming businesses in selected markets outside the United States.

4. Applicant's assets are not held as passive or portfolio investments and are not traded for short-term profit. Applicant has never been a registered investment company (or subject to any analogous regulatory scheme in another jurisdiction) and has never been engaged in the business of investing, reinvesting, or trading in securities.

5. Applicant requests relief to permit applicant and each entity that is now or in the future controlled by, or under common control with, applicant (each, including applicant, a "Covered Entity") to engage, either directly or indirectly through subsidiaries, in certain foreign tele-media ventures without being subject to the provisions of the Act. For purposes of the application, applicant represents that "foreign tele-media venture" means any and all activities outside the United States involving: communications; media; the creation, storage and transmission of voice, video, or data; programming, including entertainment, news, information, and home shopping services; print media; broadband and satellite distribution; over the air broadcast; telecommunications; wireline or wireless distribution and telephony;

network construction; design, operation, and ownership of related transport construction; and any and all related or similar activities, services, and assets.

6. Applicant is a holding company and, directly and through other Covered Entities, is engaged in the business of acquiring proprietary interests in, and developing, operating, and managing, foreign tele-media ventures. Applicant's management team has significant experience and expertise in pioneering the development of, acquiring interests in, and managing distribution, telecommunications, and programming companies both domestically and in markets outside the United States. The officers and employees of applicant spend the vast majority of their time on the business and affairs of applicant's foreign tele-media ventures. Contributions by these individuals include working to implement the construction of distribution networks, hiring staff, developing and implementing business plans and budgets, creating, acquiring, developing, and scheduling programming services, overseeing lobbying and other regulatory efforts, and providing technical, operational, marketing, and engineering direction. Management's time is also spent performing market analyses, developing new business opportunities for applicant, determining possible partner candidates, serving on boards of directors and management committees of foreign tele-media ventures, and maintaining relationships with strategic investors and partners. Applicant becomes involved in most of its foreign tele-media ventures in the start-up or development stage. In other cases, its involvement comes after the development stage, but applicant's participation enables the venture to advance more rapidly or effectively its business plan.

7. Applicant participates in foreign tele-media ventures in either of two ways. One way is for applicant, directly or through one or more other Covered Entities, to invest in a foreign tele-media company. A "foreign tele-media company," as used herein, is any corporation, partnership, joint venture, association, joint stock company, limited liability company, or other form of organization (i) substantially all of whose operations are conducted outside of the United States, (ii) that owns the assets of the foreign tele-media ventures (which may consist of capital assets or stock of operating subsidiaries), and (iii) whose business primarily relates to, or whose operations consist primarily of, the ownership, development, and operation of, or the provision of management or operational services

relating to, foreign tele-media ventures. Applicant, directly or through one or more other Covered Entities, acquires a substantial interest in the foreign tele-media company, and provides active developmental assistance to the company. For purposes of the application, applicant represents that "substantial interest" means any ownership interest that represents at least a 10% economic or voting interest. Applicant further represents that "active developmental assistance" means material involvement in the creation, development, or operation of, the provision of material managerial, advisory, or operational services relating to, or significant input on material decisions affecting the development or operations of, a foreign tele-media venture.

8. The second way applicant participates in foreign tele-media ventures is by investing, either directly or through one or more other Covered Entities, in a tele-media partnership. For purposes of the application, applicant represents that a "tele-media partnership" means any partnership, joint venture, limited liability company, or other unincorporated association (i) substantially all of whose operations are conducted outside of the United States, and (ii) whose purpose is to acquire interests in, and to develop, operate, or provide management services to, one or more foreign tele-media companies. Representatives of applicant or another Covered Entity participate on the management committee or similar governing body of the tele-media partnership. Applicant, directly or through one or more other Covered Entities, acquires a substantial interest in the tele-media partnership which, in turn, directly or through one or more subsidiaries, acquires a substantial interest in one or more foreign tele-media companies. Applicant or another Covered Entity, either directly or through the tele-media partnership, provides active developmental assistance to the foreign tele-media ventures of the tele-media partnership.

9. Applicant represents that providing "active developmental assistance" requires applicant or another Covered Entity to be or have been materially involved in providing such assistance. Thus, if applicant or another Covered Entity was materially involved in the development of a foreign tele-media venture, such entity may thereafter cease to provide active developmental assistance to such venture after the venture has moved past the development stage, provided it continues to have a substantial interest in the venture. Similarly, if applicant or

another Covered Entity acquires a substantial interest in a foreign tele-media venture after the development stage and provides active developmental assistance to that venture, then applicant or such Covered Entity may continue to rely on the requested exemptive order, notwithstanding that it ceases to provide such developmental assistance to the venture, if applicant or such Covered Entity maintains its substantial interest in the venture, and (i) the business of the foreign tele-media venture was significantly enhanced by the participation of applicant or such Covered Entity, or (ii) such foreign tele-media venture (a) is merged or combined with, or acquired by, a company in the same or a related business, or (b) effects an initial public offering of voting stock. Material involvement in a foreign tele-media venture will not be present, however, in arrangements that are immaterial to the overall development or successful operation of the foreign tele-media venture.

10. The degree of applicant's participation in foreign tele-media ventures with local and strategic partners is a result of both restrictions on foreign investment under the laws of many countries in which applicant does business, as well as benefits, both tangible and intangible, that applicant obtains from joining with strategic partners to create, develop, and operate such ventures. Applicant's structure was not established for the purpose of creating an investment company within the contemplation of the Act. While applicant believes that today it is not required to register under the Act, it is seeking the requested exemptive order as it and its foreign tele-media ventures are increasingly constrained by the requirements of the Act.

#### **Applicant's Legal Analysis**

1. Section 3(a)(1)(C) of the Act defines an "investment company" as including any issuer that is engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owns investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items). Section 3(a)(2) defines "investment securities" to include all securities except, in pertinent part, securities issued by majority-owned subsidiaries of the owner which are not investment companies and which are not excepted from the definition of investment company by section 3(c)(1) or section 3(c)(7). Section 2(a)(24) defines a "majority-owned subsidiary" of a person as a company 50% or more

of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of section 2(a)(24), is a majority-owned subsidiary of such person.

2. Rule 3a-1 under the Act deems certain issuers that meet the statutory definition of investment company in section 3(a)(1)(C) of the Act not to be investment companies, provided such issuers meet certain criteria. An issuer can qualify for this exemption only if no more than 45% of its assets consist of, and no more than 45% of its net income is derived from, securities other than, among others, securities of certain companies controlled primarily by the issuer.<sup>1</sup>

3. Applicant represents that it seeks to acquire a majority voting interest in its foreign tele-media ventures or, where such an interest is not permitted under applicable foreign investment laws or is inadvisable for business reasons, seeks to acquire interests that grant it primary control. Applicant asserts that these ownership thresholds are prohibitively large, as applicant often seeks to join with two or three strategic partners in a foreign tele-media venture. Applicant represents that each partner typically desires an interest in, and rights over, the venture that is equal to that of the other partners. Hence, applicant states that its acquisition of a majority interest, or the largest interest, in a foreign tele-media venture is often impossible.

4. Applicant states that it also may participate in a foreign tele-media venture through a "joint venture," in which applicant's interest may not be a "security" for purposes of the Act. However, applicant states that whether an arrangement is a joint venture is sometimes difficult to determine.

5. Applicant asserts that the need to structure its participation in foreign tele-media ventures in a manner that complies with the Act has resulted in severe constraints on its ability to operate effectively and efficiently and grow its business. Applicant states that if it is unable to obtain either a majority interest or primary control for purposes of section 3(a)(1)(C) or rule 3a-1, or a degree of control that will allow it to obtain an opinion of counsel that it can classify its participation as a joint venture interest, then applicant most likely will abstain from participating in that foreign tele-media venture.

6. Applicant also states that as ventures grow out of the development stage, they will often seek to expand

their businesses through acquisitions, or will seek public financing. Applicant notes that these goals are often in direct conflict with the need of applicant to maintain its ownership interest at a level that permits such interest to be classified as a non-investment security. Applicant submits that this has resulted in serious delays in the development of certain of applicant's foreign tele-media ventures, as applicant seeks to structure transactions around the requirements of the Act. Applicant states that at times, especially when applicant's interest would fall below the level of presumptive control set forth in section 2(a)(9) of the Act, applicant has denied a foreign tele-media venture permission to undertake a transaction that would have been in the best interests of applicant and that venture.

7. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act or any rule or regulation thereunder, 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. Applicant requests an order under section 6(c) to permit applicant and the other Covered Entities to engage, directly or through subsidiaries, in foreign tele-media ventures without being subject to the provisions of the Act.

8. Applicant believes that the requested relief is necessary and appropriate in the public interest. Applicant states that its business does not entail the types of risk to public investors that the Act was designed to eliminate or mitigate. Applicant asserts that its assets cannot be characterized as liquid, mobile, and readily negotiable, or as large liquid pools of funds. Applicant represents that it does not acquire securities for the purpose of disposing of them from time to time at a profit. Applicant also states that it is not a so-called "special situation" investment company; that is, a company that takes a controlling position in other issuers primarily for the purpose of making a profit in the sale of the controlled company's securities. Applicant states that rather, it is a holding company that participates in foreign tele-media ventures as a strategic investor. Applicant states that in doing so, it acquires a substantial interest and participates in the development of its foreign tele-media ventures by providing active developmental assistance.

9. Applicant believes that the requested relief is consistent with the protection of investors and the purposes

fairly intended by the policy and provisions of the Act. Applicant believes that the requirements of its business, its strategy of directly or indirectly acquiring substantial interests in foreign tele-media companies and tele-media partnerships, and its representation that each Covered Entity will provide active developmental assistance to its foreign tele-media ventures demonstrate that applicant is not the type of entity and does not engage in the type of activities that the Act was designed to regulate.

#### Applicant's Conditions

Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. No Covered Entity that seeks to rely on the exemptive order will hold itself out as being engaged in the business of investing, reinvesting, or trading in securities.

2. Each Covered Entity may rely on the exemptive order only if the manner in which it is involved in foreign tele-media ventures is, in all material respects, consistent with that described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 97-23004 Filed 8-28-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38962; File No. SR-CBOE-97-36]

### Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Related to the Procedures Regarding Opening Rotations

August 22, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 25, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> "Primary control" under rule 3a-1 means a degree of control that is greater than that of any other person. See Health Communications Services, Inc. (pub. avail. Apr. 26, 1985).

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1994).



### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 24.7 regarding the conditions under which the Exchange may halt trading in a class of index options and may resume trading after such a halt. The text of the proposed rule change is below. Additions are italicized; deletions are bracketed.

#### Chapter XXIV—Index Options

##### Rule 24.7 Trading halts or Suspensions

(a) Trading on the Exchange in an index option shall be halted whenever two floor officials, in consultation with a designated senior executive officer of the Exchange, shall conclude in their judgment that such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the facts that may be considered are the following:

(i) *the extent to which trading is not occurring in stocks underlying the index;* [trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value;]

(ii) through (iv)—No Change.

(b) Trading in options of a class or series that has been the subject of a halt or suspension by the Exchange may resume if two floor officials, in consultation with a designated senior executive officer of the Exchange determine that [the conditions which led to the halt or suspension are no longer present or that] the interests of a fair and orderly market are served by a resumption of trading. *Among the factors to be considered in making this determination are whether the conditions which led to the halt or suspension are no longer present and the extent to which trading is occurring in stocks underlying the index.* [In either event, the reopening rotation may not begin until the Exchange has determined that trading in underlying stocks whose weighted value represents more than 50% of the index value is occurring.]

(c) See also Rule 6.3B for the effect of the *initiation of a marketwide trading halt commonly known as a circuit breaker on the New York Stock Exchange* [activation of circuit breakers in the underlying primary securities markets].

(d)—No change.

#### \* \* \* Interpretations and Policies

.01—No change.

.02—*Upon reopening, a rotation shall be held in each class of index options unless two floor officials, in consultation with a designated senior executive officer of the Exchange, conclude that a different method of reopening is appropriate under the circumstances, including but not limited to, no rotation, an abbreviated rotation or any other variation in the manner of the rotation.*

### 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 CBOE 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 CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposed rule change is to eliminate certain fixed percentage tests that presently apply both to the decision to halt or suspend trading in index options and to the decision to resume trading after such a halt, as well as to make certain related changes to conform to present practice.

##### a. Trading Halts

Under present Rule 24.7(a)(i), one of the enumerated factors that the designated Exchange representatives may consider, in deciding whether to halt trading in an index option, is whether trading has been halted or suspended in underlying stocks whose weighted value represents "20% or more of the index value." By specifying a percentage level that "may be considered," the present rule may imply that it would be improper for the designated Exchange officials to consider trading interruptions in underlying stocks that collectively represent *less than 20%* of the index level. Moreover, the present rule may imply that the Exchange actually must make ongoing calculations of the extent to which underlying stocks are trading at any particular moment—something that would be difficult to do on a real time basis for some indexes, such as those with a large number of constituent stocks (e.g., the Russell 2000, which consists of 2000 stocks) or those as to which data on trading halts is not readily available (e.g., NDX, an index based on over-the-counter stocks).

In fact, these interpretations would conflict with the purpose of Rule 24.7, which grants designated Exchange representatives the discretion to halt index option trading whenever they "conclude in their judgment that such action is appropriate in the interests of a fair and orderly market and the

protection of investors." Rule 24.7(a)(i)–(iv) contains simply a *non-exclusive* list of factors that those Exchange officials may consider in exercising that discretion, so it would be inappropriate to appear to forbid those officials from considering trading disruptions in underlying stocks that fall below a predetermined level. Accordingly, the proposed change to Rule 24.7(a)(i) would clarify that Exchange officials, in evaluating whether to halt trading in index options, are not limited to situations in which 20% of the underlying stocks have halted, but rather may consider "the extent to which" trading is not occurring in the underlying stocks.

For similar reasons, the proposed change to Rule 24.7(a)(i) also would enable Exchange officials to consider not just whether trading in underlying stocks has been "halted or suspended," but whether such trading is "not occurring." The term "halted or suspended" implies a situation in which a stock exchange has taken formal action to stop trading in a stock. However, in deciding whether to continue trading a derivative instrument like an index option, Exchange officials should be able to consider the extent to which underlying stocks are not trading, whether trading is not occurring because of formal exchange action, system problems, market emergencies or some other cause. Accordingly the proposed change to Rule 24.7(a)(i) would make clear that Exchange officials, in evaluating whether to halt index option trading, may consider the extent to which "trading is not occurring" in the underlying stocks, without limiting that consideration to formal halts or suspensions.

##### b. Resumption of Trading After Trading Halts

The proposed rule change also is designed to eliminate any requirement in Rule 24.7(b) that a fixed percentage of underlying stocks must be trading before trading in index options may resume after a trading halt. At present, Rule 24.7(b) allows such trading to resume when the appropriate Exchange officials determine either that the conditions that led to the halt no longer are present or that the interests of a fair orderly market are served by a resumption of trading. However, Rule 24.7(b) provides that in no event may trading resume until the Exchange has determined that trading is occurring in underlying stocks whose weighted value represents more than 50% of the index value.

It is and would remain CBOE's practice, in deciding whether to resume



trading after an index options trading halt, to assess the extent to which underlying stocks are trading. However, it is inappropriate to forbid such a resumption until the level of stock trading has reached some predetermined, fixed level, particularly since it often may be difficult to make a precise determination about the weighted value of the underlying stocks that are trading—*e.g.*, for indexes that are composed of a large number of underlying stocks. Accordingly, the proposed rule change would eliminate the 50% threshold and instead would specify that one of the factors that Exchange officials may consider, in determining whether the “interests of a fair and orderly market are served by a resumption of trading” is “the extent to which trading is occurring in stocks underlying the index.” The proposed rule therefore would enable Exchange officials to reactivate trading as soon as they determine that conditions warrant, without interposing an artificial barrier that might result from a fixed percentage test, and would still provide a mechanism by which CBOE officials would be able to give appropriate weight to the extent to which underlying stocks are trading.

In addition, the proposed rule change would make clear that trading may resume only upon a determination by the designated Exchange officials that such a resumption is in the interests of a fair and orderly market. The present form of Rule 24.7<sup>8</sup> allows trading to resume (subject to the 50% requirement) when the proper Exchange officials determine *either* that the conditions that led to the halt no longer are present *or* that a resumption of trading would serve the interests of a fair and orderly market. Taken literally, this would enable trading to resume if the conditions that led to the halt no longer are present, even if a resumption of trading would be contrary to the interests of a fair and orderly market, an interpretation that would conflict with CBOE's practice and would be contrary to the policies under the Act. Accordingly, the proposed rule change would make clear that: (1) index option trading may resume if and only if the proper Exchange officials determine that such a resumption would be in the interests of a fair and orderly market; and (2) the fact that the conditions leading to the halt no longer are present is just one of the factors (as is the extent to which underlying stocks are trading) that those officials may consider in determining whether the interests of a fair and orderly market would be served

by a resumption of trading. In SR-CBOE-97-35, similar changes are being proposed to Rule 6.3(b), which generally governs the resumption of trading after a trading halt in an equity option.

Also, the proposed rule change conforms the cross reference to Rule 6.3B that is contained in Rule 24.7(c) to the current language of Rule 6.3B. Rule 6.3B is the Exchange's circuit breaker trading halt rule, and the language of Rule 6.3B was recently amended.

Finally, the proposed rule change adds a proposed interpretation .02 to address how trading shall resume after a trading halt. This topic is not addressed in the present form of Rule 24.7, although the last sentence of present Rule 24.7(b) apparently assumes that a rotation will be used. The proposed interpretation .02 would adopt the identical procedure that now governs the resumption of trading after a circuit breaker halt, which is set forth in interpretation .02 to Rule 6.3B. In particular, proposed interpretation .02 to Rule 24.7 would provide that trading would resume by a rotation after a trading halt unless the designated exchange officials conclude that a different method of reopening is appropriate under the circumstances. Under the proposed interpretation, those officials, among other things, could determine not to employ a rotation, to use an abbreviated rotation or otherwise to vary the manner of the rotation. This proposed interpretation should be adopted so that comparable rules govern the resumption of trading after circuit breaker halts as well as halts for other reasons.

## 2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act<sup>2</sup> in that the proposed rule change is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest by setting forth a procedure to review and address delays in the commencement of options trading.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposal will impose any 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 proposal.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-97-36 and should be submitted by September 19, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-23010 Filed 8-28-97; 8:45 am]

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<sup>2</sup> 15 U.S.C. § 78f(b)(5).

<sup>3</sup> 17 CFR 200.30-3(a)(12)(1997).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38956; File No. SR-CSE-97-09]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange, Inc., Relating to Net Capital Requirements

August 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> ("Exchange Act" or "Act"), notice is hereby given that on July 29, 1997, the Cincinnati Stock Exchange, Incorporated ("CSE" 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 CSE. 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 hereby proposes to amend Exchange Article II, Section 5.1 and Exchange Rule 11.9(a) to increase the net capital requirements for members and Designated Dealers.

The text of the proposed rule change is available at the Office of the Secretary, CSE and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE 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 CSE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The Exchange is proposing to increase its net capital requirements for member firms. The CSE notes that several smaller, introducing broker-dealers have recently encountered financial trouble, endangering the investing public. In this increasingly volatile and uncertain marketplace, the Exchange believes that

increased net capital levels are justified. Specifically, the proposed rule change would increase the net capital requirement for Exchange specialists, called Designated Dealers, to \$500,000 from the current requirement of \$100,000, and the net capital requirement for other members to \$250,000 from the current requirement of \$25,000.

The Exchange Act, as amended, and Commission Rules require specialists to undertake certain responsibilities and obligations in return for the privilege of trading for their own accounts. These include a requirement to maintain adequate minimum capital levels, as set forth in exchange rules, and a responsibility to engage in a course of dealings for the specialist's own account to assist in the maintenance of a fair and orderly market. Specialists are thus required to provide liquidity and depth in times of market stress or volatility. Minimum net capital requirements are intended to help ensure that specialists have the financial resources necessary to perform this function.

Prior to 1984, the CSE's net capital rules required a Designated Dealer to maintain at least \$500,000 in net capital.<sup>2</sup> The Exchange has subsequently amended the net capital requirement from time to time, as market conditions have warranted. Exchange Rule 11.9(a) currently requires Designated Dealers to maintain net capital of at least the greater of \$100,000 or the amount required under Commission Rule 15c3-1. When implemented in 1989, the \$100,000 minimum was determined by the Exchange to be a level of capital sufficient to ensure that the Exchange's Designated Dealers would possess sufficient financial resources to enable them to provide liquidity and depth in times of market stress.<sup>3</sup> Subsequent growth in the United States' capital markets generally, and in the CSE's market in particular have outstripped this requirement. Record price and volume levels have created a need for greater capital levels on the CSE. These greater levels of capital will help to ensure that Designated Dealers are adequately prepared to provide depth and liquidity to the Exchange's markets in times of market stress or volatility. The Exchange believes that the previous net capital requirement for Designated Dealers of at least the greater of \$500,000 or the amount required under Commission Rule 15c3-1 will better

protect the integrity and quality of the Exchange's markets, and therefore the investors whose orders are executed on the Exchange.

Article II, Section 5.1 of the CSE By-Laws imposes a minimum net capital level on non-specialist Exchange members equal to the greater of the net capital level required by Commission Rule 15c3-1 or \$25,000. The proposed rule change would increase that requirement from \$25,000 to 250,000. Members would, of course, still be subject to any higher net capital requirements imposed by Commission Rule 15c3-1. Commission Rule 15c3-1 distinguishes minimum net capital levels among dealer firms that trade for their own account and between brokerage firms that carry accounts and those that introduce customers to other firms. The Exchange believes, however, that a higher, uniform minimum requirement is appropriate because each of these types of firms may pose a risk to the financial integrity of the Exchange, as well as to the investing public generally, if permitted to operate with inadequate capitalization.

Commission Rule 15c3-1 currently requires minimum net capital of \$100,000 for any broker or dealer that effects more than 10 transactions in any one calendar year for its own investment account.<sup>4</sup> CSE members that trade for their own accounts on the Exchange often effect more than 10 trades per day. Because proprietary trading places member firm capital directly at risk, the Exchange believes the higher net capital requirement of \$250,000 is appropriate for member firms that trade for their proprietary accounts on the Exchange.

Commission Rule 15c3-1 currently imposes a similar \$250,000 minimum net capital requirement for any broker-dealer that carries customer accounts.<sup>5</sup> The proposed rule change would bring the CSE's net capital requirement for brokerage firms that carry accounts in line with the Commission's requirements.

The Exchange also believes that a uniform net capital requirement should apply to introducing brokerage firms. The CSE notes that the Commission examined this issue in revising Commission Rule 15c3-1 in 1992. The Commission noted in proposing to raise the minimum net capital level for introducing brokers under Commission Rule 15c3-1 that customers are placed at risk by brokers that do not receive or hold customer funds or securities because such brokers have indirect

<sup>2</sup> See Securities Exchange Act Rel. No. 20766 (Mar. 20, 1984), 49 FR 11274 (Mar. 26, 1984).

<sup>3</sup> See Securities Exchange Act Rel. No. 27458 (Nov. 21, 1989), 54 FR 49376 (Nov. 30, 1989).

<sup>4</sup> 17 CFR 240.15c3-1.

<sup>5</sup> 17 CFR 240.15c3-1.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

access to customer funds and securities, and can direct the movement of such assets by placing orders with clearing firms.<sup>6</sup> Customers are often unaware of or unable to distinguish between introducing and clearing firms, and tend to rely heavily upon the representations of brokers at introducing firms. A higher net capital requirement will help ensure the financial integrity of such introducing firms and thereby help to protect investors.

Similarly, better capitalized introducing firms are less likely to become insolvent. In the event that such a firm does become insolvent, customers will be better protected by higher minimum net capital requirements. The failure of an introducing firm can strand an investor, who may be unable to place orders directly with a clearing firm because the clearing firm regards the investor as the customer of the introducing firm. Such a customer would be unable either to liquidate or open new positions until the introducing firm is wound up or the customer opens a new account with a different broker. Higher net capital levels would likely result in a quicker, easier sale of the introducing firm and would help to minimize the impact of such a failure on the investing public.

Finally, the Exchange believes that raising the minimum net capital level for members will further the antifraud provisions of the federal securities laws. Members have access to customer securities and funds either directly, as in the case of a clearing firm, or indirectly, as in the case of an introducing firm that places orders with a clearing firm on behalf of its customers. In either case, member firms are presented with an opportunity to convert customer assets for personal or other inappropriate use. Higher net capital levels will help ensure adequate firm resources to address such problems. In addition, higher net capital levels may create a disincentive toward such activity by ensuring sufficient operating capital. That is, a firm with sufficient net capital may be less likely to attempt to convert customer funds for the firm's use.

(2) *Basis.* The proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the

public interest. Specifically, the proposed rule change will help ensure greater financial stability of the Exchange's members by requiring those members to maintain higher capital levels. In the event of adverse market movements, these capital reserves will help protect members and their customers by helping to ensure that funds are available to cover securities positions.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No comments were solicited in connection with the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such

filings will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-97-09 and should be submitted by September 19, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38964; File No. SR-DTC-97-05]

### **Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to the Establishment of Procedures to Distinguish Repurchase Transactions and Other Financing Transactions From Securities Pledges**

August 22, 1997.

On May 14, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-97-05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on July 15, 1997.<sup>2</sup> The Commission received no comment letters in response to the filing. On August 7, 1997, DTC amended the proposed rule change.<sup>3</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

#### **I. Description**

The rule change amends DTC's Collateral Loan Program ("CLP") procedures<sup>4</sup> to enable DTC's participants to distinguish repurchase transactions ("repos") and other types of financing transactions from pledges of securities. The CLP's current procedures do not differentiate between a securities transaction that involves the transfer of the entire interest in securities (*i.e.*, as in a repo transaction) from a securities transaction that involves the transfer of

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 38820 (July 7, 1997), 62 FR 37947.

<sup>3</sup> The amendment was technical in nature and therefore did not require republication of the notice.

<sup>4</sup> A copy of DTC's procedures for repo accounts is attached as Exhibit 2 to DTC's proposed rule change, which is available for inspection and copying at the Commission's Public Reference Room or through DTC.

<sup>6</sup> Securities Exchange Act Rel. No. 31512 (Nov. 24, 1991), 57 FR 57027 (Dec. 2, 1992).

a security interest or other limited interest in the securities (*i.e.*, a pledge).<sup>5</sup>

Under the proposed rule change, any organization that is eligible to establish a pledgee account (*i.e.*, "receiver") at DTC may establish a repo account. Consequently, a participant engaging in a repo or other type of financing transaction will be able to deliver securities to the receiver's repo account instead of the receiver's pledgee account.<sup>6</sup> DTC will deem instructions to deliver securities to a repo account as instructing DTC to transfer to the receiver the entire interest in the securities and not just a security interest or other limited interest.<sup>7</sup>

DTC will accept instructions solely from a receiver with respect to the disposition of securities credited to the receiver's repo account. The receiver may instruct DTC to deliver securities credited to its repo account to its DTC participant account if the receiver is also a DTC participant or to any other DTC participant account.<sup>8</sup> Any receiver

<sup>5</sup> According to DTC, many of its participants use the CLP to effect repos.

<sup>6</sup> The instructions for a delivery of securities to a repo account use the same data fields as the instructions for a pledge to a pledgee account, which includes a mandatory hypothecation code field. A participant delivering securities to a repo account must enter the number seven, eight, or nine in the hypothecation code field. The entry of the number seven, eight, or nine in the hypothecation code field of instructions for a delivery to a repo account does not constitute a notice or representation as to any matter by the delivering participant. The entry of the number seven, eight, or nine in the hypothecation code field of such instructions is merely an action needed to effect the delivery through DTC's facilities. A participant pledging securities to a pledgee account must continue to enter the number one, two, or three, whichever is applicable, in the hypothecation code field. Participants are responsible for entering the appropriate number in the hypothecation field for all transactions. Letter from Carl Urist, Deputy General Counsel, DTC (August 7, 1997).

<sup>7</sup> According to DTC's proposed procedures for repo accounts, the operation of a repo account will be identical to the operation of a pledgee account. As with a pledgee account: (1) the voting rights on securities credited to a repo account will be assigned to the participant that delivered the securities to the repo account; (2) cash dividend and interest payments and other cash distributions on the securities will be credited to the account of the delivering participant; (3) distributions of securities for which the exdistribution date is on or prior to the payable date or in which the distribution is payable in a different security will be credited to the account of the delivering participant; and (4) any stock splits or other distributions of the same securities for which the ex-distribution date is after the payable date will be credited to the repo account of the receiver. Also, the reports and statements that DTC sends to participants and receivers for transactions involving repo accounts will be the same as the reports that DTC generates for a pledgee account except that such reports and statements will carry a repo account number.

<sup>8</sup> According to DTC, there are a small number of non-member banks that maintain pledge accounts at DTC. Conversation with Carl H. Urist, Deputy General Counsel, DTC (August 22, 1997).

that instructs DTC to deliver securities credited to its repo account to another receiver or to a DTC participant other than the original delivering participant will be required to provide DTC with certain warranties and must indemnify DTC, its stockholders, and certain employees against potential liability.<sup>9</sup>

## II. Discussion

Section 17A(b)(3)(F)<sup>10</sup> of the Act requires that the rules of a clearing agency be designed to safeguard securities and funds in DTC's custody or control or for which it is responsible. The Commission believes that DTC's proposed rule change is consistent with DTC's obligations under the Act because the new procedures should enable DTC participants to avoid any confusion as to whether a securities transfer is actually the sale of a security or the pledge of a security as collateral. Consequently, the procedures should reduce the potential for the inadvertent delivery of dividend payments, proxy materials, or other items to the wrong party.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-97-05) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>9</sup> The indemnification provides protection from liability that may arise in the event that, unknown to DTC, at the time of the transfer there was a filing by the Securities Investor Protection Corporation or other court order that prohibited such transfer. *Id.*

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38961; File No. SR-NASD-97-16]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Relating to the Revision of the Criteria for Initial and Continued Listing on The Nasdaq Stock Market, Inc.

August 22, 1997.

#### I. Introduction

On March 3, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> to revise its listing and maintenance standards for Nasdaq National Market ("NNM") and SmallCap designated issuers. On March 27, 1997, the NASD filed Amendment No. 1 to the proposal.<sup>3</sup> On April 1, 1997, the NASD filed Amendment No. 2 to the proposal.<sup>4</sup> On June 17, 1997, the NASD filed Amendment No. 3 to the proposal.<sup>5</sup>

Notice of the substance of the proposed rule change and Amendment Nos. 1 and 2 was provided by issuance of a release<sup>6</sup> and by publication in the **Federal Register**.<sup>7</sup> Eight comment letters regarding the proposed rule change

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Commission (March 27, 1997) ("Amendment No. 1"). Amendment No. 1 makes technical and conforming changes to the proposed rule filing.

<sup>4</sup> Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Commission (April 1, 1997) ("Amendment No. 2"). Amendment No. 2 makes technical and conforming changes to the proposed rule filing.

<sup>5</sup> Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Commission (June 17, 1997) ("Amendment No. 3"). Amendment No. 3 makes technical and conforming changes to the proposed rule filing, correcting clerical errors and defining terms used in the rule language. For example, Amendment No. 3 defines two abbreviations used in the rules, as well as the terms "Market Value" and "Country of Domicile."

<sup>6</sup> Exchange Act Release No. 38469 (April 2, 1997).

<sup>7</sup> 62 FR 17262 (April 9, 1997).

were received.<sup>8</sup> This order approves the proposed rule change, as amended, and approves Amendment No. 3 on an accelerated basis.

## II. Description of the Proposal

The NASD has filed with the Commission a proposal to revise the Rule 4300 and 4400 Series governing the listing and maintenance standards for NNM and SmallCap designated issuers. Listing and maintenance standards for NNM issuers were last modified on January 9, 1989.<sup>9</sup> SmallCap listing and maintenance standards were last modified on August 30, 1991.<sup>10</sup>

The NASD states that the purpose of the revision to the listing and maintenance standards is to increase the quality of companies listed on Nasdaq and raise the level of investor protection. The changes, according to the NASD, will allow Nasdaq to balance its role in capital formation with its responsibility to provide adequate investor protection. The NASD believes the proposed standards will: (1) Increase safeguards to protect public investors; (2) address growth and change in the market; (3) conform with structural enhancements to the market that are currently underway; and (4) address the changes in the market since Nasdaq listing and maintenance standards were last revised.

More specifically, the proposal would: (1) Extend corporate governance requirements already applicable to the NNM issuers to SmallCap issuers;<sup>11</sup> (2) require peer review of auditors for both NNM and SmallCap issuers;<sup>12</sup> and (3) increase the minimum requirements, both for listing and maintenance, for NNM and SmallCap issuers.<sup>13</sup> The minimum requirements that will be increased include: (1) Net tangible assets, market capitalization, or assets

and revenue;<sup>14</sup> (2) public float and market value of public float;<sup>15</sup> (3) number of market makers;<sup>16</sup> and (4) minimum bid price.<sup>17</sup> These requirements are explained in greater detail below.

### *Elimination of the Exception to the \$1 Minimum Bid Price*

Currently, maintenance standards for both SmallCap and NNM designated issuers require that issuers maintain a minimum bid price of \$1. The existing standards provide an exception to the \$1 bid price requirement for issuers able to meet higher float as well as higher capital and surplus or net tangible asset requirements.<sup>18</sup>

The NASD proposes to eliminate the exception to the \$1 bid price minimum for several reasons. First, the NASD believes the change would remove the incentive to engage in large, below market private placements that cause dilution and concomitant harm to Nasdaq investors. The NASD also believes the change would provide a safeguard against abusive market activity sometimes associated with low-priced securities. Further, when the exception was adopted, it was intended to address a "temporary adverse market condition[]" that may result in a bid price below \$1.<sup>19</sup> Contrary to the NASD's stated intent in 1991, issuers have used the exception as a permanent means of meeting the listing standards. Finally, the NASD believes that a \$1 minimum bid price would serve to increase investor confidence and the credibility of the Nasdaq market, commensurate with its increased prominence.

### *Corporate Governance Standards for SmallCap Issuers*

The NASD proposes to extend the corporate governance requirements currently applicable to NNM issuers to SmallCap issuers. The requirements include: (1) A minimum of two independent directors; (2) an audit committee with a majority of independent directors; (3) an annual

shareholder meeting; and (4) shareholder approval for certain corporate actions.<sup>20</sup> The NASD believes the shareholder approval requirement should help prevent further stock issuances that dilute shareholder interest without the prior knowledge of investors. Further, the NASD believes the audit committee, independent director, and annual meeting requirements will provide enhanced safeguards to the investing public.

### *Increase in the Quantitative Standards for Both the SmallCap and NNM*

The NASD proposes to increase the quantitative standards for issuers to list on SmallCap and NNM. The NASD proposes this change because of the passage of time since the standards were last adjusted, the opportunities to improve the quality of the market as identified by the NASD from its experience over that period, and the concomitant increases in the growth of the market and the rate of inflation. The NASD believes the increases will further strengthen Nasdaq listing criteria and enhance the quality of Nasdaq companies, while preserving the ability of qualified Nasdaq companies to raise capital.

### *Market Capitalization Test for NNM*

The NASD proposes to permit an issuer unable to meet either of two alternative net tangible asset tests, as amended by the proposed rule change,<sup>21</sup> to be afforded designation as a NNM issuer provided it initially had a market capitalization of \$75 million, or total assets and total revenue of \$75 million each. For continued listing, such an issuer would have to maintain a market capitalization of \$50 million, or total assets and total revenue of \$50 million. The NASD states that this provision would provide an alternative for issuers that may fail to comply with the NNM net tangible asset test as a result of accounting for goodwill associated with various merger and acquisition activities or, as in the case of the telecommunications industry, significant depreciation charges. The

<sup>8</sup> Letters from Gerald L. Fishman, Fishman & Merrick, P.C. (April 18, 1997) ("Fishman Letter"); Sam Rosen, Shannon, Gracey, Ratliff & Miller, L.L.P. (April 28, 1997) ("Rosen Letter"); Friedlob Sanderson Raskin Paulson & Tourtillot, LLC (April 30, 1997) ("Friedlob Letter"); Van P. Carter, Walter & Haverfield P.L.L. (April 30, 1997) ("Carter Letter"); James F. Duffy, American Stock Exchange, Inc. (May 1, 1997) ("Amex Letter"); Bob Cardon, Corporate Secretary, Dynatronics (May 6, 1997) ("Dynatronics Letter No. 1"); Kelyvn H. Cullimore, Jr., President, Dynatronics (May 8, 1997) ("Dynatronics Letter No. 2"); and Sharon C. Kaiser, Chief Financial Officer, HemaCare Corporation (May 30, 1997) ("HemaCare Letter").

<sup>9</sup> Exchange Act Release No. 26433 (January 9, 1989), 54 FR 1463 (January 13, 1989). Many states have exempted securities designated as NNM from state registration requirements.

<sup>10</sup> Exchange Act Release No. 29638 (August 30, 1991), 56 FR 44108 (September 6, 1991).

<sup>11</sup> Proposed Rule 4310(c)(25).

<sup>12</sup> Proposed Rules 4310(c)(27) and 4450(m).

<sup>13</sup> See generally Proposed Rule 4300 and 4400 Series.

<sup>14</sup> Proposed Rules 4310(c)(2)(A), 4420(a)(5), 4420(b)(1) and 4420(c)(6) (for listing standards); Rules 4310(c)(2)(B), 4450(a)(3), and 4450(b)(1) (for maintenance standards).

<sup>15</sup> Proposed Rules 4310(c)(7), 4420(a), 4420(b) and 4420(c).

<sup>16</sup> Proposed Rules 4310(c)(1), 4420(a)(7), 4420(b)(5), 4420(c)(4), 4450(b)(6) and 4450(e).

<sup>17</sup> Proposed Rules 4310(c)(4) and 4450(a)(5).

<sup>18</sup> For SmallCap, the current exception requires \$1 million in market value of public float and \$2 million in capital and surplus. For NNM, the current exception requires \$3 million in market value of public float and \$4 million in net tangible assets.

<sup>19</sup> See Exchange Act Release No. 29638 (August 30, 1991), 56 FR 44108 (September 6, 1991).

<sup>20</sup> It is contemplated that, as is currently the case with respect to NNM issuers, the NASD would have the discretion to waive or modify these corporate governance standards for foreign SmallCap issuers where the standards are contrary to generally accepted business practices in the issuer's country of origin.

<sup>21</sup> As amended under the proposed rule change for initial listing on the National Market, an issuer must have net tangible assets of \$18 million, or \$6 million if the issuer has had earnings of \$1 million in the most recent year or two of the last three years. Net tangible assets equals total assets (including the value of patents, copyrights and trade marks but excluding the value of goodwill) less total liabilities. See Rule 4200(w).

NASD believes the proposed changes provide access to NNM listing for NNM caliber companies that would otherwise not qualify due to accounting conventions associated with certain business combinations and specialized industries.

#### *Peer Review for Auditors of Nasdaq Listed Companies*

The NASD proposes to require that auditors of Nasdaq listed companies be subject to a practice monitoring program under which the auditors' quality control systems would be reviewed by independent peer auditors on a periodic basis. Currently, companies whose shares are designated NNM or SmallCap are not required to have auditors who are subject to such peer review.<sup>22</sup> The proposal requires all independent public accountants auditing Nasdaq listed companies to receive, or be enrolled in, a peer review that meets acceptable guidelines. Acceptable guidelines would include comparability to standards of the American Institute of Certified Public Accountants ("AICPA") included in the Standards for Performing on Peer Reviews codified in the AICPA's SEC Practice Section Reference Manual, and oversight by an independent body comparable to the organizational structure of the Public Oversight Board as codified in the AICPA's SEC Practice Section Reference Manual. Further, the NASD proposes requiring that copies of peer review reports, accompanied by any letters of comment and letters of response, would be maintained by the administering entity of the peer review program and be made available to Nasdaq upon request. Similarly, the NASD proposes that working papers of the administering entity and the independent oversight body would also be required to be retained for a period after the report is filed, and be made available to Nasdaq upon request.

#### *Other Clarifying and Conforming Changes*

The NASD also proposes to specify that the requirements relating to the number of outstanding shareholders for SmallCap issuers be based on the number of "round lot" holders of an issuer's shares. The NASD believes this definition conforms with the standards of NNM and other exchanges, and ensures that issuers maintain a broad and significant shareholder base justifying a listing on a national securities market.

<sup>22</sup> Amex does require a program of peer review for auditors of issuers that are applying for listing on Amex. See Amex Letter, *supra* n.27.

In addition, the NASD proposes to conform the stock price compliance mechanism for initial listing under the NNM standards with that of the SmallCap by specifying that the applicable price is the bid price, and by removing the provisions under the NNM standards that require satisfaction of the applicable stock price only "on each of the five business days prior to the date of application by the issuer." The NASD states that the purpose of this change is to clarify the requirement and ensure that issuers be in compliance with the bid price requirement at the time of listing, and not just at the time coinciding with the filing of the application.

Furthermore, the NASD proposes to amend certain provisions and cross-references to the proposed rule changes and renumber them appropriately. Finally, the NASD proposes to eliminate outdated references and definitions, rename headings, and amend the Rule 4300 and 4400 Series where appropriate to replace "Association" with "Nasdaq."

### **III. Comments**

The Commission received eight comment letters in response to the filing, with one commenter submitting two letters.<sup>23</sup> One comment letter requested an extended comment period,<sup>24</sup> six letters opposed portions of the proposal,<sup>25</sup> one letter supported portions of the proposal,<sup>26</sup> and one letter offered a clarification to the Notice publishing the proposed rule change.<sup>27</sup> The NASD submitted a letter in response to those commenters in opposition to the proposal.<sup>28</sup>

One commenter stated that issuers unable to meet the proposed NNM maintenance requirements (which therefore would lose their NNM designation) should not be required to apply anew for SmallCap designation.<sup>29</sup> The commenter suggested requiring issuers that lost their NNM designation as a result of the increased maintenance requirements to apply for SmallCap designation could have the effect of punishing companies initially

<sup>23</sup> See *supra* n.8.

<sup>24</sup> See Fishman Letter.

<sup>25</sup> See Rosen Letter, Friedlob Letter, Carter Letter, Dynatronics Letter No. 1, Dynatronics Letter No. 2 and HemaCare Letter.

<sup>26</sup> See Friedlob Letter.

<sup>27</sup> See Amex Letter. Amex clarified that, contrary to the NASD's statement in its rule filing, Amex does require a program of peer review for auditors of issuers that are applying for listing on Amex.

<sup>28</sup> See letter from Robert E. Aber, President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Commission (May 28, 1997) ("Nasdaq Letter").

<sup>29</sup> See Rosen Letter.

designated NNM instead of SmallCap. In response to this comment, the NASD has stated it will provide for a one-time waiver of the application for SmallCap designation for issuers losing NNM designation through the implementation of the proposed maintenance standards.<sup>30</sup>

Another commenter argued that the proposed implementation period for the new listing and maintenance standards would only provide temporary relief for affected issuers.<sup>31</sup> Three commenters objected to the proposed listing and maintenance standards because of reliance by issuers or shareholders on existing standards.<sup>32</sup> One commenter proposed that companies currently listed on Nasdaq be governed by the existing standards, and that companies listed after the new standards became effective be governed by the proposed listing standards.<sup>33</sup> Another commenter suggested a three year implementation period for the new standards.<sup>34</sup> A third commenter expressed a concern that issuers were not aware of the proposal to revise the listing and maintenance requirements because the NASD had not notified issuers that it was going forward with the revision.<sup>35</sup>

The NASD, in its response to these comments, stated that issuers may meet the new listing standards at any time between their initial listing until 90 days after the proposal is approved by the Commission.<sup>36</sup> The NASD noted that issuers applying for Nasdaq designation were provided with notice of the proposed changes to the listing and maintenance standards. Further, the NASD pointed out that when new standards were implemented in 1991, they were also applied retroactively.

Another commenter believed that the proposed higher standards will have a negative effect on small businesses and capital formation.<sup>37</sup> The commenter also stated that neither the \$1 minimum bid price nor the quantitative entry and maintenance standards reflect the strength and stability of an issuer. Another commenter objected to the maintenance standard requiring a \$1 minimum share price, stating that issuers do not control their stock price.<sup>38</sup> The commenter argued that a reverse stock split, which could assist an issuer in meeting the \$1 share price

<sup>30</sup> See Nasdaq Letter, *supra* n.28.

<sup>31</sup> See Friedlob Letter.

<sup>32</sup> See Carter Letter, HemaCare Letter and Dynatronics Letter No. 2.

<sup>33</sup> See Carter Letter.

<sup>34</sup> See HemaCare Letter.

<sup>35</sup> See Dynatronics Letter No. 1.

<sup>36</sup> See Nasdaq Letter, *supra* n.28.

<sup>37</sup> See Friedlob Letter.

<sup>38</sup> See Dynatronics Letter No. 2.

minimum, is expensive and often has a negative impact on the market capitalization of an issuer. The commenter also noted that the change in minimum share price would not be a safeguard against improper market activity, and might lead to manipulation as companies tried to maintain the \$1 minimum share price.

The NASD responded to these comments by reiterating that the \$1 bid price requirement is an important component in the NASD's efforts to provide safeguards against abusive market activity associated with low-priced securities. The NASD also stated that the requirement would: reduce large, below market issuances; curtail the interim exceptions' use as a permanent solution for bid price deficiencies; and increase investor confidence as well as the credibility of Nasdaq.<sup>39</sup> The NASD noted that, in response to comments it received, it expanded the time period the bid price must be under \$1 (from 10 to 30 consecutive days) in order to fail this maintenance requirement.<sup>40</sup>

Finally, one commenter endorsed the proposed corporate governance standards, the auditor peer review proposal, and the retention of discretion by the NASD in applying the listing criteria to issuers applying for Nasdaq designation.<sup>41</sup>

#### IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Section 15A(b)(6).<sup>42</sup> Section 15A(b)(6) requires, among other things, that the rules of an association be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market, and in general, to further investor protection and the public interest.<sup>43</sup>

<sup>39</sup> See Nasdaq Letter, *supra* n.28.

<sup>40</sup> One commenter argued that the rule governing the 90-day period for an issuer to return to minimum bid price maintenance compliance applies to NNM issuers as well as SmallCap. See Rosen Letter (discussing application of Rule 4310(c)(8)(B)). The NASD has confirmed that this interpretation is correct. See Nasdaq Letter, *supra* n.28. The NASD has clarified that the rules of the Rule 4300 Series, unless otherwise specifically noted, also apply to the NNM issuers. Phone conversation between Andrew Margolin, Nasdaq and Janice Mitnick, Commission, on June 13, 1997. Therefore, under the proposed rules, both SmallCap and NNM issuers would have 90 days to return to compliance with the \$1 minimum bid.

<sup>41</sup> See Friedlob Letter.

<sup>42</sup> 15 U.S.C. § 78o-3(b)(6).

<sup>43</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on

The development and enforcement of adequate standards governing the initial listing and maintenance of listing of securities is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for a marketplace to screen issuers and to provide listed status only to bona fide companies with sufficient float, investor base and trading interest to maintain fair and orderly markets. Once an issuer has been approved for initial listing, the maintenance criteria allow a marketplace to monitor the status and trading characteristics of that issuers to ensure that it continues to meet standards for market depth and liquidity. Many states have recognized the importance of listing and maintenance standards by exempting from state registration requirements securities traded on the New York Stock Exchange, Inc., the American Stock Exchange, Inc., or Nasdaq (for securities designated as NNM).

The Commission finds that the proposed rule change is an appropriate action by the NASD in light of market growth and changes, and the goals stated by the NASD in revising Nasdaq listing and maintenance standards. There has been tremendous change in the Nasdaq stock market, both in terms of volume and market developments, since the most recent changes to the listing and maintenance requirements. Since 1991, when the Nasdaq listing and maintenance standards were last revised, volume on Nasdaq has more than tripled.<sup>44</sup> Nasdaq is now the second largest securities market in the world and includes hundreds of stocks that would qualify for a New York Stock Exchange, Inc. listing. This growth has resulted in investor expectations of a commensurate level of quality for Nasdaq designated issuers. The Commission finds that the NASD's attempts to meet such expectations by raising its listing standards are appropriate and reasonably related to enhancing the overall quality of issuers included on Nasdaq.

The new maintenance standards will become effective six months after this rule change is approved by the Commission. The Commission believes this time period will provide current issuers with adequate time to complete any corporate actions necessary to comply with the new maintenance rules.<sup>45</sup> The Commission notes that

efficiency, competition, and capital formation. See 15 U.S.C. § 78c(f).

<sup>44</sup> In 1991, Nasdaq's volume was 41.3 billion shares. For 1996, Nasdaq's volume was 138.1 billion shares.

<sup>45</sup> Such corporate actions could include the implementation of the new corporate governance

when new listing and maintenance standards were implemented in 1991, they were also applied retroactively.<sup>46</sup> At that time, the Commission stated that retroactive implementation was necessary in order to avoid creating a two-tiered Nasdaq market: one for issuers governed by the previous criteria, and one for issuers required to meet the new requirements.<sup>47</sup> The Commission believes that this rationale applies to the revision of the Nasdaq listing and maintenance standards approved here. The Commission notes that, as discussed above, the NASD will provide for a one-time waiver of the application for SmallCap designation for issuers losing NNM designation through the implementation of the proposed NNM maintenance standards.<sup>48</sup>

Under the current maintenance standards for both SmallCap and NNM, issuers must maintain a minimum bid price of \$1. The current standards provide an exception to the \$1 bid price for those issuers that can meet a higher float as well as higher capital and surplus or net tangible asset requirements.<sup>49</sup> The NASD has proposed to eliminate the exception to the \$1 bid price requirement, thereby requiring all issuers to maintain a bid price of \$1.<sup>50</sup>

The Commission believes that while the maintenance standard requiring the \$1 minimum bid price will have an impact on some issuers, the potential impact is not unreasonable when viewed in light of the goals of the revised standards. In enhancing its market, Nasdaq would like to remove extremely low-priced stocks. The Commission finds that the \$1 bid price minimum is a reasonable measure for the NASD to use to maintain its quality

provisions required for SmallCap issuers, or the authorization and issuance of additional shares to meet the new market capitalization requirements.

<sup>46</sup> Exchange Act Release No. 29638 (August 30, 1991), 56 FR 44108 (September 6, 1991).

<sup>47</sup> The Commission also stated that retroactive application was appropriate because the standards would assist the Commission in its enforcement role pursuant to newly implemented rules under the Act designated to prevent manipulation and fraud in the sale of low-priced, non-Nasdaq designated securities. See Rule 15g-9 (previously Rule 15c2-6).

<sup>48</sup> See n.29 and accompanying discussion, *supra*.

<sup>49</sup> For SmallCap issuers, the current exception requires \$1 million in market value of public float and \$2 million in capital and surplus. For NNM issuers, the current exception requires \$3 million in market value of public float and \$4 million in net tangible assets.

<sup>50</sup> Under the proposal, an issuer would fail the maintenance standard if the issuer's bid price fell below \$1 for 30 consecutive days. Once an issuer's stock falls below \$1 for 30 consecutive business days, it would have 90 days to meet the \$1 standard for 10 consecutive business days, thus returning to compliance with the maintenance standard.



control standards for issuers quoted on Nasdaq. As of May 31, 1997, the average bid price for an NNM common stock was \$15.62 and the average bid price for a SmallCap common stock was \$5.44. The Commission notes that the \$1 bid price minimum is approximately 6.4% of the NNM bid price average and approximately 18.4% of the SmallCap bid price average. In establishing criteria to uphold the quality of the market, it is appropriate for the NASD to set a minimum for the stock price that is acceptable in conjunction with the other standards for listing and maintenance. The \$1 price minimum is well below the price of most Nasdaq securities and is a reasonable standard to use to remove low-priced securities from Nasdaq. In addition, the Commission believes that because share price may be increased by a reverse stock split, not all issuers predicted to fail this maintenance standard will actually do so.

Some of the listing and maintenance standards, as modified, will have an impact on the ability of some issuers currently designated as NNM and SmallCap issuers to remain as such. Since the SmallCap listing standards were last revised in 1991, there have been modifications to the OTCBB.<sup>51</sup> Pursuant to rules patterned after the Nasdaq reporting requirements, NASD rules now require member firms effecting transactions in OTCBB eligible securities to transmit last sale reports of transactions made during normal market hours within 90 seconds after execution.<sup>52</sup> The OTCBB also has a firm quote requirement pursuant to NASD rules, obligating market makers to display firm quotes for domestic equity securities up to a minimum quotation size<sup>53</sup> determined by the bid or offer price of the security.<sup>54</sup> Like information

for Nasdaq issuers, last sale prices and quotes for the OTCBB are distributed on a real-time basis through Nasdaq Workstations and market data vendors, which in turn distribute this information to approximately 250,000 terminals worldwide.

Hence, while there may be some effect on the quality of the market for an issuer designated as SmallCap that moves to the OTCBB, the impact of such a move may be less than in 1991. For example, it appears that the average number of market makers per issuer on the OTCBB for issuers that lost their SmallCap designation is not significantly lower than for those same issuers on Nasdaq, just prior to losing their SmallCap designation.

In summary, the Commission believes it is reasonable for the NASD to raise its criteria for issuer inclusion. The heightened standards reflects the NASD's judgment that it wants only higher quality companies to avail themselves of the Nasdaq marketplace, and the imprimatur that such inclusion confers. The increase in standards is neither discriminatory nor arbitrary, and the standards are directly related to the NASD's intended goals of enhancing its listing standards. Therefore, the Commission believes that the proposal is consistent with the Act.

In approving this rule change, the Commission finds that the NASD has reached an acceptable balance between the burden that may be imposed on issuers seeking NNM or SmallCap designation, and the market and investor benefits to be gained by increased listing and maintenance standards for NNM and SmallCap issuers. Issuers desire to list and trade on Nasdaq to improve their visibility and aid in their capital formation. Against this, the NASD must balance its statutorily mandated obligation to maintain the integrity of the Nasdaq market, and to protect investors and their confidence in the market. In response to these considerations, the NASD is working to achieve its general goal of improving the quality and nature of the market.<sup>55</sup> The Commission believes that the potential impact on some small issuers resulting from the proposed revision to the Nasdaq listing and maintenance standards is not

unreasonable when weighed against the anticipated benefits to the market and investors.

The Commission finds good cause for approving Amendment No. 3 to the filing prior to the 30th day after the date of publication of the notice of the filing. Amendment No. 3 merely serves to effect a clarification to the NASD's proposal, raises no new regulatory issues, and does not materially impact the substance of the proposal.<sup>56</sup> Accordingly, the Commission believes there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act, to approve Amendment No. 3 to the proposal on an accelerated basis.

### V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3. Persons making written submissions should file six copies 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 the SEC's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-97-16, and should be submitted by September 19, 1997.

### VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 15A of the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>57</sup> that the proposed rule change (SR-NASD-97-16), as amended, is approved.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>56</sup> See *supra* n.3.

<sup>57</sup> 15 U.S.C. § 78s(b)(2).

<sup>51</sup> On March 31, 1997, the Commission issued an order granting permanent approval to the OTCBB. Exchange Act Release No. 38456 (March 31, 1997), 62 FR 16635 (April 7, 1997).

<sup>52</sup> See Rule 6550.

<sup>53</sup> See Rule 6540(b)(1)(B). The OTCBB did mandate a firm quote requirement when the SmallCap listing standards were last revised; however, the firm quote requirement did not have a minimum quote size component. This was approved by the Commission on July 1, 1993. Exchange Act Release No. 32570 (July 1, 1993), 58 FR 36725 (July 8, 1993).

<sup>54</sup> See Rule 6750. Generally, the rule provides that the lower the share price, the higher the minimum quote requirement. For example, an issue with a bid price of \$.50 has a minimum quote requirement of 5,000 shares; an issue with a \$9.50 bid price has a minimum quote requirement of 500 shares. See *id.*

<sup>55</sup> The 21(a) report and the undertakings agreed to be the NASD have been well publicized. See August 8, 1996 Order issued pursuant to Administrative Proceeding File No. 3-9056. The NASD is also working to conform itself to the undertakings agreed to pursuant to this action. See *id.*



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38963, File No. SR-NYSE-97-24]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Permanent Adoption of a Program to Display Price Improvement on the Execution Report Sent to the Entering Firm

August 22, 1997.

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 July 23, 1997, 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 proposed rule change makes permanent the program initially filed as a pilot in Securities Exchange Act Release Nos. 36421 (October 26, 1995), 60 FR 55625 (November 1, 1995) (File No. SR-NYSE-95-35) and 36489 (November 16, 1995), 60 FR 58123 (November 24, 1995) (File No. SR-NYSE-95-37).<sup>1</sup> This is a program to calculate and display, on the execution reports sent to member firms, the dollar amounts realized as savings to their customers as a result of price improvement in the execution of their orders on the Exchange.<sup>2</sup>

#### 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

<sup>1</sup> The pilot program subsequently was extended in Securities Exchange Act Release Nos. 37151 (April 29, 1996), 61 FR 20302 (May 6, 1996) (File No. SR-NYSE-96-10) (extension of pilot until October 24, 1996); 37812 (October 12, 1996), 61 FR 54477 (October 18, 1996) (File No. SR-NYSE-96-28) (extension of pilot until April 24, 1997); and 38551 (April 28, 1997), 62 FR 25011 (May 7, 1997) (File No. SR-NYSE-97-13) (extension of pilot until July 24, 1997).

<sup>2</sup> The Commission notes that the NYSE's use of the term "price improvement" in this notice differs from the Commission's recent use of the term. See *infra* Section V.

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this proposed rule change is to make permanent a pilot program for calculating and displaying, on execution reports sent to member firms entering orders, the dollar value saved by their customers as a result of price improvement of orders executed on the Exchange. This program does not in any way affect the actual execution of orders. The Exchange refers to this calculated dollar savings as the "NYSE PRIME"<sup>SM,3</sup>

Data from the operation of the pilot for the first six months of 1997 show price improvement on 23.4% of the execution reports for eligible post-opening market orders entered on the Exchange.<sup>4</sup>

The Exchange is revising NYSE PRIME to calculate whether there has been price improvement by comparing the execution price to the quotation at the time the order entered the system and at the time the order is reported following the execution. The Exchange will indicate that there is price improvement only if the execution is superior to the quotation in both calculations. The amount of any price improvement reported will be the lesser of the two calculations. The Exchange has committed to having this "double check" on line by the fourth quarter of 1997.

NYSE PRIME currently utilizes the Best Pricing Quote ("BPQ"), which has been used in the calculation of odd lot pricing, to determine price improvement.<sup>5</sup> The Exchange is

<sup>3</sup> NYSE PRIME is a service mark of the New York Stock Exchange, Inc.

<sup>4</sup> The Commission notes that this figure has not been netted to reflect price disimprovement, and should not be used for best execution evaluations. See *infra* Section V.

<sup>5</sup> See Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 19407 (May 9, 1990) (File No. SR-NYSE-90-06). The BPQ is the highest bid and lowest offer, respectively, disseminated by the Exchange or another market center participating in the Intermarket Trading System ("ITS") at the time the order is received by the Exchange. In order to protect against the inclusion of incorrect or stale quotations in the BPQ, however, the Exchange

developing a capacity to utilize the national best bid or offer ("NBBO") for calculating NYSE PRIME. The Exchange has committed to begin using the NBBO in the first half of 1998.

NYSE PRIME is available to all member organizations<sup>6</sup> for intra-day market orders entered via the Exchange's SuperDOT system that are not tick sensitive and are entered from off the Floor.<sup>7</sup>

The Exchange believes that the NYSE PRIME enhances the information made available to investors and improves their understanding of the auction market.

##### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>1</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. This proposed rule change is designed to perfect the mechanism of a free and open market in that it enhances the information provided to investors by displaying to them the dollar value of the price improvement their orders may have received when executed on the NYSE.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

includes quotations in a stock from other markets only if: (1) The stock is included in ITS in that other market; (2) the quotation size is for more than 100 shares; (3) the bid or offer is not more than one-quarter point away from the NYSE's bid or offer; (4) the quotation conforms to NYSE Rule 62 governing minimum variations; (5) the quotation does not create a locked or crossed market; (6) the market disseminating the quotation is not experiencing operational or system problems with respect to the dissemination of quotation information; and, (7) the quotation is "firm" pursuant to Rule 11Ac1-1 under the Act, 17 CFR 240.11Ac1-1, and the market's rules.

<sup>6</sup> The Commission notes that member organizations electing to receive NYSE PRIME information are required to enter into an agreement with the Exchange regarding the use of NYSE PRIME information and the NYSE PRIME service mark. Among other things, the agreement provides that in any publication or use of NYSE PRIME information (unless the Exchange otherwise agrees), the member organization must employ the NYSE PRIME service mark.

<sup>7</sup> Also excluded from the NYSE PRIME feature are booth entered or booth routed orders, booked orders, combination orders (e.g., switch orders) and orders diverted to sidacar.

<sup>1</sup> 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not have the effect of limiting access to or availability of any Exchange order entry or trading system, the NYSE PRIME program has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(e)(5) thereunder.<sup>10</sup> At any time within 60 days of the filing of such 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-97-24 and should be submitted by September 19, 1997.

**V. Commission Statement**

As a general matter, price improvement occurs when a customer

order is executed at a price that is superior to the best contra-side bid or ask quote prevailing among the markets and market centers trading the security at the time the order was received and executed. Moreover, the Commission has noted that it also is possible for a customer order to receive negative price "improvement," or price disimprovement, instead of price improvement.<sup>11</sup> Price disimprovement occurs when an order is executed at a price that is inferior to the best contra-side bid or ask quote prevailing among the markets and market makers trading the security at the time the order was received and executed.

The Commission previously has noted the importance of the opportunity for price improvement as a factor in best execution, particularly with regard to broker-dealers routing orders for automatic execution. In the Order Handling Rules Adopting Release, the Commission stated that where material differences exist between the price improvement opportunities offered by markets or market makers, these differences must be taken into account by the broker-dealer. The Commission made clear that in evaluating price improvement opportunities, a broker-dealer must consider, among other things, both the amount of price improvement and price disimprovement present in each market.<sup>12</sup> More recently, the Commission's Preferencing Study analyzed the amount of price improvement and disimprovement on the NYSE and the regional exchanges. The Preferencing Study found that a significant amount of price disimprovement occurred on each exchange.<sup>13</sup>

Therefore, a program such as NYSE Prime, which only provides price improvement numbers, should not be used as the basis for best execution evaluations. NYSE Prime provides some information to firms on a transaction by transaction basis. To be useful for best execution evaluations, however, any price improvement information disseminated also should reflect the amount of price disimprovement that

<sup>11</sup> See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (File No. S7-30-95) ("Order Handling Rules Adopting Release"); SEC, Report on the Practice of Preferencing ("Preferencing Study") (April 11, 1997) at Part V.D.

<sup>12</sup> Order Handling Rules Adopting Release at n.357.

<sup>13</sup> Compare Preferencing Study Tables V-8A to C with Tables V-9A to C. Of course, the Preferencing Study analyzed price improvement and disimprovement in the aggregate. In evaluating execution quality across markets, it is important that broker-dealers consider that execution quality may vary for different types of orders and securities. See Preferencing Study at nn. 313 and 314.

occurs on that market. Accordingly, a market providing price improvement statistics on an aggregate basis should indicate the amount of price disimprovement as well as the amount of price improvement.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

*Margaret H. McFarland,*

**Deputy Secretary.**

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38954; File No. SR-OCC-97-08]

**Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Create a New Office of Management Vice Chairman and To Change the Title of Vice Chairman to Member Vice Chairman**

August 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 9, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on May 12, 1997, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The purpose of the proposed rule change is to amend OCC's by-laws to create a new office of Management Vice Chairman and to change the title of Vice Chairman to Member Vice Chairman.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B),

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4.

and (C) below, of the most significant aspects of such statements.<sup>2</sup>

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed rule change will amend Article IV, Section 1 to clarify that the existing Vice Chairman is elected by the Board of Directors from among OCC's Member Directors<sup>3</sup> and will be renamed the Member Vice Chairman. Article IV, Section I will also be amended to create the position of Management Vice Chairman which will be elected at the discretion of the Board of Directors, but the board will not be required to fill this position. Only OCC staff members will be eligible to serve as the Management Vice Chairman, and any person serving in this office shall not be eligible to serve concurrently in any other OCC office.

Article IV, Section 7 will be amended to provide for the duties and responsibilities of the Management Vice Chairman and to clarify the duties and responsibilities of the Member Vice Chairman. The duties of the Management Vice Chairman will include assuming all of the Chairman's responsibilities in the absence or disability of the Chairman, including presiding over meetings of the Board of Directors and the shareholders. The Member Vice Chairman will preside at such meetings and assume all of the Chairman's responsibilities only in the absence of the Chairman and Management Vice Chairman. The Member Vice Chairman will remain the chair of any committee responsible for evaluating the performance of OCC or the compensation of OCC's officers.

The proposed rule change also will amend Article III, Section 15(e) to add the office of Management Vice Chairman to the list of officers who may be granted emergency powers and who may be empowered to act on behalf of any other officer who is unable to fulfill any emergency powers granted to such office. Accordingly, the Management Vice Chairman position will add another person to OCC's line of succession, which should reduce the risk that OCC would be without qualified leadership. OCC believes it is important that a clear line of succession

<sup>2</sup>The Commission has modified the text of the summaries prepared by OCC.

<sup>3</sup>To distinguish the title of the current Vice Chairman from the staff position of Management Vice Chairman, the modifier "Member" has been added to the office's title. Conforming changes have also been made to several other sections of OCC's by-laws to reflect addition of the modifier "Member" to the office's title.

be established and be as routine and trouble-free as possible. The addition of the office of Management Vice Chairman is intended to accomplish this goal. In addition, a conforming amendment to Article IV, Section 8 will be made to clarify that the President's duty to act in the place of the Chairman will arise only in the absence of the Chairman, the Management Vice Chairman, and the Member Vice Chairman.

Finally, a technical correction to Article IV, Section 1 is proposed. This section currently requires that the Board of Directors elect a senior management officer of OCC to be in charge of each OCC office that is (i) responsible for 20% or more of the volume of exchange transactions cleared through OCC or (ii) located in the same city as an exchange on which 20% or more of the volume of the exchange's transactions are cleared through OCC. OCC proposes to delete this provision because it believes that it is no longer necessary due to advances in systems design. OCC represents that the relevant exchanges are aware of this proposed change and concur with it.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because adding the position of Management Vice Chairman should strengthen the line of succession in the absence of the Chairman of the Board and will ease any transition from an existing Chairman of the Board to his or her successor.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR-OCC-97-08 and should be submitted by September 19, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 97-23012 Filed 8-28-97; 8:45 am]  
BILLING CODE 8010-01-M

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38955; File No. SR-PCX-97-12]

**Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change Modifying Rules on Disclosure of Financial Arrangements of Members and Notice of Filing and Order Granting Accelerated Approval of Amendment Thereto**

August 20, 1997.

**I. Introduction**

On April 23, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the

<sup>4</sup> 17 CFR 200.30-3(a)(12) (1995).

Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change modifying rules on disclosure of financial arrangements of Members. The proposed rule change was published for comment in Securities Exchange Act Release No. 38623 (May 13, 1997), 62 FR 27640 (May 20, 1997). The Commission received no comments on the proposal. On June 27, 1997, the Exchange amended the proposed rule change ("Amendment No. 1") to clarify certain aspects of the filing.<sup>3</sup> This order approves the proposed rule change and grants accelerated approval to Amendment No. 1.

## II. Description of the Proposal

The Exchange is proposing to make various changes to the PCX Rule 4.18, "Disclosure of Financial Arrangements of Members." Currently, Rule 4.18(a) requires disclosure of financial arrangements between Members only. In its filing, the Exchange proposed amending Rule 4.18(a) to require that a Market Maker, Floor Broker, Specialist or Member Organization that enters into a financial arrangement with any other Member or Non-Member shall disclose to the Exchange the name of such Member or Non-Member and the terms of the arrangement.

Second, Subsection (a) currently defines "financial arrangement" for purposes of Rule 4.18 as "(1) the direct financing of a Member's dealing upon the Exchange; or (2) any direct equity investment or profit sharing arrangement; or (3) any consideration over the amount of \$5,000.00 that constitutes a gift, loan, salary or bonus." The Exchange is proposing to clarify and expand the third clause to provide: "any consideration over the amount of \$5,000.00, including, but not limited to, gifts, loans, annual salaries or bonuses."

Third, the Exchange is proposing to eliminate Subsection (b), which currently provides that each market Maker shall inform the Exchange immediately of the intention of any party (1) to change any financial arrangement as defined in this Rule; or (2) to issue a margin call. It further provides that on a form prescribed by the Exchange, a Market Maker shall submit to the Exchange a monthly report of his use or extension of credit pursuant to this Section.

Fourth, the Exchange is proposing to eliminate Subsection (c), which

provides that the disclosure of financial arrangements pursuant to this Rule shall be the responsibility of all parties involved.

Finally, Subsection (d) currently provides that unless otherwise agreed, an Exchange Member shall submit to the Exchange notification of the initiation or termination of financial arrangements within ten business days of the effective date of such arrangements. It further provides that failure to disclose the terms of any financial arrangement to the Financial Compliance Department may result in disciplinary action by the Exchange. The Exchange is proposing to modify subsection (d) to provide that Exchange Members with financial arrangements must submit to the Exchange notification of the initiation, modification or termination of such financial arrangements within ten business days of the effective date of such arrangements or within such shorter period of time as the Exchange may require.<sup>4</sup> It further states that failure to disclose the terms of such financial arrangements to the Exchange may result in disciplinary action. The Exchange believes that the proposal is consistent with Section 6(b) of the Act, and Section 6(b)(5) of the Act<sup>5</sup> in particular, in that it promotes just and equitable principles of trade and protects investors and the public interest.

## III. Discussion

The Commission believes PCX's proposed rule change is consistent with Section 6(b)(5) of the Act.<sup>6</sup> Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, and, in general, to further investor protection and the public interest.<sup>7</sup>

PCX proposes requiring disclosure of financial arrangements between Members and Non-Members. The Commission believes it is appropriate to require reporting of financial arrangements between Members and Non-Members, as such arrangements may be significant and if left unreported will have an impact on the Exchange's ability to monitor the financial status of Members.

The Commission believes that the Exchange's proposal to change the definition of "financial arrangement" to include "any consideration over the

amount of \$5,000.00, including, but not limited to, gifts, loans, annual salaries or bonuses" is reasonable. The Commission believes that expanding and clarifying the definition will ensure that certain arrangements, previously outside of the enumerated items in the definition of financial arrangement, will now be included, resulting in more accurate monitoring of Member financial arrangements.

The Exchange is proposing to eliminate Rule 4.18(b) which currently provides that Market Makers must inform the Exchange of the intention of any party to change financial arrangements or to issue a margin call. The Commission believes that elimination of this subsection is reasonable as Members are already required to provide notification of changes to financial arrangements after they occur pursuant to 4.18(b) as amended. The Commission believes that pre-notification of such changes is unnecessary and wasteful of Exchange resources. The Commission also believes it is appropriate to eliminate the requirement that a Market Maker notify the Exchange of the intention of any party to issue a margin call. Based on the Exchange's representations, the Commission believes that requirement is unnecessary, as the Exchange currently receives prompt notification from a clearing Member whenever a Market Maker's trading account liquidates to a deficit.<sup>8</sup> Exchange clearing Members also provide the Exchange with capital information on lead Market Makers on a daily basis. For these reasons the Commission believes the notification by Market Makers of the intention of any party to issue a margin call is uninformative and therefore unnecessary.

The Commission believes the elimination of subsection 4.18(c), providing that the disclosure of financial arrangements pursuant to the rule is the responsibility of all parties involved, is reasonable. The Commission believes that this requirement is stated clearly in Rule 4.18(a), and is therefore redundant.

Finally, the Commission believes the Exchange's proposal requiring Exchange Members with financial arrangements to submit to the Exchange notification of the initiation, modification or termination of such financial arrangements within ten business days of the effective date of such arrangements or within such shorter period of time as the Exchange may

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Margaret J. Blake, Division of Market Regulation, Commission (June 27, 1997).

<sup>4</sup> See supra note 3.

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> See supra note 3.

require, is reasonable.<sup>9</sup> The proposal sets forth an absolute time frame within which information must be provided to the Exchange, while allowing the Exchange a certain level of flexibility in acquiring information in certain instances. The Commission believes such flexibility is necessary for adequate oversight of Member financial arrangements and will allow the Exchange to obtain information immediately, if necessary. The Commission further believes that it is reasonable for the Exchange to have the authority to subject Members to disciplinary action where they have failed to disclose the terms of financial arrangements to the Exchange. The Commission believes that such disclosure is necessary for appropriate monitoring of Market Maker activity. The Commission believes that the proposal will promote investor protection, as failure to disclose such arrangements could result in reliance on inaccurate information to the detriment of the Exchange and its Members.

The Commission finds good cause to approve Amendment No. 1 to the filing prior to the 30th day after the publication of the notice of filing because the Amendment does not affect the substantive rights of Members and accelerated approval will facilitate the uninterrupted implementation of the proposed rule change.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes 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 Room. Copies of the filing will also be available at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-97-12 and should be submitted by September 19, 1997.

<sup>9</sup> See supra note 3.

#### V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change and Amendment No. 1 are consistent with the Act and the rules and regulations thereunder applicable to the PCX, and in particular Section 6(b)(5).

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-PCX-97-12) be and hereby is approved, and that Amendment No. 1 filed thereto be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-23048 Filed 8-28-97; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38960; File No. SR-PHLX-97-31]

#### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendments to Certificate of Incorporation and By-Laws

August 22, 1997.

#### I. Introduction

On June 25, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend its Certificate of Incorporation and By-Laws.

The proposed rule change was published for comment in the **Federal Register** on July 10, 1997.<sup>3</sup> No comments were received on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

On May 21, 1997, the Phlx Board of Governors approved draft amendments to the Phlx Certificate of Incorporation and By-Laws that are designed to promote an enhanced governance structure for the Exchange. Thereafter,

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities and Exchange Act Release No. 38809 (July 1, 1997), 62 FR 37109.

with the Phlx Board's endorsement, the amendments were announced to the membership in accordance with Exchange By-Law Article XXII, Section 22-2.<sup>4</sup>

As no written request was made requesting a special meeting of the Exchange membership to consider the amendments, the Phlx Board on June 18, 1997 unanimously approved the proposed amendments for filing with the Commission.

Two of the most significant proposed changes to the By-Laws are reducing the size of the Board from 30 to 22 Governors and changing the composition of the Board to: 11 non-industry Governors, of whom at least 5 must be public Governors; 10 industry Governors;<sup>5</sup> and a Chairman of the Board who will be the full time, paid Chief Executive Officer of the Exchange.<sup>6</sup>

The proposed By-Law amendments specify the composition of the 10 industry Governors as follows: 2 Equity Floor Industry Governors, 1 Equity Options Floor Specialist Governor and 1 Equity Options Floor Registered Options Trader Governor (all of whom must work on the Exchange Floor or be a general partner, executive officer or member associated with a member organization primarily engaged in business on the Exchange Floor); 1 Equity Options Floor Broker Governor (who must work on the Equity Options Floor); and 5 Off-Floor Governors.<sup>7</sup> Except for the Chairman of the Board, all Governors are subject to term limits of two consecutive three year terms.<sup>8</sup>

The manner in which the Vice-Chairmen of the Board are selected also has been changed. Instead of the Vice-

<sup>4</sup> In accordance with Phlx By-Law Article XXII, Section 22-2, the membership was notified of the proposed amendment by a memorandum dated June 4, 1997, and no written request for a special meeting of the Exchange membership was filed within the 10 day period allowed by the By-Law. Thereafter, on June 18, 1997, a membership petition was received by the Board pursuant to Phlx By-Law Article XXII, Section 22-1, which offered, in writing, certain proposed amendments to the By-Laws. On August 1, 1997, the petition was submitted to the membership for vote. The petition failed for lack of the required quorum.

<sup>5</sup> See By-Law Article I, Section 1-1 (defining "industry," "non-industry," and "public").

<sup>6</sup> See By-Law Article IV, Section 4-1 and By-Law Article V, Section 5-1. Various other amendments to the By-Laws have been made in connection with these changes. For instance, references to "President" have been changed to refer to the "Chief Executive Officer" or "Chairman of the Board" and revisions to the number of Board members necessary to effect certain Board actions have been made, e.g., in most cases where the affirmative vote of 15 of the current 30 Governors was required, the By-Law is changed to state that a majority vote is required.

<sup>7</sup> See By-Law Article IV, Section 4-1.

<sup>8</sup> See By-Law Article IV, Section 4-3.

Chairmen being elected by the membership, the Board will now appoint the Off-Floor Vice-Chairman from among the Off-Floor Governors, and the On-Floor Vice-Chairman from among the On-Floor Governors. If there is a contest for On-Floor Vice-Chairman, a membership election will be held solely for the On-Floor Vice-Chairman.<sup>9</sup>

The proposed By-Law amendments make significant changes to the Nominating Committee's charter. The amendments specify that a majority of the Committee be non-industry Governors and authorize the Committee to select non-industry and public Governors, nominees for the industry Governor, committee chairs, and the Nominating Committee's successors, and to fill vacancies on the Board, all subject to Board approval.<sup>10</sup>

The number of members required to file independent Governor nominations will be increased from 10 to 50 members for an individual nomination, and 30 to 75 members for nominating an entire slate or portion thereof.<sup>11</sup>

Substantial amendments relating to the Exchange's standing committees are proposed, including adding new standing committees of Automation, Compensation and Quality of Markets; reducing the size of standing committees to no more than 9 members except for floor committees, which may have no more than 12 members; requiring the committee chair and at least one other member to be a Governor; and revising the charter and composition of certain existing committees. Of particular note, the Executive Committee will be authorized, with Broad approval, to appoint committee members other than committee chairs, and to act on behalf of the Board when the Broad is not in session.<sup>12</sup>

The Arbitration Committee's composition will be reduced from 25 to 4 members and member controversies will be handled in the same fashion as public customer controversies.<sup>13</sup>

The Audit Committee will be composed of 3 public Governors and the Committee's charter will be significantly expanded to authorize the Committee's inquiries into all aspects of the Exchange's operations and finances, including regulatory matters.<sup>14</sup>

Business Conduct Committee ("BCC") appeals will be taken directly to the Board and the Disciplinary Review

Committee will be eliminated.<sup>15</sup> The Exchange Enforcement staff will be entitled to petition the Board to appeal a BCC decision.<sup>16</sup>

Board Advisory Committees that hear appeals of standing committee decisions and are composed of 3 Governors, will now include at least 1 public Governor.<sup>17</sup>

By-Law Article IV, Section 4-8, is proposed to be amended so that no person shall participate in the "determination" as opposed to "adjudication" of any matter in which he is personally interested. This change is intended to expand the coverage of this provision, which pertains to disqualification of Governors from participation in Board actions. In addition, the Phlx is proposing to replace in its entirety Article XIV of the Certificate of Incorporation with a current provision of the Delaware General Corporation Law regarding contracts and transactions entered into by the Phlx in which a Governor, director, or officer has a financial interest.

Certain provisions of the Phlx Certificate of Incorporation and By-Laws are being amended in order to attract qualified candidates to serve on the Phlx Board and committees, and to clarify the responsibilities and obligations of those who are appointed. In this regard, new Article XVIII to the Phlx Certificate of Incorporation will limit the legal liability of Phlx Governors, as permitted under the Delaware General Corporation Law. In addition, current By-Law Article IV, Section 4-18, will be replaced entirely by a provision that provides broad and comprehensive indemnification coverage and rights to Governors, committee members and officers of the Exchange, and provides discretionary authority for the Board to indemnify agents and employees of the Exchange.

A number of other revisions to the By-Laws are proposed for the sake of organization or accuracy. For instance, the term "Corporation" has been changed throughout the By-Laws to "Exchange," and By-Law Articles VI and VII regarding Vice-Chairmen of the Board of Governors and Officers of the Corporation are being deleted in their entirety with the relevant sections being moved into Article V.

### III. Discussion

After careful consideration, the Commission finds that the proposed

rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange. The Commission is approving this rule change proposal in order to enable the Phlx to better fulfill its responsibilities as a self-regulatory organization. The proposal institutes or strengthens existing provisions that should help the Phlx maintain and promote the highest ethical standards among its members and staff. The Commission finds that the proposed amendments to Phlx's By-Laws and Certificate of Incorporation are designed to assure fair representation of the Exchange's members in the selection of its directors and the administration of its affairs, and that the changes will enable the Exchange to better comply with the requirements of Section 6 in particular and the Act in general. Specifically, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>18</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interest.<sup>19</sup>

The Commission finds consistent with the Act the Phlx's reduction in size of the Board of Governors from 30 to 22 and changing the composition of the Board to: 11 non-industry governors (at least 5 of whom must be public Governors); 10 industry Governors; and a Chairman of the Board who will be the paid, full-time Chief Executive Officer of the Exchange. This change is consistent with Section 6(b)(3) of the Act<sup>20</sup> in that the Board will be more representative of the various constituencies that comprise the Exchange or are affected by its activities. The substantial revisions to the Phlx corporate governance structure are a result, in part, of an inquiry by a special outside committee charged with reviewing the organizational and governance structure of the Phlx. In addition, events at the Phlx over the past year have evidenced a need for a less insular and more diverse governance and committee structure for the Exchange to perform adequately its self-regulatory obligations.<sup>21</sup> The above

<sup>18</sup> 15 U.S.C. § 78f(b)(5).

<sup>19</sup> In approving the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

<sup>20</sup> 15 U.S.C. § 78f(b)(3).

<sup>21</sup> See *Phlx Appoints Special Committee to Investigate Casella-Ashton Ties*, Securities Week, September 23, 1996, at 1; *Phlx Chairman's Resignation May Have Raised More Questions than*

<sup>9</sup> See By-Law Article IV, Section 4-2.

<sup>10</sup> See By-Law Article III, Section 3-5.

<sup>11</sup> See By-Law Article III, Section 3-7.

<sup>12</sup> See By-Law Article X, Section 10-14.

<sup>13</sup> See By-Law Article X, Section 10-8.

<sup>14</sup> See By-Law Article X, Section 10-9.

<sup>15</sup> See By-Law Article X, Section 10-11.

<sup>16</sup> See By-Law Article XI, Section 11-3.

<sup>17</sup> See By-Law Article XI, Sections 11-1 and 11-2.

noted changes, along with the increase in public representation on the Board, should enhance the Phlx's ability to uphold its responsibilities as a self-regulatory organization, and to act in a manner more consistent with the public interest. In addition, the amendment to reduce the size of the Board from 30 to 22 governors will enable the Board to perform its duties in a more efficient manner.

The Commission believes that the amendment to require 50% representation by public governors on the Board is particularly important in addressing the Exchange's governance problems, and should ensure better protection of investors and the public interest. Public governors are likely to have little or no stake in internal Exchange politics, and, if carefully selected, public governors should bring diverse experience and increased ethical sensitivity to the Board, thus enhancing the confidence of members and of the public in the Exchange's ability to govern its members and discharge its regulatory obligations appropriately.

The Exchange will continue the practice of having two Vice-Chairmen. However, one Vice-Chairman will now be appointed by the Board from among the Off-Floor Governors, and the other will be appointed by the Board from among the On-Floor Governors. Previously, these positions were elected by the membership. This change is a reasonable method of ensuring that there is balanced representation of two groups that can have divergent interests.

The Phlx is increasing the number of members required to support independent governor nominations from 10 to 50 for an individual nomination and from 30 to 75 members for nomination of a whole or partial slate. The Commission believes that this change will benefit the election process by requiring significant membership interest prior to a nomination.

The Phlx is changing the manner of the appointment of members to standing committees of the Board, designating the composition of certain committees, and creating new committees. The changes to committee structure and

procedures are important components of addressing the governance problems of the Exchange. Committees often are charged with implementing Board policies and directives, and they develop recommendations for Board consideration. An overhaul of the Board structure, without reform of the committee structure, would only partially rectify the governance problems at the Phlx. The proposed committee changes, discussed below, are designed to complement the Board changes by improving the structure of committees and selection of committee members. First, members of standing committees previously were selected by the Chairman of the Board with the approval of the Board of Governors. Under this proposal, members of standing committees will be selected by the Executive Committee, with the approval of the Board. The Commission believes that this method will better ensure the selection of qualified members of standing committees by removing selection from the sole control of the Chairman and vesting it in a more diverse group.

The charter and composition of the Nominating Committee has been changed to reduce its size from nine to seven members, with four of those members being non-industry governors, and at least two of the four being public governors (including the chair of the committee). The balance of the committee will comprise two floor governors and one off-floor governor. The Commission believes that the proposed change in composition and number of members on this committee strikes an appropriate balance in attempting to fairly represent the various interests of the Phlx membership and trading community, including investors.

The size of the Arbitration Committee has been reduced significantly from twenty-five members to four. Two of the committee members will be non-industry governors, with at least one being a public governor and one being the chair of the committee. The two other members will be an off-floor member and an on-floor member. Member controversies will be handled in the same fashion as public customer controversies. The Commission considers these changes to the Arbitration Committee to be an improvement over the Exchange's prior system of member dispute resolution, which at times resulted in delay in the resolution of disputes. While the streamlined committee should provide an effective forum for the resolution of member disputes, the Commission

intends to monitor the impact of these changes on arbitration at the Exchange.

The Commission finds consistent with the Act the significant expansion of the charter of the Audit Committee, authorizing this committee to inquire into all aspects of the Exchange's operations and finances, including regulatory matters. The committee will be composed of three public Governors. The expansion of the audit committee's charter will authorize the investigation and resolution of allegations of misconduct by governors, committee members, and Exchange staff. The Commission believes that it is important for the Phlx to have a committee with such broad investigatory powers, and approves the expansion of the committee's charter. A committee that is small and composed of independent governors should be better able to reach quick and unbiased decisions regarding alleged misconduct, or other matters pertinent to the Audit Committee's mission.

The Business Conduct Committee monitors compliance with the Act and the rules and regulations thereunder, as well as the rules and regulations of the Exchange. The Commission is approving the elimination of the Disciplinary Review Committee, in order that appeals from the Business Conduct Committee may be taken directly to the Board of Governors. In the Commission's view, this change eliminates an unnecessary level of appeal. The Commission also is approving an amendment to the By-Laws to include at least one public governor on the Advisory Committees that hear appeals of standing committee decisions because of the importance of having balanced views on these committees.

The Commission approves the creation of three Quality of Markets Committees representing the equity, equity and index option, and foreign currency option trading floors. The committees will provide advice and guidance to the Board on the Exchange's competitive position in new and existing markets, and the quality and depth of markets. The committees also will provide advice and guidance on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of the Exchange and systems operated by the Exchange. The Commission believes that the existence of these committees is an important improvement in the Phlx's review mechanism for assuring sound, fair markets.

The Exchange has modified the Certificate of Incorporation to include a

*it Answered*, Securities Week, October 21, 1996, at 1. See also Securities Exchange Act Release No. 38918 (August 11, 1997), *In the Matter of Stock Clearing Corporation of Philadelphia and Philadelphia Depository Trust Company*, Respondents, Order Instituting Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions (finding that the Stock Clearing Corporation of Philadelphia ("SCCP") and Philadelphia Depository Trust Company failed to comply with their respective rules and procedures, failed to file necessary proposed rule changes with the Commission, and, in the case of SCCP, violated Regulation T).



provision of the Delaware General Corporation Law requiring disclosure of certain information where a governor, director, or officer has a financial interest in a contract or transaction entered into by the Phlx. Pursuant to this provision, if appropriate disclosure is made, the contract entered into by the Phlx is not void or voidable solely by reason of the financial interest. The Exchange also has amended its by-laws to clarify when governors must be disqualified from participation in Board actions. Whereas previously governors were prohibited from participating in the "adjudication" of any matters in which they were personally interested, the applicable by-law now uses the term "determination." The use of this term is intended to broaden the universe of matters from which a governor could potentially be disqualified. While these amendments represent a first step in the clarification of the Exchange's conflict of interest rules, the Commission expects that the Exchange will further amend its by-laws to add more specific provisions that contain clear and detailed recusal, disclosure, and conflict of interest procedures for Board and committee members.

The Commission understands that the Phlx is formulating various orientation and educational materials, as well as a code of conduct, in order to brief persons who serve the Exchange in any official capacity, including governors, committee members, officers, employees, agents, members, member organizations, and persons affiliated with a member or member organization. The code of conduct reiterates the principles of business conduct which the Phlx expects to be maintained and followed, with the core principles being that the Exchange should conduct every aspect of its business in a fair and lawful manner, and that the Exchange should maintain a climate which encourages the fair and lawful conduct of business. These principles include the conduct of business in accordance with the federal securities laws and other applicable rules and regulations, the proper use of confidential information, disclosure of information and recusal from decision making, where appropriate, and provision of information to the Exchange where such information is reasonably requested.

The Commission supports the Phlx's strengthening of orientation and education materials in order that these persons better understand their mission, duties, and appropriate standards of conduct. The Commission understands that the Phlx is considering amending its by-laws to include compliance with the code of conduct, which at this time

is merely an Exchange policy. The Commission encourages the Phlx to submit such an amendment in order to formally reflect the important principles contained in the code of conduct, and looks forward to reviewing such an amendment.

Finally, The Commission approves the amendment of the by-laws and Certificate of Incorporation to include indemnification provisions, and supports the Exchange's goal of attracting qualified candidates for the Phlx Board of Governors through the inclusion of such provisions. The Commission also approves all non-substantive by-law changes made for the sake of organization and accuracy.

#### IV. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that the proposed rule change (SR-PHLX-97-31) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-23009 Filed 8-28-97; 8:45 am]

BILLING CODE 8010-01-M

#### DEPARTMENT OF STATE

##### Bureau of Political-Military Affairs; Determination Under the Arms Export Control Act

###### [Public Notice 2596]

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Secretary of State has made a determination pursuant to Section 81 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: August 20, 1997.

**Thomas E. McNamara,**

*Assistant Secretary of State for Political-Military Affairs.*

[FR Doc. 97-23002 Filed 8-28-97; 8:45 am]

BILLING CODE 4710-25-M

<sup>22</sup> 15 U.S.C. § 78s(b)(2).

<sup>23</sup> 17 CFR 200.30-3(a)(12).

#### DEPARTMENT OF TRANSPORTATION

##### Coast Guard

[CGD8-97-030]

##### Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

**SUMMARY:** The Lower Mississippi River Waterway Safety Advisory Committee will meet to discuss various navigation safety matters affecting the Lower Mississippi River area. The meeting will be open to the public.

**DATES:** The meeting will be held from 10 a.m. to approximately 12 noon on Wednesday, September 10, 1997.

**ADDRESSES:** The meeting will be held in the basement GSA conference room of the Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana.

###### FOR FURTHER INFORMATION CONTACT:

Mr. Monty Ledet, USCG, Administrator, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (m), Room 1341, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone (504) 589-4686.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 1 *et seq.* The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

The agenda for the meeting consists of the following items:

- (1) Approval of the minutes from the June 25, 1997 full Committee meeting.
- (2) Subcommittee Reports.
- (3) Old Business.
- (4) New Business.
- (5) Adjournment.

###### INFORMATION ON SERVICES FOR

**INDIVIDUALS WITH DISABILITIES:** For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the Administrator, Mr. Monty Ledet, Marine Safety Division, Eighth Coast Guard District as soon as possible.

Dated: August 8, 1997.

**T.W. Josiah, RADM, USCG,**

*Commander, Eighth Coast Guard District.*

[FR Doc. 97-23070 Filed 8-27-96; 8:45 am]

BILLING CODE 4910-14-M



**DEPARTMENT OF TRANSPORTATION****Coast Guard****[CGD 97-058]****Towing Safety Advisory Committee****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of meetings.

**SUMMARY:** The Towing Safety Advisory Committee (TSAC) and its working groups will meet to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings are open to the public.

**DATES:** The meeting of the TSAC working groups will be held on Tuesday, September 30, 1997, from 9 a.m. to 3 p.m. The TSAC Committee meeting will be held on Wednesday, October 1, 1997, from 9 a.m. to 1 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before September 19, 1997.

**ADDRESSES:** The TSAC working groups will meet in Room 2415, second floor, and the Committee meeting will be held in the Baruch Room, fourth floor, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC. Written material and requests to make oral presentations should be sent to Lieutenant Lionel Mew, Commandant (G-MSO-1), U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593-0001.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Lionel Mew, Assistant Executive Director, telephone (202) 267-0218, fax (202) 267-4570.

**SUPPLEMENTARY INFORMATION:** Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

**Agenda of Meeting**

*Towing Safety Advisory Committee (TSAC).* The agenda includes the following:

- (1) Progress report from the Electronic Charting working group.
- (2) Final report from the Tankbarge Structural Soundness working group.
- (3) Progress report from the Fire Suppression working group.
- (4) Progress report from the Licensing working group.
- (5) Status of the implementation of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code).
- (6) Status of the Towing Vessel Licensing rulemaking project.
- (7) Final report of the American Waterways Operators/U.S. Coast Guard

Tankbarge Transfer Spills Quality Action Team.

**Procedural**

All meetings are open to the public. At the Chairperson's discretion, members of the public may make oral presentations during the meetings. Persons wishing to make oral presentations at the meeting should notify the Assistant Executive Director no later than September 19, 1997. Written material for distribution at the meeting should reach the Coast Guard no later than September 19, 1997. If a person submitting material would like a copy distributed to each member of the committee or subcommittee in advance of the meetings, that person should submit 25 copies to the Assistant Executive Director no later than September 9, 1997.

**Information on Services for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Lieutenant Mew as soon as possible.

Dated: August 22, 1997.

**R.L. Skewes,**

*Captain, USCG, Acting Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 97-23075 Filed 8-28-97; 8:45 am]

BILLING CODE 4910-14-M

**DEPARTMENT OF TRANSPORTATION****Coast Guard****[CGD 96-044]****International, Private-Sector Tug-of-Opportunity System, Notice of Availability of a Ship-Drift Analysis for the Northwest Olympic Peninsula and the Strait of Juan de Fuca****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of extension; request for comments.

**SUMMARY:** The Coast Guard made available the Ship-Drift Analysis for the Northwest Olympic Peninsula and the Strait of Juan de Fuca, prepared by the National Oceanic and Atmospheric Administration (NOAA), through a notice published in the **Federal Register** on July 24, 1997 (62 FR 39885). The Coast Guard is extending the comment period, which closed on August 14, 1997, until August 29, 1997, to let the public participate more fully in this rulemaking.

**DATES:** Comments must be received by August 29, 1997.

**ADDRESSES:** Submit written comments to LT William Pittman, Commandant (G-MOR), U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593-0001, telephone (202) 267-0426, fax (202) 267-4085.

**FOR FURTHER INFORMATION CONTACT:** CDR William Carey, Commander, Thirteenth U.S. Coast Guard District (mep), telephone (206) 220-7221, fax (206) 220-7225. The telephone number is equipped to record messages on a 24-hour basis.

**SUPPLEMENTARY INFORMATION:** The comment period is being extended to allow for comments that, because of their technical nature, may require additional time to prepare. This extension results from requests from the public for more time. The Coast Guard is seeking comments from the public on how to apply the NOAA analysis to the marine-safety criteria set forth in a Report to Congress on International, Private-Sector Tug-of-Opportunity System for the Waters of the Olympic Coast National Marine Sanctuary and the Strait of Juan de Fuca.

Dated: August 22, 1997.

**R.C. North,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine, Safety and Environmental Protection.*

[FR Doc. 97-23069 Filed 8-28-97; 8:45 am]

BILLING CODE 4910-14-M

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****[Docket No. 91-33, Notice No. 03]****Functional Capacity Index**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comment on proposed Pediatric Functional Capacity Index.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) is developing a scale to quantify the consequences of pediatric injuries received in motor vehicle crashes based on adjusted life-years. This index is an extension of the basic index described in Docket No. 91-33, Notice No. 01. The factor used to adjust the injured person's remaining life-years is called the Functional Capacity Index (FCI). It combines decrements in each of ten dimensions of functioning into a whole body score. The development of the definitions of the functional attributes and their various capacity levels has

been completed. This notice requests comments on the approach being taken and on the attribute definitions.

**DATES:** Comments are requested no later than October 14, 1997.

**ADDRESSES:** Written comments should refer to the docket and notice number of this document and should be submitted, (preferably in ten copies) to: Docket Section, National Highway Traffic Safety Administration, Room 5109, Nassif Building, 400 Seventh Street S.W., Washington, D.C. 20590. (Docket hours are 9:30 a.m. to 4:00 p.m.)

**FOR FURTHER INFORMATION CONTACT:** Stephen Luchter, Senior Policy Advisor, Office of Plans and Policy, National Highway Traffic Safety Administration, 400 7th St. S.W., Washington, D.C. 20590. Telephone 202/366-2576.

**SUPPLEMENTARY INFORMATION:** NHTSA's mission is to save lives, prevent injuries, and reduce traffic-related health and other economic costs. To accomplish this mission efficiently, the agency needs accurate and reliable methods of quantifying the consequences of injuries to those who are injured, as well as to their families and society in general.

NHTSA has developed sophisticated methods for quantifying the economic consequences of deaths and injuries. These have been available for some time and are widely applied. NHTSA uses these for, among other things, resource allocation, regulatory analysis, and in support of state and local programs.

In addition, the agency is developing methods to quantify injury consequences based on the injured person's functional capacity. An FCI is being developed for measuring a previously healthy adult's functional capacity one year post-injury. This notice describes a program to develop a pediatric version of the FCI and requests comments on the first phase of this effort, definition of functional attributes.

### General Description

The basic assumption of the FCI is that life is its own best measure of value. If there are things a person cannot do as well following an injury as before, there is a reduction in their overall functional capacity. With the functional capacity approach, individuals of the same age and gender are counted equally. The injury consequences to young children are not discounted, and the longer average lifespan of females is accurately reflected.

The FCI is a measure of the relative degree to which an injured person is unable to function at their pre-injury level on a scale of 0 to 100, where 0 represents no limitation of function and 100 represents maximum limitation of

function. The overall consequences of an injury are found by multiplying the FCI, as a decimal between 0 and 1.0 by the injured person's remaining life expectancy. Note that the FCI can vary with time as the injured person's condition changes. The product of the FCI and the life expectancy is the number of years of reduced functional capacity. Any effects of reduced life expectancy as a result of the injury also can be accounted for.

### Attribute and Severity Level Definitions

The work of selecting the attributes to be included in Pediatric Functional Capacity Index (PFCI), and defining each attribute and each severity level has been completed. The same attributes were chosen for the PFCI as for the adult version. The choice was pragmatic, attempting to have as few as possible yet to have a sufficient number to fully describe the functioning of a complete human being. In addition, the effects of childhood development were accounted for by developing definitions that vary with the child's age.

The number of levels within each attribute were chosen as needed to reflect observable variation in functional capacity for that attribute rather than arbitrarily deciding that some number of levels would be used for all attributes. In some cases, the number of levels differs from that in the adult FCI. Similarly, age categories required to differentiate the differences in development as children mature were also selected as appropriate for each attribute. Each attribute has levels of functioning ranging from no reduction in functional capacity to maximum reduction. Definitions were developed for each attribute and each severity level as well as for appropriate age categories. The definitions were reviewed and refined based on suggestions made by a panel of nationally recognized experts in pediatric trauma, as well as physicians and allied health professionals specializing in pediatric rehabilitation medicine.

The results are shown in Tables 1 through 10.

**Eating (Table 1)**—Difficulty eating is characterized by limitations in the ability to chew and swallow foods. Defined in this manner, the ability to eat is independent of the ability to hold or use utensils.

**Excretory Function (Table 2)**—Excretory function is characterized by control over urinary and fecal elimination.

**Sexual Function (Table 3)**—This function is determined by physical capabilities anticipated to occur as an adult; dysfunction due to psychological

reasons is not considered. Note that this attribute is the only one that does not relate directly to the injured child's current situation.

**Ambulation (Table 4)**—Ambulation is characterized by the ability to (1) stand, walk and run and (2) climb stairs. Limitations are described in terms of distance, speed, the need for a mechanical device or human assistance. Limitations may be due to motor impairments, contractures, pain, loss of equilibrium, reduced sensation or poor cardiopulmonary function.

**Hand and Arm Function (Table 5)**—Upper limb function is characterized by the ability to (1) grasp and manipulate objects, (2) write, (3) move hand to mouth, (4) move arms over head, and (5) bilateral skills. Grasping and manipulating is described in terms of the size of the object. Writing is described in terms of use of a crayon in age appropriate motions. Hand to mouth movement is described in terms of number of repetitions and speed. Bilateral skills are described in terms of manipulating objects. Movement of the upper limbs may be limited by motor impairment, contracture, pain, or reduced sensation.

**Bending and Lifting (Table 6)**—Neuromusculoskeletal function of the trunk is characterized by the ability to bend over from a sitting position and touch hand to foot, and by the ability to lift. Limitations in bending and lifting may be due to motor impairments, pain, or loss of equilibrium.

**Visual Function (Table 7)**—Visual function is characterized by visual acuity and presence or absence of functional diplopia. The levels of visual acuity parallel those delineated in the 9th revision of the International Classification of Diseases (ICD-9).

**Auditory Function (Table 8)**—Auditory function is described by degree of difficulty hearing under everyday listening conditions and by the average of hearing threshold levels at four standard frequencies.

**Speech (Table 9)**—Limitations of speech include difficulties in voice production and articulation and in use of age appropriate vocabulary.

**Cognitive Function (Table 10)**—Cognitive function is described by the capacity of the individual to perform age appropriate activities, demonstrate age appropriate learning memory abilities, and for school age children having age appropriate academic progress.

### Applying the Definitions to the AIS 90 Dictionary

The attribute and severity levels will be applied to each injury listed in the

AIS 90 Dictionary by an expert panel based upon their clinical judgment. These judgements will then be validated by interviewing a sample of people who experienced the injuries.

### Developing a Numerical Scale

The final step in the development of the FCI is to translate the sets of qualitative statements applicable to each injury into numerical values. The approach taken for the PFCI follows that of the adult version. Values are assigned to each severity level within an attribute on a scale of 0 to 100. Each number on this scale represents a degree of severity such that 50 is ten degrees higher than 40, 90 is ten degrees higher than 80 and so forth. The number 0 reflects the lowest degree of severity (no limitation in functional capacity), and 100 reflects the highest degree of severity (maximum limitation in functional capacity). The numbers reflect the rater's judgment of the relative severity of the limitation in terms of its likely impact on overall function in everyday living. The major aspects of life for children are intended to include social interaction and major usual activity such as play, school or for older children, work. A separate chart is used for each of the attributes. In these charts the end points are preprinted and the rater places the remaining intermediate levels of function on the scale such that the relative spacing between levels reflects their judgments of the expected degree of severity.

Once the within-attribute scaling has been completed, the second step is to rate the relative weights of the attributes with respect to each other. This step is more complex than the rating within attributes because it must consider the possibility that the attributes may not be completely independent. Also, some combined states are added to assist in the final step of combining into the whole body factor and to cover situations not included in the single state listing, for example, total blindness in one eye and both eyes, profound or total loss of auditory function in one or both ears, quadriplegia, deaf-blind, and simultaneously being at the most severe level on all 10 dimensions. Death is also scaled to provide an anchor point.

In this step, the rater first considers the most severe level for each of the attributes and identifies which has the greatest impact on everyday living by placing a mark on a scale of 0 to 100. The rater then places the remaining most severe states for the remaining

nine attributes on the scale relative to the one judged to have the greatest impact. Death is scaled next. A scale value greater than 100 is acceptable. Next, the rater assigns a numerical value to the state representing the state of being at the most severe of all of the dimensions, and to some combined states not included in the list of attributes, such as quadriplegia and deaf-blind. These will be placed at scale values less than the value assigned to death.

Following these two steps, the values and weights will be normalized to a 0 to 100 scale with death as 100 and the remaining states relative to that. These values will then be combined using an appropriate model.

As part of this work the judgments of parents, teachers, both special education and mainstream education, and children will be obtained. In addition, an effort will be made to determine if value judgements vary with cultural background.

### Limitations

Although every attempt has been made to make the PFCI as broadly applicable as possible, certain limitations are acknowledged. Some of these are topics that could be considered for further development.

1. With a few exceptions, the index in its present state of development is applicable to single injuries. Methodologies to estimate the change in functional capacity resulting from any synergistic effects of more than one injury, particularly injuries to different body regions, remain to be developed.

2. Changes in functional capacity from pre-existing conditions are not included, as this would require knowledge of differences in the consequences of injuries to different sub-populations. An average healthy child prior to injury is assumed in the current development.

3. The present effort to develop a PFCI will be limited to the injury definitions in the 1990 version of the Abbreviated Injury Scale. Although the International Classification of Disease injury descriptions are widely used, they generally do not contain sufficient detail for the agency's countermeasure development purposes.

### Comments

NHTSA requests comments on the proposed PFCI. General and detailed comments on this proposal are welcome

in order to benefit from the opinions that interested parties and the public may wish to forward. All comments submitted in response to this notice will be considered by the agency.

Comments are specifically solicited on the following issues with respect to the material shown in Tables 1 through 10 of this Notice.

1. Do the 10 attributes reasonably cover the range of functions found in people age 1 and older?
2. Do the levels of functional capacity shown in Tables 1 through 10 reasonably cover the range for the individual functions?
3. Are the definitions of the functional capacity levels shown in Tables 1 through 10 unambiguous?
4. Are the definitions shown in Tables 1 through 10 comprehensible to a lay person?

Written comments should be submitted to: NHTSA Docket Section, Room 5109, Nassif Building, 400 Seventh Street S.W., Washington, D.C. 20590.

Comments should refer to Docket #91-33, Notice 03.

It is requested, but not required, of interested persons that ten copies of each comment be submitted. All comments must not exceed fifteen pages in length. (49 CFR 553.21). Necessary attachments may be appended to these suggestions without regard to the fifteen page limit. This limitation is intended to encourage commenters to present their views in a concise fashion.

All comments received before the close of business on the comment closing date listed above 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 be considered. However, this action may proceed at any time after that date. The agency will continue to file relevant information as it becomes available. It is recommended that interested persons continue to examine the docket for new material. Those persons desiring to be notified upon receipt of their comments by the docket should include a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on: August 22, 1997.

**William H. Walsh,**  
Associate Administrator, Plans and Policy.

EATING

Function	Level A: No limitations	Level B: No dietary modifications. Requires supervision, compensatory strategies and/or adaptive equipment	Level C: Requiring dietary modifications. May require supervision, compensatory strategies and/or adaptive equipment	Level D: Limited P.O. intake supplemented by tube feeding	Level E: Tube feeding only
Swallowing Liquids 12 mo+.	Drinks liquids primarily from cup, however may occasionally use bottle or breast. Coughing and choking are rare.	Requires grading amount of liquid, or compensatory strategies (i.e., jaw support, etc.).	Requires use of thickening agent or rice cereal to safely tolerate liquids.	Tolerates small amount of liquid following safety precautions however, child is unable to meet nutritional needs P.O. requiring tube feeding.	All nutritional needs met via tube feeding as child is unable to safely take any liquids P.O. secondary to impaired oral motor skills and/or risk for aspiration.
Swallowing Solids 12-18 mo.	Effectively chews and swallows ground, mashed, or chopped table foods. May lose minimal amounts of food/saliva during chewing and swallowing.	Requires adaptive positioning techniques, adaptive placement of food in mouth (i.e. flat-based spoon) or smaller sized bolus to tolerate solids.	Requires pureed diet (i.e. baby food) secondary to difficulty chewing, swallowing or digesting.	Tolerates small amount of solids following safety precautions however, child is unable to meet nutritional needs P.O. requiring tube feeding.	All nutritional needs met via tube feeding as child is unable to safely take any solids P.O. secondary to impaired oral motor skills and/or risk for aspiration.
18 mo+ .....	Effectively chews and swallows all solids well with good lip closure. No loss of food/saliva during swallowing.	Requires adaptive positioning techniques, adaptive placement of food in mouth (i.e. flat-based spoon) or smaller sized bolus to tolerate solids.	Requires pureed diet (i.e. baby food) secondary to difficulty chewing, swallowing or digesting.	Tolerates limited amount of solids following safety precautions however, child is unable to meet nutritional needs P.O. requiring tube feeding.	All nutritional needs met via tube feeding as child is unable to safely take any solids P.O. secondary to impaired oral motor skills and/or risk for aspiration.

Reference: Pre-Feeding skills—Suzanne Evans Morris, PhD and Marsha Dunn Klein, M.Ed, OTR, Therapy Skill Builders, 1987, P.O. (Per Os)=By Mouth.

EXCRETORY FUNCTION

Function	Level A: No limitation	Level B: Controllable excretory difficulty	Level C: Moderate excretory difficulty	Level D: Severe excretory difficulty
1yr-<2yrs (12-23 mnths).	No significant difficulty eliminating urine or fecal matter (into diaper); No constipation or urinary retention.	No retention problems. Dependent, but controlled use of catheterization device +/- or ostomy or controlled with medication +/- or diet.	Moderate retention. Difficulty eliminating urine or fecal matter (into diaper) despite use of catheterization device +/- or ostomy or controlled with medication +/- or diet.	Severe difficulty eliminating urine or fecal matter (into diaper) despite use of catheterization device +/- or ostomy or medication +/- or diet.
2yrs-3 1/2yrs (24-42 mnths).	No significant difficulty eliminating urine or fecal matter (into diaper); No constipation or urinary retention.	No retention problems. Dependent, but controlled use of catheterization device +/- or ostomy or controlled with medication +/- or diet.	Moderate retention. Difficulty eliminating urine or fecal matter (into diaper) despite use of catheterization device +/- or ostomy or controlled with medication +/- or diet.	Severe difficulty eliminating urine or fecal matter (into diaper) despite use of catheterization device +/- or ostomy or medication +/- or diet.
>3 1/2yrs-10yrs (≤42-≥120 mnths).	No significant difficulty controlling the elimination of urine or fecal matter. No incontinence day/night; No constipation or urinary retention.	No incontinence. Controlled use of catheterization device +/- or ostomy with 1 person assistance or controlled with medication +/- or diet. No retention problems. Dependent, but controlled use of catheterization device +/- or ostomy or controlled with medication +/- or diet.	Moderate incontinence (urinary +/- or fecal); frequency greater than 2x/wk by night and by day despite use of catheterization device +/- or ostomy with 1 person assistance or controlled with medication +/- or diet. Moderate retention difficulty despite use of catheterization device +/- or ostomy or medication +/- or diet.	Severe incontinence (urinary +/- or fecal); frequency everyday & night despite use of catheterization device +/- or ostomy with 1 person assistance or controlled with medication +/- or dietary influence. Severe retention difficulty despite use of catheterization device +/- or ostomy or medication +/- or diet.

SEXUAL INTERCOURSE FUNCTIONING (PREDICTION OF ADULT SEXUAL FUNCTION)

Function	Level A: No limitation	Level B: Moderate difficulty	Level C: Severe limitation (or no sexual function possible)
1yr + (12+ mnths) ...	Sexual function will be possible without difficulty.	Sexual function will be possible but with varying degrees of difficulty due to physical impairment(s).	Sexual function will not be possible or there will be severely impaired difficulty.

AMBULATION (STAIR CLIMBING)

Function	Level A: No limitations	Level B: Minor limitations	Level C: Independent, requires device, takes more than reasonable time	Level D: Minimally dependent; requires assistance	Level E: Moderately dependent	Level F: Completely dependent
Stair climbing 12-17 months.	Crawls up or down stairs, may walk up stairs with one hand held.	.....	May require extra time and/or an assisted device.	.....	.....	Severe limitation, no ability to climb stairs.
18-23 months .....	Walks up and down holding rail. May need one hand held walking down stairs.	Walks up w/one hand held, may crawl up or down stairs.	.....	Crawls on stomach and elbows (not quadruped) up stairs.	.....	Severe limitation, no ability to climb stairs.
24-29 months .....	Walks up and down holding rail.	Needs 1 hand held walking down stairs.	Crawls up or down stairs, may walk up with one hand held and/or use assisted device.	.....	Crawls on stomach and elbows (not quadruped) upstairs.	Severe limitation no ability to climb stairs.
30-35 months .....	Alternates feet going up and down stairs.	Alternates feet going down stairs.	Walks up and down holding rail, may need 1 hand held and/or assisted device.	Crawls up or down stairs	.....	Severe limitation, crawls on stomach up stairs, no ability to stair climb.

AMBULATION (STAIR CLIMBING)—Continued

Function	Level A: No limitations	Level B: Minor limitations	Level C: Independent, requires device, takes more than reasonable time	Level D: Minimally dependent; requires assistance	Level E: Moderately dependent	Level F: Completely dependent
36 months and older ....	No limitation. Climbs up and down 12 steps without difficulty.	Minimal limitation, may have deviations in gait pattern.	Climbing 12 stairs without assistance takes more than a reasonable time, requires device or handrail.	Can climb minimum of 12 steps with or without assistance and/or device.	Stair climbing less than 12 steps with or without assistance and/or device.	Severe limitation, cannot walk up minimum of 12 steps.

AMBULATION (STANDING, WALKING, RUNNING)

Function	Level A: No limitations	Level B: Minor limitations	Level C: Independent, requires device, takes more than reasonable amount of time	Level D: Minimally dependent; requires assistance	Level E: Moderately dependent	Level F: Completely dependent
Standing/Walking/Running 12–17 Months.	Walks alone seldom falls (may be wide based gait) may only walk several steps independently.	Walks with 1 hand held ..	Walks with 2 hands held may require assisted device (orthotics, walker, etc.).	Cruises with 1 hand (may need assisted device).	Cruises with 2 hands (may need assisted device).	Completely dependent, crawl and/or stands at rail, including no crawling or standing or pull to standing position.
18–23 Months .....	Walks alone without falling, runs.	Walks alone seldom falls	Walks with 1 hand held may require some device.	Walks with 2 hands held may require device.	Cruises with 1 hand (may need device).	Completely dependent; crawls, stands, cruises with 2 hands; may not crawl or pull to stand.
24 Months and Older ...	No limitations, able to walk at least 150', no deviations in gait pattern.	Some limitation, can walk 150' without assistance but with increasing problems over increased distances; may have minimal deviation; does not require device.	Can walk 150' without assistance, but takes more than a reasonable amount of time and requires some device.	Can walk minimum of 150' with assistance may or may not require device.	Walking limited to 50–150' with/without assistance and/or device.	Difficulty standing for long periods of time or walk minimum of 50' including unable to walk at all.

Note: Cruising: "Sideways walking, holding rail for support, shifting hands." Taken from Manual of Developmental Diagnosis by Knobloch, Stevens and Malone (p. 68).

PEDIATRIC BETTER HAND AND ARM FUNCTION

Function	Level A: No limitation	Level B: Minor limitation in hand function: No limitation in arm function	Level C: Major limitation in hand function: No limitation in arm function	Level D: No limitation in hand function: Min to moderate limitation in arm function	Level E: Moderate limitation in hand and arm function	Level F: Complete or near paralysis or loss of both limbs
Grasp and release of small and large objects (12 mos. +).	Grasps tiny objects using tips of thumb and index finger. No difficulty with large objects in relation to the child's hand. Releases objects in a controlled manner.	Uses immature grasp (scissor grasp) of tiny object with increased time. No difficulty with large objects. Requires increased time for controlled release.	Uses immature grasp (palmer grasp) with max difficulty with tiny and large objects (including not being able to do it at all). Release is uncontrolled.	No difficulty grasping pellet or large objects. Release is controlled.	Moderate difficulty grasping small and large objects using immature grasp patterns (raking). May require increased time. Release is clumsy but purposeful.	Max difficulty or inability to grasp small and large objects. Release is uncontrolled.
Writing (15–23 mos.) ....	Holds crayon in palm and scribbles spontaneously. Writes using whole arm movement.	Minor difficulty to grasp crayon in palm and write using whole arm movement. Imitates scribble with increased time.	Max difficulty grasping crayon including inability to grasp crayon effectively for scribble.	No difficulty grasping crayon in palm. May require increased time to scribble using whole arm movements.	Moderate difficulty to grasp crayon in palm and write using whole arm movement. Requires increased time to scribble.	Max difficulty grasping crayon including inability to grasp crayon or scribble.
(24–30 mos.) .....	Holds crayon in palm and writes using forearm movement. Demonstrates vertical stroke and circular scribble.	Holds crayon in palm and writes using forearm movement. Demonstrates vertical stroke and circular scribble with increased time.	Max difficulty grasping crayon including inability to grasp crayon effectively for scribble.	No difficulty grasping crayon in palm. Writes using whole arm movements. Demonstrates age-appropriate strokes.	Moderate difficulty to grasp crayon in palm and write using whole arm movements. Requires increased time to grossly imitate vertical and circular strokes.	Max difficulty grasping crayon; including inability to grasp crayon or scribble.
(31–59 mos.) .....	Holds crayon with fingers and writes using whole hand and wrist movement. Imitates horizontal stroke, V+H strokes.	Holds crayon with fingers and writes using whole hand and wrist movement. Imitates horizontal, V+H strokes with increased time.	Max difficulty grasping crayon. Uses immature grasp patterns (palmer). Writes using forearm movement.	No difficulty grasping crayon with fingers. Writes using whole hand or wrist movement with forearm supported. Demonstrates age-appropriate strokes.	Uses immature grasp (palmer) to hold crayon and writes using forearm or wrist movement. Requires increased time to grossly imitate horizontal and vertical strokes.	Max difficulty grasping crayon including inability to grasp crayon or scribble.
(60 mos. +) .....	Holds crayon with fingers and writes using fine finger movement. Prints own name.	Holds crayon with fingers and writes using wrist and finger movement. Prints own name with increased time.	Max difficulty grasping crayon. Uses whole hand or forearm movement to write. Imitates immature stroke patterns grossly.	No difficulty grasping crayon. Writes using fine finger movements with forearm supported. Demonstrates age-appropriate strokes.	Requires increased time to grasp crayon with fingers and write using forearm movement. Grossly prints own name.	Max difficulty grasping crayon including inability to grasp crayon or scribble.
Hand Movement to mouth(12 mos. +).	No difficulty moving hands to mouth at least 5 times.	No difficulty moving hands to mouth at least 5 times.	No difficulty moving hands to mouth at least 5 times.	Minimal to mod difficulty moving hands to mouth at least 5 times.	Requires increased time to take hand to mouth.	Cannot move either hand to mouth at least 5 times.
Arm Movement over head(12 mos. +).	No difficulty reaching for toys over head with both arms.	No difficulty reaching for toys over head with both arms.	No difficulty reaching for toys over head with both arms.	Min to mod difficulty reaching over head for toys with one or both arms.	Requires increased time or assistance to reach above head.	Cannot reach over head with either arm.
Bilateral UE skills (12–15 mos.).	No difficulty using both hands to manipulate different objects simultaneously.	Min difficulty using both hands to manipulate different objects simultaneously. May require increased time.	Max difficulty or inability to use both hands to manipulate different objects simultaneously.	No difficulty using both hands to manipulate different objects simultaneously.	Uses uncoordinated movement patterns to manipulate different objects simultaneously in both hands. May drop objects frequently during task.	Max difficulty or inability to use both hands to manipulate different objects simultaneously.

PEDIATRIC BETTER HAND AND ARM FUNCTION—Continued

Function	Level A: No limitation	Level B: Minor limitation in hand function: No limitation in arm function	Level C: Major limitation in hand function: No limitation in arm function	Level D: No limitation in hand function: Min to moderate limitation in arm function	Level E: Moderate limitation in hand and arm function	Level F: Complete or near paralysis or loss of both limbs
16–23 mos.) .....	No difficulty stabilizing object with one hand while manipulating object with the other hand.	Min difficulty stabilizing object with one hand while manipulating object with the other hand. May use forearm rather than hand to stabilize.	Min to mod difficulty stabilizing object with one hand while manipulating with the other hand. Uses forearm rather than hand to stabilize.	Min to mod difficulty stabilizing object with hand while manipulating with the other hand. Uses forearm rather than hand to stabilize.	Moderate difficulty to stabilize object with hand while manipulating object with other hand. May use trunk or leg to assist to stabilize object.	Max difficulty or inability to stabilize object with one hand while manipulating object with other hand.
(24 mos. +) .....	No difficulty completing bilateral opposing UE movements (i.e., tearing paper).	Min difficulty completing bilateral opposing UE movements. May require increased time.	Max difficulty or inability to complete bilateral opposing UE movements.	Min to Mod difficulty completing bilateral opposing UE movements. May require increased time.	Requires increased time to complete bilateral opposing UE movements. May require several attempts to successfully complete task.	Max difficulty or inability to complete bilateral opposing UE movements.

BENDING AND LIFTING

Function	Level A: No limitation	Level B: Minor limitation	Level C: Major limitation	Level D: Cannot bend or lift
Bending from Sitting Position (1 yr. +).	No difficulty bending over from sitting position in appropriate sized chair to touch hand to foot and return to sitting at least 5 times.	Minimal difficulty bending over from sitting position in appropriate sized chair to touch hand to foot and return to sitting 5 times. May require increased amount of time.	Can bend over from sitting position in an appropriate sized chair, touch hand to foot and return to sitting at least 2 times. Requires maximum increased time or use of adaptive techniques, i.e., assisting with upper extremities to push self up into sitting.	Cannot with controlled motion bend over from sitting position, touch hand to foot and return to sitting position.
Bending from Standing Position (12–18 mos).	Holds supporting surface to bend from standing position and return to upright position at least 3 times. May lose balance occasionally.	Holds supporting surface to bend from standing position and return to upright position at least 3 times. Requires repeated attempts secondary to frequent loss of balance.	.....	Cannot bend from standing to pick up object from floor and return to upright.
Bending from Standing Position (18 mos +).	No difficulty bending over from standing position to pick up object from floor and return to upright position at least 5 times.	Minimal difficulty bending over from standing position to pick up object from floor and return to upright position at least 5 times. May require increased time or adaptive techniques, i.e. holding onto stable surface.	Maximal difficulty bending over from standing position to pick up object from floor and return to upright position. Requires increased time and may use adaptive techniques, i.e. holding onto stable surface.	Cannot bend over from standing position to pick up object from floor and return to upright position for a minimum of 2 times. Includes not being able to bend in a controlled manner from standing at all.
Lifting from Standing* (1 yr. +).	No difficulty lifting amounts appropriate for age and body weight.	Minimal difficulty lifting amounts appropriate for age.	Major difficulty or inability to lift amounts appropriate for age; but able to lift a lesser amount.	Inability to lift any weight.

\* Norms are needed for “appropriate” amount and minimal amount of weight to age for a pediatric population.

VISION

Function	Level A: No limitations	Level B: No loss in VA but with Diplopia	Level C: Near-normal vision	Level D: Moderate-low vision	Level E: Severe low vision (legal blindness in USA)	Level F: Preferred low vision	Level G: Total blindness
1yr–2yrs (12–23 mnths).	.....	.....	Able to I.D. favorite toy 5cm in size from across room with nystagmus.	Recognizes relative across room without voice. With possible nystagmus.	.....	Everything close to face. without recognition of faces or objects without cues. with nystagmus possible.	Without visual response even to light.
2yrs–5yrs (24–59 mnths).	.....	.....	Near-normal vision; VA is 20/30–20/60. Look out window and ID objects i.e. birds. Not on top of TV. Recognizes relative across room without voice.	Moderate low vision; VA is 20/70–20/160. Without recognition of people without stimuli. Without seeing small objects out the window. With possible nystagmus.	.....	Profound low vision; VA is <5/200 (count fingers at less than 3 mo) but with light perception. Near TV, loses interest if not close. Everything close to face. Without recognition of faces or objects without stimuli with possible nystagmus.	Total visual impairment; black blind; no light perception.

VISION—Continued

Function	Level A: No limitations	Level B: No loss in VA but with Diplopia	Level C: Near-normal vision	Level D: Moderate-low vision	Level E: Severe low vision (legal blindness in USA)	Level F: Preferred low vision	Level G: Total blindness
5yrs—<10yrs (60–119 mnths).	Normal vision; no significant loss of VA; VA is 20/25 or better; no functional diplopia.	No significant loss of VA; VA is 20/25 or better but functional diplopia is present.	Near-normal vision; VA is 20/30–20/60.	Moderate low vision; VA is 20/70–20/160. Face close to page Up close to black-board or front of room.	.....	Profound low vision; VA is <5/200 (count fingers at less than 3mo) but with light perception.	Total visual impairment; black blind; no light perception.
>10 yrs≤120 months.	Normal vision; no significant loss of VA; VA is 20/25 or better; no functional diplopia.	No significant loss of VA; VA is 20/25 or better but functional diplopia is present.	Near-normal vision; VA is 20/30–20/60.	Moderate low vision; VA is 20/70–20/160.	Severe low vision; legally blind in USA; VA is 20/200–5/200.	Profound low vision; VA is <5/200 (count fingers at less than 3 mo) but with light perception.	Total visual impairment; black blind; no light perception.

Best Eye—Remember most Pedi Injuries unilateral and until 8–10 years old children will have only transient diplopia and then suppression of the poorer eye.  
 School Age—can ask regarding school eye screen.  
 Without visual field.

AUDITORY FUNCTION IN ONE EAR

Function	Level A: No limitations	Level B: Minor loss	Level C: Moderate loss	Level D: Severe loss	Level E: Profound or total loss
1yr—<2yrs (12–23 mnths).	No significant loss able to hear under everyday listening conditions; average hearing level at 500, 1000, 2000 and 3000 Hz ≤25 with understanding of simple phrases.	.....	Moderate to moderately severe loss; average hearing level at 500, 1000, 2000 and 3000 Hz is 41–70 Difficulty with conversation beyond 3–5 ft., classroom or group discussion with significant difficulty understanding simple phrases.	.....	Profound to total loss; non-correctable; average hearing level at 500, 1000, 2000 and 3000 Hz is >91 Difficulty hearing all but some loud sounds Failure to respond, awaken, or move to loud environmental sounds.
2yrs—>10yrs (24mnths—≥120 mnths).	No significant loss able to hear under everyday listening conditions; average hearing level at 500, 1000, 2000 and 3000 Hz ≤25.	Minor loss correctable with readily available hearing aid; average hearing level at 500, 1000, 2000 and 3000 Hz is 26–40 Difficulty with faint or distant speech.	Moderate to moderately severe loss; average hearing level at 500, 1000, 2000 and 3000 Hz is 41–70 Difficulty with conversation beyond 3–5 ft., classroom or group discussion.	Severe loss; average hearing level at 500, 1000, 2000 and 3000 Hz is 71–91 Difficulty with anything but shouted or amplified speech.	Profound to total loss; non-correctable; average hearing level at 500, 1000, 2000 and 3000 Hz is >91 Difficulty hearing all but some loud sounds.

Reference  
 \* Goodman, A.C. and Chasin, W.D.: In Gellis, SS and Kagan B.M. (Eds): Current Pediatric Therapy 7th Ed W.B. Saunders Co. Phila, 1976 p.518 (or whole Pedi Catalog Vol 1 p.15).

SPEECH/LANGUAGE

Function	Level A: No limitations	Level B: Mild limitations	Level C: Moderate–severe limitations	Level D: Global limitations
12–14 mos .....	Vocabulary of 4–6 words; recognizes own name; mixes words with jargon; follows simple motor instructions (esp. if accompanied by visual cue).	Vocabulary of 1–2 words; imitates sounds of adults inconsistently; minimal language comprehension; smiles in response to presence of caregiver or familiar person; listens at least momentarily when spoken to by a caregiver.	Sparse output mainly jargon; does not recognize name or follow motor instructions.	Maximum difficulty; no speech; minimal comprehension of commands.
15–18 mos .....	Vocabulary of 8–20 words; uses words and jargon in conversation; identifies some body parts; sings spontaneously.	Vocabulary of 4–6 words; recognizes own name, but does not follow motor instructions; smiles in response to presence of caregiver or other familiar person; mild articulation defect without compromise of intelligibility.	Vocabulary of 1–2 words; recognizes own name, but does not follow motor instructions; intelligibility of speech compromised by articulation defect.	Maximum difficulty; no speech; minimal comprehension of commands.
19–23 mos .....	Vocabulary of 30–300 words; uses "I" and "mine"; tries to tell experiences; uses short, incomplete sentences; uses prepositions and regular verb endings; follows 1–2 step commands.	Vocabulary of 8–20 words; mixes words with jargon; follows simple motor instructions and identifies some body parts; mild articulation defect without compromise of intelligibility.	Vocabulary of 4–6 words; mixes words with jargon; follows simple motor instructions; intelligibility of speech compromised by articulation defect.	Maximum difficulty; no speech; minimal comprehension of commands.
24–36 mos .....	Uses a range of words which is normal for age (vocabulary of 900–1000 words); sentences have 8 or more words; uses "he" and "she" correctly; recites rhymes, songs; follows 2–3 step commands; identifies 2 colors; sentences have subject and verb; talks about present.	Vocabulary of 30–300 words; uses words and jargon in short, incomplete sentences; identifies some body parts; sings spontaneously; mild articulation defect without compromise of intelligibility.	Vocabulary of 8–20 words; mixes words with jargon; follows simple motor instructions; intelligibility of speech compromised by articulation defect.	Maximum difficulty; no speech; minimal comprehension of commands.
37–47 mos .....	Uses a range of words which is normal for age (Vocabulary of 1,000–1,500 words); talks about the present; states number of siblings.	Uses a range of words slightly below other children of same age (vocabulary of 900–1000 words); sentences have 8 or more words; uses "he" and "she" correctly; recites rhymes, songs; follows 2–3 step commands; identifies 2 colors; sentences have subject and verb; talks about present; mild articulation defect without compromise of intelligibility.	Vocabulary of 30–300 words; uses words and jargon in short, incomplete sentences; identifies some body parts; sings spontaneously; intelligibility of speech compromised by articulation defect.	Maximum difficulty; no speech; minimal comprehension of commands.
48–59 mos .....	Uses a range of words which is normal for age (vocabulary of 1500–2200 words); increases complexity of sentences; recounts the past; asks many questions; understands most questions about the immediate environment; has 75%+ grammar acquisition; discusses feelings; follows 3-step commands.	Uses a range of words slightly below other children of same age (vocabulary of 1000–1500 words); uses "I" and "mine"; tries to tell experiences; uses short sentences which range from complete with subject and verb to incomplete sentences; follows 1–2 step commands; mild articulation defect without compromise of intelligibility.	Uses significantly fewer words than other children of same age (vocabulary of 900–1000 words); uses words and jargon in conversation; identifies body parts; intelligibility of speech compromised by articulation defect.	Maximum difficulty; no speech; minimal comprehension of commands.

SPEECH/LANGUAGE—Continued

Function	Level A: No limitations	Level B: Mild limitations	Level C: Moderate-severe limitations	Level D: Global limitations
5-8 years .....	Uses a range of words which is normal for age (vocabulary of 2,500+ words); understands a range of words which is normal for age (20,000-24,000 words); uses all parts of speech to some degree; verbalizes ideas; talks a lot.	Uses a range of words slightly below other children of same age (vocabulary of 1500-2200 words); sentences have 8+ words; uses "he" and "she" correctly; follows 2 step commands; mild articulation defect without compromise of intelligibility.	Uses significantly fewer words than other children of same age (vocabulary of 1000-1500 words); uses "I" and "mine"; tries to tell experiences; uses short, incomplete sentences; follows 1-2 step commands; intelligibility of speech compromised by articulation defect.	Maximum difficulty; no speech; minimal comprehension of commands.
8-10 years .....	Uses a range of words which is normal for age (vocabulary of 5,000+ words); understands a range of words which is normal for age (25,000+ words); able to write fluently either in cursive or in printed characters; prints or writes sentences of 3 to 4 words; reads at or above second grade level; gives complex directions to others.	Uses a range of words slightly below other children of same age (vocabulary of 2,500+ words); 75% grammar acquisition; follows 3 step commands; verbalizes ideas; mild articulation defect without compromise of intelligibility.	Uses significantly fewer words than other children of same age (vocabulary of 1500-2200 words); recites alphabet; tells plot of a fairy tale; follows 2-step commands; 25% grammar acquisition; intelligibility of speech compromised by articulation defect.	Maximum difficulty; no speech; minimal comprehension of commands.
>10 years .....	Uses a range of words which is normal for age (vocabulary of 25,000+ words); talks a lot; understands a range of words which is normal for age (approximately 50,000 words).	Uses a range of words slightly below other children of same age (vocabulary of 5,000+ words); increases complexity of sentences using all parts of speech to some degree; understands a range of words slightly below other children of same age (20,000+ words); 75% grammar acquisition; follows 3-step commands; mild articulation defect without compromise of intelligibility.	Uses significantly fewer words than children of same age (vocabulary of 2,500 words); sentences have 8+ words; uses "he" and "she" correctly; follows 2 step commands; intelligibility of speech compromised by articulation defect.	Maximum difficulty; no speech; minimal comprehension of commands.

COGNITION

Function	Level A: No limitations	Level B: Mild limitations	Level C: Moderate-severe limitations	Level D: Global limitations
12-14 mos .....	Uses common objects appropriately; helps to turn pages; tries to pick up cubes; builds tower of 2 blocks; spontaneously scribbles or imitates; searches for objects; maintains attention for 2 minutes to an interactive toy or picture.	Brings 2 blocks together, usually lifting them and comparing them, but does not build a tower; touches book but does not turn page; picks up crayon but fails to scribble; maintains attention for one minute to an interactive toy/picture.	Inconsistent response to book; variable response to blocks; no use of crayon; inconsistently maintains attention.	No response to book; no response to blocks; no use of crayon; fails to attend to interactive toy or picture.
Learning/memory	Searches in a location where an object was last hidden.	Fails to consistently search for hidden object.	No response to hidden object .....	Max difficulty; does not search.
15-18 mos .....	Imitates adult object use and motor acts; turns 2-3 pgs at a time; initiates crayon stroke; builds 3 block tower; places different shaped objects in different sized holes; maintains attention for 2 minutes or more to an interactive toy or picture.	Uses common objects appropriately; helps to turn pages; tries to pick up cubes; builds tower of two blocks; spontaneously scribbles or imitates; searches for objects; mild difficulty sustaining attention for more than 2 minutes, easily distracted.	Inconsistent response to toy or to book; inconsistently uses crayon; no response to placing different shaped objects in different sized holes; fails to maintain attention for 2 minutes to an interactive toy or picture; brings 2 blocks together, usually lifting them and comparing them, but does not build a tower.	No response to book; no response to blocks; no use of crayon; no response to toy; no response to placing different shaped objects in different sized holes; max difficulty.
Learning/memory	Remembers places where familiar objects are usually located (toys in toybox).	Searches in a location where an object was last hidden.	Fails to consistently search for hidden object.	Max difficulty; no response.
19-23 mos .....	Builds tower of 5-7 blocks; imitates circular scribble and/or vertical stroke; places different shaped objects in different sized holes even after rotation; sits alone for short periods with book; maintains attention for 3 to 4 minutes or more to an interactive toy or picture.	Builds 3 block tower; turns 2-3 pages at a time; initiates crayon stroke; places different shaped objects in different sized holes; mild difficulty sustaining attention for more than 2 to 3 minutes, easily distracted.	Builds tower of 2 blocks; inconsistently uses crayon; inconsistently places different shaped objects in different sized holes; inconsistent response to toy; scribbles with crayon; inconsistently maintains attention for 2 minutes.	No response to book; no response to blocks; no use of crayon; no response to toy; no response to placing different shaped objects in different sized holes; max difficulty.
Learning/memory	Recognizes pictures in picture book .....	Remembers places where familiar objects are usually located (toys in toybox).	Searches in a location where an object was last hidden.	Max difficulty; minimal search.
24-30 mos .....	Matches familiar objects; builds tower of 8-9 blocks; makes circular strokes with crayon; knows big and little concepts; maintains attention for 5 minutes or longer on one interactive activity.	Builds 5-7 block tower; scribbles spontaneously with a crayon; places different shaped objects in different sized holes even after rotation; mild difficulty sustaining attention for more than 3-4 minutes, easily distracted.	Builds tower of 3 or fewer blocks; plays with crayon but not without prompting/imitation scribbles using crayon; tries but usually unable to place different shaped objects in different sized holes.	No response to book; no response to blocks; no use of crayon; no response to toy; no response to placing different shaped objects in different sized holes; max difficulty.
Learning/memory	Remembers one item; repeats 2 items, 1 of 3 trials.	Recognizes pictures in picture book .....	Remembers places where familiar objects are usually located (toys in toybox).	Max difficulty; minimal search.
31-36 mos .....	Creates representational art; matches primary colors; engages in make-believe play unconstrained by objects; builds tower of 10 cubes; imitates bridge; copies circle; places 7 different shaped objects in different sized holes; maintains attention for 6-7 minutes or longer on one interactive activity.	Builds 8-9 block tower; imitates a circular scribble; mild difficulty sustaining attention for more than 5 minutes; easily distracted.	Builds 5-7 block tower; places different shaped objects in different sized holes even after rotation; inconsistently maintains attention for 3-4 minutes on one toy or activity.	No response to book; no response to blocks; no use of crayon; no response to toy; no response to placing different shaped objects in different sized holes; max difficulty.
Learning/memory	Remembers 2 items; repeats 3 items, 1 of 3 trials.	Remembers one item; repeats 2 items, 1 of 3 trials.	Recognizes pictures in picture book .....	Max difficulty; minimal search.
37-47 mos .....	Knows 4 actions; maintains attention for 10-11 min; can show use of 2 objects; imitates a square or better; can build a bridge with blocks.	Creates representational art; matches primary colors; engages in make-believe play unconstrained by objects; builds tower of 10 cubes; imitates bridge; copies circle; places 7 different shaped objects in different sized holes; maintains attention for 6-7 minutes or longer on one activity.	Builds 8-9 block tower; imitates a circular scribble; mild difficulty sustaining attention for more than 5 minutes; easily distracted.	No response to book; no response to blocks; no use of crayon; no response to placing different shaped objects in different sized holes; max difficulty.
Learning/memory	Remembers 3 items; repeats 4 items, 1 of 3 trials.	Remembers 2 items; repeats 3 items; 1 of 3 trials.	Remembers one item; repeats 2 items, 1 of 3 trials.	Inconsistently recognizes picture Max difficulty; no response.



COGNITION—Continued

Function	Level A: No limitations	Level B: Mild limitations	Level C: Moderate-severe limitations	Level D: Global limitations
48-59 mos .....	Knows own right and left; develops time concepts; recognizes relationships of parts to whole; categorizes types of animals; counts rotely up to 13; can show 3 objects; understands concepts of 3; labels some coins; maintains attention for 11-13 minutes on one interactive activity.	Matches familiar objects; knows big and little; builds bridge with blocks; imitates a circle with a crayon; knows big and little concepts; mild difficulty sustaining attention for 10 minutes; easily distracted.	Builds 10 block tower; imitates a circle; repeats 1 item, 1 of 3 trials, places 7 different shaped objects in different sized holes; inconsistently maintains attention for 7-8 minutes.	No response to book; no response to blocks; no use of crayon; no response to formboard or other toy; max difficulty.
Learning/memory	Remembers 4 items;repeats 5 items, 1 of 3 trials; learns sequences such as days of the week; recalls gist of a short story; recognizes series of pictures.	Remembers 3 items; remembers places where familiar objects are usually located; repeats 4 items, 1 of 3 trials.	Remembers 2 items; repeats 3 items, 1 of 3 trials.	Max difficulty; may recall 1 item.
5-8 years .....	Longer attention span for 15 minutes or more on one activity; knows left and right of others; understands conversation; knows differences and similarities; reads spontaneously.	Builds tower of 6-7 blocks; creates representational art; matches primary colors; engages in make-believe play unconstrained by objects; mild difficulty sustaining attention for more than 10 minutes, easily distracted.	Builds tower of 4-5 blocks; imitates a circle; inconsistently maintains attention for 9-10 minutes.	No response to book; no response to blocks; no use of crayon; no response to placing different shaped objects in different sized holes; max difficulty.
Learning/memory	Remembers and repeats 5 items; learns a list of 6-8 words.	Remembers 4 items; learns sequences such as months of the year; recalls gist of a short story; recognizes a series of pictures; repeats 5 items, 1 of 3 trials.	Remembers 1-2 items; partial recall of a short story; repeats 1-2 items, 1 of 3 trials Remembers 3 items; remembers places where familiar objects are usually located; repeats 4 items, 1 of 3 trials.	Max difficulty.
Academic progress.	No change from preinjury .....	Some decline in grades since injury but remains in similar classes (e.g. mainstream).	Some or all classes are resources (special education), but attends school full time.	Homebound or institutionalized.
8-10 years .....	Reads books at second to fourth grade level; writes neatly most of the time; can give complex directions to others, i.e. how to use key to unlock door; knows right and left of others; understands conversation; maintains attention for 30 minutes or more on one activity.	Knows own right from left; develops time concepts; recognizes relationships of specific parts to whole; counts rotely up to 13; prints/writes at least 10 words from memory states month and day of birthday; recites alphabet; reads at least 3 common signs; mild difficulty sustaining attention for 15 minutes or more; easily distracted.	Builds tower of 6-7 blocks; creates representational art; matches primary colors; engages in make-believe play; inconsistently maintains attention for 10-15 minutes.	Max difficulty; no response to book or blocks.
Learning/memory	Remembers and repeats 6 items; recalls events, actions of a short story; learns a list of 8-10 words.	Remembers and repeats 5 items; learns a list of 6-8 words; recalls gist of story but not specific events and actions.	Remembers 4 items; learns sequences such as months of the year; recalls gist of a short story; recognizes a series of pictures; repeats 5 items, 1 of 3 trials.	Max difficulty; minimal recall or recognition of 1-2 items.
Academic progress.	No change from preinjury .....	Some decline in grades since injury but remains in similar classes (e.g. mainstream).	Some or all classes are resource (special education), but attends school full time.	Homebound or institutionalized.
≥10 years .....	Plans future actions; engages in abstract thought; i.e. can interpret proverb providing more than a concrete explanation; solves problems with only minimal physical input; writes in cursive, maintains attention for 60 minutes or more on one activity.	Knows left and right; understands conversation; knows differences and similarities; reads spontaneously; mild difficulty sustaining attention for more than 30 minutes, easily distracted.	Knows own right and left; develops time concepts; recognizes relationships of parts to whole; categorizes; counts rotely up to 13; can show 3 objects; understands concept of 3; labels some coins; inconsistently maintains attention for more than 15 minutes.	No response to book; no response to blocks; no use of crayon; no response to form board or other toy; max difficulty.
Learning/memory	Remembers and repeats 7 items; repeats details of short story; learns a list of 11-12 words; recognizes series of 100+ pictures; memory approaches the level in adolescents and young adults (e.g., recognizes faces of 100+ classmates, friends, relatives).	Remembers and repeats 6 items; learns a list of 8-10 words.	Remembers and repeats 5 items; learns a list of 6-8 words.	Max difficulty; may recall or recognize 1-3 items.
Academic progress.	No change from preinjury .....	Some decline in grades since injury but remains in similar classes (e.g. mainstream).	Some or all classes are resource (special education), but attends school full time.	Homebound or institutionalized.

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 BILLING CODE 4910-59-P

**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

[STB Docket No. AB-32 (Sub-No. 57X)]

**Boston and Maine Corporation—  
 Abandonment Exemption—in  
 Rockingham County, NH**

Boston and Maine Corporation (B&M) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon an approximately 3.30-mile line of railroad on the Hampton Branch between milepost 42.70 and milepost 46.00 in Hampton, Hampton Falls and

Seabrook, Rockingham County, NH.<sup>1</sup> The line traverses United States Postal Service Zip Codes 03842, 03844 and 03874.

B&M has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local

<sup>1</sup> Pursuant to 49 CFR 1150.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. The applicant in its verified notice, indicated a proposed consummation date of September 29, 1997. However, because the verified notice was filed on August 11, 1997, consummation should not have been proposed to take place prior to September 30, 1997. Applicant's representative has been contacted and has confirmed that the correct consummation date is on or after September 30, 1997.

government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected

employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 30, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>2</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>3</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 8, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 18, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John R. Nadolny, Esq., General Counsel, Law Department, Boston and Maine Corporation, Iron Horse Park, No. Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

B&M has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 3, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&M shall file a notice of consummation with the Board to signify that it has exercised the authority

<sup>2</sup>The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>3</sup>Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$900. See 49 CFR 1002.2(f)(25).

granted and fully abandoned the line. If consummation has not been effected by B&M's filing of a notice of consummation by August 28, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: August 21, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 97-23054 Filed 8-28-97; 8:45 am]

BILLING CODE 4915-00-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-227 (Sub-No. 10X)]

#### Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Stark County, OH

On August 12, 1997, Wheeling & Lake Erie Railway Company (W&LE) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Massillon Branch, extending from milepost 22.05 at Run Junction, near Navarre, OH, to the end of the track at milepost 16.40, near Massillon, OH, which traverses U.S. Postal Service ZIP Codes 44647, 44618, 44662, and 44616, a distance of 5.65 miles, in Stark County, OH. The line includes the station of Massillon at approximately milepost 16.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued no later than November 28, 1997.<sup>1</sup>

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after

<sup>1</sup>W&LE seeks expedited handling of this petition and requests that the exemption be made effective by November 1, 1997, or soon thereafter. In support of its request, W&LE states that the almost \$130,000 that is expected from salvage of the track materials on this line is vital to its short-term viability. If the record supports an abandonment, we will attempt to accommodate W&LE's request.

service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at \$900. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 18, 1997. Each trail use request must be accompanied by a \$150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-227 (Sub-No. 10X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001; and (2) William C. Sippel, Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565-1545. (TDD for the hearing impaired is available at (202) 565-1695.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. The EA in this proceeding will be issued by September 19, 1997.<sup>2</sup> The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: August 20, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 97-23055 Filed 8-28-97; 8:45 am]

BILLING CODE 4915-00-P

<sup>2</sup>EAs in these abandonment proceedings are normally available within 60 days of the filing of the petition, but SEA will attempt to issue the EA earlier in an effort to accommodate W&LE's request for expedited handling.

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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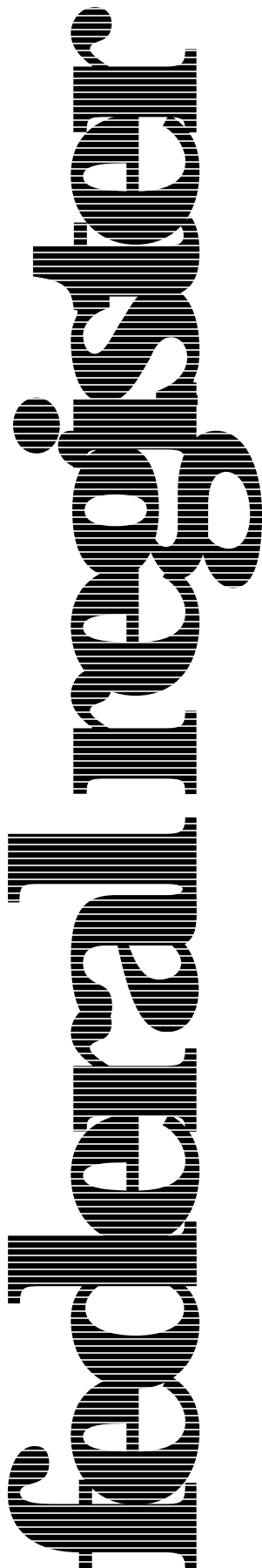
**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71****[Docket No. 97-ACE-15]****Amendment to Class E Airspace,  
Aurora, MO***Correction*

In rule document 97-21406, beginning on page 43275, in the issue of Wednesday, August 13, 1997, make the following corrections:

**§ 71.1 [Corrected]**

1. On page 43276, in the second column, in the fourth line from the bottom, "Aura" should read "Aurora".
2. On the same page, in the third column, in the second line, after "each" insert "side".

BILLING CODE 1505-01-D



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Friday  
August 29, 1997

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**Part II**

**Department of the  
Interior**

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**Office of Surface Mining Reclamation and  
Enforcement**

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**30 CFR Part 870  
Coal Moisture; Final Rule**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 870

RIN 1029-AB78

## Coal Moisture

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.  
**ACTION:** Final rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is amending its regulations governing how the excess moisture allowance is determined for reclamation fee purposes. This action defines terms and phrases related to the collection and testing of coal samples used to determine the inherent and total moisture of coal; identifies acceptable American Society for Testing and Materials (ASTM) standard sampling and testing methods for high and low-rank coals; prescribes frequencies for collecting and testing coal samples; and provides the coal industry with formulas for use in calculating an excess moisture tonnage allowance for the purpose of reducing the weight of coal subject to the abandoned mine land reclamation fee.

The regulatory revision clarifies and simplifies technical guidance for all users, and provides the coal industry with standard criteria for calculating an excess moisture allowance on all coals subject to reclamation fee payment. The intended effect of this revision is to enhance compliance with the provisions of section 402 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The prescribed criteria will ensure that all tonnage reductions for excess moisture are taken on comparable bases.

**EFFECTIVE DATE:** This regulation is effective October 1, 1997. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kewal Kohli, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220; telephone (412) 937-2175.

**SUPPLEMENTARY INFORMATION:**

## I. Background

## II. Discussion of Final Rule and Responses to Comments

## A. Section 870.5—Definitions.

## B. Section 870.18—General rules for calculating excess moisture.

## C. Section 870.19—How to calculate excess moisture in HIGH-rank coals.

D. Section 870.20—How to calculate excess moisture in LOW-rank coals.

## III. Procedural Matters

**I. Background**

Section 402(a) of the SMCRA requires all operators of coal mining operations subject to its provisions to pay a reclamation fee on each ton of coal produced. In December 1977, OSM first promulgated regulations to implement this provision (42 FR 62714, December 13, 1977). Briefly, the regulations require that the Abandoned Mine Land (AML) fees must be paid on the actual gross weight of the coal, at the time of the first transaction (sale, transfer of ownership, or use) involving the coal. This regulation has been in effect basically unchanged since 1977. In 1982, OSM revised the regulatory language to clarify the point in time of fee determination and to stress that the actual gross weight of the coal must be used for fee calculation. At that time OSM also specifically noted that no fees were owed on impurities physically removed before the sale, transfer of ownership, or use. In 1988, OSM again revised this regulation to allow an operator who mined coal after July 1, 1988, to elect to take an allowance for moisture contained in the coal at the time of sale that is determined to be in excess of the inherent, or natural bed, moisture in the coal.

Initially, OSM adopted the excess moisture allowance to address an inconsistency in the methods of determining coal weight under various Federal taxation requirements. At the time OSM proposed to amend its regulation to allow a deduction for excess moisture, the ASTM Committee on Coal and Coke, whose membership included representatives of the Internal Revenue Service (IRS) and OSM, was conducting a study to develop and/or confirm precision statements for the ASTM standard test method used to estimate the bed moisture in high-rank coals, ASTM D1412-85, as it applied to all coals. In a letter of November 18, 1987, the IRS submitted the following comment in response to the OSM proposal, "the results of the ASTM or a similar study should be received before one test is prescribed for use by all taxpayers."

As an interim measure, until adequate and fully reliable testing procedures became available for coals of all ranks, OSM's 1988 adopted regulation incorporated a suggestion made by the IRS. OSM decided to rely on a facts and circumstances test to allow an operator to elect to take an allowance for excess moisture provided the operator could demonstrate, through competent

evidence, that there was a reasonable basis for determining the existence and amount of excess moisture. OSM's standard of reasonableness required an operator to provide sufficient documentation to sustain the weight reduction. Although no specific time periods were given for testing, an operator was also required to prove that time frames chosen to measure the existence and amount of excess moisture were reasonable.

The preamble to the 1988 rule discussed OSM's willingness to accept the ASTM standard test methods to determine inherent moisture, ASTM D1412-85, and total moisture, ASTM D3302-82, pending the availability of more suitable alternatives. OSM recognized that these tests were not always reliable for this purpose and acknowledged its willingness to accept other testing methods for some subbituminous and lignite coals. OSM also stated its intent to develop technical guidance to assist operators and to assure uniform application of the excess moisture allowance throughout the industry.

The final rule which OSM adopted in 1988, at 30 CFR 870.18, allowed an operator to elect to reduce the weight of coal tonnage subject to reclamation fee payment by a percentage of excess moisture estimated to be contained in the coal at the time of fee assessment. OSM subsequently issued five AML Payer Letters to provide technical guidance to the coal industry and assist with the application of this regulation. OSM also published the guidance in the OSM Payer Handbooks.

OSM's audits of excess moisture reduced tonnages find that operators frequently fail to conform to inherent moisture test procedures described in AML Payer Letters, and do not provide adequate support for procedures they do use. Some operators mining large volumes of low-rank coal base tonnage reductions on test data that is known to be unreliable.

On December 3, 1996 (61 FR 64220), OSM published its proposal for revising the rule in the **Federal Register**. The public comment period closed on February 3, 1997.

**II. Discussion of the Final Rule and Responses to Comments**

Five commenters commented on the proposed rule revision: two coal companies, a trade association, a law firm representing a coal company, and an industry consulting firm. The majority of the commenters supported the intent of consolidating previous guidance into a single rulemaking, but

expressed various concerns on specific issues.

Based on the comments received, OSM is revising its regulations governing the excess moisture allowance to codify regulatory technical requirements as proposed, with some changes. The proposal incorporates by reference ASTM standards used for collecting and testing a coal sample as specified in 30 CFR 870.19(a), Table 1 and Table 2, and 30 CFR 870.20(a), Tables 1, 2, and 3. The ASTM standards were published in the 1994 Annual Book of ASTM Standards, Volume 05.05. A copy of the ASTM standards is available for inspection at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC, and at the Office of the Federal Register, 800 North Capitol St., Washington, DC. The rule establishes a frequency for using ASTM standard test methods on coals of all ranks, and adopts the method approved by the ASTM to establish inherent moisture in low-rank coal, the ASTM D1412-93, Appendix X1. Use of this procedure for low-rank coal will ensure excess moisture allowances taken on low-rank coals are on a comparable basis to those taken on high-rank coal, and all excess moisture allowances are fair and equitable. Definitions for high and low rank coal are provided. The rule also includes an option that provides operators with a method to calculate an allowance for the excess moisture present in as-shipped coal. This is of particular benefit when an operator sells large volumes of coal, and/or sells coal with a substantial variance between the total and inherent moisture.

#### A. Section 870.5—Definitions

None of the commenters addressed this section, and the revised definitions for excess, inherent, and total moisture are being adopted as proposed. The definition for excess moisture is revised by including, by reference, a formula for use in calculating excess moisture in high and low-rank coals. The formula to be used for high-rank coals is found in a new section 870.19 and the formula for low-rank coals is found in a new section 870.20. The existing definition of inherent moisture is expanded to incorporate by reference the specific ASTM methods of sample collection and test procedures shown in section 870.19, Table 2, Calculating INHERENT moisture percentage in HIGH-rank coals, and section 870.20, Table 2, and Table 3, Calculating INHERENT moisture percentage in LOW-rank coals. The existing definition of total moisture is

expanded to incorporate by reference ASTM criteria in section 870.19, Table 1, for Calculating the TOTAL moisture percentage in HIGH-rank coals, and section 870.20, Table 1, for Calculating the TOTAL moisture percentage in LOW-rank coals. The expansion of the existing definitions to incorporate by reference specific ASTM sample collection methods and test procedures provides precise technical standards to facilitate operator compliance with OSM's requirements, and provides a consistent basis to calculate all excess moisture allowances.

#### B. Section 870.18—General Rules for Calculating Excess Moisture

The modifications to 30 CFR 870.18, excess moisture content allowance at section 870.18(a), (b), and (c) are adopted as proposed. The previous section 870.18(a) required an operator to demonstrate through competent evidence that the basis for determining the existence and amount of excess moisture is reasonable. Section 870.18(b) required standard laboratory analyses for testing inherent and total moisture. Section 870.18(c) required an operator who blended coal mined from multiple seams prior to the initial sale, transfer, or use of the coal to test for variations in the inherent moisture amounts from different seams.

This revision replaces the reasonableness standard found at section 870.18(a), the generic laboratory test requirement at section 870.18(b), and the requirement for a separate test of coal from each seam mined prior to blending the coal for sale, transfer of ownership or use at section 870.18(c). The revision also recognizes the distinct differences in high and low-rank coals in sections 870.19 and 870.20. Section 870.19 provides acceptable standards for collecting and testing a sample of high-rank coals to establish the percentage of inherent and total moisture contained in the coal, and calculate the excess moisture allowance. Section 870.20 provides like standards for calculating the excess moisture allowance for low-rank coals.

Revised section 870.18(c) adds definitions to further explain the meaning of terms as they are used in new sections 870.19 and 870.20. "As-shipped coal" and "tipple coal" is defined as the coal found at the mine or loading facility. A precise meaning for a "channel sample" and "core sample" is given and the definitions incorporate by reference the specific ASTM procedure used to take the particular kind of sample. The "correction factor" is added as the method used to establish the difference between the equilibrium

moisture and inherent moisture in low-rank coals under section 870.20. "Equilibrium moisture" is defined as the method used to estimate the inherent moisture in all coals, and ASTM D1412 and ASTM D1412, Appendix X1, are incorporated by reference. Types of "high-rank coals" and "low-rank coals" are defined to explain how these terms are used throughout sections 870.5 and 870.18-20.

#### C. Section 870.19—How To Calculate Excess Moisture in HIGH-Rank Coals

The new section 870.19, which provides standard criteria for an operator to use to establish excess moisture in high-rank coals, is being adopted as proposed. Table 1 includes the ASTM standard sample collection method, ASTM D2234-89, *Standard Test Methods for Collection of a Gross Sample of Coal*, that OSM will accept for use as the basis for calculating the percentage of total moisture in as-shipped high-rank coals each day the coal is either shipped or used. Table 1 also provides the test procedure, ASTM D3302-91, *Standard Test Method for Total Moisture in Coal*, that would be acceptable for that purpose.

Two commenters suggested that more than one test method be accepted for determining total moisture in high-rank coals. The prescribed test methodology is designed to provide operators with the most reliable means of determining the total moisture in the coals. While other methods are available, the results produced may be less accurate, and they are not incorporated as being acceptable in all cases. Operators wishing to use other methodologies should obtain prior OSM approval to avoid possible disallowance of their excess moisture amounts. The operator must demonstrate that the test used yields accurate results.

One commenter opposed the requirement to test for total moisture each day coal is shipped or used because:

- It would represent an excessive burden for small to medium-sized operators who do not now test for total moisture every day they ship coal;
- The cost involved with testing for total moisture every day in many cases will either exceed or substantially diminish the value of the coal moisture deduction; and
- The previous regulation did not require it.

The commenter recommended that one analysis of each stockpile of coal be allowed as an alternative to daily

testing. OSM has considered these comments, but is retaining the daily testing requirement. The basis for the coal moisture deduction is to recognize that coal operators generally are not compensated for the weight of excess moisture in the coal they ship, and therefore, should not be required to pay fees on that weight. The total moisture of the coal can vary significantly from day to day based on weather and other conditions. The commenter stated that a single test of each stockpile, if depleted in 10 days or less, would provide an average value of the total moisture percentage for the stockpile for each day that the coal was used or shipped. In OSM's view, such an approach will not adequately recognize the variations in day-to-day moisture amounts and tonnages shipped. The more this relationship is obscured, the less relevant it becomes in recognizing the weight of excess moisture for which the operator may not be compensated.

OSM also recognizes that the cost of daily moisture tests could exceed the value of the excess moisture fee deduction that would be derived. For that reason, OSM emphasizes in section 870.18(a) that the operator may use the customer's test results on the shipped coal in support of an excess moisture deduction. It has been OSM's experience that the majority of buyers conduct such tests as part of their efforts to ensure quality. By obtaining copies of the test results and related records, the seller could avoid the expense of testing.

The daily total moisture test results must be converted to quarterly figures to be reported to OSM on the OSM-1 Form, Coal Reclamation Fee Report. To calculate the quarterly total moisture percentage an operator should: (1) Multiply the daily total moisture percentage by the tonnage shipped or used that day, to find the daily total moisture tonnage; and, (2) add the daily total moisture tonnage for each day in the quarter; and, (3) add the daily tonnage shipped or used in the quarter, to find the total tonnage shipped or used during the quarter. Then, divide the sum of the daily total moisture tonnage, step (2), by the sum of the daily tonnage shipped or used in the quarter, step (3). This will result in the total moisture percentage in high-rank coals for the quarter which is reported on the Coal Reclamation Fee Report.

Table 2 provides three methods for sampling high-rank coals, and testing the sample to determine the inherent moisture percentage that will be acceptable to OSM. To collect a coal sample directly from a coal seam an operator could use either a core or a

channel sample method. If a core sample is collected the operator is required to collect the sample using procedures in ASTM D5192-91, *Standard Practice for Collection of Coal Samples from Core* and to test by ASTM D1412-93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C*. If a channel sample is used, the operator is required to collect the sample using procedures in ASTM D4596-93, *Standard Practice for Collection of Channel Samples of Coal in a Mine* and to test by either ASTM D1412-93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C*, or ASTM D3302-91, *Standard Test Method for Total Moisture in Coal*. To collect a sample of blended coal, as-shipped coal, tippable coal, commingled coal, or coal from slurry ponds an operator will use procedures in ASTM D2234-89, *Standard Test Methods for Collection of a Gross Sample of Coal* and test by ASTM D1412-93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C* to estimate the inherent moisture.

An operator may select one of two options for timing inherent moisture tests, either quarterly or monthly. If a quarterly inherent moisture test is chosen, the operator must report the results of one inherent moisture test taken at any time during the quarter on the OSM-1 form for the quarter in which the test was taken. If monthly inherent moisture testing is preferred, the operator must create a 24-month inherent moisture baseline during the first 24-months a coal seam is in continuous operation. To create the 24-month inherent moisture baseline, an operator must collect and test one sample in each month of the calendar quarter. The quarterly inherent moisture percentage reported to OSM for each of the first 8 quarters a seam is in continuous operation is then based on a weighted average of the 3-monthly inherent moisture tests results from each quarter. To determine the quarterly weighted average inherent moisture percentage an operator would then: (1) Multiply the inherent moisture percentage for one month by the number of tons produced or shipped in that month to find the monthly inherent moisture tonnage; (2) add the inherent moisture tonnage determined in (1) for each of the 3 months to find the quarterly inherent moisture tonnage; (3) divide the inherent moisture tonnage found in (2) by the total number of tons produced or shipped during the three

months of the quarter; and, (4) report the weighted average percentage determined in (3) for the quarter to OSM on the OSM-1 form. After the first 24-months, an operator would use an updated rolling average percentage to report inherent moisture percentages for all subsequent quarters in which a coal seam is continuously mined. The rolling average percentage would be calculated by: Adding the results of one inherent moisture test of one coal sample collected during every 12-month period to the inherent moisture percentages for the preceding 23 tests, and dividing the sum of these tests by 24.

Section 870.19(a) provides instruction on how an operator would calculate the excess moisture in high-rank coals by using one of two methods. One method involves the simple subtraction of the inherent moisture percentage from the total moisture percentage as it is found in the existing rule. OSM expects that most operators of small to medium size mines would likely prefer to continue to use this method. A new alternative formula is added as a second method in section 870.19(a) that allows an adjustment in the excess moisture calculation for a percentage of inherent moisture contained in the as-shipped coal. Some operators who either mine a large volume of coal, or mine coal with a significant variance in total and inherent moisture, have requested OSM's approval to use this formula for calculating a tonnage reduction for excess moisture. OSM is now providing this option as an alternative to the existing formula used to determine the excess moisture percentage. The excess moisture percentage found in section 870.19(a) is multiplied by the tonnage sold, transferred, or used during the quarter to determine the excess moisture reduced tonnage for the quarter under section 870.19(b).

#### D. Section 870.20—How To Calculate Excess Moisture in LOW-Rank Coals

A new section 870.20, which provides standard criteria for an operator to use to establish excess moisture in low-rank coals, is being adopted with changes. Table 1 includes the ASTM standard sample collection procedure, ASTM D2234-89, *Standard Test Methods for Collection of a Gross Sample*, and test procedure, ASTM D3302-91, *Standard Test Method for Total Moisture in Coal*. OSM will accept for use as the basis for calculating the percentage of total moisture in as shipped low-rank coals each day the coal is either shipped or used.

The daily total moisture test results must be converted to quarterly figures to be reported to OSM on the OSM-1, Coal

Reclamation Fee Report. To calculate the quarterly total moisture percentage an operator must: (1) Multiply the daily total moisture percentage by the tonnage shipped or used that day, to find the daily total moisture tonnage; (2) add the daily total moisture tonnage for each day in the quarter; and, (3) add the daily tonnage shipped or used in the quarter, to find the total tonnage shipped or used during the quarter. Then, divide the sum of the daily total moisture tonnage, step (2), by the sum of the daily tonnage shipped or used in the quarter, step (3). This will result in the total moisture percentage in low-rank coal for the quarter which would be reported by the OSM-1, Coal Reclamation Fee Report.

Table 2 provides instructions on how an operator will determine the inherent moisture percentage of coal mined from one or more benches of low-rank coals by: collecting one sample of as-shipped coal each month of the calendar quarter using procedure ASTM D2234-89, *Standard Test Methods for Collection of a Gross Sample of Coal*; and testing each sample for equilibrium moisture by ASTM D1412-93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C*.

The operator would calculate the inherent moisture percentage to report to OSM for the quarter by averaging the results from the 3 monthly equilibrium moisture tests, and adding the correction factor.

Table 3 provides the method an operator is required to use to establish the correction factor during the first quarter an excess moisture allowance is taken on low-rank coals mined from a bench or multiple benches. The correction factor is found by using procedures in ASTM D1412-93 Appendix X1, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C* to collect 15 samples of coal from a freshly exposed, unweathered coal seam face during the quarter. All 15 samples would be tested for inherent moisture and equilibrium moisture as required by ASTM D1412-93 Appendix X1, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C*.

In the proposed rule, we stated that 5 samples had to be taken in each month of the first quarter for a total of 15 samples. Three commenters suggested a variety of alternatives, including allowing companies to:

- Perform a single annual collection of 20 samples;
- Collect all 15 samples in a single month; or

—Take 20 to 30 samples annually.

The OSM-1 forms reporting tonnage and moisture amounts are to be filed for each calendar quarter. The purpose of the samples is to help determine the appropriate moisture amount for the coal shipped or used in the calendar quarter being reported. As a result, it is not feasible to delay the sampling and testing beyond that quarter. In response to the commenters, however, we have revised the final rule to state that the sampling and testing need not be done until the first quarter a deduction is taken, and that all 15 samples may be taken anytime during the quarter rather than 5 each month. This is also designed to address some commenters' concerns that sampling on some days during the quarter may be difficult due to harsh weather.

The operator is required to establish the correction factor for the first quarter and all later quarters by: averaging the 15 inherent moisture test results; averaging the 15 equilibrium moisture test results; and, subtracting the average inherent moisture from the average equilibrium moisture.

Three commenters also suggested that a regression formula be allowed to determine the correction factor rather than simple subtraction of the average equilibrium moisture from the average inherent moisture. Generally, regression analysis is a statistical approach which can be used to determine inherent moisture based on its relationship to possibly several other variables of coal content, such as ash, Btu, and equilibrium moisture. We examined this approach and found that it would require sampling for every variable used in the analysis and a substantially greater number of tests to produce reliable results. We also found it difficult to specify all the different variables that should be considered in every situation. As a result, we are not incorporating a regression approach into the final rule. If an operator elects to use a method other than that provided in the rule, the operator should obtain prior OSM approval to avoid having to revert to the simple subtraction method.

One commenter objected to calculating a correction factor for each bench as we originally proposed, pointing out that multiple benches may be mined simultaneously. We have revised the requirement in the final rule to allow an average correction factor to be calculated and applied when such situations exist. The correction factor could be changed at any time provided new samples are taken and all procedures shown in Table 3 are repeated.

### III. Procedural Matters

#### *Federal Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, OSM requested comments from the public and the Office of Management and Budget (OMB) on the information collections contained in the proposed rulemaking. Commenters were asked to address: (a) Whether the proposed collection of information is necessary for the proper performance of OSM, including whether the information will have practical utility; (b) the accuracy of OSM's estimate of the burdens 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 collection on the respondents, including the use of automated collection techniques or other forms of information technology. Comments received on the information collection requirements in the proposed rule have been addressed in the preamble above:

*Title:* Abandoned mine reclamation fund—fee collection and coal production reporting: 30 CFR part 870.

*OMB Control Number:* 1029-0090.

*Abstract:* Section 402 of the Surface Mining Control and Reclamation Act of 1977 requires operators of coal mining operations to pay a reclamation fee to the Secretary for deposit in the Abandoned Mine Reclamation Fund for the purpose of reclaiming lands mined and left abandoned, or inadequately reclaimed, prior to the Act's effective date. Reclamation fees are to be paid on each ton of coal produced.

Sections 870.18, 870.19, and 870.20 of the regulations allow an operator to take an excess moisture content allowance when calculating the amount of reclamation fees that are owed. To substantiate the calculated moisture deduction claimed, an operator (or other entity responsible for the payment of the reclamation fee) is required to document by standard laboratory analysis the excess moisture content for each coal seam mined. This documentation must be updated as necessary to establish the continuing validity of the excess moisture content allowance taken by the operator.

*Need For and Use:* The information submitted will be used by OSM auditors to verify an operator's compliance with Section 402 of the Act and the requirements of the regulation at 30 CFR 870.18, 870.19, and 870.20. During an audit, operators must substantiate how the calculation for excess moisture was determined. Response to this collection of information is required to obtain a



benefit and is held confidential under the Freedom of Information Act.

Operators must retain their records for a 6-year period to allow for the audit of tax records. Courts have ruled that the AML fee is an excise tax. The applicable provision of the Energy Policy Act of 1992 (Section 2515) extended the fee through 2004.

*Respondents:* Approximately 1,050 coal mining operators who take the coal moisture deduction allowance.

*Total Annual Burden:* OSM estimates that 2 hours will be required to prepare and maintain the documentation for audit purposes per respondent. The total annual burden is estimated to be 2,100 hours.

*Executive Order 12988 on Civil Justice Reform*

The Department of the Interior has determined that this rule meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

*Executive Order 12866*

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

The rule is not considered economically significant under section 3(f)(1) of Executive Order 12866 and will not have a significant economic effect on the coal mining industry, or on regional or national economies. OSM is providing a viable methodology that will enable coal mine operators to calculate the correct allowance for excess moisture. OSM is not attempting to specify any given amount, or percentage, as an excess moisture allowance. For that reason it is not possible to predict the cost that this revision will have in terms of the amount of the additional AML fees that the industry will pay and the government collect or the industry save and the government not collect. Based on AML tonnages reported, and the total moisture allowances taken for 1996, the industry saved approximately \$5,729,000 in terms of the tonnage reported. With regard to benefits, the rule revision will ensure that all excess moisture allowances are fair and equitable. OSM's revision also includes an option that will provide operators with a method to calculate an allowance for the inherent moisture present in as-shipped coal. This will be of particular benefit when an operator sells large volumes of coal, and/or sells coal with a substantial variance between the total and inherent moisture.

*Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities for the following reason. The rule will provide two methods for operators to calculate the excess moisture in high-rank coal. OSM expects that most operators of small to medium size mines will likely prefer to continue to use the current method of calculation while operators who either mine a large volume of coal, or mine coal with a significant variance in total and inherent moisture, will use the other option as an alternative to the existing formula used to determine the excess moisture percentage. Thus, for small operators any change from current practices is optional.

*Unfunded Mandates Reform Act*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

*National Environmental Policy Act*

OSM has prepared an environmental assessment (EA) of this rule and has made a Finding of No Significant Impact (FONSI) on the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA and FONSI are on file in the OSM Administrative Record.

*Author:* The principal author of this rule is Dr. Kewal Kohli, Mining Engineer, Office of Surface Mining, U.S. Department of the Interior, 3 Parkway Center, Pittsburgh, PA 15220. Inquiries with respect to the rule should be directed to Dr. Kohli at the address and telephone specified under **FOR FURTHER INFORMATION CONTACT**.

**List of Subjects in 30 CFR Part 870**

Incorporation by reference, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: July 2, 1997.

**Bob Armstrong,**

*Assistant Secretary, Land and Minerals Management.*

Accordingly, 30 CFR part 870 is amended as set forth below:

**PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING**

1. The authority citation for part 870 is revised to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 870.5 is amended by revising definitions of "excess moisture," "inherent moisture" and "total moisture" to read as follows:

**§ 870.5 Definitions.**

\* \* \* \* \*

*Excess moisture* means the difference between total moisture and inherent moisture, calculated according to § 870.19 for high-rank coals or the difference between total moisture and inherent moisture calculated according to § 870.20 for low-rank coals.

\* \* \* \* \*

*Inherent moisture* means moisture that exists as an integral part of the coal seam in its natural state, including water in pores, but excluding that present in macroscopically visible fractures, as determined according to § 870.19(a) or § 870.20(a).

\* \* \* \* \*

*Total moisture* means the measure of weight loss in an air atmosphere under rigidly controlled conditions of temperature, time and air flow, as determined according to either § 870.19(a) or § 870.20(a).

3. Section 870.18 is revised to read as follows:

**§ 870.18 General rules for calculating excess moisture.**

If you are an operator who mined coal after June 1988, you may deduct the weight of excess moisture in the coal to determine reclamation fees you owe under 30 CFR 870.12(b)(3)(i). Excess moisture is the difference between total moisture and inherent moisture. To calculate excess moisture in HIGH-rank coal, follow § 870.19. To calculate excess moisture in LOW-rank coal, follow § 870.20. Report your calculations on the OSM-1 form, Coal Reclamation Fee Report, for every calendar quarter in which you claim a deduction. Some cautions:

(a) You or your customer may do any test required by §§ 870.19 and 870.20. But whoever does a test, you are to keep test results and all related records for at least six years after the test date.

(b) If OSM disallows any or all of an allowance for excess moisture, you must submit an additional fee plus interest computed according to § 870.15(c) and penalties computed according to § 870.15(f).

(c) The following definitions are applicable to §§ 870.19 and 870.20. ASTM standards D4596-93, *Standard Practice for Collection of Channel Samples of Coal in a Mine*; D5192-91, *Standard Practice for Collection of Coal Samples from Core*; and, D1412-93,

*Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C* are

incorporated by reference as published in the 1994 Annual Book of ASTM Standards, Volume 05.05. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Each applicable ASTM standard is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the **Federal Register**. You may obtain copies from the ASTM, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC.

(1) *As-shipped coal* means raw or prepared coal that is loaded for shipment from the mine or loading facility.

(2) *Blended coal* means coals of various qualities and predetermined quantities mixed to control the final product.

(3) *Channel sample* means a sample of coal collected according to ASTM standard D4596-93 from a channel extending from the top to the bottom of a coal seam.

(4) *Commingle coal* means coal from different sources and/or types combined prior to shipment or use.

(5) *Core sample* means a cylindrical sample of coal that represents the

thickness of a coal seam penetrated by drilling according to ASTM standard D5192-91.

(6) *Correction factor* means the difference between the equilibrium moisture and the inherent moisture in low rank coals for the purpose of § 870.20(a).

(7) *Equilibrium moisture* means the moisture in the coal as determined through ASTM standard D1412-93.

(8) *High-rank coals* means anthracite, bituminous, and subbituminous A and B coals.

(9) *Low-rank coals* means subbituminous C and lignite coals.

(10) *Slurry pond* means any natural or artificial pond or lagoon used for the settlement and draining of the solids from the slurry resulting from the coal washing process.

(11) *Tipple coal* means coal from a mine or loading facility that is ready for shipment.

4. Sections 870.19 and 870.20 are added to read as follows:

**§ 870.19 How to calculate excess moisture in HIGH-rank coals.**

Here are the requirements for calculating the excess moisture in high-rank coals for a calendar quarter. ASTM standards D2234-89, *Standard Test Methods for Collection of a Gross Sample of Coal*; D3302-91, *Standard Test Method for Total Moisture in Coal*; D5192-91, *Standard Practice for Collection of Coal Samples from Core*; D1412-93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C*; and, D4596-93, *Standard Practice for Collection of Channel Samples of Coal in a Mine* are incorporated by reference

as published in the 1994 Annual Book of ASTM Standards, Volume 05.05. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Each applicable ASTM standard is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the **Federal Register**. You may obtain copies from the ASTM, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC.

(a)(1) Calculate the excess moisture percentage using one of these equations:

$$EM = TM - IM$$

or

$$EM = TM - \left( IM \times \frac{100 - TM}{100 - IM} \right)$$

(2) EM equals excess moisture percentage. TM equals total as-shipped moisture percentage calculated according to Table 1 of this section. IM equals inherent moisture percentage calculated according to Table 2 of this section.

(b) Multiply the excess moisture percentage by the tonnage from the bonafide sales, transfers of ownership, or uses by the operator during the quarter.

BILLING CODE 4310-05-M

**Table 1**

**Calculating TOTAL moisture percentage in HIGH-rank coals <sup>1</sup>**

**Collect and test each day you ship or use coal ▼**

Collect a sample of as-shipped or used coal. Follow procedures in ASTM D2234-89.

Test the sample for daily total moisture percentage. Follow laboratory procedures in ASTM D3302-91.

Obtain prior OSM approval for use of other procedures.

**Convert daily test results to quarterly figures and report them ▼**

1. Multiply daily total moisture percentage by daily tonnage shipped or used. You now have daily total moisture tonnage.
2. Add up daily total moisture tonnage for the quarter.
3. Add up daily tonnage shipped or used in the quarter.
4. Divide 2 by 3.

Report this total moisture percentage in high-rank coal for the quarter on OSM-1, Coal Reclamation Fee Report.

<sup>1</sup> See §870.19 for the incorporation by reference of the ASTM standards.

**Calculating INHERENT moisture percentage in HIGH-rank coals <sup>1</sup>****Choose from 3 ways to collect and test ▼****First**

Collect a core sample<sup>2</sup>. Follow procedures in ASTM D5192-91.

Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93.

**Or second**

Collect a channel sample. Follow procedures in ASTM D4596-93.

Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93 or ASTM D3302-91.

**Or third**

Collect a sample of blended coal, as-shipped coal, tippie coal, commingled coal, or coal from slurry ponds. Follow procedures in ASTM D2234-89.

Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93.

**Choose from 2 ways to time the tests and convert the results for quarterly reporting ▼****First**

Collect and test once each quarter. Report test results for that quarter on OSM-1. Test results need no converting; they are in quarterly units already.

**Or second**

Create a 24-month baseline and update as follows:

***For reporting months 1-24 . . .***

Collect and test one sample each month. Each quarter, calculate a weighted average percentage of inherent moisture:

- Multiply a month's inherent moisture percentage by tons produced or shipped. You now have the month's inherent moisture tonnage.
- Add up 3 months of that inherent moisture tonnage.
- Divide by tons produced or shipped in those 3 months. Report the quarter's weighted average percentage on OSM-1.

***For all subsequent months . . .***

Collect and test one sample for inherent moisture every 12 months. Calculate—and report in the following 4 quarters—one updated rolling average percentage:

- Add to the annual sample percentage the inherent moisture percentages for the preceding 23 tests.
- Divide by 24. Report the weighted average percentage on OSM-1.

<sup>1</sup> See §870.19 for the incorporation by reference of the ASTM standards.

<sup>2</sup> Core sampling was approved by the ASTM effective January 1, 1992.

**§ 870.20 How to calculate excess moisture in LOW-rank coals.**

Here are the requirements for calculating the excess moisture in low-rank coals for a calendar quarter. ASTM standards D2234-89, *Standard Test Methods for Collection of a Gross Sample of Coal*; D3302-91, *Standard Test Method for Total Moisture in Coal*; and, D1412-93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C* are incorporated by reference as published in the 1994 Annual Book of ASTM Standards, Volume 05.05. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C.

552(a) and 1 CFR part 51. Each applicable ASTM standard is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the **Federal Register**. You may obtain copies from the ASTM, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 120, 1951 Constitution Avenue, NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC.

(a)(1) Calculate the excess moisture percentage using one of these equations:

$$EM = TM - IM$$

or

$$EM = TM - \left( IM \times \frac{100 - TM}{100 - IM} \right)$$

(2) EM equals excess moisture percentage. TM equals total as-shipped moisture percentage calculated according to Table 1 of this section. IM equals inherent moisture percentage calculated according to Tables 2 and 3 of this section.

(b) Multiply the excess moisture percentage by the tonnage from the bona fide sales, transfers of ownership, or uses by the operator during the quarter.

BILLING CODE 4310-05-M

## Calculating TOTAL moisture percentage in LOW-rank coals <sup>1</sup>

### Collect and test each day you ship or use coal ▼

Collect a sample of as-shipped or used coal. Follow procedures in ASTM D2234-89.

Test the sample for daily total moisture percentage. Follow laboratory procedures in ASTM D3302-91.

Obtain prior OSM approval for use of other procedures.

### Convert test results to quarterly figures and report them ▼

Convert daily total moisture percentage to quarterly total moisture percentage:

1. Multiply daily total moisture percentage by daily tonnage shipped or used. You now have daily total moisture tonnage.
2. Add up daily total moisture tonnage for the quarter.
3. Add up daily tonnage shipped or used in the quarter.
4. Divide 2 by 3.

Report this total moisture percentage in low-rank coal for the quarter on OSM-1, Coal Reclamation Fee Report.

<sup>1</sup> See §870.20 for the incorporation by reference of the ASTM standards.

### Calculating INHERENT moisture percentage in LOW-rank coals <sup>1</sup>

#### Collect and test once a month ▼

Collect 1 sample of as-shipped coal. Follow procedures in ASTM D2234-89.

Test the sample for equilibrium moisture. Follow laboratory procedures in ASTM D1412-93.

#### Convert test results to quarterly figures and report them ▼

Calculate inherent moisture percentage for the quarter:

- Average the 3 equilibrium moisture results from your monthly tests.
- Add to this average a **Correction Factor** that you calculate for the first quarter according to Table 3 below.

Report this inherent moisture percentage for the quarter on OSM-1.

<sup>1</sup> See §870.20 for the incorporation by reference of the ASTM standards.

## Calculating the Correction Factor for Table 2<sup>1</sup>

### Collect and test in the first quarter a deduction is taken<sup>▼</sup>

Collect 15 samples that are representative of the entire seam from a freshly exposed, unweathered coal seam face. Follow procedures in ASTM D1412-93 Appendix X1.

Test each sample for two things:

- Inherent moisture
- Equilibrium moisture.

Follow laboratory procedures in ASTM D1412-93 Appendix X1.

### Convert test results into a correction factor for all quarterly reports<sup>▼</sup>

Use the test results to calculate a correction factor:

- Average the 15 inherent moisture results from your tests.
- Average the 15 equilibrium moisture results from your tests.
- Subtract the average equilibrium moisture from the average inherent moisture.

You now have a correction factor for the first quarter the deduction is taken, and all later quarters. Use it in Table 2 above. You may change the correction factor at any time by repeating the steps in this table.

A correction factor applies to only the bench you sample. If you mine multiple benches or seams simultaneously, you may combine the sample results from the different benches or seams to calculate an average correction factor. You may update the correction factor by repeating the procedures or incorporating new test results with the initial result.

<sup>1</sup> See §870.20 for the incorporation by reference of the ASTM standards.





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Friday  
August 29, 1997

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**Part III**

**Office of  
Management and  
Budget**

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**Governmentwide Grants Management  
Requirements; Notice; Interim Final Rules  
and Proposed Rule**

## OFFICE OF MANAGEMENT AND BUDGET

### Governmentwide Grants Management Requirements

**AGENCY:** Office of Management and Budget.

**ACTION:** Final Revision of OMB Circulars A-21, A-87, A-102, A-110 and A-122 and Interim Final Revision of OMB Circular A-110.

**SUMMARY:** The Office of Management and Budget (OMB) is issuing final revisions to five OMB circulars and, in addition, OMB is issuing interim final amendments to one of these circulars to reflect the Single Audit Act Amendments of 1996. The five Circulars are A-21 ("Cost Principles for Educational Institutions"), A-87 ("Cost Principles for State and Local Governments"), A-102 ("Grants and Cooperative Agreements with State and Local Governments"), A-110 ("Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"), and A-122 ("Cost Principles for Non-Profit Organizations"). The purpose of these revisions is to provide a conditional exemption from OMB's grants management requirements and a conditional class deviation from the agencies' Grants Management Common Rule for certain Federal grant programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. Additionally, OMB is issuing interim final conforming amendments to Circular A-110 to reflect the enactment of the Single Audit Act Amendments of 1996, the recent rescission of OMB Circular A-128 ("Audits of State and Local Governments"), and the consolidation of its provisions in a revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

**DATES:** The final revisions and interim final amendments are effective September 29, 1997. All comments on the interim final amendments should be in writing and must be received by October 28, 1997. Late comments will be considered to the extent practicable.

**ADDRESSES:** Comments should be mailed to Grants Management Audit Docket, Office of Federal Financial Management, Office of Management and Budget, Room 6025 New Executive Office Building, Washington, DC 20503. Electronic mail (E-mail) comments may

be submitted via the Internet to [kahlow\\_b@a1.eop.gov](mailto:kahlow_b@a1.eop.gov). Please include the full body of E-mail comments in the text of the message and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message.

**FOR FURTHER INFORMATION CONTACT:** Barbara F. Kahlow, Office of Financial Federal Financial Management, Office of Management and Budget, (202) 395-3053. The revised OMB Circulars A-21, A-87, A-102, A-110, and A-122 are available electronically on the OMB Home Page at <http://www.whitehouse.gov/WH/EOP/omb>. These revised Circulars are also available in paper format by contacting the OMB Publications Office at (202) 395-7332.

**SUPPLEMENTARY INFORMATION:** On May 14, 1997, the Office of Management and Budget (OMB) proposed a revision (62 FR 26577) of OMB Circulars A-21, "Cost Principles for Educational Institutions," A-87, "Cost Principles for State and Local Governments," A-102, "Grants and Cooperative Agreements with State and Local Governments," A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and A-122, "Cost Principles for Non-Profit Organizations." The proposal would provide a conditional exemption from OMB's grants management requirements and a conditional class deviation from the agencies' Grants Management Common Rule (GMCR) for certain Federal grant programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment.

This exemption could be granted to related Federal non-entitlement grant programs which are administered by State and local governments and which have the following characteristics: the related programs (1) serve a common program purpose, (2) have specific statutorily-authorized consolidated planning and consolidated administrative funding, and (3) are administered by State agencies which are funded mostly by non-Federal sources. In order to promote efficiency in the State and local program administration of such related programs, Federal agencies could exempt these covered State-administered, non-entitlement grant programs from Federal grants management requirements in OMB Circulars A-21, A-87, A-110, and

A-122, and the GMCR. The exemptions would be from all but the allocability-of-costs provisions of Circulars A-21 (Section C, subpart 4), A-87 (Attachment A, subsection C.3), and A-122 (Attachment A, subsection A.4), and from all of the administrative requirements provisions of Circular A-110 and the GMCR.

A Federal agency would have the discretion to exempt a Federal grant program from the Federal grants management requirements. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

If a Federal agency exempts a Federal grant program from these requirements, a State would only qualify if it adopts its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A-87, and extends such requirements to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not to be used for general expenses required to carry out other responsibilities of a State or its subrecipients. If a State does not adopt such fiscal and administrative requirements, then it would continue to be subject to the Federal grants management requirements.

### Response to Comments

OMB received eight comment letters: three from Federal agencies, one from a local government, two from universities, one from a non-profit organization, and one from an interest group. Four of the letters did not address the substance of the proposed revisions. The letter from the local government asked if the proposal had any relationship to the recent revision of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," on June 24, 1997 (62 FR 35278); in response to this question, these revisions are not related to that revision of Circular A-133. The letter from the non-profit organization raised concerns about certain other provisions in OMB Circular A-122 which are unrelated to the proposal; OMB will consider these concerns in connection with its review of Circular A-122. A letter from one of the Federal agencies requested an unrelated change to the GMCR and OMB Circular A-110; the issue raised will be considered during OMB's future review of those provisions. A letter from another Federal agency raised concerns

about OMB's denial of certain other, unrelated waiver requests from that agency which would have been applicable only to that agency's grant programs.

The other four letters addressed the substance of the proposed revisions. The interest group commenter supported the proposed revisions and recommended that the flexibility afforded to State-administered programs be extended to local-administered programs. This recommendation for flexibility for local-administered programs will be considered during OMB's future review of the five circulars.

The two university commenters objected to the proposal because of its possible effect on those subrecipients, including subcontractors, that are universities. Specifically, the university commenters preferred to be subject only to OMB Circulars A-21 and A-110 (and not also to State grants management requirements) because "We have found that state government does not always do a good job communicating to us what the guidelines are for a given program." The university commenters stated that they are familiar with Circulars A-21 and A-110 and "have systems in place to deal with them." Finally, the Federal agency commenter found the proposal unclear and felt that "the funding agency needs to have not only accountability, but also the consistent accountability afforded by currently imposed Federal cost principles and uniform administrative requirements." The commenter raised a concern about the possible inefficiency of having more than one State grants management system, with one for exempted grant programs (and other State programs), and one for the rest of the Federal grant programs.

OMB would also be concerned if the proposed changes increased burden on State grantees or their subrecipients, as the three commenters apparently believed. However, State grants management requirements instead of Federal grants management requirements currently apply to several previously-exempted Federal programs as well as to State-funded programs which have no Federal funding. In 1981 and 1982, OMB waived the application of Circulars A-21, A-87, A-102, A-110, and A-122 for certain, selective State-administered programs. As a consequence, OMB believes that the addition of programs with shared, statutorily-authorized consolidated planning and consolidated administrative funding with these already-exempted programs would not result in additional burden on

subrecipients and would not result in increased inefficiency. Since OMB does not believe that any negative effects on grantees or subrecipients will ensue from the proposed revisions, OMB is finalizing them.

Accordingly, to provide such a conditional exemption, OMB is adopting the proposed revisions and amending: Section A.3 of Circular A-21; Attachment A Section A.3 of Circular A-87; Section 2 of Circular A-102; Subpart C of Circular A-110 (as a new Section \_\_\_\_\_.29 instead of as Section \_\_\_\_\_.45 as proposed); and, Attachment A Section A of Circular A-122. The amendments are set forth below.

#### Interim Final Conforming Amendments

In addition to adopting the proposed revisions to the five circulars, OMB is also making conforming amendments to Circular A-110 to reflect the enactment of the Single Audit Act Amendments of 1996 (Public Law 104-156, 110 Stat. 1396) and OMB's rescission of Circular A-128 ("Audits of State and Local Governments") and its issuance of the June 24, 1997, revision of OMB Circular A-133 (62 FR 35278, June 30, 1997). The provisions of the 1996 Act and of the revised Circular A-133 apply to audits of fiscal years beginning after June 30, 1996. The revised Circular A-133 co-locates audit requirements for States, local governments, and non-profit organizations. As a consequence, OMB rescinded OMB Circular A-128.

Currently, Circular A-110 refers to the Single Audit Act of 1984 (which was superseded by the 1996 Act), to Circular A-128 (which was rescinded), and to the former version of OMB Circular A-133 (which covered only non-profit organizations, and did not cover State and local governments). These interim final conforming amendments update these references. Additional conforming changes were made to conform with the 1996 Act and revised Circular A-133 (e.g., to reflect that, under the 1996 Act, all non-profit hospitals are now subject to the Act).

OMB has determined, under 5 U.S.C. 553(b)(B), that good cause exists to issue these conforming amendments on an interim final basis. The conforming amendments update the references to the applicable statute and circulars, by replacing the superseded references with current ones. Moreover, under the Single Audit Act Amendments of 1996, the provisions of the 1996 Act (which are reflected in the revised OMB Circular A-133) provide standards that are effective for audits of fiscal years beginning after June 30, 1996. Accordingly, OMB has determined that issuing a proposal for comment on these

conforming amendments would be "impractical, unnecessary, and contrary to the public interest."

#### Availability of Revised Circulars

OMB has prepared updated versions of the five circulars, as amended herein. The revised OMB Circulars A-21, A-87, A-102, A-110, and A-122, as amended herein, are available electronically on the OMB Home Page at <http://www.whitehouse.gov/WH/EOP/omb>. These revised Circulars, as amended herein, are also available in paper format by contacting the OMB Publications Office at (202) 395-7332.

**Joseph J. Minarik,**

*Acting Director.*

1. OMB hereby amends Circulars A-21, A-87, A-102, A-110, and A-122 by adding the three paragraphs that follow, regarding "Conditional exemptions," at the specified places in each Circular: (1) as a new paragraph d under A.3 Purpose and Scope, Application of Circular A-21; (2) as a new paragraph e under Attachment A, A.3 Purpose and Scope, Application of Circular A-87; (3) as a new paragraph j under Section 2, Post-award Policies of Circular A-102; (4) as a new Section \_\_\_\_\_.29 under Subpart C, Post-award Requirements of Circular A-110; and, (5) as a new paragraph 7 under Attachment A, A. Basic Considerations of Circular A-122:

*Conditional exemptions.* (1) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(2) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A-87 (Attachment A, subsection C.3), "Cost Principles for State, Local, and Indian Tribal Governments," A-21 (Section C, subpart 4), "Cost Principles for Educational

Institutions," and A-122 (Attachment A, subsection A.4), "Cost Principles for Non-Profit Organizations," and from all of the administrative requirements provisions of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and the agencies' grants management common rule.

(3) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A-87, and extend such policies to all

subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

2. OMB hereby amends paragraphs (a), (b) and (c) of Section     .26 of OMB Circular A-110 to read as follows:

    .26 **Non-Federal audits.**

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the

Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A-133 shall be subject to the audit requirements of the Federal awarding agencies.

[FR Doc. 97-22828 Filed 8-28-97; 8:45 am]

BILLING CODE 3110-01-P

<b>DEPARTMENT OF AGRICULTURE</b>	<b>DEPARTMENT OF EDUCATION</b>	<b>CORPORATION FOR NATIONAL AND COMMUNITY SERVICE</b>
7 CFR Parts 3016 and 3019	34 CFR Parts 74 and 80	45 CFR Parts 2541 and 2543
<b>DEPARTMENT OF ENERGY</b>	<b>NATIONAL ARCHIVES AND RECORDS ADMINISTRATION</b>	<b>DEPARTMENT OF TRANSPORTATION</b>
10 CFR Part 600	36 CFR Parts 1207 and 1210	49 CFR Parts 18 and 19
<b>SMALL BUSINESS ADMINISTRATION</b>	<b>DEPARTMENT OF VETERANS AFFAIRS</b>	<b>Grants and Cooperative Agreements to State and Local Governments, Universities, Hospitals, and Other Non-Profit Organizations</b>
13 CFR Part 143	38 CFR Part 43	<b>AGENCIES:</b> Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of Veterans Affairs, Agency for International Development (IDCA), Corporation for National and Community Service, Environmental Protection Agency, Federal Emergency Management Agency, Federal Mediation and Conciliation Service, General Services Administration, Institute of Museum and Library Services (NFAH), National Aeronautics and Space Administration, National Archives and Records Administration, National Endowment for the Arts (NFAH), National Endowment for the Humanities (NFAH), National Science Foundation, Office of National Drug Control Policy, Small Business Administration, United States Information Agency.
<b>NATIONAL AERONAUTICS AND SPACE ADMINISTRATION</b>	<b>ENVIRONMENTAL PROTECTION AGENCY</b>	<b>ACTION:</b> Interim final rule with request for comments.
14 CFR Parts 1260 and 1273	40 CFR Parts 30 and 31	
<b>DEPARTMENT OF COMMERCE</b>	<b>GENERAL SERVICES ADMINISTRATION</b>	
15 CFR Part 24	41 CFR 105-71 and 105-72	
<b>OFFICE OF NATIONAL DRUG CONTROL POLICY</b>	<b>DEPARTMENT OF THE INTERIOR</b>	
21 CFR Part 1403	43 CFR Part 12	
<b>DEPARTMENT OF STATE</b>	<b>FEDERAL EMERGENCY MANAGEMENT AGENCY</b>	
22 CFR Parts 135 and 145	44 CFR Part 13	
<b>INTERNATIONAL DEVELOPMENT COOPERATION AGENCY</b>	<b>DEPARTMENT OF HEALTH AND HUMAN SERVICES</b>	
Agency for International Development	45 CFR Parts 74 and 92	
22 CFR Part 226	<b>NATIONAL SCIENCE FOUNDATION</b>	
<b>UNITED STATES INFORMATION AGENCY</b>	45 CFR Part 602	
22 CFR Part 518	<b>NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES</b>	
<b>DEPARTMENT OF JUSTICE</b>	National Endowment for the Arts	
28 CFR Parts 66 and 70	45 CFR Part 1157	
<b>DEPARTMENT OF LABOR</b>	<b>National Endowment for the Humanities</b>	
29 CFR Parts 95 and 97	45 CFR Part 1174	
<b>FEDERAL MEDIATION AND CONCILIATION SERVICE</b>	<b>Institute of Museum and Library Services</b>	
29 CFR Part 1470	45 CFR Part 1183	
<b>DEPARTMENT OF DEFENSE</b>		
32 CFR Part 33		

**SUMMARY:** This interim final revision to the agencies' grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and the agencies' codification of Office of Management and Budget (OMB) Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," is issued to implement the Single Audit Act Amendments of 1996 and the June 24, 1997, revision of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The agencies' rules provide uniform fiscal and administrative requirements applicable to all types of grants and cooperative agreements to State and local governments, institutions of higher

education, hospitals, and other non-profit organizations.

**DATES:** This interim final rule is effective September 29, 1997. Comments must be received on or before October 28, 1997 in order to be assured of consideration.

**ADDRESSES:** Persons wishing to submit comments on this interim final rule should send them to Charles Gale, Director, Office of Grants Management, Department of Health and Human Services, A-102 Rulemaking Docket, Room 517D, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201. A copy of each communication submitted will be available for public inspection and copying during regular business hours (9:00 a.m.-5:30 p.m. eastern standard time) at the above address.

**FOR FURTHER INFORMATION CONTACT:** For general issues regarding this interim final rule, contact Charles Gale, Director, Office of Grants Management, Department of Health and Human Services (202) 690-6377. For agency-specific issues, see contact persons for individual agencies in preambles of the individual agencies below.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Single Audit Act Amendments of 1996 (Public Law 104-156, 110 Stat. 1396) and the June 24, 1997, revision of Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (62 FR 35278, June 30, 1997) require agencies to adopt in codified regulations the standards in the revised Circular A-133 by August 29, 1997, so that they will apply to audits of fiscal years beginning after June 30, 1996. The revised Circular A-133 co-locates audit requirements for States, local governments, and non-profit organizations. As a consequence, OMB rescinded OMB Circular A-128, "Audits of State and Local Governments."

This interim final rule amends the agencies' grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and the agencies' codification of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," to implement the Single Audit Act Amendments of 1996 and the revised OMB Circular A-133. Some agencies codified only one of the two

rules and these agencies will only be amending their appropriate rules.

Under the provisions of section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)), any Department of Housing and Urban Development (HUD) proposed or interim final rule that is issued for public comment is subject to prepublication Congressional review for a period of 15 days. Therefore, HUD is not joining in today's common rule but is adopting the common amendments in a separate rulemaking.

The existing agency rules refer to the Single Audit Act of 1984 which was replaced by the Single Audit Act Amendments of 1996, the rescinded OMB Circular A-128, the former title of OMB Circular A-133, and the prior threshold that triggers an audit requirement. This interim final rule corrects these references. Additional changes were made to conform with the Act and revised Circular A-133, such as to reflect that all non-profit hospitals are now subject to the Act, and to reflect the General Accounting Office's revised terminology for financial audits in accordance with generally accepted government auditing standards.

Under the Administrative Procedure Act, to issue an interim final rule without a prior notice of proposed rulemaking, it is necessary to make a finding that issuing a proposed rule would be impractical, unnecessary, and contrary to the public interest. Since the Single Audit Act Amendments of 1996 and revised OMB Circular A-133, which provide standards applicable to non-Federal entities, are effective for audits of fiscal years beginning after June 30, 1996, a proposed rule would be impractical, unnecessary, and contrary to the public interest.

**Impact Analysis**

*Executive Order 12866*

Executive Order 12866 requires that a regulatory impact analysis be prepared for "major" rules, which are defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more, or certain other specified effects.

The participating agencies do not believe that this modification to the agencies' grant rules will have an annual impact of \$100 million or more or the other effects listed in the Order. However, the interim final rule would result in some savings to organizations administering grants or subgrants, primarily due to the increase in the threshold (from \$25,000 to \$300,000) that triggers an audit requirement. For this reason, the participating agencies

have determined that this interim final rule would not create a major rule within the meaning of the Order.

*Regulatory Flexibility Act of 1980*

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis must be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

The participating agencies certify that this interim final rule will not have a significant economic impact on a substantial number of small entities. The interim final rule does not affect the amount of funds provided in the covered programs, but rather increases the threshold for non-Federal entities subject to audit, thereby reducing burden on some small entities.

*Unfunded Mandates Act of 1995*

The Unfunded Mandates Act of 1995 (Pub. L. 104-4) requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of \$100 million of State, local, and Indian tribal governments or the private sector. Since this interim final rule will not result in expenditures of this magnitude, the agencies certify that such statements are not necessary.

*Paperwork Reduction Act*

The participating agencies certify that this interim final rule will impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) after OMB finalizes the new SF-SAC, "Data Collection Form for Reporting on Audits of States, Local Governments, and Non-Profit Organizations." On June 30, 1997, OMB requested public comments on the proposed SF-SAC (62 FR 35302).

**Text of the Common Interim Final Rule**

The text of the common interim final rule as amended in this document appears below:

**PART \_\_\_\_—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. Section \_\_\_\_ .26 is amended by revising paragraphs (a), (b) introductory text, and (b)(1) to read as follows:

\_\_\_\_.26 Non-Federal audit.

(a) *Basic Rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends \$300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractors has complied with laws and regulations affecting the expenditure of Federal funds;

\* \* \* \* \*

**PART \_\_\_\_—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**

2. Section \_\_\_\_ .26 is amended by revising paragraphs (a), (b) and (c) to read as follows:

\_\_\_\_.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-

7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A-133 shall be subject to the audit requirements of the Federal awarding agencies.

\* \* \* \* \*

**Adoption of Common Interim Final Rule**

The adoption of the common interim final rule by the agencies in this document appears below.

**DEPARTMENT OF AGRICULTURE (USDA)**

**Office of the Secretary**

**7 CFR Parts 3016 and 3019**

**RIN 0505-AA10**

**FOR FURTHER INFORMATION CONTACT:** Patricia Wensel, Director, Office of the Chief Financial Officer, Planning and Accountability Division, 202-720-1175.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** USDA is joining other Federal agencies in making the common rule amendments in 7 CFR Part 3016, "Uniform Administrative Requirements for Grants and Agreements to State and Local Governments," and 7 CFR Part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." USDA is adding amendments in Parts 3016 and 3019 to cross reference that the revised Circular A-133 is codified verbatim in a new Part 3052 of title 7, "Audits of States, Local Governments, and Non-Profit Organizations." The new Part 3052 and amendments to remove the existing audit requirements from 7 CFR Part 3015, "Uniform Federal Assistance Regulations," and 7 CFR Part 3051, "Audits of Institutions of Higher Education and Other Nonprofit Institutions," are published as an interim final rule elsewhere in this **Federal Register**. Additionally, USDA has published a notice in this **Federal Register** to withdraw a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on October 17, 1995, because the Single Audit Act Amendments of 1996 and the revised Circular A-133 have replaced the provisions in that NPRM.

**List of Subjects**

*7 CFR Part 3016*

Accounting, Audit requirements, Grant programs—Agriculture, reporting and recordkeeping requirements.

*7 CFR Part 3019*

Accounting, Audit requirements, Grant programs—Agriculture, reporting and recordkeeping requirements.

Issued at Washington, D.C., on August 21, 1997.

Approved:  
Irvin T. David,  
*Acting Chief Financial Officer.*  
Dan Glickman,  
*Secretary of Agriculture.*

Parts 3016 and 3019 of title 7 of the Code of Federal Regulations are amended as follows:

**PART 3016—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 3016 continues to read as follows:

**Authority:** 5 U.S.C. 301.

2. Section 3016.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

3. Section 3016.26 is amended by adding paragraph (a)(1) and by adding and reserving paragraph (a)(2) to read as follows:

**§ 3016.26 Non-Federal audit.**

(a) \* \* \*

(1) In USDA, revised OMB Circular A-133 is implemented in 7 CFR Part 3052, "Audits of States, Local Governments, and Non-Profit Organizations."

(2) [Reserved]

\* \* \* \* \*

**PART 3019—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**

4. The authority for part 3019 continues to read as follows:

**Authority:** 5 U.S.C. 301.

5. Section 3019.26 is amended as set forth in amendatory instruction 2 at the end of the common preamble.

6. Section 3019.26 is further amended by adding paragraph (e) to read as follows:

**§ 3019.26 Non-Federal audits.**

\* \* \* \* \*

(e) In USDA, revised OMB Circular A-133 is implemented in 7 CFR Part 3052, "Audits of States, Local Governments, and Non-Profit Organizations."

**DEPARTMENT OF ENERGY**

**10 CFR Part 600**

RIN 1991-AB38

**FOR FURTHER INFORMATION CONTACT:** Cherlyn Seckinger, Procurement Analyst, Office of Procurement and Assistance Policy, U.S. Department of Energy, Washington, DC 20585, (202) 586-8246.

**List of Subjects**

*10 CFR Part 600*

Accounting, Administrative practice and procedure. Audit requirements, Government contracts, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 8, 1997.

**Richard H. Hopf,**

*Deputy Assistance Secretary for Procurement and Assistance Management.*

Part 600 of title 10 of the Code of Federal Regulations is amended as follows:

**PART 600—FINANCIAL ASSISTANCE RULES**

1. The authority citation for part 600 continues to read as follows:

**Authority:** Sections 644 and 646, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97-258, 96 Stat. 1003-1005 (31 U.S.C. 630-6308).

**Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit Organizations and Commercial Organizations**

**§ 600.126 [\_\_\_\_.26] [Amended]**

2. Section 600.126 [\_\_\_\_.26] is amended as set forth in amendatory instruction 2 at the end of the common preamble.

**Subpart C—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments**

**§ 600.226 [\_\_\_\_.26] [Amended]**

3. Section 600.226 [\_\_\_\_.26] is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 143**

**FOR FURTHER INFORMATION CONTACT:** David R. Kohler, Associate General Counsel for General Law, Office of the

General Counsel, U.S. Small Business Administration, Washington, DC 20416, (202) 205-6642.

**List of Subjects in 13 CFR Part 143**

Accounting, Audit requirements, Grant programs—Small business, Reporting and recordkeeping requirements.

Part 143 of title 13 of the Code of Federal Regulations is amended as follows:

**PART 143—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority citation for part 143 would continue to read as follows:

**Authority:** 15 U.S.C. 634(b)(6)

**§ 143.26 [Amended]**

2. Section 143.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**Antonella Pianalto,**  
*Acting Administrator.*

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**14 CFR Parts 1260 and 1273**

RIN 2700-AA95

**FOR FURTHER INFORMATION CONTACT:** Richard Kall, Procurement Analyst, Contract Management Division (Code HK), Office of Procurement, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358-0459.

**List of Subjects**

*14 CFR 1260*

Accounting, Audit requirements, Grant programs, Reporting and recordkeeping requirements.

*14 CFR 1273*

Accounting, Audit requirements, Reporting and recordkeeping requirements.

Laura Layton,  
*Director, Contract Management Division.*

Parts 1273 and 1260 of title 14 of the Code of Federal Regulations are amended as follows:

**PART 1273—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 1273 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(5)

**§ 1273.26 [Amended]**

2. Section 1273.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**PART 1260—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**

3. The authority for part 1260 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(5)

**§ 1260.126 [\_\_\_\_.26] [Amended]**

4. Section 1260.126 [\_\_\_\_.26] is amended as set forth in amendatory instruction 2 at the end of the common preamble.

**DEPARTMENT OF COMMERCE**

**15 CFR Part 24**

[Docket No. 970820199-7199-01]

RIN 0605-AA11

**FOR FURTHER INFORMATION CONTACT:** John J. Phelan, III., Director, Office of Executive Assistance Management, U.S. Department of Commerce, Office of Executive Assistance Management, Room 6020, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230, Telephone Number 202-482-4115.

**List of Subjects in 15 CFR Part 24**

Accounting, Audit requirements, Grant programs, Grant administration, Insurance reporting, Reporting and recordkeeping requirements.

**Sonya G. Stewart,**  
*Director for Executive Budgeting and Assistance Management.*

Part 24 of title 15 of the Code of Federal Regulations is amended as follows:

**PART 24—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

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

**Authority:** 5 U.S.C. 301.

**§ 24.26 [Amended]**

2. Section 24.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.



**OFFICE OF NATIONAL DRUG CONTROL POLICY****21 CFR Part 1403**

RIN 3201-ZA01

**FOR FURTHER INFORMATION CONTACT:** Richard Yamamoto, Program Director, High Intensity Drug Trafficking Areas Program, Office of National Drug Control Policy, Washington, DC. 20503, (202) 395-6755.

**List of Subjects in 21 CFR Part 1403**

Accounting, Audit requirements, Contract programs, Grant programs, Reporting and recordkeeping requirements.

Barry McCaffrey,  
*Director.*

Part 1403 of title 21 of the Code of Federal Regulations is amended as follows:

**PART 1403—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for Part 1403 continues to read as follows:

**Authority:** 5 U.S.C. 301.

**§ 1403.26 [Amended]**

2. Section 1403.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**DEPARTMENT OF STATE****22 CFR Parts 135 and 145**

RIN 1400-AA87

**FOR FURTHER INFORMATION CONTACT:** Gladys Gines, Procurement Analyst, Office of the Procurement Executive, Policy Division, U.S. Department of State, Washington, D.C. 20520, (703) 516-1691.

**List of Subjects**

22 CFR Part 135

Accounting, Audit requirements, Grant programs, Contract programs, Reporting and recordkeeping requirements.

22 CFR Part 145

Accounting, Audit requirements, Grant programs, Contract programs, Reporting and recordkeeping requirements.

Robert E. Lloyd,

*Procurement Executive, Acting.*

Parts 135 and 145 of title 22 of the Code of Federal Regulations are amended as follows:

**PART 135—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 135 continues to read as follows:

**Authority:** 22 U.S.C. 2658.

**§ 135.26 [Amended]**

2. Section 135.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**PART 145—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**

3. The authority for part 145 continues to read as follows:

**Authority:** 22 U.S.C. 2658.1.

**§ 145.26 [Amended]**

4. Section 145.26 is amended as set forth in amendatory instruction 2 at the end of the common preamble.

**INTERNATIONAL DEVELOPMENT COOPERATION AGENCY**

Agency for International Development

**22 CFR Part 226**

RIN 0412-AA36

**FOR FURTHER INFORMATION CONTACT:** M/OP/P, Diana Esposito (703) 875-1529.

**List of Subjects**

22 CFR Part 226

Accounting, Audit requirements, Grant Programs, Reporting and recordkeeping requirements.

**Marcus L. Stevenson,**

*Director, Office of Procurement.*

Part 226 of Title 22 of the Code of Federal Regulations is amended as follows:

**PART 226—ADMINISTRATION OF ASSISTANCE AWARDS TO U.S. NON-GOVERNMENTAL ORGANIZATIONS**

1. The authority for part 226 continues to read as follows:

**Authority:** Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

**§ 226.26 [Amended]**

2. Section 226.26 is amended as set forth in amendatory instruction 2 at the end of the common preamble.

**UNITED STATES INFORMATION AGENCY****22 CFR Part 518**

RIN 3116-AA13

**FOR FURTHER INFORMATION CONTACT:** Fannie L. Allen, Chief, Grants Division, Office of Contracts, U.S. Information Agency, Washington, DC 20547, (202) 205-5477 or Connie L. Stinson, Senior Grants Officer, Office of Contracts, Grants Division, Washington, DC 20547 on (202) 205-8383.

**List of Subjects**

22 CFR Part 518

Accounting, Audit requirements, Grant programs, Reporting and recordkeeping requirements.

Edward G. Müller,

*Acting Agency Procurement Executive.*

Part 518 of title 22 of the Code of Federal Regulations is amended as follows:

**PART 518—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**

1. The authority for part 518 continues to read as follows:

**Authority:** 22 U.S.C. 2658; 31 U.S.C. 503 and 1111; Reorganization Plan No. 2 of 1977, 42 FR 62461, 3 CFR, 1977 Comp. p. 200; E.O. 12048, 43 FR 13361, 3 CFR, 1978 Comp. p. 168.

**§ 518.26 [Amended]**

2. Section 518.26 is amended as set forth in amendatory instruction 2 at the end of the common preamble.

**DEPARTMENT OF JUSTICE****28 CFR Parts 66 and 70**

[A.G. Order No. 2107-97]

RIN 1121-AA-45

**FOR FURTHER INFORMATION CONTACT:** James McKay, Director, Financial Management Division, Office of Justice Programs, U.S. Department of Justice, Washington, DC 20531, (202) 616-2687.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** DOJ's existing 28 CFR Part 70, § 70.26, includes provision for commercial organizations to follow OMB Circular A-133. DOJ is including this requirement in the amended rule.

**List of Subjects**

*28 CFR Part 66*

Accounting, Audit requirements, Grant programs, Reporting and recordkeeping requirements.

*28 CFR Part 70*

Accounting, Audit requirements, Grant programs, Reporting and recordkeeping.

Janet Reno,  
*Attorney General.*

Parts 66 and 70 of title 28 of the Code of Federal Regulations are amended as follows:

**PART 66—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 66 continues to read as follows:

**Authority:** The Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, et seq. (as amended); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, et seq. (as amended); Victims of Crime Act of 1984, 42 U.S.C. 10601, et seq. (as amended); 18 U.S.C. 4042; and U.S.C. 4351–4353.

**§ 66.26 [Amended]**

2. Section 66.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**PART 70—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS AND OTHER NON-PROFIT ORGANIZATIONS**

3. The authority for part 70 continues to read as follows:

**Authority:** 5 U.S.C. 301; The Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, et seq. (as amended); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, et seq. (as amended); Victims of Crime Act of 1984, 42 U.S.C. 10601, et seq. (as amended); 18 U.S.C. 4042; and U.S.C. 4351–4353.

4. Section 70.26 is amended as set forth in amendatory instruction 2 at the end of the common preamble.

5. Section 70.26 is further amended by adding paragraph (d) to read as follows:

**§ 70.26 Non-Federal Audits.**

\* \* \* \* \*

(d) Commercial organizations must follow the audit threshold in revised OMB Circular A–133 in determining whether to conduct an audit in accordance with Government Auditing Standards.

**DEPARTMENT OF LABOR**

**29 CFR Parts 95 and 97**

**RIN 1291–AA25**

**FOR FURTHER INFORMATION CONTACT:** Al Stewart, Director, Office of the Acquisition Advocate, U.S. Department of Labor, Washington, DC 20210, (202) 219–9174.

**List of Subjects**

*29 CFR Part 95*

Accounting, Audit requirements, Contract programs, Grant programs, Reporting and recordkeeping.

*29 CFR Part 97*

Accounting, Audit requirements, Contract programs, Grant programs, Reporting and recordkeeping requirements.

Patricia W. Lattimore,  
*Acting Assistant Secretary for Administration and Management.*

Parts 95 and 97 of title 29 of the Code of Federal Regulations are amended as follows:

**PART 95—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS, AND WITH COMMERCIAL ORGANIZATIONS, FOREIGN GOVERNMENTS, ORGANIZATIONS UNDER THE JURISDICTION OF FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS**

1. The authority for part 95 continues to read as follows:

**Authority:** 5 U.S.C. 301; OMB Circular A–110; Secretary of Labor’s Order 4–76.

**§ 95.26 [Amended]**

2. Section 95.26 is amended as set forth in amendatory instruction 2 at the end of the common preamble.

**PART 97—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 97 continues to read as follows:

**Authority:** 5 U.S.C. 301; OMB Circular A–102.

**§ 97.26 [Amended]**

2. Section 97.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**FEDERAL MEDIATION AND CONCILIATION SERVICE**

**29 CFR Part 1470**

**RIN 3076–AA01**

**FOR FURTHER INFORMATION CONTACT:** Peter L. Regner, Director of Program Services, Federal Mediation and Conciliation Service, Washington, DC 20427 (202) 606–8181.

**List of Subjects**

*29 CFR Part 1470*

Accounting Audit Requirements, Grant Programs, Reporting and Recordkeeping requirements.

John Calhoun Wells,  
*Director of Federal Mediation and Conciliation Service.*

**PART 1470—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 1470 continues to read as follows:

**Authority:** 29 U.S.C. 175a.

**§ 1470.26 [Amended]**

2. Section 1470.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 33**

**RIN 0790–AG49**

**FOR FURTHER INFORMATION CONTACT:** Mark Herbst; ODDR&E(R); 3080 Defense Pentagon; Washington, DC 20301–3080, (703) 325–4132.

**List of Subjects**

*32 CFR Part 33*

Accounting, Audit requirements, Grant programs, Reporting and recordkeeping requirements.

Linda M. Bynum,  
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

Part 33 of title 32 of the Code of Federal Regulations is amended as follows:

**PART 33—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 33 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. 113.

**§ 33.26 [Amended]**

2. Section 33.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**DEPARTMENT OF EDUCATION****34 CFR Parts 74 and 80**

RIN 1890-AA04

**FOR FURTHER INFORMATION CONTACT:**

Kathy Thomas, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3652, ROB-3, Washington, D.C. 20202-4258. Telephone: (202) 708-7227. Internet: kathy\_\_thomas@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**List of Subjects***34 CFR Part 74*

Accounting, Audit requirements, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping.

*34 CFR Part 80*

Accounting, Audit requirements, Grant programs, Indians, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements.

Richard W. Riley,

*Secretary of Education.*

Parts 74 and 80 of title 34 of the Code of Federal Regulations are amended as follows:

**PART 74—ADMINISTRATION OF GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**

1. The authority for part 74 continues to read as follows:

**Authority:** 20 U.S.C. 1221e-3 and 3474; OMB Circular A-110, unless otherwise noted.

**§ 74.26 [Amended]**

2. Section 74.26 is amended as set forth in amendatory instruction 2 at the end of the common preamble.

**PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

3. The authority for part 80 continues to read as follows:

**Authority:** 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-102, unless otherwise noted.

**§ 80.26 [Amended]**

4. Section 80.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**Appendix to Part 80 [Removed]**

5. The Appendix to part 80 is removed.

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION****36 CFR Parts 1207 and 1210**

RIN 3095-AA78

**FOR FURTHER INFORMATION CONTACT:**

Nancy Allard, NARA Regulatory Contact, at 301-713-7360, ext. 226.

**List of Subjects***36 CFR Part 1207*

Accounting, Audit requirements, Grant programs, Reporting and recordkeeping requirements.

*36 CFR Part 1210*

Accounting, Audit requirements, Grant programs, Reporting and recordkeeping requirements.

John W. Carlin,

*Archivist of the United States.*

Parts 1207 and 1210 of title 36 of the Code of Federal Regulations are amended as follows:

**PART 1207—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 1207 is revised to read:

**Authority:** 44 U.S.C. 2104(a); 44 U.S.C. 2501-2506.

**§ 1207.26 [Amended]**

2. Section 1207.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**PART 1210—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**

3. The authority for part 1210 continues to read:

**Authority:** 44 U.S.C. 2104(a); 44 U.S.C. 2501-2506.

**§ 1210.26 [Amended]**

4. Section 1210.26 is amended as set forth in amendatory instruction 2 at the end of the common preamble.

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 43**

RIN 2900-AJ00

**FOR FURTHER INFORMATION CONTACT:**

Nancy Tackett, Office of Assistant Secretary for Policy and Planning (008), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-5033.

**List of Subjects***38 CFR Part 43*

Accounting, Audit requirements, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Approved: August 20, 1997.

Hershel W. Gober,

*Acting Secretary of Veterans Affairs.*

Part 43 of title 38 of the Code of Federal Regulations is amended as follows:

**PART 43—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 43 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1712.

**§ 43.26 [Amended]**

2. Section 43.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 30 and 31**

[FRL-5881-5]

RIN 2030-AA54

**FOR FURTHER INFORMATION CONTACT:**

Peggy Louise Anthony, Grant Policy Specialist, Office of Grants and Debarment, U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 564-5364.

**List of Subjects***40 CFR Part 30*

Accounting, Audit requirements, Grant programs—environment, protection of public health, pollution control, Reporting and recordkeeping requirements.

**40 CFR Part 31**

Accounting, Audit requirements, Grant programs—environment, protection of public health, pollution control, Reporting and recordkeeping requirements.

Dated: August 19, 1997.

**Carol M. Browner,**  
Administrator, U.S. Environmental Protection Agency.

Parts 30 and 31 of title 40 of the Code of Federal Regulations are amended as follows:

**PART 31—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 31 continues to read as follows:

**Authority:** 33 U.S.C. 1251 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 300f et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 9601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1401 et seq.

**§ 31.26 [Amended]**

2. Section 31.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**PART 30—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**

3. The authority for part 30 continues to read as follows:

**Authority:** 7 U.S.C. 135 et seq.; 15 U.S.C. 2601 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 241, 242b, 243, 246, 300f, 300j-1, 300j-2, 300j-3; 42 U.S.C. 1857 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 9601 et seq.

**§ 30.26 [Amended]**

4. Section 30.26 is amended as set forth in amendatory instruction 2 at the end of the common preamble.

**GENERAL SERVICES ADMINISTRATION****41 CFR Parts 105-71 and 105-72**

RIN 3090-AG59

**FOR FURTHER INFORMATION CONTACT:**  
Susan Dobrow, Public Buildings Service, General Services Administration, Washington, DC 20405, (202) 501-1542.

**List of Subjects****41 CFR 105-71**

Accounting, Audit requirements, Grant programs, Reporting and recordkeeping requirements.

**41 CFR 105-72**

Accounting, Audit requirements, Grant programs, Reporting and recordkeeping requirements.

Paul Chistolini,

Deputy Commissioner, Public Buildings Service.

Parts 105-71 and 105-72 of title 41 of the Code of Federal Regulations are amended as follows:

**PART 105-71—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 105-71 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

**§ 105-71.126 [\_\_\_\_.26] [Amended]**

2. Section 105-71.126 [\_\_\_\_.26] is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**PART 105-72—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**

3. The authority for part 105-72 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

**§ 105-72.306 [\_\_\_\_.26] [Amended]**

4. Section 105-72.306 [\_\_\_\_.26] is amended as set forth in amendatory instruction 2 at the end of the common preamble.

**DEPARTMENT OF THE INTERIOR****Office of the Secretary****43 CFR Part 12**

RIN 1090-AA62

**FOR FURTHER INFORMATION CONTACT:**  
Debra E. Sonderman, (Director, Procurement and Property Management Systems), (202) 208-3336.

**ADDITIONAL SUPPLEMENTARY INFORMATION:**

Although the Department is joining in the publication of this common rule, several other changes in addition to those which will amend regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and Office of Management and Budget (OMB) Circular A-110, "Uniform

Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," are required to be made to 43 CFR Part 12.

Specifically, several references to the previous version of OMB Circular A-133 have to be revised to reflect the new title, the references to the previous OMB Circular A-128 have to be deleted, and other changes have to be made to reflect changes in Part 12 since the original publication of Subpart A. In addition, the Department's implementation of OMB Circular A-128 at Subpart B must be removed now that the Circular has been rescinded.

**List of Subjects 43 CFR Part 12**

Accounting, Administrative practice and procedure, Audit requirements, Cooperative agreements, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Dated: August 18, 1997.

Robert T. Lamb,

Acting Assistant Secretary-Policy, Management and Budget.

Part 12 of title 43 of the Code of Federal Regulations is amended as follows:

**PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS**

1. The authority for part 12 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. 252a, 701 et seq; sec. 501, Pub. L. 104-206, 110 Stat. 2984; sec. 307, Pub. L. 104-208, 110 Stat. 3009; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12674, 3 CFR, 1989 Comp., 215; E.O. 12689, 3 CFR, 1989 Comp., p. 235; E.O. 12731, 3 CFR, 1990 Comp., p. 306; OMB Circular A-102; OMB Circular A-110; and OMB Circular A-133.

**Subpart A—Administrative and Audit Requirements and Cost Principles for Assistance Programs**

2. Section 12.2 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 12.2 Policy.**

(a) All financial assistance awards and subawards, in the form of grants and cooperative agreements, in accordance with paragraph (b) of this section, are subject to subparts C, D, E, and F of this part, OMB Circulars A-102, "Grants and Cooperative Agreements with State and Local Governments," A-110, "Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," A-87,

“Cost Principles for State and Local Governments,” A-21, “Cost Principles for Educational Institutions,” A-122, “Cost Principles for Non-Profit Organizations,” and A-133, “Audits of States, Local Governments, and Non-Profit Organizations.”

(b)(1) Governmental recipients and subrecipients are subject to subparts C, D, and E of this part, Circulars A-87 and A-133.

(2) Institutions of higher education which are recipients or subrecipients are subject to subparts D, E, and F of this part, Circulars A-110, A-21, and A-133.

(3) Non-profit organizations which are recipients or subrecipients are subject to subparts D, E, and F of this part, Circulars A-110, A-122, and A-133.

\* \* \* \* \*

**Subpart B—[Removed and reserved]**

3. Subpart B (§§ 12.11 through 12.31 and appendix to subpart) is removed and reserved.

**Subpart C—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments**

**§ 12.66 [\_\_\_\_.26] [Amended]**

4. Section 12.66 [\_\_\_\_.26] is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**Subpart F—Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations**

**§ 12.926 [\_\_\_\_.26] [Amended]**

5. The text of § 12.926 [\_\_\_\_.26] is revised to read as set forth following amendatory instruction 2 at the end of the common preamble.

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 13**

RIN 3067-AC70

FOR FURTHER INFORMATION CONTACT: Charles F. McNulty, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202-646-3422.

**List of Subjects in 44 CFR Part 13**

Accounting, Audit requirements, Grant programs, Reporting and recordkeeping requirements. James L. Witt, Director.

Part 13 of title 44 of the code of Federal Regulations is amended as follows:

**PART 13—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority citation for Part 13 is amended to read as follows:

**Authority:** Reorganization Plan No. 3 of 1978; 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412.

**§ 13.26 [Amended]**

2. Section 13.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Parts 74 and 92**

RIN 0991-AA92

FOR FURTHER INFORMATION CONTACT: Charles Gale, Director, Office of Grants Management, 202-690-6377; for the hearing impaired only: TDD 202-690-6415.

ADDITIONAL SUPPLEMENTARY INFORMATION: In order to maintain the Department’s rules for audits of commercial organizations which receive HHS awards (currently at 45 CFR 74.26(a)(2) and (3)) we are adding that text to the common rule amendment at 45 CFR 74.26(d). Commercial organizations are not covered by OMB Circular A-133.

We are removing part 74’s discussion of hospitals which are not affiliated with an institution of higher education (currently at 45 CFR 74.26(b)(1) and (2)) because those hospitals are now covered by Circular A-133. We are also removing the instructions for submission of audit reports (currently at 45 CFR 74.26(d)) because that topic is covered by the new Circular. Additionally, we have added a parenthetical in 45 CFR 74.26(d)(1) that makes clear that for-profit hospitals are included in the scope of that section.

**List of Subjects**

**45 CFR Part 74**

Accounting, Administrative practice and procedures, Audit requirements, Grants administration, Grant programs, Reporting and recordkeeping requirements.

**45 CFR Part 92**

Accounting, Administrative practice and procedures, Audit requirements, Grants administration, Grant programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance does not apply.)

Dated: August 18, 1997.

Donna E. Shalala, Secretary.

Parts 92 and 74 of title 45 of the Code of Federal Regulations are amended as follows:

**PART 92—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 92 continues to read as follows:

**Authority:** 5 U.S.C. 301.

**§ 92.26 [Amended]**

2. Section 92.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR AWARDS AND SUBAWARDS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS; AND CERTAIN GRANTS AND AGREEMENTS WITH STATES, LOCAL GOVERNMENTS AND INDIAN TRIBAL GOVERNMENTS**

1. The authority for part 74 continues to read as follows:

**Authority:** 5 U.S.C. 301; OMB Circular A-110 (58 FR 62992, November 29, 1993).

2. Section 74.26 is amended as set forth in amendatory instruction 2 at the end of the common preamble.

3. Section 74.26(d) is revised to read as follows:

**§ 74.26 Non-Federal audits.**

\* \* \* \* \*

(d)(1) Recipients and subrecipients that are commercial organizations (including for-profit hospitals) have two options regarding audits:

(i) A financial related audit (as defined in the Government Auditing Standards, GPO Stock #020-000-00-265-4) of a particular award in accordance with Government Auditing Standards, in those cases where the recipient receives awards under only one HHS program; or, if awards are received under multiple HHS programs, a financial related audit of all HHS awards in accordance with Government Auditing Standards; or

(ii) An audit that meets the requirements contained in OMB Circular A-133.

(2) Commercial organizations that receive annual HHS awards totaling less than OMB Circular A-133’s audit requirement threshold are exempt from requirements for a non-Federal audit for

that year, but records must be available for review by appropriate officials of Federal agencies.

#### NATIONAL SCIENCE FOUNDATION

##### 45 CFR Part 602

RIN 3145-AA35

FOR FURTHER INFORMATION CONTACT: Jean Feldman, Head, Policy Office, Division of Contracts, Policy & Oversight, 703-306-1243, e-mail jfeldman@nsf.gov.

##### List of Subjects

45 CFR Part 602

Accounting, Audit requirements, Contract programs, Grant programs, Reporting and recordkeeping requirements.

Joseph L. Kull,  
*Chief Financial Officer.*

Part 602 of title 42 of the Code of Federal Regulations is amended as follows:

#### PART 602—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

1. The authority for part 602 continues to read as follows:

**Authority:** 42 U.S.C. 1870(a).

##### § 602.26 [Amended]

2. Section 602.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

#### NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

##### National Endowment for the Arts

##### 45 CFR Part 1157

RIN 3135-AA14

FOR FURTHER INFORMATION CONTACT: Ms. Donna M. DiRicco, Grants and Contracts Officer, National Endowment for the Arts, (202) 682-5403.

##### List of Subjects in 45 CFR Part 1157

Accounting, Audit requirements, Contract programs, Grant programs, Reporting and recordkeeping requirements.

Laurence M. Baden,  
*Director of Administration.*

Part 1157 of title 45 of the Code of Federal Regulations is amended as follows:

#### PART 1157—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

1. The authority for part 1157 continues to read as follows:

**Authority:** 20 U.S.C. 959.

##### § 1157.26 [Amended]

2. Section 1157.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

#### NATIONAL ENDOWMENT FOR THE HUMANITIES

##### 45 CFR Part 1174

RIN 3136-AA23

FOR FURTHER INFORMATION CONTACT: David J. Wallace, Director, Grants Office, National Endowment for the Humanities, (202) 606-8494.

##### List of Subjects

45 CFR Part 1174

Accounting, Audit requirements, Grant programs, Reporting and recordkeeping requirements.  
Sheldon Hackney,  
*Chairman.*

Part 1174 of title 45 of the Code of Federal Regulations is amended as follows:

#### PART 1174—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

1. The authority for part 1174 continues to read as follows:

**Authority:** 20 U.S.C. 959(a)(1).

##### § 1174.26 [Amended]

2. Section 1174.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

#### INSTITUTE OF MUSEUM AND LIBRARY SERVICES

##### 45 CFR Part 1183

RIN 3137-AA09

FOR FURTHER INFORMATION CONTACT: Mary Estelle Kennelly, Acting Program Director, Office of Museum Services, Institute of Museum and Library Services, Washington, DC 20560, 202/606-8547.

##### List of Subjects

45 CFR Part 1183

Accounting, Audit requirements, Grant programs, Reporting and recordkeeping requirements.

Diane B. Frankel,  
*Director, IMLS.*

Part 1183 of title 45 of the Code of Federal Regulations is amended as follows:

#### PART 1183—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

1. The authority for part 1183 continues to read as follows:

**Authority:** 20 U.S.C. 961.

##### § 1183.26 [Amended]

2. Section 1183.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

#### CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

##### 45 CFR Parts 2541 and 2543

RIN 3045-AA14

FOR FURTHER INFORMATION CONTACT: Organizations receiving assistance under the National and Community Service Act should contact Michael Kenefick at (202) 606-5000, ext. 101. Organizations receiving assistance under the Domestic Volunteer Service Act should contact Larry Floyd at (214) 767-5461.

##### List of Subjects

45 CFR Part 2541

Accounting, Audit requirements, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

45 CFR Part 2543

Accounting, Administrative practice and procedures, Audit requirements, Grant programs—health, Grant programs—social, Grants administration, Reporting and recordkeeping requirements.

John Gomperts,  
*Acting Chief Operating Officer.*

Parts 2541 and 2543 of title 45 of the Code of Federal Regulations are amended as follows:

**PART 2541—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 2541 continues to read as follows:

**Authority:** 42 U.S.C. 4950 *et seq.* and 12501 *et seq.*

**§ 2541.260 [\_\_\_\_.26] [Amended]**

2. Section 2541.260 [\_\_\_\_.26] is amended as set forth in amendatory instruction 1 at the end of the common preamble.

**PART 2543—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**

3. The authority for part 2543 continues to read as follows:

**Authority:** 42 U.S.C. 12501 *et seq.*

**§ 2543.26 [Amended]**

4. Section 2543.26 is amended as set forth in amendatory instruction 2 at the end of the common preamble.

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**49 CFR Parts 18 and 19**

**RIN 2105-AC66**

**FOR FURTHER INFORMATION CONTACT:** Robert G. Taylor, U.S. Department of Transportation, Office of Acquisition and Grant Management, M-62, 400 Seventh Street, S.W., Room 9401, Washington, DC 20590, (202) 366-4289.

**ADDITIONAL SUPPLEMENTAL INFORMATION:** Additional Departmental clarifying audit requirements contained in 49 CFR part 18.26 (d) and (e) are no longer required, and are being deleted as part of this rulemaking. These paragraphs make references to audit requirements that have been superseded by OMB Circular A-133.

**List of Subjects**

**49 CFR Part 18**

Accounting, Audit requirements, Contract programs, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

**52 CFR Part 19**

Accounting, Administrative practices and procedures, Audit requirements,

Grant programs, Reporting and recordkeeping requirements.

Rodney E. Slater,

*Secretary of Transportation.*

Parts 18 and 19 of title 49 of the Code of Federal Regulations are amended as follows:

**PART 18—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority for part 18 continues to read as follows:

**Authority:** 49 U.S.C. 322(a).

**§ 18.26 [Amended]**

2. Section 18.26 is amended as set forth in amendatory instruction 1 at the end of the common preamble.

3. Section 18.26 is further amended by removing paragraphs (d) and (e).

**PART 19—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**

4. The authority for part 19 continues to read as follows:

**Authority:** 49 U.S.C. 322(a).

**§ 19.26 [Amended]**

5. Section 19.26 is amended as set forth in amendatory instruction 2 at the end of the common preamble.

[FR Doc. 97-22829 Filed 8-28-97; 8:45 am]

**BILLING CODES** 3410-KS-M; 6450-01-M; 7510-01-M; 3180-02-M; 4710-05-M; 6116-01-M; 8230-01-M; 4410-18-M; 4510-23-M; 6372-01-M; 5000-04-M; 4000-01-M; 7515-01-M; 8320-01-M; 6560-50-M; 6820-23-M; 4310-RF-M; 6718-01-M; 4150-04-M; 7555-01-M; 7537-01-M; 7536-01-M; 5900-04-M; 6050-28-M

**DEPARTMENT OF AGRICULTURE**

**Office of the Chief Financial Officer**

**7 CFR Chapter XXX and Parts 3015, 3051, and 3052**

**RIN 0505-AA10**

**Grants and Cooperative Agreements to State and Local Governments, Universities, Hospitals, and Other Non-Profit Organizations**

**AGENCY:** Office of the Chief Financial Officer, USDA.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule amendment is issued to implement the Single Audit Act Amendments of 1996 (Public Law 104-156, 110 Stat. 1396) and the June 24, 1997, revision of OMB Circular A-133, "Audits of States, Local

Governments, and Non-Profit Organizations" and to replace the existing audit requirements that are superseded by Public Law 104-156 and the revised A-133.

**DATES:** This interim final rule is effective September 29, 1997. Comments must be received on or before October 28, 1997 in order to be assured of consideration.

**ADDRESSES:** Persons wishing to submit comments on this interim final rule should send them to Patricia Wensel, Director, Planning and Accountability Division, Department of Agriculture, 1400 Independence Avenue, S.W., Room 3027 South Building, Washington, D.C. 20250. A copy of each communication submitted will be available for public inspection during regular business hours (8:30 a.m.-5:00 p.m.) at the above address.

**FOR FURTHER INFORMATION CONTACT:** Patricia Wensel, Director, Office of the Chief Financial Officer, Planning and Accountability Division, 202-720-1175.

**SUPPLEMENTARY INFORMATION:**

**Background**

USDA is (1) removing existing audit requirements from 7 CFR Part 3015, "Uniform Federal Assistance Regulations," and 7 CFR Part 3051, "Audits of Institutions of Higher Education and Other Nonprofit Institutions," and (2) codifying revised Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" (62 FR 35278, June 30, 1997) in a new 7 CFR Part 3052, "Audits of States, Local Governments, and Non-Profit Organizations." Elsewhere in this **Federal Register**, USDA has published an interim final rule to amend the common rule sections on audit in 7 CFR Parts 3016, "Uniform Administrative Requirements for Grants and Agreements to State and Local Governments," and 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and a notice to withdraw the October 17, 1995 (60 FR 53717), proposed rule whose audit provisions have been superseded by the Single Audit Act Amendments of 1996 (Public Law 104-156, 110 Stat. 1396) and the June 24, 1997, revision of OMB Circular A-133.

On November 10, 1981, the Department of Agriculture published 7 CFR Part 3015, as a final rule to provide Departmentwide policies and standards for the administration of grants and cooperative agreements. Part 3015

included Subpart I which set out audit requirements for State and local governments in §§ 3015.70 through 3015.77 and audit requirements for institutions of higher education, hospitals and other non-profit organizations in § 3015.79. Section 3015.78 was reserved for future use.

On July 16, 1985, USDA published an interim rule amending Subpart I of Part 3015 to implement OMB Circular A-128, "Audits of State and Local Governments." Circular A-128 was issued pursuant to the Single Audit Act of 1984. Subpart I of Part 3015 was revised to encompass §§ 3015.70 through 3015.76 for State and local governments and § 3015.77 for institutions of higher education, hospitals and other non-profit organizations.

USDA published the final rule implementing Circular A-128 in Part 3015 on January 14, 1986.

On August 3, 1993, USDA published a final rule to remove the audit requirements for institutions of higher education and other nonprofit organizations from § 3015.77 of Subpart I, Part 3015. At the same time, USDA published a final rule in a new 7 CFR Part 3051 to establish audit requirements for non-governmental organizations in accordance with OMB Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions," and to cover in the scope of the rule Federal cost-type contracts used to buy services and goods for the use of the Federal government.

The Single Audit Act Amendments of 1996 and the June 24, 1997, revision of OMB Circular A-133 require agencies to adopt in codified regulations the standards in the revised Circular A-133 by August 29, 1997, so that the standards will apply to audits of fiscal years beginning after June 30, 1996. The revised Circular A-133 co-locates audit requirements for States, local governments, and nonprofit organizations. Consequently, OMB rescinded OMB Circular A-128, "Audits of State and Local Governments."

In order to codify revised Circular A-133 which places audit requirements for governments and nonprofits in one Circular, USDA is removing the audit requirements from 7 CFR Parts 3015 and 3051. To eliminate confusion, USDA is codifying the audit requirements of revised Circular A-133 in a new Part 3052 of title 7. The audit provisions in Part 3052 are verbatim to the revised Circular A-133 which OMB published in final on June 30, 1997 (62 FR 35278).

#### **Justification for Interim Final Rule**

Under the Administrative Procedure Act, to issue an interim final rule without a prior notice of proposed rulemaking, it is necessary to make a finding that issuing a proposed rule would be impractical, unnecessary, and contrary to the public interest. The Single Audit Act Amendments of 1996 and revised Circular A-133 are effective for audits of fiscal years beginning after June 30, 1996 and the statutory date for publication of the codified Circular A-133 is August 29, 1997. Given these time frames, USDA believes publication of a proposed rule would be impractical, unnecessary, and contrary to the public interest. Publication of a proposed final rule is also unnecessary, as USDA has no authority to deviate from the Government-wide policy under Circular A-133 in response to any public comments.

OMB published a Notice of Proposed Rulemaking (NPRM) on November 5, 1996, (61 FR 57232-57249) requesting comments on the proposal to revise OMB Circular A-133 and to rescind OMB Circular A-128, "Audits of States and Local Governments." The comments received on the NPRM were considered and addressed in developing the final rule which was published in regulatory format on June 30, 1997 (62 FR 35278-35319). USDA's codification in 7 CFR Part 3052 of the revised Circular A-133 is verbatim to OMB's June 30 final revision to A-133. Therefore, USDA believes it would be unnecessary and contrary to the public interest to ask for comments again.

The existing audit requirements in 7 CFR Part 3015 implement Circular A-128 and in 7 CFR Part 3051 implement Circular A-133 before the June 30 revision. Circular A-128 has been rescinded and A-133 has been revised. USDA's action to remove obsolete audit requirements from Parts 3015 and 3051 is a necessary action triggered by the A-133 revision and the Public Law 104-156. Therefore, it is in the public interest to remove the audit requirements from existing regulations at the same time as the new revised A-133 standards are codified in the new Part 3052. Accordingly, it is impractical to publish the related Part 3015 and Part 3051 amendments as proposed rules and it is necessary and in the public interest to publish them as an interim final rule with the codification of Circular A-133.

#### **Impact Analysis**

##### *Executive Order 12866*

Executive Order 12866 requires that a regulatory impact analysis be prepared

for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more or certain other specified effects.

USDA does not believe that this revision to its rules will have an annual impact of \$100 million or more or the other effects listed in the Order. However, the interim final rule would result in some savings to organizations administering grants or subgrants, primarily due to the increase in the threshold (from \$25,000 to \$300,000) that triggers an audit requirement. For this reason, USDA has determined that this interim final rule would not create a major rule within the meaning of the Order.

##### *Regulatory Flexibility Act of 1980*

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis must be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities (5 U.S.C. 605(b)).

USDA certifies that this interim final rule will not have a significant economic impact on a substantial number or small entities. The interim final rule does not affect the amount of funds provided in the covered programs, but rather increases the threshold for non-Federal entities subject to audit, thereby reducing the burden on some small entities.

##### *Unfunded Mandates Act of 1995*

The Unfunded Mandates Act of 1995 (Pub. L. 104-4) requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of \$100 million by State, local, and Indian tribal governments or the private sector. Since this interim final rule will not result in expenditures of this magnitude, USDA certifies that such statements are not necessary.

##### *Paperwork Reduction Act*

This interim final rule will impose additional reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) after OMB finalizes the new SF-SAC, "Data Collection Form for Reporting on Audits of States, Local Governments, and Non-Profit Organizations." On June 30, 1997, OMB requested public comments on the proposed SF-SAC (62 FR 35302).



**List of Subjects****7 CFR Part 3015**

Accounting, Grant programs (Agriculture), Intergovernmental regulations.

**7 CFR Part 3051**

Accounting, Auditing, Colleges and universities, Grant programs, Nonprofit organizations.

**7 CFR Part 3052**

Grant programs (Agriculture), Auditing.

Issued at Washington, D.C., on August 21, 1997.

Approved:

**Irvin T. David,**

*Acting Chief Financial Officer.*

**Dan Glickman,**

*Secretary of Agriculture.*

For the reasons stated in the preamble, 7 CFR chapter XXX is amended as follows:

**CHAPTER XXX—OFFICE OF THE CHIEF FINANCIAL OFFICER, DEPARTMENT OF AGRICULTURE**

1. The heading of Chapter XXX is revised to read as set forth above.

**PART 3015—UNIFORM FEDERAL ASSISTANCE REGULATIONS**

1. The authority citation for part 3015 continues to read as follows:

**Authority:** 5 U.S.C. 301.

**Subpart A—General**

2. Section 3015.1 is amended by revising paragraph (a)(2) as follows:

**§ 3015.1 Purpose and scope of this part.**

(a) \* \* \*

(2) Additionally, this part establishes intergovernmental review provisions required by Executive Order 12372 for any programs listed in the **Federal Register** as covered, and policy on competition in awarding discretionary grants and cooperative agreements.

\* \* \* \* \*

**Subpart I—[Removed and Reserved]**

3. Subpart I of Part 3015 (§§ 3015.70–3015.77 and appendix to subpart) is removed and reserved.

**PART 3051—[REMOVED]**

4. Part 3051 is removed.

5. Part 3052 is added as follows:

**PART 3052—AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS**

Sec.

**Subpart A—General**

3052.100 Purpose.

3052.105 Definitions.

**Subpart B—Audits**

3052.200 Audit requirements.

3052.205 Basis for determining Federal awards expended.

3052.210 Subrecipient and vendor determinations.

3052.215 Relation to other audit requirements.

3052.220 Frequency of audits.

3052.225 Sanctions.

3052.230 Audit costs.

3052.235 Program-specific audits.

**Subpart C—Auditees**

3052.300 Auditee responsibilities.

3052.305 Auditor selection.

3052.310 Financial statements.

3052.315 Audit findings follow-up.

3052.320 Report submission.

**Subpart D—Federal Agencies and Pass-Through Entities**

3052.400 Responsibilities.

3052.405 Management decision.

**Subpart E—Auditors**

3052.500 Scope of audit.

3052.505 Audit reporting.

3052.510 Audit findings.

3052.515 Audit working papers.

3052.520 Major program determination.

3052.525 Criteria for Federal program risk.

3052.530 Criteria for a low-risk auditee.

**Authority:** 5 U.S.C. 301

**Subpart A—General**

**§ 3052.100 Purpose.**

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

**§ 3052.105 Definitions.**

**Audit finding** means deficiencies which the auditor is required by § 3052.510(a) to report in the schedule of findings and questioned costs.

**Auditee** means any non-Federal entity that expends Federal awards which must be audited under this part.

**Auditor** means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of non-profit organizations.

**CFDA number** means the number assigned to a Federal program in the Catalog of Federal Domestic Assistance (CFDA).

**Cluster of programs** means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are

research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by the Office of Management and Budget (OMB) in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a State shall identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 3052.400(d)(1) and § 3052.400(d)(2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in § 3052.520, and, with the exception of R&D as described in § 3052.200(c), whether a program-specific audit may be elected.

**Cognizant agency for audit** means the Federal agency designated to carry out the responsibilities described in § 3052.400(a).

**Compliance supplement** refers to the Circular A–133 Compliance Supplement, included as Appendix B to Circular A–133, or such documents as OMB or its designee may issue to replace it. This document is available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325.

**Corrective action** means action taken by the auditee that:

- (1) Corrects identified deficiencies;
- (2) Produces recommended improvements; or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

**Federal agency** has the same meaning as the term agency in Section 551(1) of title 5, United States Code.

**Federal award** means Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract. Contracts to operate Federal Government owned, contractor operated facilities (GOCOs) are excluded from the requirements of this part.

**Federal awarding agency** means the Federal agency that provides an award directly to the recipient.

**Federal financial assistance** means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property),

cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in § 3052.205(h) and § 3052.205(i).

*Federal program* means:

(1) All Federal awards to a non-Federal entity assigned a single number in the CFDA.

(2) When no CFDA number is assigned, all Federal awards from the same agency made for the same purpose should be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

(i) Research and development (R&D);  
(ii) Student financial aid (SFA); and  
(iii) "Other clusters," as described in the definition of cluster of programs in this section.

*GAGAS* means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

*Generally accepted accounting principles* has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Internal control* means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(1) Effectiveness and efficiency of operations;  
(2) Reliability of financial reporting; and  
(3) Compliance with applicable laws and regulations.

*Internal control pertaining to the compliance requirements for Federal programs* (Internal control over Federal programs) means a process—effected by an entity's management and other personnel—designed to provide reasonable assurance regarding the achievement of the following objectives for Federal programs:

(1) Transactions are properly recorded and accounted for to:

(i) Permit the preparation of reliable financial statements and Federal reports;

(ii) Maintain accountability over assets; and

(iii) Demonstrate compliance with laws, regulations, and other compliance requirements;

(2) Transactions are executed in compliance with:

(i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and

(ii) Any other laws and regulations that are identified in the compliance supplement; and

(3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

*Loan* means a Federal loan or loan guarantee received or administered by a non-Federal entity.

*Local government* means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

*Major program* means a Federal program determined by the auditor to be a major program in accordance with § 3052.520 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § 3052.215(c).

*Management decision* means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

*Non-Federal entity* means a State, local government, or non-profit organization.

*Non-profit organization* means:

(1) any corporation, trust, association, cooperative, or other organization that:

(i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(ii) Is not organized primarily for profit; and

(iii) Uses its net proceeds to maintain, improve, or expand its operations; and

(2) The term non-profit organization includes non-profit institutions of higher education and hospitals.

*OMB* means the Executive Office of the President, Office of Management and Budget.

*Oversight agency for audit* means the Federal awarding agency that provides

the predominant amount of direct funding to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency for audit are described in § 3052.400(b).

*Pass-through entity* means a non-Federal entity that provides a Federal award to a subrecipient to carry out a Federal program.

*Program-specific audit* means an audit of one Federal program as provided for in § 3052.200(c) and § 3052.235.

*Questioned cost* means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

*Recipient* means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.

*Research and development (R&D)* means all research activities, both basic and applied, and all development activities that are performed by a non-Federal entity. Research is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. Development is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

*Single audit* means an audit which includes both the entity's financial statements and the Federal awards as described in § 3052.500.

*State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory

of the Pacific Islands, any instrumentality thereof, any multi-State, regional, or interstate entity which has governmental functions, and any Indian tribe as defined in this section.

*Student Financial Aid* (SFA) includes those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070 et seq.) which is administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

*Subrecipient* means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in § 3052.210.

*Types of compliance requirements* refers to the types of compliance requirements listed in the compliance supplement. Examples include: activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; matching, level of effort, earmarking; and, reporting.

*Vendor* means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in § 3052.210.

## Subpart B—Audits

### § 3052.200 Audit requirements.

(a) Audit required. Non-Federal entities that expend \$300,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in § 3052.205.

(b) Single audit. Non-Federal entities that expend \$300,000 or more in a year in Federal awards shall have a single audit conducted in accordance with § 3052.500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 3052.235. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) Exemption when Federal awards expended are less than \$300,000. Non-Federal entities that expend less than \$300,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in § 3052.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

(e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

### § 3052.205 Basis for determining Federal awards expended.

(a) Determining Federal awards expended. The determination of when an award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(b) Loan and loan guarantees (loans). Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of Federal awards expended under loan programs, except

as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the fiscal year; plus

(2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) Loan and loan guarantees (loans) at institutions of higher education. When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered Federal awards expended in that year. The balance of loans for previous years is not included as Federal awards expended because the lender accounts for the prior balances.

(d) Prior loan and loan guarantees (loans). Loans, the proceeds of which were received and expended in prior-years, are not considered Federal awards expended under this part when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) Endowment funds. The cumulative balance of Federal awards for endowment funds which are federally restricted are considered awards expended in each year in which the funds are still restricted.

(f) Free rent. Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of an award to carry out a Federal program shall be included in determining Federal awards expended and subject to audit under this part.

(g) Valuing non-cash assistance. Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) Medicare. Medicare payments to a non-Federal entity for providing patient care services to Medicare eligible individuals are not considered Federal awards expended under this part.

(i) Medicaid. Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) Certain loans provided by the National Credit Union Administration. For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured institutions are not considered Federal awards expended.

**§ 3052.210 Subrecipient and vendor determinations.**

(a) General. An auditee may be a recipient, a subrecipient, and a vendor. Federal awards expended as a recipient or a subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

(b) Federal award. Characteristics indicative of a Federal award received by a subrecipient are when the organization:

- (1) Determines who is eligible to receive what Federal financial assistance;
- (2) Has its performance measured against whether the objectives of the Federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable Federal program compliance requirements; and
- (5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) Payment for goods and services. Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program.

(d) Use of judgment in making determination. There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and

judgment should be used in determining whether an entity is a subrecipient or vendor.

(e) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

(f) Compliance responsibility for vendors. In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

**§ 3052.215 Relation to other audit requirements.**

(a) Audit under this part in lieu of other audits. An audit made in accordance with this part shall be in lieu of any financial audit required under individual Federal awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this part neither limit the authority of Federal agencies, including their Inspectors General, or GAO to conduct or arrange for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) Federal agency to pay for additional audits. A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange

for funding the full cost of such additional audits.

(c) Request for a program to be audited as a major program. A Federal agency may request an auditee to have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 3052.520 and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

**§ 3052.220 Frequency of audits.**

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part shall be performed annually. Any biennial audit shall cover both years within the biennial period.

(a) A State or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period under audit.

(b) Any non-profit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

**§ 3052.225 Sanctions.**

No audit costs may be charged to Federal awards when audits required by this part have not been made or have been made but not in accordance with this part. In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action using sanctions such as:

- (a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;

(b) Withholding or disallowing overhead costs;

(c) Suspending Federal awards until the audit is conducted; or

(d) Terminating the Federal award.

#### § 3052.230 Audit costs.

(a) Allowable costs. Unless prohibited by law, the cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations.

(b) Unallowable costs. A non-Federal entity shall not charge the following to a Federal award:

(1) The cost of any audit under the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 *et seq.*) not conducted in accordance with this part.

(2) The cost of auditing a non-Federal entity which has Federal awards expended of less than \$300,000 per year and is thereby exempted under § 3052.200(d) from having an audit conducted under this part. However, this does not prohibit a pass-through entity from charging Federal awards for the cost of limited scope audits to monitor its subrecipients in accordance with § 3052.400(d)(3), provided the subrecipient does not have a single audit. For purposes of this part, limited scope audits only include agreed-upon procedures engagements conducted in accordance with either the AICPA's generally accepted auditing standards or attestation standards, that are paid for and arranged by a pass-through entity and address only one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and, reporting.

#### § 3052.235 Program-specific audits.

(a) Program-specific audit guide available. In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) Program-specific audit guide not available.

(1) When a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee shall prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 3052.315(b), and a corrective action plan consistent with the requirements of § 3052.315(c).

(3) The auditor shall:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the Federal program consistent with the requirements of § 3052.500(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the requirements of § 3052.500(d) for a major program; and

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding in accordance with the requirements of § 3052.500(e).

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in conformity with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which shall describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § 3052.505(d)(1) and findings and questioned costs consistent with the requirements of § 3052.505(d)(3).

(c) Report submission for program-specific audits.

(1) The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal agency that provided the funding or a different period is specified in a program-specific audit guide. (However, for fiscal years beginning on or before June 30, 1988, the audit shall be completed and the required reporting shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period, unless a different period is specified in a program-specific audit guide.) Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit to the Federal clearinghouse designated by OMB the data collection form prepared in accordance with § 3052.320(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide to be retained as an archival copy. Also, the auditee shall submit to the Federal awarding agency or pass-through entity the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit shall consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § 3052.320(b), as applicable to a program-specific audit, and one copy of this reporting package shall be

submitted to the Federal clearinghouse designated by OMB to be retained as an archival copy. Also, when the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit one copy of the reporting package to the Federal clearinghouse on behalf of the Federal awarding agency, or directly to the pass-through entity in the case of a subrecipient. Instead of submitting the reporting package to the pass-through entity, when a subrecipient is not required to submit a reporting package to the pass-through entity, the subrecipient shall provide written notification to the pass-through entity, consistent with the requirements of § 3052.320(e)(2). A subrecipient may submit a copy of the reporting package to the pass-through entity to comply with this notification requirement.

(d) Other sections of this part may apply. Program-specific audits are subject to § 3052.100 through § 3052.215(b), § 3052.220 through § 3052.230, § 3052.300 through § 3052.305, § 3052.315, § 3052.320(f) through § 3052.320(j), § 3052.400 through § 3052.405, § 3052.510 through § 3052.515, and other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program laws and regulations.

### Subpart C—Auditees

#### § 3052.300 Auditee responsibilities.

The auditee shall:

(a) Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

(b) Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.

(c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

(d) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 3052.310.

(e) Ensure that the audits required by this part are properly performed and

submitted when due. When extensions to the report submission due date required by § 3052.320(a) are granted by the cognizant or oversight agency for audit, promptly notify the Federal clearinghouse designated by OMB and each pass-through entity providing Federal awards of the extension.

(f) Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 3052.315(b) and § 3052.315(c), respectively.

#### § 3052.305 Auditor selection.

(a) Auditor procurement. In procuring audit services, auditees shall follow the procurement standards prescribed by the Grants Management Common Rule (hereinafter referred to as the "A-102 Common Rule") 7 CFR Part 3016, Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," or the FAR (48 CFR part 42), as applicable (OMB Circulars are available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503). Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in the A-102 Common Rule, OMB Circular A-110, or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

(b) Restriction on auditor preparing indirect cost proposals. An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs. To minimize any disruption in existing contracts for audit services, this paragraph applies to audits of fiscal years beginning after June 30, 1998.

(c) Use of Federal auditors. Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

#### § 3052.310 Financial statements.

(a) Financial statements. The auditee shall prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, organization-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § 3052.500(a) and prepare separate financial statements.

(b) Schedule of expenditures of Federal awards. The auditee shall also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple award years, the auditee may list the amount of Federal awards expended for each award year separately. At a minimum, the schedule shall:

(1) List individual Federal programs by Federal agency. For Federal programs included in a cluster of programs, list individual Federal programs within a cluster of programs. For R&D, total Federal awards expended shall be shown either by individual award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.

(3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available.

(4) Include notes that describe the significant accounting policies used in preparing the schedule.

(5) To the extent practical, pass-through entities should identify in the schedule the total amount provided to subrecipients from each Federal program.

(6) Include, in either the schedule or a note to the schedule, the value of the Federal awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year end. While not required, it is preferable to present this information in the schedule.

**§ 3052.315 Audit findings follow-up.**

(a) General. The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under § 3052.510(c). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

(b) Summary schedule of prior audit findings. The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(4) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding

occurred was submitted to the Federal clearinghouse;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) Corrective action plan. At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

**§ 3052.320 Report submission.**

(a) General. The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the data collection form and reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period.) Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) Data Collection. (1) The auditee shall submit a data collection form which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be approved by OMB, available from the Federal clearinghouse designated by OMB, and include data elements similar to those presented in this paragraph. A senior level representative of the auditee (e.g., State controller, director of finance, chief executive officer, or chief financial officer) shall sign a statement to be included as part of the form certifying that: the auditee complied with the requirements of this part, the form was prepared in accordance with this part (and the instructions accompanying the form), and the information included in the form, in its entirety, are accurate and complete.

(2) The data collection form shall include the following data elements:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses.

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee.

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.

(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(vi) A list of the Federal awarding agencies which will receive a copy of the reporting package pursuant to § 3052.320(d)(2) of OMB Circular A-133.

(vii) A yes or no statement as to whether the auditee qualified as a low-risk auditee under § 3052.530 of OMB Circular A-133.

(viii) The dollar threshold used to distinguish between Type A and Type B programs as defined in § 3052.520(b) of OMB Circular A-133.

(ix) The Catalog of Federal Domestic Assistance (CFDA) number for each Federal program, as applicable.

(x) The name of each Federal program and identification of each major program. Individual programs within a cluster of programs should be listed in the same level of detail as they are listed in the schedule of expenditures of Federal awards.

(xi) The amount of expenditures in the schedule of expenditures of Federal awards associated with each Federal program.

(xii) For each Federal program, a yes or no statement as to whether there are audit findings in each of the following types of compliance requirements and the total amount of any questioned costs:

- (A) Activities allowed or unallowed.
- (B) Allowable costs/cost principles.
- (C) Cash management.
- (D) Davis-Bacon Act.
- (E) Eligibility.
- (F) Equipment and real property management.
- (G) Matching, level of effort, earmarking.



(H) Period of availability of Federal funds.

(I) Procurement and suspension and debarment.

(J) Program income.

(K) Real property acquisition and relocation assistance.

(L) Reporting.

(M) Subrecipient monitoring.

(N) Special tests and provisions.

(xiii) Auditee Name, Employer Identification Number(s), Name and Title of Certifying Official, Telephone Number, Signature, and Date.

(xiv) Auditor Name, Name and Title of Contact Person, Auditor Address, Auditor Telephone Number, Signature, and Date.

(xv) Whether the auditee has either a cognizant or oversight agency for audit.

(xvi) The name of the cognizant or oversight agency for audit determined in accordance with § 3052.400(a) and § 3052.400(b), respectively.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor shall complete the applicable sections of the form. The auditor shall sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the data elements prescribed by OMB.

(c) Reporting package. The reporting package shall include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 3052.310(a) and § 3052.310(b), respectively;

(2) Summary schedule of prior audit findings discussed in § 3052.315(b);

(3) Auditor's report(s) discussed in § 3052.505; and

(4) Corrective action plan discussed in § 3052.315(c).

(d) Submission to clearinghouse. All auditees shall submit to the Federal clearinghouse designated by OMB the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section for:

(1) The Federal clearinghouse to retain as an archival copy; and

(2) Each Federal awarding agency when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the Federal awarding agency provided directly or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the Federal awarding agency provided directly.

(e) Additional submission by subrecipients. (1) In addition to the requirements discussed in paragraph (d) of this section, auditees that are also subrecipients shall submit to each pass-through entity one copy of the reporting package described in paragraph (c) of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the pass-through entity provided.

(2) Instead of submitting the reporting package to a pass-through entity, when a subrecipient is not required to submit a reporting package to a pass-through entity pursuant to paragraph (e)(1) of this section, the subrecipient shall provide written notification to the pass-through entity that: an audit of the subrecipient was conducted in accordance with this part (including the period covered by the audit and the name, amount, and CFDA number of the Federal award(s) provided by the pass-through entity); the schedule of findings and questioned costs disclosed no audit findings relating to the Federal award(s) that the pass-through entity provided; and, the summary schedule of prior audit findings did not report on the status of any audit findings relating to the Federal award(s) that the pass-through entity provided. A subrecipient may submit a copy of the reporting package described in paragraph (c) of this section to a pass-through entity to comply with this notification requirement.

(f) Requests for report copies. In response to requests by a Federal agency or pass-through entity, auditees shall submit the appropriate copies of the reporting package described in paragraph (c) of this section and, if requested, a copy of any management letters issued by the auditor.

(g) Report retention requirements. Auditees shall keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the Federal clearinghouse designated by OMB. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

(h) Clearinghouse responsibilities. The Federal clearinghouse designated by OMB shall distribute the reporting packages received in accordance with paragraph (d)(2) of this section and § 3052.235(c)(3) to applicable Federal awarding agencies, maintain a data base

of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required data collection forms and reporting packages.

(i) Clearinghouse address. The address of the Federal clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132.

(j) Electronic filing. Nothing in this part shall preclude electronic submissions to the Federal clearinghouse in such manner as may be approved by OMB. With OMB approval, the Federal clearinghouse may pilot test methods of electronic submissions.

#### Subpart D—Federal Agencies and Pass-Through Entities

##### § 3052.400 Responsibilities.

(a) Cognizant agency for audit responsibilities. Recipients expending more than \$25 million a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment. To provide for continuity of cognizance, the determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 1995, 2000, 2005, and every fifth year thereafter. For example, audit cognizance for periods ending in 1997 through 2000 will be determined based on Federal awards expended in 1995. (However, for States and local governments that expend more than \$25 million a year in Federal awards and have previously assigned cognizant agencies for audit, the requirements of this paragraph are not effective until fiscal years beginning after June 30, 2000.) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency for audit. Within 30 days after any reassignment, both the old and the new cognizant agency for audit shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency for audit shall:

(1) Provide technical audit advice and liaison to auditees and auditors.

(2) Consider auditee requests for extensions to the report submission due



date required by § 3052.320(a). The cognizant agency for audit may grant extensions for good cause.

(3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.

(5) Advise the auditor and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit shall notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon audits performed in accordance with this part.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(9) For biennial audits permitted under § 3052.220, consider auditee requests to qualify as a low-risk auditee under § 3052.530(a).

(b) Oversight agency for audit responsibilities. An auditee which does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 3052.105. The oversight agency for audit:

(1) Shall provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) Federal awarding agency responsibilities. The Federal awarding agency shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each recipient of the CFDA title and number, award name and number, award year, and if the award is for R&D. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.

(2) Advise recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements.

(3) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.

(4) Provide technical advice and counsel to auditees and auditors as requested.

(5) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(6) Assign a person responsible for providing annual updates of the compliance supplement to OMB.

(d) Pass-through entity responsibilities. A pass-through entity shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.

(2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

(3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that subrecipients expending \$300,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

(7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

#### § 3052.405 Management decision.

(a) General. The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

(b) Federal agency. As provided in § 3052.400(a)(7), the cognizant agency for audit shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § 3052.400(c)(5), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

(c) Pass-through entity. As provided in § 3052.400(d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) Time requirements. The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should be initiated within six months after receipt of the audit report and proceed as rapidly as possible.

(e) Reference numbers. Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with § 3052.510(c).

#### Subpart E—Auditors

##### § 3052.500 Scope of audit.

(a) General. The audit shall be conducted in accordance with GAGAS. The audit shall cover the entire operations of the auditee; or, at the option of the auditee, such audit shall include a series of audits that cover

departments, agencies, and other organizational units which expended or otherwise administered Federal awards during such fiscal year, provided that each such audit shall encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which shall be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards shall be for the same fiscal year.

(b) Financial statements. The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) Internal control. (1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(2)(i) of this section.

(3) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(2) of this section are not required for those compliance requirements. However, the auditor shall report a reportable condition (including whether any such condition is a material weakness) in accordance with § 3052.510, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) Compliance. (1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal

programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should use the types of compliance requirements contained in the compliance supplement as guidance for identifying the types of compliance requirements to test, and determine the requirements governing the Federal program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements.

(4) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance.

(e) Audit follow-up. The auditor shall follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 3052.315(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor shall perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) Data Collection Form. As required in § 3052.320(b)(3), the auditor shall complete and sign specified sections of the data collection form.

#### **§ 3052.505 Audit reporting.**

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer

of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) A report on internal control related to the financial statements and major programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements. This report shall also include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which shall include the following three components:

(1) A summary of the auditor's results which shall include:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses;

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee;

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses;

(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings which the auditor is required to report under § 3052.510(a);

(vii) An identification of major programs;

(viii) The dollar threshold used to distinguish between Type A and Type B

programs, as described in § 3052.520(b); and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § 3052.530.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which shall include audit findings as defined in § 3052.510(a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings which relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

#### § 3052.510 Audit findings.

(a) Audit findings reported. The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) Reportable conditions in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a reportable condition for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement. The auditor shall identify reportable conditions which are individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements related to a major program. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement.

(3) Known questioned costs which are greater than \$10,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on

compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than \$10,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs which are greater than \$10,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program which is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program which is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$10,000, then the auditor shall report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for major programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to make an additional reporting when the auditor confirms that the fraud was reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 3052.315(b) materially misrepresents the status of any prior audit finding.

(b) Audit finding detail. Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information shall be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award number, is not available, the auditor shall provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) Identification of questioned costs and how they were computed.

(5) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.

(6) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.

(7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.

(c) Reference numbers. Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

#### § 3052.515 Audit working papers.

(a) Retention of working papers. The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, or pass-through entity to extend the retention period. When the auditor is aware that the Federal awarding agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) Access to working papers. Audit working papers shall be made available upon request to the cognizant or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to working papers includes the right of Federal agencies to obtain copies of working papers, as is reasonable and necessary.

**§ 3052.520 Major program determination.**

(a) General. The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (l) of this section shall be followed.

(b) Step 1. (1) The auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the larger of:

(i) \$300,000 or three percent (.03) of total Federal awards expended in the case of an auditee for which total Federal awards expended equal or exceed \$300,000 but are less than or equal to \$100 million.

(ii) \$3 million or three-tenths of one percent (.003) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$100 million but are less than or equal to \$10 billion.

(iii) \$30 million or 15 hundredths of one percent (.0015) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$10 billion.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section shall be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as Type A programs. When a Federal program providing loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

(4) For biennial audits permitted under § 3052.220, the determination of Type A and Type B programs shall be based upon the Federal awards expended during the two-year period.

(c) Step 2. (1) The auditor shall identify Type A programs which are low-risk. For a Type A program to be considered low-risk, it shall have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, it shall have had no audit findings under § 3052.510(a). However, the auditor may use judgment and consider that audit findings from questioned costs under § 3052.510(a)(3) and § 3052.510(a)(4), fraud under § 3052.510(a)(6), and audit follow-up for the summary schedule of prior audit findings under § 3052.510(a)(7) do not preclude the Type A program from being low-risk. The auditor shall consider: the criteria in § 3052.525(c), § 3052.525(d)(1), § 3052.525(d)(2), and § 3052.525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a Type A program have significantly increased risk; and apply professional judgment in determining whether a Type A program is low-risk.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program at certain recipients may not be considered low-risk. For example, it may be necessary for a large Type A program to be audited as major each year at particular recipients to allow the Federal agency to comply with the Government Management Reform Act of 1994 (31 U.S.C. 3515). The Federal agency shall notify the recipient and, if known, the auditor at least 180 days prior to the end of the fiscal year to be audited of OMB's approval.

(d) Step 3. (1) The auditor shall identify Type B programs which are high-risk using professional judgment and the criteria in § 3052.525. However, should the auditor select Option 2 under Step 4 (paragraph (e)(2)(i)(B) of this section), the auditor is not required to identify more high-risk Type B programs than the number of low-risk Type A programs. Except for known reportable conditions in internal control or compliance problems as discussed in § 3052.525(b)(1), § 3052.525(b)(2), and § 3052.525(c)(1), a single criteria in § 3052.525 would seldom cause a Type B program to be considered high-risk.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed the larger of:

(i) \$100,000 or three-tenths of one percent (.003) of total Federal awards expended when the auditee has less

than or equal to \$100 million in total Federal awards expended.

(ii) \$300,000 or three-hundredths of one percent (.0003) of total Federal awards expended when the auditee has more than \$100 million in total Federal awards expended.

(e) Step 4. At a minimum, the auditor shall audit all of the following as major programs:

(1) All Type A programs, except the auditor may exclude any Type A programs identified as low-risk under Step 2 (paragraph (c)(1) of this section).

(2) (i) High-risk Type B programs as identified under either of the following two options:

(A) Option 1. At least one half of the Type B programs identified as high-risk under Step 3 (paragraph (d) of this section), except this paragraph (e)(2)(i)(A) does not require the auditor to audit more high-risk Type B programs than the number of low-risk Type A programs identified as low-risk under Step 2.

(B) Option 2. One high-risk Type B program for each Type A program identified as low-risk under Step 2.

(ii) When identifying which high-risk Type B programs to audit as major under either Option 1 or 2 in paragraph (e)(2)(i) (A) or (B), the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This paragraph (e)(3) may require the auditor to audit more programs as major than the number of Type A programs.

(f) Percentage of coverage rule. The auditor shall audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 50 percent of total Federal awards expended. If the auditee meets the criteria in § 3052.530 for a low-risk auditee, the auditor need only audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 25 percent of total Federal awards expended.

(g) Documentation of risk. The auditor shall document in the working papers the risk analysis process used in determining major programs.

(h) Auditor's judgment. When the major program determination was performed and documented in accordance with this part, the auditor's judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-through

entities shall only be for clearly improper use of the guidance in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

(i) Deviation from use of risk criteria. For first-year audits, the auditor may elect to determine major programs as all Type A programs plus any Type B programs as necessary to meet the percentage of coverage rule discussed in paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

(1) A first-year audit is the first year the entity is audited under this part or the first year of a change of auditors.

(2) To ensure that a frequent change of auditors would not preclude audit of high-risk Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

**§ 3052.525 Criteria for Federal program risk.**

(a) General. The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. The auditor shall use auditor judgment and consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) Current and prior audit experience. (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall consider whether weaknesses are isolated in a single

operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(iii) The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) Oversight exercised by Federal agencies and pass-through entities. (1) Oversight exercised by Federal agencies or pass-through entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs which are higher risk. OMB plans to provide this identification in the compliance supplement.

(d) Inherent risk of the Federal program. (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, laws, regulations, or the provisions of contracts or grant agreements may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

**§ 3052.530 Criteria for a low-risk auditee.**

An auditee which meets all of the following conditions for each of the preceding two years (or, in the case of biennial audits, preceding two audit periods) shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 3052.520:

(a) Single audits were performed on an annual basis in accordance with the provisions of this part. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee, unless agreed to in advance by the cognizant or oversight agency for audit.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of Federal awards were unqualified. However, the cognizant or oversight agency for audit may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS. However, the cognizant or oversight agency for audit may judge that any identified material weaknesses do not affect the management of Federal awards and provide a waiver.

(d) None of the Federal programs had audit findings from any of the following in either of the preceding two years (or, in the case of biennial audits, preceding two audit periods) in which they were classified as Type A programs:

(1) Internal control deficiencies which were identified as material weaknesses;

(2) Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the Type A program; or

(3) Known or likely questioned costs that exceed five percent of the total Federal awards expended for a Type A program during the year.

[FR Doc. 97-22830 Filed 8-28-97; 8:45 am]

BILLING CODE 3410-KS-P

**DEPARTMENT OF AGRICULTURE****Office of the Chief Financial Officer****7 CFR Parts 3015, 3016, and 3050**

RIN 0505-AA09

**Audit Requirements for OMB Circular A-128****AGENCY:** Office of the Chief Financial Officer, USDA.**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** On October 17, 1995, USDA published a proposed rule (60 FR 53717) to simplify USDA audit requirements for State, local, and Indian Tribal governments that receive USDA financial assistance. USDA is withdrawing that proposed rule because the amendments to Parts 3015 and 3016

and the proposal to establish a new Part 3050 refer to audit requirements that have been replaced by the Single Audit Act Amendments of 1996. The updated audit requirements for USDA are published elsewhere in this **Federal Register**.

**DATES:** The proposed rule is withdrawn as of August 29, 1997.

**FOR FURTHER INFORMATION CONTACT:** Patricia Wensel, Director, Office of the Chief Financial Officer, Planning and Accountability Division, 202-720-1175.

**List of Subjects***7 CFR Part 3015*

Accounting, Grant programs—Agriculture, Indians, Insurance, Intergovernmental relations, Loans programs, Reporting and recordkeeping requirements.

*7 CFR Part 3016*

Accounting, Grant programs—Agriculture, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

*7 CFR Part 3050*

Accounting, Indians, Intergovernmental relations, Grant programs—Agriculture.

Issued at Washington, D.C., on August 21, 1997.

*Approved:*

**Irvin T. David,**

*Acting Chief Financial Officer.*

**Dan Glickman,**

*Secretary of Agriculture.*

[FR Doc. 97-22831 Filed 8-28-97; 8:45 am]

BILLING CODE 3410-KS-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## 45 CFR Part 96

RIN 0991-AA92

## Block Grant Programs: Implementation of OMB Circular A-133

AGENCY: Department of Health and Human Services (HHS).

ACTION: Interim final rule with request for comments.

**SUMMARY:** This interim final rule implements Office of Management and Budget (OMB) Circular A-133 for Department of Health and Human Services (HHS) block programs.

**DATES:** This interim final rule is effective September 29, 1997. Comments must be received on or before October 28, 1997 to be assured of consideration.

**ADDRESSES:** Comments should be submitted to Charles Gale, Director, Office of Grants Management, Department of Health and Human Services, Room 517-D, 200 Independence Ave. SW, Washington, DC 20201. A copy of the comments received will be available for public inspection and copying during regular business hours (9:00 a.m. to 5:30 p.m. eastern time) at the above address.

**FOR FURTHER INFORMATION CONTACT:** Charles Gale, 202-690-6377; for the hearing impaired only: TDD 202-690-6415.

**SUPPLEMENTARY INFORMATION:** Elsewhere in this issue of the **Federal Register**, Federal grant-making agencies have published interim final amendments to the grants management common rule for State and local governments (codified by HHS at 45 CFR part 92) and to their codification of OMB Circular A-110 (codified by HHS at 45 CFR part 74) for the purpose of implementing the Single Audit Act Amendments of 1996 (110 Stat. 1396) and the revision of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," published in the **Federal Register** on June 30, 1997. (62 FR 35278.)

In addition, it is necessary for HHS to amend its block grant regulation (45 CFR part 96) in a similar way. This interim final rule implements the Single Audit Act Amendments of 1996 and the revised Circular A-133 in the same manner as, and in conjunction with, the common rule amendments referred to above. The supplementary information, impact analyses, and the justification for the waiver of proposed rulemaking of the common rule amendments apply equally to this action.

This amendment of 45 CFR part 96 essentially adopts today's amendment to the grants management common rule (45 CFR 92.26 (a) through (b)(1)) together with most of the remainder of the existing audit policy found at 45 CFR 92.26(b) (2) through (5). The provision on auditor selection, found at 45 CFR 92.26(c), has not been adopted in part 96 because the block grant rules do not contain procurement standards as contemplated by that section.

**List of Subjects in 45 CFR Part 96**

Accounting, Administrative practice and procedures, Audit requirements, Block grants, Grants administration, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance does not apply)

Dated: August 18, 1997.

**Donna E. Shalala,**  
Secretary.

Part 96 of title 45 of the Code of Federal Regulations is amended as follows:

**PART 96—BLOCK GRANTS**

1. The authority citation for part 96 is revised to read as follows:

**Authority:** 31 U.S.C. 1243 note, 7501-7507; 42 U.S.C. 300w *et seq.*, 300x *et seq.*, 300y *et seq.*, 701 *et seq.*, 8621 *et seq.*, 9901 *et seq.*, 1397 *et seq.*

2. Section 96.31 is revised to read as follows:

**§ 96.31 Audits.**

(a) *Basic rule.* Grantees and subgrantees are responsible for

obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of State, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted Government auditing standards covering financial audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, expending \$300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

(1) Determine whether subgrantees have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

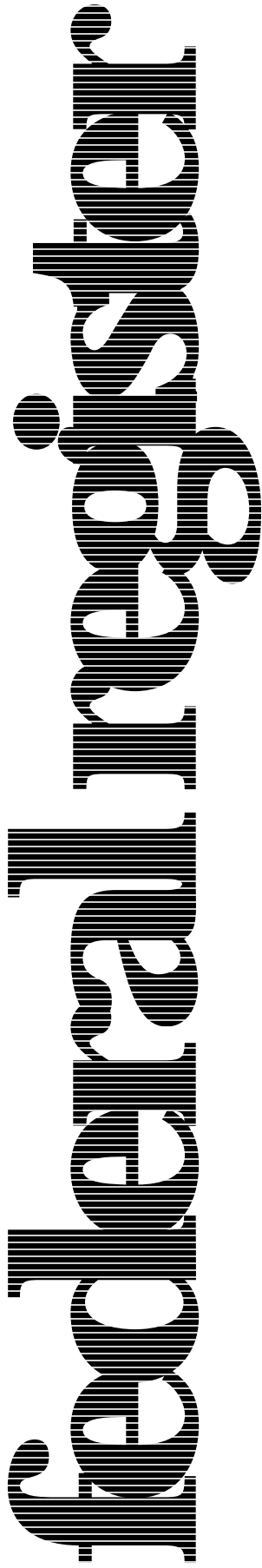
(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

[FR Doc. 97-22832 Filed 8-28-97; 8:45 am]

BILLING CODE 4150-04-M



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Friday  
August 29, 1997

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**Part IV**

**Department of  
Health and Human  
Services**

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Health Care Financing Administration

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42 CFR Parts 400, 409, et al.  
Medicare Program; Changes to the  
Hospital Inpatient Prospective Payment  
Systems and Fiscal Year 1998 Rates;  
Final Rule



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Parts 400, 409, 410, 411, 412, 413, 424, 440, 485, 488, 489, and 498**

[BPD-878-FC]

RIN 0938-AH55

**Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates**

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule with comment period.

**SUMMARY:** We are revising the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes resulting from the Balanced Budget Act of 1997, Pub. L. 105-33, and changes arising from our continuing experience with the systems. In the addendum to this final rule with comment period, we describe changes in the amounts and factors necessary to determine prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs. Generally, these changes are applicable to discharges occurring on or after October 1, 1997. We also set forth rate-of-increase limits and changes for hospitals and hospital units excluded from the prospective payment systems.

**DATES:** *Effective Date:* This rule is a major rule as defined in Title 5, United States Code, section 804(2). Section 4644 of Pub. L. 105-33 provides that, with respect to this final rule, the reference in Title 5, United States Code, section 801(a)(3)(A) to a 60-day delay in the effective date for major rules is deemed to be a reference to a 30-day delay. In accordance with these provisions, the provisions of this final rule with comment period are effective on October 1, 1997.

*Comment Period:* Comments on the provisions resulting from the Balanced Budget Act of 1997 will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on October 28, 1997. We will not consider comments concerning provisions that remain unchanged from the June 2, 1997 proposed rule or that were revised based on public comment.

**ADDRESSES:** Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services,

Attention: BPD-878-FC, P.O. Box 7517, Baltimore, MD 21207-0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or Room C5-09-26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD-878-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

For comments that relate to information collection requirements, mail a copy of comments to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer; and Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2-26-17, 7500 Security Boulevard, Baltimore, MD 21244-1850

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**FOR FURTHER INFORMATION CONTACT:** Nancy Edwards, (410) 786-4531, Operating Prospective Payment, DRG, and Wage Index Issues. Tzvi Hefter, (410) 786-4487, Capital Prospective

Payment, Excluded Hospitals, and Graduate Medical Education Issues.

**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.

As required by section 1886(g) of the Act, effective with cost reporting periods beginning on or after October 1, 1991, we also have implemented a prospective payment methodology for hospital inpatient capital-related costs. Under the capital-related cost methodology, a predetermined payment amount per discharge is made for Medicare inpatient capital-related costs.

*B. Summary of the Provisions of the June 2, 1997 Proposed Rule*

On June 2, 1997, we published a proposed rule in the **Federal Register** (62 FR 29902) 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, 1997. Subsequently, on August 5, 1997, the Balanced Budget Act of 1997, Public Law 105-33, was enacted. This Act made major changes to the Medicare hospital payment systems, rates, and policies effective beginning with FY 1998. These legislative changes are summarized under section I.D. of this preamble. More specific details on individual provisions that we are implementing in this final rule with comment period are included under the various sections of this preamble.

Following is a summary of the major changes that we had proposed to make in the June 2, 1997 proposed rule:

- We proposed changes for FY 1998 DRG classifications and relative weights, as required by section 1886(d)(4)(c) of the Act.
- We proposed to update the hospital wage index for FY 1998. We also

proposed revisions to the wage index based on hospital redesignations and a revised process for wage data verification.

- We proposed to use a revised hospital market basket in developing the recommended FY 1998 update factor for the operating prospective payment rates and the excluded hospital rate-of-increase limits.

- We discussed several provisions of the regulations in 42 CFR Parts 412 and 413 and set forth certain proposed changes concerning the following:

- + Elimination of day outlier payments.
- + Rural referral centers.
- + Indirect medical education.
- + Direct graduate medical education programs.

- We discussed several provisions of the regulations in 42 CFR parts 412, 413, and 489 and set forth certain proposed changes and clarifications concerning the following:

- + Possible adjustments to capital minimum payment levels.
- + Special exceptions application process.

- We proposed changes to the application of the criteria for "hospitals within hospitals" seeking exclusion from the prospective payment system. We also proposed technical clarifications concerning exclusion of rehabilitation units.

- In the addendum to the proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 1998 prospective payment rates for operating costs and capital-related costs. We also proposed update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 1998 for hospitals and hospital units excluded from the prospective payment system.

- In Appendix A of the proposed rule, we set forth an analysis of the impact that the proposed changes would have on affected entities.

- In Appendix B of the proposed rule, we set forth our technical appendix on the proposed FY 1998 capital cost model.

- In Appendix C of 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 of the proposed rule, we included our report to Congress on our initial estimate of an update factor for FY 1998 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 1998 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, 1997 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, 1997 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 was recommended), were discussed in detail in the appropriate sections of the preamble, the addendum, or the appendices to the proposed rule.

#### C. Public Comments Received in Response to the June 2 Proposed Rule

A total of 341 items of correspondence containing comments on the proposed rule were received. The main areas of concern addressed by the commenters were the changes in the DRG classifications related to coronary stents and stereotactic radiosurgery, and the request for comments on future changes for burn cases. Among other areas of concern addressed by the commenters were implementation of the

FY 1999 wage index and the policy change related to hospitals and hospital units excluded from the prospective payment system (specifically, hospital-within-hospital policy).

Summaries of the public comments received and our responses to those comments appear in the individual related sections of the preamble.

#### D. Relevant Provisions of the Balanced Budget Act of 1997

As noted above, on August 5, 1997, after we had issued the proposed rule for the FY 1998 prospective payment system changes, the Balanced Budget Act of 1997 was enacted. This Act made major changes that affect Medicare payments for hospital inpatient services under the prospective payment systems and the cost limits applicable to excluded hospitals, as well as the direct graduate medical education payments. Because most of these changes are effective October 1, 1997, we have had to make some revisions to the June 2 proposals as well as make additional changes. The provisions of Public Law 105-33 that we are implementing in this final rule with comment period are as follows:

1. *Hospital Operating Payment Update.* The applicable percentage change in the standardized amounts is 0 percent for FY 1998, the market basket percentage increase minus 1.9 percentage points for all hospitals in all areas for FY 1999, the market basket percentage increase minus 1.8 percentage points for hospitals in all areas for FY 2000, the market basket percentage increase minus 1.1 percentage points for hospitals for all areas for FYs 2001 and 2002, and the market basket percentage increase for hospitals in all areas for FY 2003 and subsequent fiscal years. (Section 4401(a))

Hospitals that do not receive disproportionate share (DSH) or indirect medical education (IME) payments and are (MDH) for FY 1998 or 1999 will receive a higher update for that year if—

- The hospital is in a State in which the aggregate prospective payment system operating payments to these types of hospitals is less than the aggregate prospective payment system operating costs (an overall State negative operating margin) for FY 1995 cost reporting periods; and
- The hospital itself has a negative operating prospective payment system margin in the payment year. (Section 4401(b))

2. *Hospital Capital Rate Reduction.* The Federal capital rate and the hospital-specific rate are reduced by applying the budget neutrality factor

that was in effect in FY 1995, which results in a 15.68 percent reduction in the rates. In addition, for FY 1998 through FY 2002, both rates will be reduced an additional 2.1 percent. These reductions together result in an overall reduction of 17.78 percent in the unadjusted rates for the next 5 years. (Section 4402)

**3. Disproportionate Share Payments.**

The DSH payments to hospitals are reduced by 1 percent in FY 1998, 2 percent in FY 1999, 3 percent in FY 2000, 4 percent in FY 2001, and 5 percent in FY 2002. (Section 4403)

**4. Outlier Payments.** Beginning in FY 1998, IME and DSH payments will be made only on the base DRG payment rates and not on outlier payments. In determining outlier payments, the fixed loss cost outlier threshold will encompass payments for IME and DSH. (Section 4405)

**5. Base Payment Rate to Puerto Rico Hospitals.** The national share of the Puerto Rico payment rate is increased from 25 to 50 percent. Thus, these hospitals will be paid based on 50 percent of a national payment amount (based on a discharge-weighted average of the large urban and other urban national standardized amounts) and 50 percent of the Puerto Rico payment amount. (Section 4406)

**6. Special Reclassification.** The Secretary is given discretionary authority to deem Stanly County, North Carolina (a rural county) as a part of the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina MSA (a large urban area) for purposes of the prospective payment system. (Section 4408)

**7. New Guidelines for Geographic Reclassification.** Public Law 105-33 includes several provisions concerning geographic reclassification under section 1886(d)(10) of the Act. For geographic reclassifications for FY 1998 and subsequent years, the Secretary must establish and publish alternative guidelines for a hospital that demonstrates that—

- Its average hourly wage is at least 108 percent of the average hourly wage of all other hospitals in its Metropolitan Statistical Area (MSA) (or New England County Metropolitan Area (NECMA));
- It pays at least 40 percent of the adjusted uninflated wages in the MSA; and
- It submitted an application and was approved for reclassification for the wage index for FYs 1992 through 1997. (Section 4409)

For reclassifications for FYs 1999, 2000, and 2001, a hospital may seek reclassification to another area for purposes of DSH payment whether or

not the standardized amount is the same. (Section 4203(a))

For any hospital that has ever been classified as a rural referral center (RRC), the Medicare Geographic Classification Review Board (MGCRCB) may not reject an application for reclassification for purposes of the wage index on the basis of the 108 percent rule. (Section 4202)

For any hospital that is owned by a municipality and was reclassified as an urban hospital for FY 1996, the Secretary must exclude the overhead wages and hours associated with a skilled nursing facility that is owned by the hospital and that is physically located apart from the hospital in determining the hospital's average hourly wage for purposes of qualifying for FY 1998 reclassification, if the hospital had previously applied for and been denied reclassification for FY 1998. (Section 4410(c))

**8. Floor on Area Wage Index.** Beginning with FY 1998, the wage index for an urban hospital may not be lower than the Statewide area rural wage index. (Section 4410 (a) and (b))

**9. Indirect Medical Education.** The IME formula is revised to reduce the IME adjustment factor from 7.7 percent to 7.0 percent in FY 1998, 6.5 percent in FY 1999, 6.0 percent in FY 2000, and 5.5 percent in FY 2001 and subsequent fiscal years. (Section 4621(a))

For cost reporting periods beginning on or after October 1, 1997, the total number of full-time equivalent residents in a hospital's approved medical residency training program in the fields of allopathic medicine and osteopathic medicine is limited to the hospital's full-time equivalent count for the most recent cost reporting period ending on or before December 31, 1996. For cost reporting periods beginning on or after October 1, 1997, a hospital's indirect medical education full-time equivalent count is based on the average full-time equivalent count for the cost reporting period and the preceding two cost reporting periods. For the first cost reporting period beginning on or after October 1, 1997, the average is based on residents in that period and the preceding period. The statute provides for adjustments for short periods and a transition rule for FY 1998. Furthermore, the ratio of residents-to-beds may not exceed the ratio calculated during the prior cost reporting period (after accounting for the cap on the number of resident FTEs).

For portions of cost reporting periods occurring on or after January 1, 1998, the Secretary must make payments to teaching hospitals for the indirect costs of graduate medical education

associated with Medicare managed care discharges. Payment is equal to the per discharge amount that would have been made for that discharge if the beneficiary were not enrolled in managed care, multiplied by an applicable percentage. The applicable percentage is 20 percent in 1998, 40 percent in 1999, 60 percent in 2000, 80 percent in 2001, and 100 percent in 2002 and subsequent years.

**10. Rural Referral Centers.** Any hospital classified as an RRC for FY 1991 will be classified as an RRC for FY 1998 and subsequent fiscal years. (Section 4202(b))

**11. Medicare-Dependent, Small Rural Hospitals.** The special treatment of MDHs is reinstated for FYs 1998, 1999, and 2000. The payment methodology is identical to the methodology applicable in FY 1993; that is, if the hospital's hospital-specific rate based on 1982 or 1987 costs is higher than the Federal rate, the hospital receives 50 percent of the difference between the Federal rate and the hospital-specific rate. (Section 4204)

**12. Reinstatement of the Add-On for Blood Clotting Factor.** The add-on payment for blood clotting factor provided to inpatients with hemophilia is permanently reinstated beginning in FY 1998. (Section 4452)

**13. Counting Residents for Direct Graduate Medical Education.** For cost reporting periods beginning on or after October 1, 1997, the total number of unweighted full-time equivalent residents in a hospital's approved medical residency training program in the fields of allopathic medicine and osteopathic medicine is limited to the hospital's unweighted full-time equivalent count for the most recent cost reporting period ending on or before December 31, 1996. For cost reporting periods beginning on or after October 1, 1997, a hospital's direct medical education full-time equivalent count is based on the average full-time equivalent count for the cost reporting period and the preceding two cost reporting periods. For the first cost reporting period beginning on or after October 1, 1997 the average is based on residents in that period and the preceding period. The statute provides for adjustments for short periods and a transition rule for FY 1998.

The Secretary is permitted to prescribe rules that allow institutions that are members of the same affiliated group (as defined by the Secretary) to elect to apply the FTE cap on an aggregate basis.

The Secretary must prescribe rules for providing exceptions to the cap for

medical residency training programs beginning on or after January 1, 1995.

The statute gives the Secretary authority to collect whatever data are necessary to implement these provisions. (Section 4623)

14. *Payments to Managed Care Plans for Graduate Medical Education.* For portions of cost reporting periods occurring on or after January 1, 1998, the Secretary must make payments to teaching hospitals for the direct costs of graduate medical education associated with Medicare managed care discharges. Payment is equal to the product of the per resident amount, the total number of FTE residents working all areas of the hospital, the fraction of the total number of inpatient bed days that are attributable to Medicare managed care enrollees, and an applicable percentage. The applicable percentage is 20 percent in 1998, 40 percent in 1999, 60 percent in 2000, 80 percent in 2001 and 100 percent in 2002 and subsequent years. (Section 4624)

15. *Payment to Nonhospital Providers.* For cost reporting periods beginning on or after October 1, 1997, the Secretary may establish rules for payment to qualified nonhospital providers for the direct costs of medical education incurred in the operation of an approved medical residency training program. Qualified nonhospital providers include federally qualified health centers, rural health clinics, Medicare Choice organizations, and any other nonhospital providers that the Secretary determines to be appropriate. The rules established by the Secretary must specify the amounts, form, and manner in which payments will be made and the portion of the payments that will be made from each of the Medicare Trust Funds. The Secretary must reduce the aggregate amount paid to hospitals to the extent payment is made to nonhospital providers for residents included in the hospital's full-time equivalent count. (Section 4625)

16. *Payment for Combined Medical Residency Training Programs.* The initial residency period for combined programs consisting only of primary care training is the longest of the composite programs plus one additional year. A resident enrolled in a combined medical residency training program that includes an obstetrics and gynecology program qualifies for this special rule if the other programs combined with the obstetrics and gynecology program are for training a resident in primary care. This provision is effective for residency training programs beginning July 1, 1997. (Section 4627)

17. *Payment Update for Excluded Hospitals and Hospital Units.* For FY

1998, the rate-of-increase limits for excluded hospitals and units will be updated by 0 percent. For FYs 1999 through 2002, the update factor is tied to the relationship between the hospital's target amount and its operating costs. For hospitals with costs exceeding the target amount by 10 percent or more, the update is the market basket percentage increase; if costs exceed the target but by less than 10 percent, the update factor equals the market basket percentage increase minus 0.25 percentage points for each percentage point by which costs are less than 10 percent over the target (but in no case less than 0); if costs are less than or equal to the target but not below  $\frac{2}{3}$  of the target amount, the update is the greater of 0 percent or the market basket percentage increase minus 2.5 percentage points; and if costs do not exceed  $\frac{2}{3}$  of the target amount, the update factor is 0 percent. (Section 4411)

18. *Reductions to Capital Payments.* Capital payment amounts for certain excluded hospitals and hospital units are reduced by 15 percent for FYs 1998 through 2002. (Section 4412)

19. *Rebasing.* A hospital that was excluded from the prospective payment system before 1991 may apply to rebase its target amount for its cost reporting period beginning in FY 1998. The rebased target amount is determined by using the five latest settled cost reporting periods as of August 5, 1997, updating for inflation, excluding the highest and the lowest cost per discharge, and calculating an average for the remaining three. Long-term care hospitals with costs exceeding 115 percent of their target amount and a 70-percent disproportionate patient percentage may elect to use the cost reporting period beginning during FY 1996 as their base year, updated for inflation. (Section 4413)

20. *Cap on Target Amounts for Excluded Hospitals and Units.* For FYs 1998 through 2002, the target amount will be capped at the 75th percentile of the target amounts for similar facilities for cost reporting periods ending during FY 1996, updated by inflation. This cap applies to psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals.

21. *Bonus and Relief Payments to Excluded Hospitals and Units.* Bonus payments to excluded hospitals and units are the lesser of—

- 15 percent of the amount by which the ceiling (target amount times Medicare discharges) exceeds the amount of operating costs; or
- 2 percent of the ceiling.

A continuous improvement bonus payment system is established beginning FY 1998 for hospitals with at least 3 full cost reporting periods whose operating costs for the payment period are less than the least of its target amount, its trended costs (as defined by the statute), or its expected costs (as defined by the statute). The bonus under this system equals the lesser of—

- 50 percent of the amount by which operating costs are less than expected costs; or
- 1 percent of the ceiling.

Hospitals with costs over 110 percent of their ceiling receive relief payments equal to an additional 50 percent of the amount by which costs exceed 110 percent of the ceiling, not to exceed 10 percent of the ceiling. (Section 4415)

22. *Change in Payment and Target Amount for New Providers.* Effective October 1, 1997, the new provider exemptions for excluded hospitals are eliminated except for children's hospitals. The amount of payment for a new provider will be the lesser of operating costs for the period, or 110 percent of the national median of the target amount for hospitals in the same class for cost reporting periods ending in FY 1996, wage adjusted and updated by the market basket percentage increase to the fiscal year in which the hospital first received payments. (Section 4416 and 4419)

23. *Treatment of Certain Long-Term Care Hospitals.* Long-term care hospitals located in the same building or on the same campus as another hospital and that were in existence on September 30, 1995, are grandfathered in as hospitals excluded from the prospective payment system. This amendment applies to discharges occurring on or after October 1, 1995. (Section 4417(a))

A hospital that first received payment in 1986, has an average inpatient length of stay greater than 20 days, and in its 12-month cost reporting period ending in FY 1997, has 80 percent or more of its annual Medicare discharges that reflect a finding of neoplastic disease, is excluded from the prospective payment system as a long-term care hospital.

This provision applies to cost reporting periods beginning on or after August 5, 1997. (Section 4417(b))

24. *Treatment of Certain Cancer Hospitals.* A hospital recognized as a comprehensive cancer research center by the National Cancer Institute of the National Institutes of Health as of April 20, 1983; located in a State which, as of December 19, 1989, was not operating a demonstration project under section 1814(b); that applied for and was denied classification on or before December 31, 1990; is licensed for less than 50 acute

care beds; and demonstrates that at least 50 percent of its total discharge reflects a finding of neoplastic disease for the 4-year period ending December 31, 1996, is excluded from the hospital prospective payment system retroactively to 1991. The legislation includes an option to rebase payments. Retroactive payments must be made by August 5, 1998. (Section 4418)

#### 25. Limited-Service Rural Hospital Program

A "Medicare Rural Hospital Flexibility Program" is established. This program is a national limited-service hospital program that replaces the existing Essential Access Community Hospital/Rural Primary Care Hospital (EACH/RPCH) program which operates in seven States. The program allows States to designate rural facilities as "critical access hospitals" if they are located a sufficient distance from other hospitals, make available 24-hour emergency care, maintain no more than 15 inpatient beds, and keep inpatients no longer than 96 hours (except where weather or emergency conditions dictate, or a Peer Review Organization waives the limit). In addition, critical access hospitals do not have to meet all of the staffing requirements that apply to hospitals under Medicare. Payment for inpatient and outpatient services under this program is on the basis of reasonable cost.

States may receive grants for program activities, and are authorized to provide for the creation of networks, which include at least one critical access hospital and at least one acute care hospital. Critical access hospitals with swing-bed agreements are allowed to have up to 25 inpatient beds and to furnish both acute (hospital-level) and SNF-level care, provided that no more than 15 of those beds are used at any one time for acute care. Existing RPCHs, otherwise eligible as CAHs, and existing medical assistance facilities (MAFs) participating under the MAF demonstration project in Montana, will be deemed as CAHs. Existing EACHs in rural areas will continue to be paid as sole community hospitals but no new EACHs will be designated. (Section 4201)

26. *Change in Publication Dates.* Beginning with the FY 1999 update, the DRG prospective payment rate methodology and the recommended hospital prospective payment updates must be published as a proposed rule by April 1 and as a final rule by August 1 of each year. (Section 4644 (a)(1) and (b)(1))

As a conforming change, the deadline for applications for geographic reclassification for years beginning with

FY 2000 is moved from October 1 to September 1. Because the FY 1999 applications are due on October 1, 1997, the Secretary is directed to shorten the deadlines for MGCRB decision making, so that a final decision for all applications is made by June 15, 1998. (Section 4644(c))

Each of these provisions and the changes to the regulations necessary to implement these provisions are described in greater detail in sections III, IV, V, and VI of this preamble.

## 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, 1997 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 several changes to the DRG classification system for FY 1998. The proposed changes, the comments we received concerning them, our responses to those comments, and the final DRG changes are set forth below.

## 2. MDC 1 (Diseases and Disorders of the Nervous System)

### a. Stereotactic Radiosurgery

Effective October 1, 1995, procedure code 92.3 (stereotactic radiosurgery) was created and classified as a non-OR procedure. However, because this procedure had previously been coded to procedure codes that are classified as operating room procedures, we assigned procedure code 92.3 to the same surgical DRGs as the predecessor codes. Therefore, in the following DRGs, stereotactic radiosurgery is considered a non-OR procedure that affects DRG assignment: in MDC 1, DRG 1 (Craniotomy Age >17 Except for Trauma), DRG 2 (Craniotomy for Trauma Age >17), and DRG 3 (Craniotomy Age 0–17) and, in MDC 10 (Endocrine, Nutritional and Metabolic Diseases and Disorders), DRG 286 (Adrenal and Pituitary Procedures). In addition, in MDC 17 (Myeloproliferative Diseases and Disorders and Poorly Differentiated Neoplasms), procedure code 92.3 is considered a major OR procedure for purposes of assignment to DRG 400 (Lymphoma and Leukemia with Major OR Procedure) and DRGs 406 and 407 (Myeloproliferative Disorders or Poorly Differentiated Neoplasms with Major OR Procedure).<sup>1</sup> We stated in the June 2, 1995 proposed rule (60 FR 29207) that we would analyze the stereotactic radiosurgery cases as soon as the FY 1996 cases were available to ensure that these DRG assignments were appropriate.

In analyzing the FY 1996 MedPAR file, we found that there were stereotactic radiosurgery cases assigned to DRGs 1, 286, 400, and 407. In DRG 1, the average standardized charges for these cases are approximately \$16,400 compared to approximately \$27,800 for DRG 1 overall and the lengths of stay are about 3 days and 10 days, respectively. In DRG 286, the average charges for procedure code 92.3 are also much lower than all cases in that DRG, about

\$11,900 versus \$19,400. Again the length of stay is also much lower for stereotactic radiosurgery, just over 1 day compared to almost 7 days for all DRG 286 cases.

Because the cases associated with procedure code 92.3 clearly are much less resource-intensive than the other cases in the DRGs to which it is assigned, we proposed to reassign procedure code 92.3 to DRGs 7 and 8 (Peripheral and Cranial Nerve and Other Nervous System Procedures) in MDC 1 and DRGs 292 and 293 (Other Endocrine, Nutrition and Metabolic OR Procedures) in MDC 10. We also proposed to remove procedure code 92.3 from the list of major OR procedures in MDC 17. Therefore, these cases would be assigned to DRGs 401 and 402 (Lymphoma and Non-Acute Leukemia with Other OR Procedure) and DRG 408 (Myeloproliferative Disorders or Poorly Differentiated Neoplasms with Other OR Procedure).

We received over 130 comments regarding our proposal to move procedure code 92.3, including many from people who underwent radiosurgery. Three commenters supported the proposal. One commenter concurred that a revision of the DRG assignment and payment level for radiosurgery is appropriate, but suggested that any change be delayed until further analysis of industry data has been conducted. The remaining commenters opposed our proposal and strongly recommended that stereotactic radiosurgery cases continue to be assigned to DRG 1, or if a change must be made, these cases should be assigned to their own DRG with an appropriate relative weight. The specific comments we received are discussed below.

*Comment:* Many commenters stated that stereotactic radiosurgery is cost effective and is less expensive (by approximately 1/3) than open cranial surgery. The commenters were concerned that this proposal would result in a 40 percent reduction in payment for these cases.

*Response:* Currently, stereotactic radiosurgery is being paid at the same level as open cranial surgery, as the commenter noted. We believe these comments support our decision to move the radiosurgery cases into a DRG with cases of comparable utilization of resources, rather than group them with open surgery procedures, which involve much greater resource use. Our intent is not to discourage the utilization of this advanced technology nor to reduce payment arbitrarily, but to make appropriate payment for the procedure by assigning it to a DRG with similar resource use.

*Comment:* There are several different approaches being used in stereotactic radiosurgery. The two most prevalent are the gamma knife and the linear accelerator. Some commenters believe that we should be analyzing these cases separately and possibly making different DRG assignments for them. Other commenters urged us not to distinguish between approaches in radiosurgery, and one of these commenters submitted data to demonstrate that there is no difference in patient outcomes and that the different types of approach are clinically similar.

*Response:* Effective October 1, 1995, a new ICD-9-CM procedure code was created to capture stereotactic radiosurgery. The new code 92.3 (Stereotactic radiosurgery) encompasses both gamma knife and linear accelerator procedures. This topic was addressed at a public meeting of the ICD-9-CM Coordination and Maintenance Committee in 1994 at which representatives from the radiosurgery industry were in attendance. Comments were accepted at the meeting and attendees were also invited to submit written comments. At that time, we did not receive any negative comments regarding the inclusion of all approaches to radiosurgery in one code. Therefore, with only one code, we are unable to distinguish the radiosurgery cases based on different approaches.

We note that one difference between the approaches is the initial capital costs of the equipment. However, now that capital payments are made to hospitals under a prospective payment system, there is no way for us to specifically recognize these different costs.

*Comment:* Several commenters stated that because most radiosurgery patients do not have complicating conditions, which are necessary to be assigned to DRG 7, most cases will be assigned to DRG 8 and receive the lower relative weight associated with less complicated cases. In any event, the commenters believe that the payment for DRGs 7 and 8 is less than the costs of providing the treatment. One commenter stated that the average payment for radiosurgery cases assigned to DRG 1 in FY 1996 was \$11,876.28, while payment for DRGs 7 and 8 in the same year averaged \$9,973.13 and \$4,547.64, respectively. Therefore, this proposal could reduce hospital payment for the average Medicare radiosurgery cases in DRG 1 by as much as 62 percent.

*Response:* We have performed an analysis of the full FY 1996 MedPAR file, updated through June 1997. Of the 1,275 cases coded with procedure 92.2, 966 cases would have been assigned to

<sup>1</sup> A single title combined with two DRG numbers is used to signify pairs. Generally, the first DRG is 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.

DRGs 7 and 8 under our proposal. Of those 966 cases, 406 classify to DRG 7 and 560 cases classify to DRG 8. The average charges of these reassigned cases are approximately \$16,300 for DRG 7 and \$13,700 for DRG 8. The average standardized charges for DRG 7 and 8 overall are approximately \$20,250 and \$9,950, respectively. Thus, the average charges for radiosurgery cases assigned to DRG 7 (just over 40 percent of the total) are approximately \$4,000 less than the overall cases assigned to that DRG and the average charges for the cases assigned to DRG 8 are approximately \$4,000 more than the overall cases.

Therefore, given a similar distribution at any hospital, the payments for the DRG 7 and 8 cases should come close to balancing out; that is, DRG 7 will result in payments in excess of costs and DRG 8 will result in approximately equal numbers of cases with costs in excess of payments. This is consistent with the design of the prospective payment system, which is intended to make an average, predetermined payment for each case that encourages hospitals to provide care efficiently and economically and treat a mix of patients so that cases incurring payments in excess of costs are balanced by cases incurring costs in excess of payments.

The difference between assignment to DRG 7 and DRG 8 is the documentation of complications resulting from treatment or comorbidities that are present upon admission and may affect treatment. Examples of these secondary diagnoses that, in fact, many of the patients who commented reported having are postoperative nausea (which may prolong the patient's stay), diabetes, congestive heart failure, and emphysema. In fact, commenters stated that one of the advantages of radiosurgery over open surgery is that it can be performed on patients with comorbidities who could not otherwise tolerate surgery for their conditions.

We also note that DRGs 1 and 2 are not split on the basis of CCs; rather, they are assigned based on whether the case is or is not a trauma case. Therefore, hospitals might not have coded secondary diagnoses for radiosurgery cases. Nonetheless, over 40 percent of the reassigned cases in our analysis have CCs included on the bill. We believe this will remain true in FY 1998 and the percentage may even increase now that properly coding CCs will affect the amount of payment.

In response to the commenter concerned about the low payment for DRGs 7 and 8, we note that, based on the MedPAR file, the average payment for radiosurgery cases assigned to DRG

1 in FY 1996 was approximately \$16,000. If those cases had been assigned to DRGs 7 and 8 in that year, we estimate that the average payment would have been approximately \$14,000 and \$8,000, respectively. Thus, on average, payment for radiosurgery cases will be reduced by approximately 30 percent. This is consistent with commenter's assertion that this procedure costs approximately one-third less than an open cranial procedure.

*Comment:* Commenters suggested that instead of continuing to assign radiosurgery cases to DRG 1, it would be acceptable to assign these cases to their own DRG and assign a weight of approximately 3.0.

*Response:* As we have stated in several previous documents, including the June 2 proposed rule (in connection with the discussion of automatic implantable cardioverter defibrillators (62 FR 29906)), we are reluctant to create device-specific DRGs where the cost of the device dominates the charges. Creating a separate DRG for radiosurgery, where the costs of the device used to perform the procedure dominates the charges, would be a similar issue. With such a procedure-specific DRG, it would be relatively easy for hospitals and manufacturers of the equipment to raise the charges for the cases until they create a relative weight that consistently pays them more than their costs. We believe that the resource consumption associated with cases in DRGs 7 and 8 is similar to that required by radiosurgery cases. However, we will continue to monitor this technology to ensure that these DRGs remain appropriate assignments.

*Comment:* Several commenters believe that the relatively low charges of the radiosurgery cases result, in part, from incorrect use of procedure code 92.3. These commenters requested that we either wait until these issues are resolved to make a DRG change or that we adjust the cases in the MedPAR file based on industry data.

*Response:* It is often the case with a new code, whether diagnosis or procedure, that there is a period of time necessary to gain experience and correctly use the code. We did notice some coding discrepancies when we reviewed the radiosurgery cases. However, these discrepancies are not in the cases that are assigned to DRGs 7 and 8, but rather the cases that remain assigned to DRG 1. We note that coders appear to be including improperly the approach to the radiosurgery procedure, such as coding thalamotomy and pallidotomy separately in addition to the stereotactic radiosurgery code. In

addition, the coding of some cases has included codes that represent the result of the radiosurgery, that is, the destruction of the lesion of the brain. Again this is an improper coding practice. Both of these coding practices result in radiosurgery cases being assigned to DRG 1.

We will continue to monitor these cases to ensure that our decision to reassign radiosurgery to DRGs 7 and 8 remains appropriate. We will also work with the industry concerning the possibility of assigning separate ICD-9-CM codes to the different types of radiosurgery.

#### b. Sleep Apnea

In our August 30, 1996 final rule (61 FR 46168), we discussed our review of the DRG assignment of cases in which surgery is performed to correct obstructive sleep apnea (diagnosis code 780.57). When coded as the principal diagnosis, sleep apnea is assigned to DRGs 34 and 35 (Other Disorders of the Nervous System) in MDC 1.

The result of our review was to assign several surgical procedures used to correct sleep apnea to DRGs 7 and 8 (Peripheral and Cranial Nerve and Other Nervous System Procedures). These procedures involved repair of the palate or pharynx (procedure codes 27.69, 29.4, and 29.59). Previously, since none of these surgical procedures had been assigned to MDC 1, cases of sleep apnea treated with one of these procedures had been assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis) or DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis).

An associated procedure that is also used to treat sleep apnea is correction of cleft palate (procedure code 27.62). Currently, correction of cleft palate is assigned only to DRG 52 (Cleft Lip and Palate Repair) in MDC 3 (Diseases and Disorders of the Ear, Nose, Mouth, and Throat). Thus, when this procedure is performed for sleep apnea cases, the cases would be assigned to DRG 468. We proposed to add this surgical procedure to MDC 1. Like the palate and pharynx repair procedures that were addressed last year, these cases are not clinically similar to the other surgical DRGs in MDC 1; thus, we proposed to include them in DRGs 7 and 8.

*Comment:* We received three comments on this proposal. One commenter supported the change; another registered no objection but pointed out that the proposed rule stated procedure code 27.62 is currently assigned to DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis) when the principal diagnosis



is sleep apnea. The commenter noted that under the current DRG groupings, such a case would actually be assigned to DRG 468. The final commenter stated that if a patient is admitted for cleft palate repair, the principal diagnosis likely would be cleft palate (diagnosis code 749.xx) even if sleep apnea is also present, presumably resulting in assignment to DRG 52. This commenter suggested that if cleft palate repair is performed infrequently in conjunction with a principal diagnosis of obstructive sleep apnea, it would be unnecessary to reassign these cases to DRGs 7 and 8.

*Response:* In the proposed rule, we inadvertently stated that sleep apnea cases involving the correction of cleft palate currently would be assigned to DRG 477. The commenter is correct that such cases are currently assigned to DRG 468.

Although a patient admitted for cleft palate repair would more likely have a principal diagnosis of cleft palate than of sleep apnea, cases do occur in which obstructive sleep apnea is the documented reason for the surgery. Our rationale for the proposed change is based not on the frequency of the cases but on whether or not these cases are appropriately assigned to DRG 468, which by definition should encompass only cases involving *unrelated* operating room procedures. Because we believe that cleft palate repair is related to obstructive sleep apnea, it would be inappropriate to continue to assign these cases to DRG 468; the better policy is to assign the procedure to DRGs 7 and 8 in MDC 1. Therefore, we are adopting this change in this final rule.

### c. Genuculate Herpes Zoster

Genuculate herpes zoster (diagnosis code 053.11) is an acute viral disease characterized by inflammation of spinal ganglia and by a vesicular eruption along the area of distribution of a sensory nerve. In the August 30, 1996 final rule (61 FR 27447), we moved diagnosis codes 053.10 and 053.19 (herpes zoster with unspecified nervous system complication and other herpes zoster, respectively) from DRG 20 (Nervous System Infection Except Viral Meningitis) to DRGs 18 and 19 (Cranial and Peripheral Nerve Disorders). We considered moving diagnosis code 053.11 at that time, however, the higher average charges associated with genuculate herpes zoster and slightly higher length of stay led us to decide instead to leave 053.11 in DRG 20 and to reassess this decision in upcoming years.

For the proposed rule, we conducted an analysis of the cases assigned to DRG 20 using the FY 1996 MedPAR file. The

average standardized charges for these cases were approximately \$8,430, significantly lower than the average charges for the DRG of approximately \$21,180. The average length of stay for the genuculate herpes zoster cases, approximately 6 days, was also less than the average length of stay for DRG 20 of approximately 10 days. Based on these data, we proposed to reassign diagnosis code 053.11 to DRGs 18 and 19, which have average charges of approximately \$8,460 and \$5,460, respectively. The average length of stay for DRGs 18 and 19 was approximately 6 days and 4 days, respectively.

We received two comments supporting this change and we are including it in the final DRG changes.

### 3. MDC 5 (Diseases and Disorders of the Circulatory System)

#### a. Heart Assist Devices

In November 1995, we amended our general noncoverage decision concerning artificial hearts and related devices. Section 65-15 of the Medicare Coverage Issues manual was revised to allow coverage of the HeartMate Implantable Pneumatic Left Ventricular Assist System (HeartMate IP LVAS) in accordance with its Food and Drug Administration (FDA)-approved use as a temporary mechanical circulation support in nonreversible left ventricular failure as a bridge to cardiac transplant. In order to receive Medicare coverage, all of the following conditions must be met:

- The patient is listed as an approved heart transplant candidate by a Medicare-approved heart transplant center.

- The implantation of the system is done in a Medicare-approved heart transplant center. Written permission from the listing center is needed if the patient has the implantation done at another Medicare-approved center.

- The patient is on inotropes.
- The patient is on an intra-aortic balloon pump (if possible).

- The patient has left atrial pressure or pulmonary capillary wedge pressure  $\geq 20$  mm Hg with either—

- Systolic blood pressure  $\leq 80$  mm Hg; or

- Cardiac index of  $\leq 2.0$  l/min/m<sup>2</sup>.

A procedure code for implant of an implantable, pulsatile heart assist system (37.66), which includes the HeartMate IP LVAS, was created effective October 1, 1995. At that time, the procedure code was assigned to DRGs 110 and 111 (Major Cardiovascular Procedures). In the proposed rule, we presented our analysis of a full year of cases coded

with this procedure (FY 1996 MedPAR file, December update) to determine if this DRG assignment remained appropriate.

In the full (100 percent) FY 1996 MedPAR file, there were 51 cases of implant of an internal heart assist system (procedure code 37.66) in MDC 5. Of these 51 cases, 18 were assigned to DRG 110 and none to DRG 111. The other 33 cases were assigned to DRG 103 (Heart Transplant), DRG 104 (Cardiac Valve Procedures with Cardiac Cath), DRGs 106 and 107 (Coronary Bypass), and DRG 108 (Other Cardiothoracic Procedures). Of the 18 cases assigned to DRG 110, the average charge was about \$96,000 and the average length of stay was 22.5 days. The average charges for all cases assigned to DRG 110 was about \$36,500 and the average length of stay was 10.1 days.

Thus, the cases coded with procedure code 37.66 are much more resource-intensive than the other cases assigned to DRG 110. In reviewing the other surgical DRGs in MDC 5 for possible reassignment of this procedure, we identified two DRGs that contained cases clinically similar to implant of heart assist device cases: DRG 103 and DRG 108. For FY 1996, the average charge of cases in DRG 103 was approximately \$164,000 and the length of stay was 46 days. For DRG 108, these statistics were about \$54,000 and 12.1 days. Thus, the average charge for DRG 103 was approximately \$68,000 higher than the average charge of the heart assist device cases and the average charge for DRG 108 was approximately \$42,000 lower.

Because our general policy is to assign a procedure code to a DRG with clinically similar cases that is the best match in terms of resource use, we proposed to assign procedure code 37.66 to DRG 108.

*Comment:* We received two comments supporting this proposal. However, several other commenters believe that the only solution that would be appropriate is to assign procedure code 37.66 either to DRG 103 or to its own DRG. In support of this comment, they cite the very high resource utilization associated with the procedure. In addition, one commenter believed that failure to revise our proposal could limit Medicare beneficiaries' access to this procedure.

*Response:* As noted in the proposed rule, although reassignment of these cases to DRG 108 does not place them in a DRG with identical resource use, it is the best alternative we have at this time. As we discuss above in section II.B.2.a. of this preamble concerning radiosurgery, it has not been our



practice to create device-specific DRGs. Assignment of these cases to DRG 103 would be no more appropriate in terms of resource use than reassignment to DRG 108. In addition, we believe that only transplant cases should be assigned to that DRG. We will continue to monitor these cases in future years. We are also contemplating the feasibility of conducting a comprehensive review of the current surgical DRGs in MDC 5. We last did this effective for FY 1991. Because there have been so many changes in approach to heart surgery in the past few years as well as the development of new devices and techniques, we believe such a review could help realign these cases in terms of both clinical and resource use homogeneity.

With regard to the statement that failure to revise our proposal could result in denial of heart assist devices to Medicare beneficiaries, we note, as we have in many previous documents, that it is a violation of a hospital—s Medicare provider agreement to place restrictions on the number of Medicare beneficiaries it accepts for treatment unless it places the same restrictions on all other patients.

We also note that, effective May 5, 1997, the coverage instructions concerning heart assist devices were revised to delete the specific product names and the hemodynamic criteria (Transmittal No. 94; April 1997). As revised, section 65–15 of the Medicare Coverage Issues Manual allows coverage of a ventricular assist device used for support of blood circulation postcardiotomy if the device has received approval from the FDA for that purpose and the device is used according to FDA-approved labeling instructions or as a bridge to heart transplant if all of the following conditions are met:

- The device is used as a temporary mechanical circulatory support as a bridge to cardiac transplant.
- The patient is listed as an approved heart transplant candidate by a Medicare-approved heart transplant center.
- The implantation of the system is done in a Medicare-approved heart transplant center. If the patient is listed with another center, written permission is needed from that center.

#### *b. Automatic Implantable Cardioverter Defibrillators (AICD)*

For several years, we have received correspondence concerning the appropriate DRG assignment of procedures involving automatic implantable cardioverter defibrillators (AICDs). These cases are currently

assigned to DRG 116 (Other Permanent Cardiac Pacemaker Implant or AICD Generator or Lead Procedure), and are represented by the following procedure codes:

- 37.95 Implantation of automatic cardioverter/defibrillator lead(s) only
- 37.96 Implantation of automatic cardioverter/defibrillator pulse generator only
- 37.97 Replacement of automatic cardioverter/defibrillator lead(s) only
- 37.98 Replacement of automatic cardioverter/defibrillator pulse generator only

As explained in detail in the September 1, 1992 final rule (57 FR 39749), the clinical composition and relative weights of the surgical DRGs in MDC 5 do not offer a perfect match with the AICD cases. However, review of those DRGs in terms of clinical coherence and similar resource consumption led to the determination that DRG 116 was the best possible fit. In that document, we stated that we would continue to monitor these cases.

We last discussed this issue in the September 1, 1995 final rule (60 FR 45780). At that time, we concluded that, although the average charge for AICD cases was much higher than the average charge for DRG 116 overall, the AICD cases were clinically similar to the DRG 116 cases and should not be moved. In addition, a slight decrease in the average charge for the cases between the FY 1993 and FY 1994 MedPAR files led us to believe further reductions might be forthcoming since there were new AICD devices entering the market that might lead to increased price competition.

For the proposed rule, we reviewed the most current AICD cases as contained in the FY 1996 MedPAR file and found that the average standardized charge for AICD cases assigned to DRG 116 was \$28,777 compared to an average charge of \$21,330 for all cases in DRG 116. Because the average charge for AICD cases continued to be much higher than the average charge for all other DRG 116 cases, we proposed to move them to DRG 115 (Permanent Cardiac Pacemaker Implantation with AMI, Heart Failure or Shock). We also proposed to revise the title of DRG 115 to "Permanent Cardiac Pacemaker Implant with AMI, Heart Failure or Shock or AICD Lead or Generator Procedure."

We received several comments commending us on this decision and we are adopting it as final.

#### *c. Coronary Artery Stent*

Effective October 1, 1995, procedure code 36.06 (Insertion of coronary artery stent(s)) was introduced. As dictated by

our longstanding practice, we assigned this code to the same DRG category as its predecessor codes. Therefore, procedure code 36.06 was assigned to DRG 112 (Percutaneous Cardiovascular Procedures), as insertion of a stent is usually performed in conjunction with percutaneous transluminal coronary angioplasty (PTCA).

We discussed this assignment and public comments we received in both the September 1, 1995 final rule (60 FR 45785) and the August 30, 1996 final rule (61 FR 46171). We stated that we would review the stent cases as soon as the FY 1996 MedPAR file was available, as these would be the first Medicare data available for these cases.

As discussed in the proposed rule, our analysis of the FY 1996 MedPAR data on coronary stent implantation in Medicare beneficiaries revealed the following:

- The difference between the average length of stay for the stent cases and the nonstent cases was 0.19 days (4.39 days versus 4.20 days).
- Charges for patients receiving a stent were approximately \$23,650, while charges for patients without stent implant were approximately \$17,480, for a difference of \$6,170.
- Of those beneficiaries who had a PTCA procedure in FY 1996, approximately 34 percent received a stent.

Based on the significant variation in hospital charges between stent and nonstent cases in DRG 112, we proposed to move these cases out of that DRG. Although the coronary artery stent cases are not clinically similar to the pacemaker cases in DRG 116, the resource consumption of those cases is very similar. Therefore, absent any other appropriate DRG, we proposed to add to DRG 116 those cases including procedure codes for PTCA in combination with insertion of coronary stent. Specifically, we proposed to move into DRG 116 the following procedure codes when performed in conjunction with procedure code 36.06:

- 35.96 Percutaneous valvuloplasty
- 36.01 Single vessel percutaneous transluminal coronary angioplasty [PTCA] or coronary atherectomy without mention of thrombolytic agent
- 36.02 Single vessel percutaneous transluminal coronary angioplasty [PTCA] or coronary atherectomy with mention of thrombolytic agent
- 36.05 Multiple vessel percutaneous transluminal coronary angioplasty [PTCA] or coronary atherectomy performed during the same operation, with or without mention of thrombolytic agent

36.09 Other removal of coronary artery obstruction

37.34 Catheter ablation of lesion or tissues of the heart

We also proposed to change the title of DRG 116 to "Other Permanent Cardiac Pacemaker Implant or PTCA with Coronary Artery Stent Implant."

*Comment:* We received many comments in support of this move. Commenters cited increased payment for use of coronary stenting in appropriate patients as a rational response to an economic dilemma. One commenter requested that consideration be given to increased payment for the cost of the stents themselves within DRG 116 for those cases in which multiple stents are implanted in the same operative episode.

*Response:* We appreciate the positive responses generated by this proposal. With regard to the request for modification of DRG 116 to take into account the use of more than one stent per patient, we would remind the commenter that one of the parameters of the prospective payment system is predetermined, identical payments for each discharge in a DRG. To arbitrarily begin to increase payment based on the number of stents used in a procedure would undermine the system. We will continue to monitor the stent cases and the assignment to DRG 116. If PTCA cases with stent become a higher percentage of the PTCA cases or the average charge for stent cases falls, we may reconsider this assignment.

*Comment:* There were several commenters who, while supporting the proposal to increase increasing stent payment, also chided us for our lack of foresight in neglecting to consider new drug therapies in conjunction with PTCA. The pharmaceutical referenced in these comments is a category of drugs called glycoprotein (GP) IIb/IIIa inhibitors, which act to reduce platelet aggregation, thereby reducing death rate, recurrent heart attack, and further surgery.

Commenters suggested that HCFA take immediate steps to establish a procedure code describing infusion of GPIIb/IIIa therapy. They further suggested that if the agency's required lead time for revising an existing ICD-9-CM code, or creating a new code for platelet inhibitor therapy, precluded a new code from being effective this October 1, then HCFA should create a temporary code that hospitals could use until a new ICD-9-CM code could become effective. It was suggested that such a temporary code would allow the reclassification of angioplasty with GPIIb/IIIa usage into DRG 116 to be effective October 1, 1997.

*Response:* We appreciate the suggestion that the category of GPIIb/IIIa platelet inhibitor drugs be uniquely identified in the ICD-9-CM coding system, but would also note that a write-in campaign during a proposed rule comment period does not permit us to respond to this request in a responsible manner. To quickly produce a temporary code would be the equivalent of producing a permanent code, but would not include due process in order to make it a meaningful addition to the ICD-9-CM coding system.

We would point out that, effective October 1, 1986, code 36.04 (intracoronary artery thrombolytic infusion) was added to the procedure coding system based on a proposal made by a major pharmaceutical company. As we rely heavily on information from the public to make the ICD-9-CM coding system responsive to the coding needs of the hospital industry, we anticipated that the guidance, language, and suggestions received from this pharmaceutical company were current and timely. In the interim, there has been no public protest or demand for an ICD-9-CM platelet inhibitor therapy code that would better meet the needs of the industry.

In retrospect, we regret that we integrated this code as it does not appear to have been an appropriate addition to the coding system. We will work with the drug and hospital industry representatives to provide us with more insight and better language as we bring the topic of platelet inhibitors before the ICD-9-CM Coordination and Maintenance Committee on December 4, 1997. We would anticipate, therefore, having an appropriate code describing GPIIb/IIIa drug therapy early next year. This code would be effective for discharges on or after October 1, 1998.

#### *d. Circulatory Disorders (DRGs 121 and 122)*

In response to a comment on the May 31, 1996 proposed rule, we stated in the August 30, 1996 final rule (61 FR 46172) that we would conduct a comprehensive review of cases currently assigned to DRG 121 (Circulatory Disorders with Acute Myocardial Infarction (AMI) and Cardiovascular Complications, Discharged Alive) and DRG 122 (Circulatory Disorders with AMI without Cardiovascular Complications, Discharged Alive) to determine whether changes were needed to the list of complicating conditions that can result in assignment to DRG 121. Accordingly, for the FY 1998 proposed rule, we analyzed the cases in the FY 1996 MedPAR file that were assigned to

either DRG 121 or 122. Through a variety of statistical analyses of length of stay and standardized charge data, we assessed the impact on resource use of all coded secondary diagnoses.

Our analysis of these secondary diagnosis codes revealed many cases now assigned to DRG 122 in which certain secondary diagnoses are associated with resource use comparable to cases assigned to DRG 121. Although many of these cases involve secondary diagnoses that are not strictly cardiovascular in nature, such as diagnosis code category 482 (other bacterial pneumonia), we now believe that it is appropriate to expand DRG 121 to include such major complications when they are represented in significant volume among the cases in the DRG. Continuing to limit DRG 121 only to cases involving the existing list of cardiovascular complications would contribute to large variations in the charges and lengths of stay for cases in DRG 122.

Therefore, we proposed to change the title of DRG 121 to "Circulatory Disorders with AMI and Major Complications, Discharged Alive," and to add the following diagnosis codes to the list of complications that would produce assignment to DRG 121 when present in conjunction with the existing list of AMI diagnoses:

- 398.91 Rheumatic heart failure
- 416.0 Primary pulmonary hypertension
- 430 Subarachnoid hemorrhage
- 431 Intracerebral hemorrhage
- 432.0 Nontraumatic extradural hemorrhage
- 432.1 Subdural hemorrhage
- 432.9 Unspecified intracranial hemorrhage
- 433.01 Occluded basilar artery with cerebral infarction
- 433.11 Occluded carotid artery with cerebral infarction
- 433.21 Occluded vertebral artery with cerebral infarction
- 433.31 Occluded multiple and bilateral artery with cerebral infarction
- 433.81 Occluded specified precerebral artery with cerebral infarction
- 433.91 Occluded precerebral artery NOS with cerebral infarction
- 434.00 Cerebral thrombosis
- 434.01 Cerebral thrombosis with cerebral infarction
- 434.10 Cerebral embolism
- 434.11 Cerebral embolism with cerebral infarction
- 434.90 Cerebral artery occlusion
- 434.91 Cerebral artery occlusion with cerebral infarction
- 436 Acute, but ill-defined, cerebrovascular disease

- 481 Pneumococcal pneumonia
- 482.xx Other bacterial pneumonia (all 4th and 5th digits)
- 483.x Pneumonia due to other specified organism (all 4th digits)
- 484.x Pneumonia in infectious diseases classified elsewhere (all 4th digits)
- 485 Bronchopneumonia, organism unspecified
- 486 Pneumonia, organism unspecified
- 487.0 Influenza with pneumonia
- 507.x Pneumonitis due to solids and liquids (all 4th digits)
- 518.0 Pulmonary collapse
- 518.5 Pulmonary insufficiency following trauma and surgery
- 518.81 Respiratory failure
- 707.0 Decubitus ulcer
- 996.62 Infection and inflammatory reaction due to other vascular device, implant, and graft
- 996.72 Other complications due to other cardiac device, implant, and graft

We note that, in conjunction with the proposed changes, we also proposed to revise the title of DRG 122 to read "Circulatory Disorders with AMI without Major Complications, Discharged Alive."

We received four comments fully supporting these proposed changes and are including them in the final DRG changes.

4. MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue)

a. Introduction

As discussed in detail below, we proposed to create several new DRGs in MDC 8 effective for discharges on or after October 1, 1997. Specifically, we proposed to replace current DRGs 214 and 215 (Back and Neck Procedures) with the following new DRGs:

- DRG 496 Combined Anterior/Posterior Spinal Fusion
- DRG 497 Spinal Fusion with CC
- DRG 498 Spinal Fusion without CC
- DRG 499 Back and Neck Procedures Except Spinal Fusion with CC
- DRG 500 Back and Neck Procedures Except Spinal Fusion without CC

In addition, we proposed to replace existing DRGs 221 and 222 (Knee Procedures) with new DRGs 501 and 502 (Knee Procedures with Principal Diagnosis of Infection) and DRG 503 (Knee Procedures without Principal Diagnosis of Infection).

b. Back and Neck Procedures

Currently, hospital inpatient cases involving back and neck procedures generally are assigned to DRGs 214 and 215 (assuming a principal diagnosis that

groups the case to MDC 8). We have received correspondence indicating that within these DRGs, cases involving spinal fusion procedures represent a distinctly more complex and resource-intensive subset, and that payment under DRGs 214 and 215 is inadequate to cover the costs of treating patients that require spinal fusion. Therefore, for the proposed rule we conducted an analysis of the cases assigned to DRGs 214 and 215 using the FY 1996 MedPAR file.

Within our sample, cases involving fusion procedures (procedure codes 81.00–81.09) constituted approximately 35 percent of cases in DRG 214 (Back and Neck Procedures with CC) and 23 percent of those in DRG 215 (Back and Neck Procedures without CC). In DRG 214, the average standardized charges for the fusion cases were nearly double the charges of the nonfusion cases (approximately \$25,300 versus \$12,900). There were also significant differences in charges in DRG 215—\$14,400 for fusion cases and \$8,500 for nonfusion cases. Lengths of stay for fusion cases were also longer, although not dramatically so—7.1 days for fusion cases versus 5.4 days for other cases in DRG 214, and 3.8 days versus 3.1 days in DRG 215. In view of the volume of cases involved and the clear differences in resource use, we concluded that it would be appropriate to create additional DRGs to separate spinal fusion cases from the other back and neck procedures.

Next, we expanded our analysis to determine whether it would be appropriate to subdivide the spinal fusion cases according to whether both anterior and posterior spinal fusion were performed. This combination of procedures, which involves fusing both the front and rear of the vertebrae, typically is performed on patients who have had previous fusions that have not bonded effectively or who have several vertebrae that need extensive fusion on both sides of the spine. As the table below illustrates, the average charges and lengths of stay for the cases involving both anterior and posterior spinal fusion were markedly greater than for the other spinal fusion cases in either DRG 214 or 215.

Type of case	Avg. charges	Average length of stay (in days)
Anterior and posterior spinal fusion .....	\$51,200	12.3
DRG 214—Other spinal fusion .....	24,300	6.9

Type of case	Avg. charges	Average length of stay (in days)
DRG 215—Other spinal fusion .....	14,300	3.8

Even though the cases in which both anterior and posterior spinal fusions were performed represented only about 3 percent of all spinal fusion cases in our sample, we concluded that the magnitude of the differences in both average charges and lengths of stay warranted a further subdivision of the spinal fusion cases.

Based on this analysis, we proposed to replace the two existing DRGs for back and neck procedures with five new DRGs. For ease of reference and classification, current DRGs 214 and 215 would be made invalid and we would establish new DRGs 496 through 500 to contain all the cases that are currently grouped in DRGs 214 and 215. We believe that the division of these cases into the new DRGs would improve clinical coherence and provide for more appropriate payment for both spinal fusion cases and cases involving other back and neck procedures.

Discharges would be assigned to each of the five proposed DRGs as follows: DRG 496 Combined Anterior/Posterior Spinal Fusion

DRG 496 would include any combination of procedure codes as follows:

One or more of the following procedure codes—

- 81.02 Other cervical fusion anterior
- 81.04 Dorsal/dorsulum fusion anterior
- 81.06 Lumbar/lumbosac fusion anterior and

One or more of the following procedure codes—

- 81.03 Other cervical fusion posterior
- 81.05 Dorsal/dorsulum fusion posterior
- 81.08 Lumbar/lumbosac fusion posterior

DRGs 497 and 498 Spinal Fusion with and without CC

DRGs 497 and 498 would include any of the following procedure codes, as long as any combination of procedure codes would not otherwise result in assignment to proposed DRG 496—

- 81.00 Spinal fusion NOS
- 81.01 Atlas-axis fusion
- 81.02 Other cervical fusion anterior
- 81.03 Other cervical fusion posterior
- 81.04 Dorsal/dorsulum fusion anterior
- 81.05 Dorsal/dorsulum fusion posterior
- 81.06 Lumbar/lumbosac fusion anterior

81.07 Lumbar/lumbosac fusion lateral  
 81.08 Lumbar/lumbosac fusion posterior  
 81.09 Refusion of spine  
 DRGs 499 and 500 Back and Neck  
 Procedures Except Spinal Fusion with and without CC.  
 All procedure codes in current DRGs 214 and 215 other than procedure codes 81.00 through 81.09 would be assigned to DRGs 499 and 500.  
 We received five comments in support of this proposal. We are adopting the proposed changes as final.

*c. Knee Procedures*

On several occasions, most recently in our September 1, 1993 final rule (58 FR 46286), we have examined cases in DRG 209 (Major Joint and Limb Reattachment of the Lower Extremity) to see whether hip replacement cases that involve infections or other complications should be classified separately from the less complicated cases in DRG 209. We have found that the average charges and lengths of stay for cases with principal diagnoses of infection or complications were only slightly higher than for all cases in DRG 209. When we limited our analysis to cases with a principal diagnosis of infection, we found that the cases had significantly higher charges than for DRG 209 overall, but in view of the small volume of cases (less than 0.5 percent of the total DRG 209 cases), we decided that changes in the classification of cases in DRG 209 were not warranted.

In the proposed rule, at the request of several correspondents, we revisited the issue of whether DRG refinements are needed to address differences in resource use associated with orthopedic

procedures where deep infections are present. To evaluate this issue, we analyzed various classifications of cases in MDC 8. We began by identifying all cases with a principal diagnosis indicating deep orthopedic infection of the lower extremities or spine. The diagnosis codes used were as follows:  
 711.05 Pyogenic arthritis pelvic region and thigh  
 711.06 Pyogenic arthritis lower leg  
 711.07 Pyogenic arthritis ankle and foot  
 711.08 Pyogenic arthritis other specified sites  
 730.05 Acute osteomyelitis pelvic region and thigh  
 730.06 Acute osteomyelitis lower leg  
 730.07 Acute osteomyelitis ankle and foot  
 730.08 Acute osteomyelitis other specified sites  
 730.15 Chronic osteomyelitis pelvic region and thigh  
 730.16 Chronic osteomyelitis lower leg  
 730.17 Chronic osteomyelitis ankle and foot  
 730.18 Chronic osteomyelitis other specified sites  
 730.25 Unspecified osteomyelitis pelvic region and thigh  
 730.26 Unspecified osteomyelitis lower leg  
 730.27 Unspecified osteomyelitis ankle and foot  
 730.28 Unspecified osteomyelitis other specified sites  
 996.66 Infection and inflammatory reaction due to internal joint prosthesis  
 996.67 Infection and inflammatory reaction due to other internal orthopedic device

For each of the DRGs into which these cases are grouped, we then compared the average standardized charges and average length of stay for cases with any of the infection diagnoses listed above with other cases in the DRGs. Unlike in the past, we did not limit our analysis to DRG 209 but examined all DRGs within MDC 8 that focus on surgical procedures of the lower extremities or spine, including DRGs 209; 210, 211, and 212 (Hip and Femur Procedures Except Major Joint); 214 and 215 (Back and Neck Procedures); and 221 and 222 (Knee Procedures).

For the most part, we again found that these cases represented only a very small proportion of the total cases in the DRGs in question. In DRG 209, for example, cases with one of the above diagnosis codes as the principal diagnosis continued to constitute less than 1 percent of all cases in the DRG. Moreover, although the average standardized charges for the deep infection cases (\$24,834) were approximately 21 percent higher than the charges for the remaining cases in the DRG (\$19,297), the differences are well within one standard deviation of the average charge. Given the small volume of cases, we again conclude that changes in DRG 209 are not justified.

The only DRGs that we examined in which cases with a principal diagnosis of deep infection represented more than 1 percent of total cases in our sample were DRGs 221 and 222. As illustrated in the chart below, there are significant differences in both average charges and average length of stay between infection cases in these DRGs and other cases in the DRGs.

Type of case	Number of cases <sup>1</sup>	Average charges (in dollars)	Average length of stay (in days)
DRG 221 (all cases) .....	451	16,529	7.2
DRG 221 with infection .....	152	23,174	11.4
DRG 221 w/out infection .....	299	13,151	5.1
DRG 222 (all cases) .....	340	9,149	3.9
DRG 222 with infection .....	37	14,452	7.0
DRG 222 w/out infection .....	303	8,502	3.5

<sup>1</sup> Based on the 10-percent random sample of the FY 1996 MedPAR file.

Thus, more than one-third of cases in DRG 221 had a principal diagnosis of deep infection, the average length of stay for these cases was more than twice as long as for the remaining cases, and average charges were approximately 76 percent higher. Similarly, for the 12 percent of total DRG 222 cases with infection as the principal diagnosis, the average length of stay was double that for other cases, with average charges

approximately 70 percent higher. Given the proportional volume of cases involved, and the significant differences in both average charges and length of stay for infection cases in these DRGs, we concluded that DRG refinements are appropriate.

Based on this analysis, we proposed to replace the two existing DRGs for knee procedures with three new DRGs. Again, for ease of reference and

classification, current DRGs 221 and 222 would be made invalid and we would establish new DRGs 501 through 503 to contain all the cases that are currently grouped in DRGs 221 and 222.

Discharges would be assigned to each of the three proposed DRGs as follows:

DRG 501 Knee Procedures with Principal Diagnosis of Infection with CC

DRG 502 Knee Procedures with Principal Diagnosis of Infection without CC

DRG 501 and 502 would include any of the operating room procedures now assigned to DRGs 221 and 222, when the principal diagnosis is any of the following:

- 711.06 Pyogenic arthritis lower leg
- 730.06 Acute osteomyelitis lower leg
- 730.16 Chronic osteomyelitis lower leg
- 730.26 Unspecified osteomyelitis lower leg
- 996.66 Infection and inflammatory reaction due to internal joint prosthesis
- 996.67 Infection and inflammatory reaction due to other internal orthopedic device

DRG 503 Knee Procedures without Principal Diagnosis of Infection

DRG 503 would include any of the operating room procedures now assigned to DRGs 221 and 222 when the principal diagnosis is not listed above under DRGs 501 and 502.

*Comment:* We received four comments in support of this proposed change. One of the commenters suggested that we also consider splitting proposed DRG 503 into two DRGs to distinguish between cases with and without CCs.

*Response:* As shown in the table above, based on the FY 1996 MedPAR 10 percent sample, the average charges associated with cases in new DRG 503 are \$13,151 for cases with CC and \$8,502 for cases without CC. The average lengths of stay for DRG 503 cases with and without CC are 5.1 and 3.5 days, respectively. We note that the mean standardized charges for this DRG are approximately \$10,100. Given the similar lengths of stay for these two sets of cases and the relatively small magnitude of difference in average charges (much less than one standard deviation), we do not believe that further division of the new DRG is warranted. Thus, we are adopting the new proposed DRGs for Knee Procedures as final.

5. MDC 11 (Diseases and Disorders of the Kidney and Urinary Tract)

Among the ICD-9-CM coding changes that took effect October 1, 1995 was the addition of new procedure code 59.72 (injection of implant into urethra or bladder neck). Although this procedure is not routinely performed in an operating room, the code was previously included within codes classified as operating room procedures. Thus, as is our practice, we assigned this procedure code to the surgical DRGs to which the procedure had formerly been assigned

as a non-OR procedure that affects DRG assignment. Therefore, procedure code 59.72 was assigned to DRGs 308 and 309 (Minor Bladder Procedures) and DRG 356 (Female Reproductive System Reconstructive Procedures).

In the June 2, 1995 proposed rule (60 FR 29209), we stated that we would reevaluate the DRG classification of this code when data on its use became available for analysis in 2 years, that is, in preparation for the FY 1998 rulemaking process. We indicated that possible changes would include moving the procedure code to a different surgical DRG or classifying the code as a non-OR procedure that did not affect DRG assignment.

In the FY 1996 MedPAR file, there were several cases with procedure code 59.72 assigned to DRGs 308 and 309. The chart below compares average charges and length of stay for cases in these DRGs with and without the injection procedure.

Type of case	Number of cases	Average charge (in dollars)	Average length of stay (in days)
DRG 308 with procedure 59.72	5	6,978	4.2
DRG 308 w/ out procedure 59.72	910	13,254	6.5
DRG 309 with procedure 59.72	7	5,879	1.4
DRG 309 w/ out procedure 59.72	311	7,888	2.7

As the table illustrates, cases in which injection of implant into the urethra or bladder neck is the only relevant procedure for DRG assignment purposes constitute a very small minority of the cases in DRGs 308 and 309. However, these cases have lower average charges and length of stay than other cases in the DRGs. Thus, we proposed to reclassify the procedure code as a non-OR procedure that does not affect DRG assignment.

Under this proposal, cases currently assigned to DRGs 308 and 309 because of the performance of an implant injection would be reassigned to medical DRGs in MDC 11, primarily either DRGs 320, 321, and 322 (Kidney and Urinary Tract Infections) or DRGs 331 and 332 (Other Kidney and Urinary Tract Diagnoses). Both of these sets of DRGs have average charges closely in line with the charges for cases in which procedure 59.72 now determines DRG assignment.

This change would also affect DRG 356 in MDC 13 (Diseases and Disorders

of the Female Reproductive System). Within the 10 percent sample used for this analysis, only 2 of the 2,689 cases in DRG 356 were assigned based on the presence of procedure code 59.72, and as in DRGs 308 and 309, both the average charges and length of stay were lower than for other cases.

We received two comments in support of this proposal and are including it in the final DRG changes.

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 surgical 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, 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 procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the relative weight 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 diagnoses 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 this 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 9 (Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast), MDC 10 (Endocrine, Nutritional and Metabolic Diseases and Disorders), and MDC 12 (Diseases and Disorders of the Male Reproductive System) as follows:

- In the Pre-MDC DRGs, we would reorder Bone Marrow Transplant (DRG 481) above Liver Transplant (DRG 480).
- In MDC 9, we would reorder Perianal and Pilonidal Procedures (DRG 267) above Breast Procedures (DRGs 257–262).
- In MDC 10, we would reorder OR Procedures for Obesity (DRG 288) above Skin Graft and Wound Debridement (DRG 287).
- In MDC 12, we would reorder Circumcision (DRGs 342 and 343) above Transurethral Prostatectomy (DRGs 336 and 337).

Based on a test of the proposed changes using the most recent MedPAR file and the revised GROUPER software, we found that the proposed change to the Pre-MDC DRGs, Bone Marrow Transplant (DRG 481) above Liver Transplant (DRG 480) is not supported and this change will not be incorporated in this final rule. The Pre-MDC DRGs hierarchy will remain the same as in FY 1997.

We received one comment in support of our surgical hierarchy proposals. We also received one comment that disagreed, as discussed below.

*Comment:* One commenter was opposed to reordering Circumcision (DRGs 342 and 343) above Transurethral Prostatectomy (DRGs 336 and 337). The commenter stated that circumcision (procedure code 64.0) is the only procedure in DRGs 342 and 343, and the commenter believes that this procedure is not as resource intensive or complex as the procedures assigned to DRGs 336 and 337. The commenter suggested the more appropriate assignment for a case involving both a transurethral prostatectomy and a circumcision would be DRGs 336 and 337.

*Response:* Based on the Medicare cases, the average standardized charges for cases assigned to DRGs 342 and 343 is almost \$7,000, which is higher than the average standardized charges of cases assigned to DRGs 336 and 337, approximately \$6,500. Thus, if a case involves both a circumcision and a prostatectomy, we believe it should be assigned to the higher-weighted DRG category. Although circumcision can be a relatively simple surgery for infants,

when it is performed for Medicare beneficiaries, it appears to be a more complicated procedure and might involve the use of significant resources.

The other proposed changes to the surgical hierarchy 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

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 CCs already on the 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 coding of CCs for closely related conditions, 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 of a CC. (See the September 30, 1988 final rule for the revision made for the discharges occurring in FY 1989 (53 FR 38485); the September 1, 1989 final rule for the FY 1990 revision (54 FR 36552); the September 4, 1990 final rule for the FY 1991 revision (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 revision (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); the September 1, 1995 final rule for the FY 1996 revisions (60 FR 45782); and the August 30, 1996 final rule for the FY 1997 revisions (61 FR 46171)).

We proposed 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, 1997, as well as the proposed CC changes described above. (See section II.B.9, below, for a discussion of ICD-9-CM changes.) These changes were proposed in accordance with the principles established when we created the CC Exclusions List in 1987. We received one comment, which supported our changes to the CC lists.

The changes discussed above have been added to Table 6E, Additions to the CC Exclusions List, in section V of the Addendum to this final rule.

Tables 6E and 6F 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, 1997. 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 6E—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 1997,

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 6F—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 1997 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 from 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, 1996, and 1997) and those in Tables 6E and 6F 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, 1997.

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 14.0, is available for \$195.00, which includes \$15.00 for shipping and handling. Version 15.0 of this manual, which will include the final FY 1998 DRG changes, will be available in October 1997 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 Excision 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, September 1, 1995, and August 30, 1996, 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, 60 FR 45783, and 61 FR 46173, 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. Based on this year's review, we proposed to move procedure code 54.92 (Removal of foreign body from peritoneal cavity) to MDC 11 and assign it to DRG 315 (Other Kidney and Urinary Tract OR Procedures). We note that, under the current DRGs, when procedure code 54.92 is coded in addition to a principal diagnosis code of 868.14 (injury with open wound into retroperitoneum), the case is assigned to DRG 468.

*Comment:* We received two comments on this proposed change. One commenter fully supported the proposal. The other commenter noted that moving procedure code 54.92 from DRG 468 to DRG 315 in MDC 11 would result in a 43 percent reduction in the DRG relative weight associated with the case. Although the change makes sense clinically, the commenter questioned the financial impact involved.

*Response:* The purpose of DRG 468 is to accommodate cases in which an OR procedure that is unrelated to the principal diagnosis is performed. As the commenter acknowledges, the clinical relationship between procedure code 54.92 (Removal of foreign body from peritoneal cavity) and a principal diagnosis code of 868.14 (injury with open wound into retroperitoneum) is clear. We note that this change would have resulted in the reassignment of only one case in FY 1996; therefore, the financial impact involved is minimal. We are adopting this change as proposed.

#### *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.

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 two procedures—other surgical occlusion of abdominal arteries (procedure code 38.86) and other arthroscopy of knee (procedure code 80.16)—that are significantly less resource intensive than the other procedures assigned to DRG 468.

Therefore, we proposed to move procedure codes 38.86 and 80.16 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.

*Comment:* We received two comments on this proposal. Both commenters supported moving procedure code 80.16, but one of the commenters believes that procedure code 38.86 represents cases that are very complicated and require a high level of resources.

*Response:* Our review of the average resource use associated with DRG 468 cases with procedure code 38.86 support this change. The average charge associated with this case is approximately \$13,150. The average charges for cases in DRG 468 and 477 are approximately \$30,000 and \$14,300, respectively. Thus, moving procedure code 38.86 to DRG 477 appears appropriate in terms of resource use. We will review the cases in the FY 1997 MedPAR file when it becomes available to ensure that this remains true for those cases.

#### 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 classification 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 fields, 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 June 6 and December 5 and 6, 1996, and finalized the coding changes after consideration of comments received at the meetings and in writing within 60 days following the December 1996 meeting. The initial meeting for consideration of coding issues for implementation in FY 1999 was held on June 6, 1997. The minutes of the meeting can be obtained from the HCFA Home Page @ <http://www.hcfa.gov.pubaffr.htm>. Paper copies of these minutes will no longer be available and the mailing list will be discontinued. 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](mailto: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](mailto:pbrooks@hcfa.gov).

The ICD-9-CM code changes that have been approved will become effective October 1, 1997. 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, other codes, or have been deleted are in Table 6C (Invalid Diagnosis Codes). These invalid diagnosis codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 1997. The corresponding new or expanded diagnosis codes are included in Table 6A. Revisions to diagnosis code titles are in Table 6D (Revised Diagnosis Code Titles), which also includes the DRG assignments for these revised codes. For FY 1998, there are no procedure codes that have been replaced or deleted nor are there any revisions to procedure code titles. We received three comments concerning our assignment of new ICD-9-CM codes.

*Comment:* One commenter wrote in support of the creation of a new diagnosis code for pyoderma gangrenosum (code 686.01) in order to distinguish this condition from infectious pyoderma. The commenter stated that pyoderma gangrenosum is not infectious, but instead is a manifestation of other disease such as ulcerative colitis or Crohn's disease. Pyoderma gangrenosum is characterized by ulcers with extensive necrosis around the edges and are generally found on the lower extremities. Therefore, the commenter believes that this code should be assigned to DRG 271 (Skin Ulcers) rather than DRGs 277, 278, and 279 (Cellulitis).

*Response:* 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, we proposed to assign diagnosis code 686.01 to DRGs 277, 278, and 279, the DRGs to which its predecessor code, 686.0 (pyoderma), had been assigned. The resource use and other data associated with this diagnosis code will be available in the FY 1998 MedPAR file, which will be used for analysis as part of the FY 2000 DRG changes. We will evaluate the DRG assignment of code 686.01 at that time.

*Comment:* In the proposed rule, we announced a new diagnosis code (031.2) for disease due to disseminated mycobacterium avium-intracellulare complex (DMAC). We proposed that this code be classified to DRG 423 (Other Infectious and Parasitic Disease

Diagnoses) in MDC 18 (Infectious and Parasitic Diseases, Systemic or Unspecified Sites) as well as be designated as an HIV major related condition in DRG 489 (HIV with Major Related Condition). A commenter disagreed with our decision to classify this code as a non-CC; that is, diagnosis code 031.2 would not be included on the CC list. The commenter believes that when DMAC is present as a secondary diagnosis, it would be considered a substantial complication or comorbidity.

*Response:* DMAC is the most common disseminated bacterial infection in patients with advanced acquired immunodeficiency syndrome (AIDS). As such, cases coded with 031.2 will also be coded with a principal or secondary diagnosis of 042, Human immunodeficiency virus (HIV) disease and will be assigned to DRG 489. DRG 489 is not divided based on the presence or absence of CCs. We believe that the vast majority of patients with DMAC, if not all, will be assigned to this DRG, thus negating the need to add this disease to the CC list. As noted above, it is our practice to assign new codes to the same category as their predecessor code was assigned. We note that cases coded 031.2 would have been coded to 031.8 (other specified mycobacterial diseases), which is not a CC. We will review the assignment of cases in which DMAC is coded as a secondary condition when the FY 1998 MedPAR file becomes available and re-evaluate our decision.

*Comment:* Commenters noted what they believed to be a typographical error concerning new code V42.83 (organ or tissue replaced by transplant, pancreas). In Table 6A, New Diagnosis Codes, this code was recorded as being assigned to MDC 7, DRG 467 (Other Factors Influencing Health Status). Since DRG 467 is assigned to MDC 23, the commenters assumed this was a typographical error.

*Response:* The commenters are correct; diagnosis code V42.83 is assigned to DRG 204 (Disorders of Pancreas Except Malignancy) in MDC 7.

#### 10. Other Issues

##### a. MDC 22 (Burns)

Under the current DRG system, burn cases generally are assigned to one of six DRGs in MDC 22 (Burns). These DRGs—DRGs 456 through 460 and 472—have been in place without change since 1986. Recently, we have received several letters from representatives of facilities that specialize in treating burn cases asserting that the existing DRGs do not adequately capture the variation in

resource use associated with different types of burn cases. In the proposed rule (62 FR 29912), we discussed the concerns of these correspondents and solicited public comments on whether changes in these DRGs can increase their ability to explain the variation in resource use among burn cases.

We received approximately 15 public comments on this issue, all of which supported our efforts to identify DRG groupings that would reflect more homogeneous resource use. These comments included a proposal for restructuring the DRG classifications in MDC 22 that has been endorsed by the American Burn Association. Several commenters also suggested the need for a special facility category to make possible payment differences for designated burn care facilities. As noted in the proposed rule, however, any suggestions involving payment adjustments for hospitals designated as burn centers would require legislative action. We intend to conduct a full review of the comments and proposals we have received as part of the FY 1999 DRG analysis agenda. We will discuss our findings and, if appropriate, propose modifications to MDC 22 in the FY 1999 proposed rule.

##### b. Marfan Syndrome (DRG 390)

We are making a minor DRG classification change for FY 1998 that we inadvertently did not include in the June 2 proposed rule. Based on correspondence we have received, we reviewed the assignment of diagnosis code 759.82 (Marfan syndrome) to DRG 390 (Neonate with Other Significant Problems) in MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period). While Marfan syndrome is a congenital disorder, cardiovascular abnormalities associated with the disorder are most likely to manifest in adults. Because the current classification system often results in adult patients being classified to the MDC for newborns, we agree that, from a clinical coherence standpoint, it is appropriate that these cases be reclassified. Therefore, we are reassigning code 759.82 from DRG 390 into MDC 5, DRGs 135, 136, and 137 (Cardiac Congenital & Valvular Disorders). There were no cases with a principal diagnosis code of 759.82 in the FY 1996 MedPAR file.

##### C. Recalibration of DRG Weights

We proposed to use the same basic methodology for the FY 1998 recalibration as we did for FY 1997. (See the August 30, 1996 final rule (61 FR 46176).) That is, we would recalibrate the weights based on charge data for

Medicare discharges. However, we would use the most current charge information available, the FY 1996 MedPAR file, rather than the FY 1995 MedPAR file. The MedPAR file is based on fully-coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The final recalibrated DRG relative weights are constructed from FY 1996 MedPAR data, based on bills received by HCFA through June 1997, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1996 MedPAR file includes data for approximately 11.2 million Medicare discharges.

The methodology used to calculate the DRG relative weights from the FY 1996 MedPAR file is as follows:

- All the claims were regrouped using the 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 was used in computing the current weights. That is, 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 costs 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 1998. For this final rule, using the FY 1996 MedPAR data set, there are 34 DRGs that contain fewer than 10 cases. We computed the weights for the 34 low-volume DRGs by adjusting the FY 1997 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs.

The weights developed according to the methodology described above, using the proposed 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.a 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.

Although we received no comments on the recalibration of the DRG weights, we did receive one comment that relates to that process.

*Comment:* One commenter was concerned about the reduction in the proposed FY 1998 relative weight for DRG 480 (Liver Transplant), compared to the FY 1997 weight. The commenter noted that Table 5 of the proposed rule (62 FR 29990) indicated approximately an 8-day reduction in length of stay from FY 1995 to FY 1996 and asked that we review the MedPAR data for this DRG to verify the accuracy of the data and the consequent change in the relative weight.

*Response:* Every year when the relative weights are recalibrated, we use charge information from the most recent Medicare data available. That is, we use the charges reported by hospitals for the cases under each DRG to establish the relative weights. As the commenter requested, we have re-examined the FY 1996 MedPAR data that are used in establishing the DRG relative weights for FY 1998. We have not identified any problems or anomalies related to the cases in DRG 480 and are confident that the relative weight and length of stay data set forth in Table 5 of this final rule are accurate. We note that the final FY 1996 MedPAR data result in a slightly higher relative weight and average length of stay for DRG 480 than shown in the proposed rule, although the data still indicate close to a 7-day reduction in average length of stay for these cases. (Data for the final rule are taken from the June 1997 update of the FY 1996 MedPAR data, rather than the December 1996 file used for the proposed rule.)

Both the relative weight and the length of stay for liver transplant cases have exhibited continuing declines since the early 1990's. Although the decline between FY 1995 and FY 1996 was more pronounced than in some other years, this change is not unusual for a relatively low volume DRG (fewer than 400 cases) with a large range of reported charges and lengths of stay. A few very low or very high charge cases can make a dramatic difference in the DRG weight.

### III. Changes to the Hospital Wage Index and Medicare Geographic Reclassification Guidelines

#### 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 under the Act, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs), Primary MSAs (PMSAs), and New England County Metropolitan Areas (NECMAs) issued by the Office of Management and Budget (OMB). OMB also designates Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of one million or more, comprised of two or more PMSAs (identified by their separate economic and social character). For purposes of the hospital wage index, we use the PMSAs rather than CMSAs since they allow a more precise breakdown of labor costs. If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA. Rural areas are areas outside a designated MSA, PMSA, or NECMA.

In the proposed rule, we noted that, effective April 1, 1990, the term Metropolitan Area (MA) replaced the term Metropolitan Statistical Area (MSA) (which had been used since June 30, 1983) to describe the set of metropolitan areas comprised of MSAs, PMSAs, and CMSAs. The terminology was changed by OMB in the March 30, 1990 **Federal Register** to distinguish between the individual metropolitan areas known as MSAs and the set of all metropolitan areas (MSAs, PMSAs, and CMSAs) (55 FR 12154). For purposes of the prospective payment system, we will continue to refer to these areas as MSAs.

Section 1886(d)(3)(E) of the Act also 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. We also adjust the wage index, as discussed below in

section III.B.3, to take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act.

#### B. FY 1998 Wage Index Update

The final FY 1998 wage index in section V. of the Addendum (effective for hospital discharges occurring on or after October 1, 1997 and before October 1, 1998) is based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 1994 (the FY 1997 wage index was based on FY 1993 wage data). We used the same categories of data that were used in the FY 1997 wage index. Therefore, the FY 1998 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.

We proposed to calculate a separate Puerto Rico-specific wage index to be applied to the Puerto Rico standardized amount. We stated that this wage index would be calculated in the same manner as the national wage index described below, but will be based solely on Puerto Rico's data. We received several comments supporting the new Puerto Rico-specific wage index. We are implementing that change and revising § 412.210(e) accordingly.

We did not propose any changes in the reporting of hospital wage index data, but we received numerous comments regarding the FY 1995 wage data, which will not be used until we develop the FY 1999 wage index. The Medicare cost report for reporting periods beginning during FY 1995 included several changes to the Worksheet S-3 that will allow us to analyze further refinements to the wage index. Among those changes are the separate reporting of all salary costs for physicians (including teaching physicians), residents, and certified registered nurse anesthetists (CRNAs). In addition, we collected overhead cost data by cost center in order to analyze the possibility of excluding overhead costs attributable to skilled nursing facilities and other excluded areas from the wage index. These comments are discussed in detail below.

*Comment:* Two commenters stated that we should exclude physician

salaries (as recommended by the Medicare Technical Advisory Group); one suggested that we should immediately exclude these costs using information from the Worksheet A-8-2 of the Medicare cost report.

Alternatively, a few commenters suggested that we should include contracted Part A physician salaries for those States in which hospitals are prohibited from employing physicians. Several commenters are concerned that the removal of teaching physician and resident salaries would redistribute revenues from large metropolitan areas with large teaching programs to areas that support medical education to a lesser extent. The commenters noted that recent legislation revising the payments for disproportionate share and the indirect medical education adjustments (sections 4403 and 4621 of Public Law 105-33) will further reduce payment for hospitals in major metropolitan areas.

Other commenters suggested that we analyze the impact of excluding the data before making a final decision. Some commenters specifically recommended that we determine whether hospitals that are prohibited from employing physicians are disadvantaged by our current policy, and, if so, that we develop a policy that minimizes the redistribution of revenue and the concentration of losses in particular geographic areas.

*Response:* These comments relate to the FY 1995 wage data, which we are not using in developing the FY 1998 wage index. We will consider these comments in developing the FY 1999 wage index. Although the deadline for fiscal intermediaries to submit all of the reviewed FY 1995 wage data to HCFA is mid-November 1997, we intend to begin our analysis of these data prior to that time, based on the data that have already been submitted to the Health Care Provider Cost Report Information System (HCRIS). We note that our fundamental objective in administering the wage index is to ensure that it is accurate and fair, and we will evaluate the use of the FY 1995 wage data with that objective in mind.

Regarding the suggestion that we use Worksheet A-8-2 to exclude Part A physician salaries, we noted in the proposed rule (62 FR 29914) that, because the intermediaries had already begun reviewing the FY 1994 cost report and finalizing the Worksheet S-3 data, we did not believe it would be appropriate to revise their instructions and require them to make a change to their procedure. Therefore, we will review and evaluate for the FY 1995 data, which provides for the separate

reporting of physician salaries when considering appropriate changes in the FY 1999 wage index.

*Comment:* One hospital association commented that it had analyzed unedited preliminary FY 1995 HCRIS data and concluded that revising our policy to include contracted Part A physician salaries would redistribute current payments by only half of what would result if we changed our policy to exclude all Part A physician and resident salaries. (Currently, we exclude contracted Part A physician salaries, but include similar salaries if the physician is employed by the hospital.) Other commenters noted other data issues that arise using the preliminary FY 1995 HCRIS wage data.

*Response:* In response to these comments, we would emphasize that the cost report data analyzed by these commenters are very preliminary, and in many cases, have not yet been reviewed by the intermediaries. The data were extracted from the HCRIS Minimum Data Set, which is updated quarterly and becomes more accurate and complete after the deadline for completion of the wage data desk reviews by the intermediaries. We are aware of the need to carefully review these data due to the changes discussed above, and we will work with those in the hospital industry that have taken the initiative to begin to examine the data in order to draw upon their findings while proceeding with our analysis.

*Comment:* Two commenters stated that wages and wage-related costs for physicians, residents, and CRNAs are not reported separately for FY 1995, but are reported separately for FY 1996. They requested that HCFA postpone its evaluation of the exclusion of these data until the FY 1996 data are available, and that HCFA announce this 1-year delay in the FY 1998 final rule.

*Response:* We are aware that for the FY 1995 cost reports some hospitals may have reported teaching physicians' salaries with residents' wages, and also did not separately report wage-related costs for physicians, residents, and CRNAs. To address this situation we revised the FY 1996 cost reporting instructions. We will consider the impact of this problem in our FY 1995 data analysis.

*Comment:* Four commenters disputed the rationale that Part A physician and resident salaries should be excluded from the wage index because these costs are largely paid through Medicare direct graduate medical education payments. They stated that other costs, such as outpatient and general service costs that are allocated to excluded cost centers, are similarly paid outside the

prospective payment system, but are included in the wage index calculation.

*Response:* The FY 1995 revised Worksheet S-3 allows for the separate reporting of direct salaries and hours by general service cost centers as well as physician salaries. We plan to analyze these data to determine the feasibility of allocating general service costs and removing those costs that are associated with excluded areas. Regarding outpatient costs, hospital staff frequently provide services in both the outpatient and inpatient departments, and we believe that the inclusion of outpatient salaries causes little or no distortion to the wage index.

#### 1. Verification of Wage Data From the Medicare Cost Report

The data for the FY 1998 wage index were obtained from Worksheet S-3, Part II of the Medicare cost report. The data file used to construct the final wage index includes FY 1994 data submitted to 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 (62 FR 29914). To be reflected in the final wage index, wage data corrections had to be reviewed, verified, and transmitted to HCFA through HCRIS by June 16, 1997. (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 the final wage index.

#### 2. Computation of the Wage Index

The method used to compute the final wage index is as follows:

Step 1—As noted above, we based the FY 1998 wage index on wage data reported on the FY 1994 Medicare cost reports. 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 period beginning on or after October 1, 1993 and before October 1, 1994. In addition, we included data from a few hospitals that had cost reporting periods beginning in September 1993 and reported a cost reporting period exceeding 52 weeks. These 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 1994 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 salaries. To make the wage inflation adjustment, we used the percentage change in average hourly earnings estimated for each 30-day increment from October 14, 1993 through April 15, 1995, for hospital industry workers from Standard Industry Classification 806, Bureau of Labor Statistics Employment and Earnings Bulletin. The annual inflation rates used were 3.6 percent for FY 1993, 2.7 percent for FY 1994, and 3.3 percent for FY 1995. 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
10/14/93 .....	11/15/93 .....	1.038679
11/14/93 .....	12/15/93 .....	1.036376
12/14/93 .....	01/15/94 .....	1.034077
01/14/94 .....	02/15/94 .....	1.031784
02/14/94 .....	03/15/94 .....	1.029496
03/14/94 .....	04/15/94 .....	1.027213
04/14/94 .....	05/15/94 .....	1.024935
05/14/94 .....	06/15/94 .....	1.022662
06/14/94 .....	07/15/94 .....	1.020394
07/14/94 .....	08/15/94 .....	1.018131
08/14/94 .....	09/15/94 .....	1.015873
09/14/94 .....	10/15/94 .....	1.013620
10/14/94 .....	11/15/94 .....	1.010881
11/14/94 .....	12/15/94 .....	1.008150
12/14/94 .....	01/15/95 .....	1.005426
01/14/95 .....	02/15/95 .....	1.002709
02/14/95 .....	03/15/95 .....	1.000000
03/14/95 .....	04/15/95 .....	0.997298

For example, the midpoint of a cost reporting period beginning January 1, 1994 and ending December 31, 1994 is June 30, 1994. An inflation adjustment factor of 1.020394 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 1994 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 18 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 1994 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 salaries plus fringe benefits obtained in Step 3 for all hospitals in that area to determine the total adjusted salaries plus fringe benefits for the labor market area.

Step 7—We divided the total adjusted salaries plus fringe benefits 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 salaries plus fringe benefits 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 \$20.0950.

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.

Step 10—Following the process set forth above, we developed a separate Puerto Rico-specific wage index for purposes of adjusting the Puerto Rico standardized amounts. We added the total adjusted salaries plus fringe benefits (as calculated in Step 3) for all hospitals in Puerto Rico and divided the sum by the total hours for Puerto Rico (as calculated in Step 4) to arrive at an

overall average hourly wage of \$9.1364 for Puerto Rico. For each labor market area in Puerto Rico, we calculated the hospital wage index value by dividing the area average hourly wage (as calculated in Step 7) by the overall Puerto Rico average hourly wage.

Step 11—Section 4410(a) Public Law 105-33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in the State in which the hospital is located. For FY 1998, this change affects 128 hospitals in 32 MSAs. The MSAs affected by this provision are identified in Table 4A by a footnote. Furthermore, this wage index floor is to be implemented in such a manner as to assure that aggregate prospective payment system payments are not greater or less than those which would have been made in the year if this section did not apply. We note that the Secretary has exercised the authority granted to her by section 4408 of Public Law 105-33 to include Stanly County in the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina MSA. This change is 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 would reduce the wage index value for the area to which the hospitals are redesignated by 1 percentage point or less, the area 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 that combined wage index value.

- If including the wage data for the redesignated hospitals increases the wage index value for the area to which the hospitals are redesignated, both the area and the redesignated hospitals receive the combined wage index value.

- The wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.

- Rural areas whose wage index values would be reduced by excluding the wage data for hospitals that have been redesignated to another area continue to have their wage index values calculated as if no redesignation had occurred.

- 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 index values calculated exclusive of the wage data 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 value for an urban area below the statewide rural wage index value.

We note that, except for those rural areas where redesignation would reduce the rural wage index value, the wage index value for each area is computed exclusive of the wage data for hospitals that have been redesignated from the area for purposes of their wage index. As a result, several urban areas listed in Table 4a have no hospitals remaining in the area. This is because all the hospitals originally in these urban areas have been reclassified to another area by the MGCRB. These areas with no remaining hospitals receive the prereclassified wage index value. The prereclassified wage index value will apply as long as the area remains empty.

The final wage index values for FY 1998 are shown in Tables 4A, 4B, 4C, and 4F in the Addendum to this final rule. Subject to the provisions of Public

Law 105-33, the FY 1998 wage index values incorporate all hospital redesignations for FY 1998, withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process. For FY 1998, 357 hospitals are redesignated for purposes of the wage index (hospitals redesignated under section 1886(d)(8)(B) or 1886(d)(10) of the Act). Hospitals that are redesignated should use the wage index values shown in Table 4C. Areas in Table 4C may have more than one wage index value because the wage index value for a redesignated rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located. When the wage index value of the area to which a rural hospital is redesignated is lower than the wage index value for the rural areas of the State in which the rural hospital is located, the redesignated rural hospital receives the higher wage index value, that is, the wage index value for the rural areas of the State in which it is located, rather 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 1994 wage data. In addition, Table 3C in the Addendum to this final rule includes the adjusted (inflated) average hourly wage for each hospital based on the FY 1994 data. 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. Changes to the Medicare Geographic Classification Review Board (MGCRB) Guidelines and Timeframes*

Various provisions of Public Law 105-33 address the guidelines the MGCRB uses to reclassify hospitals to other geographic areas as well as the timetable under which hospitals must submit applications for reclassification and the MGCRB and the Secretary must make decisions on those applications.

#### 1. Revised Application and MGCRB Timeframes

Currently, a hospital must submit an application to the MGCRB for geographic reclassification for a fiscal year by the first day of the preceding fiscal year (that is, October 1, 1997 for

reclassification effective in FY 1999). The MGCRB has 180 days to make a decision on that application (no later than March 31 of the fiscal year), the hospital has 15 days to request a review of that decision by the Administrator of HCFA (by April 15), and the Administrator has up to 90 days to issue a final decision (July 15). Under our current publication schedule, the July 15 deadline allows the final geographic reclassification decisions to be incorporated in the wage index and payment rates that are published in the final rule on or about September 1.

Sections 4644 (a)(1) and (b)(1) of Public Law 105-33 amend section 1886 (d)(6) and (e) of the Act to provide that the final rule setting the payment rates for years beginning with FY 1999 must be published by August 1. Because this change in publication dates would conflict with the timetable for geographic reclassification decisions, section 4644(c) of Public Law 105-33 amended section 1886(d)(10)(C)(ii) of the Act to require a hospital to submit an application for reclassification no later than the first day of the month preceding the beginning of the Federal fiscal year (that is, by September 1) beginning with applications filed for reclassification for FY 2000. Under this timetable, the amount of time the MGCRB and the Administrator have to make decisions will not change from the current schedule.

In addition, because applications filed for reclassification effective in FY 1999 are not due until October 1, 1997, section 4644(c)(2) requires us to shorten the deadlines under section 1886(d)(10)(C) of the Act so that all final decisions on MGCRB applications will be completed by June 15, 1998. We have consulted with the staff of the MGCRB and the reclassification decisions will be made by the MGCRB by February 28, 1998. This will allow final decisions of the Secretary to be completed by June 15, 1998.

We are revising §§ 412.256 and 412.274 to implement the change in the application deadline.

#### 2. Alternative Wage Index Reclassification Guidelines for Individual Hospitals

a. In the September 1, 1992 final rule, we revised the wage index guidelines at § 412.230(e) to add the requirement that a hospital cannot be reclassified unless its average hourly wage is at least 108 percent of the average hourly wage of the area in which it is located. For FY 1998 reclassification, section 4409 of Public Law 105-33 requires the Secretary to establish alternative wage index guidelines for geographic

reclassification. As provided in the statute, a hospital may reclassify for wage index purposes if it demonstrates that:

- Its average hourly wage is at least 108 percent of the average hourly wage of all *other* hospitals in its MSA, that is, not including its own wage data.
- It pays at least 40 percent of the adjusted uninflated wages in the MSA.
- It reclassified for the wage index for each of the fiscal years 1992 through 1997.

The hospital must also meet all other applicable guidelines (for example, proximity).

As noted above, this provision is effective for FY 1998 reclassifications. Because the application and decision making process for FY 1998 reclassification is already completed, we must provide special guidelines for hospitals to apply for reclassification under this provision for FY 1998.

A hospital seeking reclassification for FY 1998 under this provision must submit its application to the MGCRB by September 15, 1997. In addition, the hospital must submit 7 copies of a completed application to the MGCRB. The MGCRB will dismiss a hospital's request for reclassification if the completed application is not received by September 15, 1997. If the MGCRB renders a favorable decision on a hospital's application, the hospital will be reclassified for purposes of the wage index for FY 1998 as if that decision had been made under the usual guidelines and timetable.

Ordinarily, a hospital seeking MGCRB reclassification for a fiscal year must submit its application by October 1 of the preceding fiscal year, and all reclassification decisions with respect to a fiscal year must be finalized before the beginning of the fiscal year (this includes decisions of the MGCRB as well as decisions of the HCFA Administrator when the Administrator undertakes review). However, sections 4409 and 4410 of Public Law 105-33, enacted on August 5, 1997, set forth special reclassification provisions under which certain hospitals may be reclassified for FY 1998 (beginning on October 1, 1997). The MGCRB will make decisions on applications for reclassification based on these provisions before the beginning of the fiscal year, but it will not be feasible to complete the process for appeals or other review before October 1. Nevertheless, we believe it is appropriate to permit appeals of decisions on requests for reclassification under sections 4409 and 4410. Therefore, for such appeals, we are incorporating the current appeals and

review process (including the timetables for a hospital to request review and for the Administrator to complete review) even though that process will not be finalized until after the beginning of the fiscal year. Our general position has been, and continues to be, that changes to the prospective payment rates should be made prospectively only. Nevertheless, given the extraordinary circumstances presented by the recent enactment of the legislation, if a decision on a request for reclassification under section 4409 or section 4410 becomes final under this process after the beginning of the fiscal year, the decision will be effective as of the beginning of the fiscal year. We are revising the regulations at § 412.230(e) to implement this provision.

b. In the case of a hospital that is owned by a municipality and that was reclassified as an urban hospital for FY 1996, in calculating the hospital's average hourly wage for the purposes of geographic reclassification for FY 1998 only, section 4410(c) of Public Law 105-33 requires the exclusion of general service wages and hours of personnel associated with a skilled nursing facility that is owned by the hospital of the same municipality and that is physically separated from the hospital to the extent that such wages and hours of such personnel are not shared with the hospital and are separately documented. A hospital seeking reclassification under this provision must submit 7 copies of a completed application to the MGCRB by September 15, 1997. The MGCRB will dismiss a hospital's request for reclassification if the completed application is not received by September 15, 1997. If the MGCRB renders a favorable decision on a hospital's application, the hospital will be reclassified for purposes of the wage index for FY 1998 as if that decision had been made under the usual guidelines and timetable. The special appeals procedures discussed earlier apply to this context as well.

### 3. Alternative Guidelines for Rural Referral Centers

Currently, under section 1886(d)(10)(D) of the Act, rural referral centers (RRCs) are allowed to apply to the MGCRB to be reclassified for purposes of the wage index adjustment. To be reclassified, RRCs must meet the following criteria:

- The hospital's average hourly wage must be at least 108 percent of the Statewide rural hourly wage.
- The hospital's average hourly wage must be at least 84 percent of the average hourly wage of the target urban area to which the RRC is applying.

As provided in section 4202 of Public Law 105-33, the MGCRB is prohibited from rejecting a hospital's request for reclassification on the basis of any comparison between the average hourly wage and the average hourly wage of hospitals in the area in which the hospital is located if the hospital was ever classified as an RRC. However, RRCs will continue to be required to have an average hourly wage that is at least 84 percent of the average hourly wage of the target urban area to which the RRC is applying. In addition, while RRCs do not have to meet the proximity requirements for reclassification, they continue to be required to seek reclassification to the nearest urban area. We are revising § 412.230(a)(3) to implement this provision.

### 4. Reclassification for the Disproportionate Share Adjustment

Section 4203 of Public Law 105-33 provides that for a limited time a rural hospital may apply and qualify for reclassification to another area for purposes of disproportionate share adjustment payments whether or not the standardized amount is the same for both areas. For 30 months after the date of enactment of Public Law 105-33, the MGCRB will consider the application under section 1886(d)(10)(C)(i) of a hospital requesting a change in the hospital's geographic classification for purposes of determining for a fiscal year eligibility for and additional payment amounts under section 1886(d)(5)(F) of the Act. Under Public Law 105-33, the MGCRB will apply the guidelines for standardized amount reclassification (§ 412.230(d)) until the Secretary establishes separate guidelines. Therefore, hospitals seeking such reclassification for FY 1998 must submit a reclassification application to the MGCRB by October 1, 1997. Decisions based on these applications will be effective for FY 1999 (beginning on October 1, 1998). Section 4203 of Public Law 105-33 is effective for the 30 month period beginning on the date of enactment. Accordingly, hospitals may seek reclassification for purposes of DSH for FY 2000 and FY 2001. We are revising § 412.230(a)(5)(ii) of the regulations to implement this provision.

### 5. Occupational Mix Adjustment

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 the occupational-mix adjusted hourly wage for hospital groups is the same as that for a single hospital, that is, 90 percent.

In the August 30, 1996 final rule, we stated that, because the American Hospital Association (AHA) was terminating its collection of information on the Hospital Personnel by Occupation Category as of 1994, there would be no suitable source of occupational mix data for hospitals to use for geographic reclassification under §§ 412.230(e)(1)(iv), 412.232(c) and 412.234(b) beginning with reclassifications effective for FY 1999 (61 FR 46185). In that rule, we stated that we would not make a final decision on this issue until the next year in case another suitable source of occupational mix data were found. Although we did not include any alternative data source in the proposed rule, we received some comments suggesting another way to obtain occupational mix data.

*Comment:* One commenter proposed a methodology for collecting occupational mix data for those hospitals that seek to be reclassified through the MGCRB process using occupational mix data as part of their wage index calculations. The commenter proposed the following process:

- Any hospital that wants to use the 90 percent occupational mix adjustment criteria should be allowed to use the 1993 AHA data for FY 1999 reclassifications, which must be filed by October 1, 1997.
- For any hospital that successfully reclassifies for FY 1999 using the 1993 AHA data, HCFA would contact the State or local hospital associations in the State in which the reclassified hospital is located to obtain more current occupational mix data for the affected MSAs that could be used by the individual hospital for future years' occupational mix data. In some cases, there may be costs incurred in collecting these data. The commenter suggested that the individual reclassified hospitals would bear any costs of data collection incurred by the State or local hospital



associations or, alternatively, the costs could be distributed by the associations to the individual hospitals in the MSA asked to provide these data.

- The applicable hospital associations would provide the data to HCFA for any data review deemed necessary by HCFA. The individual hospitals would obtain the occupational mix data directly from HCFA after HCFA had completed any data edits or performed any other procedures that HCFA believes necessary to determine the validity and usability of the data. The data would be collected in a single survey for FY 1995, FY 1996, and FY 1997 to correspond with the next 3 years of wage survey data. Thus, current data would be available for the next 3 years for the individual MSA to which a hospital was successfully reclassified using the 90 percent occupational mix data.

- For future years, individual hospitals seeking to qualify using the occupational mix criterion for a wage index reclassification to an MSA where the data are not already being collected could use the 1993 AHA data for the first year. This would then trigger a data accumulation request for that area. It is the opinion of the commenter that this would allow all prospective payment hospitals to use the 90 percent criterion if needed.

Three State hospital associations also wrote to indicate support for this proposal. The AHA supports the use of its 1993 occupational mix data on an interim basis. In addition, although the AHA does not wish to be the future vehicle of data collection, it supports the concept of hospitals designing a method to collect occupational mix data for use in future years.

*Response:* 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 that can be consistently applied. We are unaware of any sources other than the AHA data that meet these criteria. (Originally, these data were also available from the Department of Labor Statistics, which has since discontinued its hospital wage survey.) We responded to comments on this issue in the August 30, 1996 final rule (61 FR 46186). In that document, we reiterated that we were interested only in occupational mix data that are available on a national basis. We also noted that we were not interested in collecting the data ourselves.

The commenter's proposal fails to meet the "national basis" criterion that we set. The commenter proposes that only hospitals in certain areas would

have to report occupational mix data. This does not provide a national database for those other hospitals that might want to use the data at some future time, nor does it allow verification of the data through edit checks performed on a national basis, such as those that we perform on the wage data. The commenter also proposes that HCFA ensure that the data are collected and that HCFA edit and validate the data and provide them to those who request the data. We do not want to be either the requestor or the repository of these data, nor do we have the resources to edit or validate these data.

In addition, this proposal contemplates the use of the 1993 AHA data for several years. For example, if a hospital first attempts to qualify using occupational mix data for FY 2002 in an area not already collecting these data, it would have to use the 1993 AHA occupational mix categories to adjust 1997 wage data. We believe that this would not be an accurate measure of the hospital's weighted average hourly wage for purposes of reclassification.

Finally, the commenter suggests that those hospitals that benefit from the use of occupational mix data should fund the data collection effort. This could lead to some inconsistency in availability of the data. If some hospitals that could benefit are unable to fund the collection effort, they would be at a disadvantage. Moreover, we are uncomfortable with the concept of allowing hospitals that will benefit from certain data to pay others for those data. We are unsure about how the payment incentive might influence the data.

Since we have discovered no other suitable source of occupational mix data during the past year, we have no updated occupational mix data to correspond with the FY 1994 wage data that will be used for FY 1999 reclassifications. Therefore, this option will no longer be available to hospitals. We have amended the regulations at §§ 412.230(e), 412.232(c), and 412.234(b) to reflect this decision. We remain interested in any occupational mix data proposals that meet our criteria.

#### *D. Requests for Wage Data Corrections*

In the proposed rule, we stated that, as in past years, we would make a data file available in mid-August containing the wage data used to construct the wage index values in the final rule. (Please note that this data file is also available through the Internet at HCFA's home page (<http://www.hcfa.gov>.) As with the file made available in March 1997, HCFA makes the August wage

data file available to hospital associations and the public. This August file is being made available only for the limited purpose of identifying any potential errors made by HCFA or the intermediary in the entry of the final wage data that result from the process described above, not for the initiation of new wage data correction requests.

If, after reviewing the August data file or the information in 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, including dates. These requests must be received by HCFA and the intermediaries no later than September 15, 1997. Requests mailed to HCFA should be sent to: Health Care Financing Administration; Center for Health Plans and Providers; Attention: Stephen Phillips, Technical Advisor; Division of Acute Care; C5-06-27; 7500 Security Boulevard; Baltimore, MD 21244-1850. Each request also must be sent to the hospital's fiscal intermediary. The intermediary will review requests upon receipt and contact HCFA immediately to discuss its findings.

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 wage data file. 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 HCRIS on or before June 16, 1997.
- Requests for correction of errors that were not, but could have been, identified during the hospital's review of the March 1997 data.

- Requests to revisit factual determinations or policy interpretations made by the intermediary or HCFA during the wage data correction process. Verified corrections to the wage index received timely (that is, by September 15, 1997) will be effective October 1, 1997.

We believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors in their wage data 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 1998 wage index on October 1, 1997. 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 1998 (that is, by the September 15, 1997 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.

#### *E. Modification of the Process and Timetable for Updating the Wage Index*

Although the wage data correction process described above has proven successful for ensuring that the wage data used each year to calculate the wage indexes are generally reliable and accurate, we expressed concern in the proposed rule that there have been an excessive number of revisions being requested after the release of the wage data in mid-March. Last year, in developing the FY 1997 wage index, the wage data were revised between the proposed and the final rules for more than 13 percent of the hospitals (approximately 700 of 5,200). The number of revisions this year was similar. Since hospitals are expected to submit complete and accurate data, and the data are reviewed and edited by the intermediaries and HCFA, we believe that we should be making few revisions after the release of the March wage data file. According to information received from the intermediaries, these late revisions are partly due to the lack of responsiveness of hospitals in providing sufficient information to the intermediaries during the desk reviews (that is, during the intermediary's review of the hospital's cost report).

Our analysis of last year's wage data also showed that, although the volume of revisions was high, the effect of the changes on the wage index was minimal. Of the 370 labor market areas, only 4 (1.1 percent) experienced a change of 5 percent or more in their wage index value and only 39 (10.6 percent) experienced a change of 1 percent or more. Thus, the intensity of work that must be performed in order to incorporate these revisions in the 1 month available between the mid-June date for revision requests and the mid-July date by which we must begin calculation of the final wage index is not warranted in light of the minimal changes to the actual wage index values.

Another feature of the current process is that it results in corrections to the final wage index after the September 1 final rule publication and before the October 1 effective date of the wage index. Immediately following the development of the final wage index, a second wage data file is made available in mid-August so that hospitals may again verify the accuracy of their wage data. If a hospital detects an error made by the intermediary or HCFA in the handling (entry or transmission) of the wage data, the hospital may request a correction (this year, by September 15). The corrections are published in the **Federal Register** after the October 1 implementation date in a correction notice to the final rule. We would prefer to minimize the need to republish certain wage index values after the final rule is in effect.

Finally, hospitals base their geographic reclassification decisions (whether or not to withdraw their applications) on the wage index published in the proposed rule. Although the FY 1997 proposed and final wage indexes were quite similar, we cannot ensure this will happen each year if increasing numbers of hospitals delay the submittal to their intermediaries of wage data supporting documentation until the May 15 deadline. We believe that hospitals could make more informed decisions regarding reclassification if the proposed wage index more closely resembles the final wage index. Therefore, in the proposed rule, we discussed possible revisions to the wage data verification process.

#### 1. Process and Timetable

The major change we proposed to the current process was the requirement that wage data revisions be requested (and resolved) earlier, before publication of the proposed rule. Subsequent corrections would be allowed only for errors in handling the

data (our current timetable allows for such corrections after the final rule is published). For example, the FY 1999 wage index will use FY 1995 cost report data (that is, cost reports beginning in FY 1995) and become effective October 1, 1998. Under the proposed timetable, hospitals would be required to submit all requests for wage data revisions to their intermediary by mid-December 1997. We indicated this would provide ample opportunity for hospitals to evaluate the results of intermediaries' desk reviews and prepare any requests for corrections. We noted that the desk reviews are to be performed on an ongoing basis as cost reports are received from hospitals and, for the FY 1995 wage data, must be completed prior to the mid-November 1997 deadline for submitting all FY 1995 wage data to HCRIS.

As under the current process, after reviewing requests for wage data revisions submitted by hospitals, fiscal intermediaries would transmit any revised cost report to HCRIS and forward a copy of the revised wage index Worksheet S-3 to the hospital. If requested revisions are not accepted, the fiscal intermediaries would notify the hospital in writing of reasons why the changes were not accepted. We believe that fiscal intermediaries are generally in the best position to make evaluations regarding the appropriateness of a particular cost and whether it should be included in the wage index data. However, if a hospital disagrees with the intermediary's policy interpretation, the hospital may contact HCFA in an effort to resolve the dispute. All policy issues would be resolved by mid-January.

The proposed timetable for developing the annual update to the wage index was as follows (an asterisk indicates no change from prior years):  
 Mid-November\* All desk reviews for hospital wage data are completed and revised data transmitted by intermediaries to HCRIS.  
 Mid-December Deadline for hospitals to request wage data revisions and provide adequate documentation to support the request.  
 Mid-January Deadline for intermediaries to submit to HCRIS all revisions resulting from hospitals' requests for adjustments (as of mid-December) (and verification of data submitted to HCRIS (as of mid-November)).  
 Early April Edited wage data are available for release to the public.  
 May 1\* Proposed rule published with 60-day comment period and 45-day withdrawal deadline for geographic reclassification.

Early May (2 weeks after publication of proposed rule) Deadline for hospitals to notify HCFA and intermediary that wage data are incorrect due to mishandling of data (that is, error in data entry or transmission) by intermediary or HCFA.

Late May (2 weeks after previous deadline) Deadline for intermediaries to transmit all revisions to HCRIS.

September 1\* Publication of the final rule.

October 1\* Effective date of updated wage index.

The most significant change reflected in the proposed timetable is that we would no longer make available a preliminary wage data file prior to hospitals' final opportunity to request corrections.

As noted in section V of this preamble, section 4644(b) of Public Law 105-33 requires that, beginning with FY 1999, we publish a proposed rule on changes to the prospective payment system by April 1 prior to the fiscal year when such changes are to become effective, and a final rule by August 1. In light of this and for other reasons discussed below, we are revising this proposed timetable for preparing the FY 1999 wage index to allow for release of a public use file containing the edited preliminary FY 1995 wage data.

## 2. Cost Reporting Timetable

In the proposed rule, we stated that the proposed timetable would not significantly alter the time hospitals have to ensure the accuracy of their data. In developing the wage index for a given fiscal year, we use the most recent, reviewed wage data, that is, wage data from cost reports that began in the fiscal year 4 years earlier. For example, for the FY 1999 wage index, we will use data from cost reporting periods beginning in FY 1995. Hospitals must submit cost reports to their intermediaries within 150 days of the end of their cost reporting periods. Once the cost report is received, the intermediary has 12 months to review and settle it.

As part of the settlement process, we require intermediaries to conduct a desk review of the wage data. The desk review program for hospital wage data targets potentially aberrant data and checks the completeness and accuracy of the data, including verifying that reported costs are in conformance with our policy, before they are used in calculating the wage index. The intermediary checks the wage data and supporting documentation submitted by the hospital and contacts the hospital if

additional information is needed to verify the accuracy of the data. When it is necessary for the intermediary to adjust a hospital's wage data, the intermediary notifies the hospital in writing of the change to the cost report and hospitals then have the opportunity to request adjustments. This would continue to be the case.

Since intermediaries must settle cost reports within 12 months of their receipt, most of the cost reports are settled by the time we compile the data to calculate the wage index. We note, however, that the annual update of the wage index is not tied directly to the cost report settlement process since extensions or reopenings of settled cost reports may be granted.

The following is an illustration of the process for settling a typical cost report beginning in FY 1995. Of course, hospitals' cost reporting periods may begin at any time during the year.

January 1, 1995 Cost reporting period begins.

December 31, 1995 Cost reporting period ends.

May 31, 1996 Cost report must be submitted by the hospital to the intermediary.

July 31, 1996 Cost report must be transmitted by the intermediary to HCRIS.

May 31, 1997 Cost report must be settled by the intermediary. (Desk review of hospital wage data is performed on an ongoing basis by the intermediary before the cost report is settled.)

July 31, 1997 Settled cost report must be transmitted by the intermediary to HCRIS.

*Comment:* One association representing fiscal intermediaries objected to our statement that the intermediaries must settle cost reports within 12 months of their receipt. The commenter stated that this is not consistent with our current audit and reimbursement performance standards.

*Response:* The regulations at § 405.1835(c) provide that the intermediary has up to 12 months from receipt of a cost report in which to settle it. For purposes of the contractor performance evaluation program (CPEP) for FY 1997, the standard is that the intermediary has at least 21 months from receipt of a hospital's cost report in which to settle it. While we are not changing the CPEP instructions or standards for FY 1997, the instructions are subject to change from year to year. Therefore, in the discussion of the wage index timetable, we used the cost report settlement information from the regulations, which are relatively

constant, not the performance evaluation standard, which is subject to change from year to year. Since we are required by statute to update the wage index on an annual basis, the wage index update is not tied directly to the cost report settlement process as the settlement may be delayed for several reasons, including allowances by the CPEP, extensions, and reopenings.

*Comment:* The same commenter was also concerned that the proposed modification to the timetable for developing the FY 1999 wage index would require intermediaries to complete desk reviews for two cost reporting periods within the same budget year and that this substantial increase in work would require additional funding.

*Response:* Regarding the commenter's concern that additional funding would be needed to handle the increased desk review workload (which would result from revising the timetable as proposed), in the instructions for the wage index desk review the intermediaries are instructed to perform the desk reviews as the cost reports are received. We do not agree with the commenter's assertion that shortening the timeframe for developing the wage index will result in a substantial increase in the intermediaries' workload. In fact, as we pointed out in the preamble to the proposed rule, under the current process, intermediaries are required to verify the inclusion and accuracy of all hospitals' wage data twice during the wage index development. Our proposed timetable would have eliminated the need for the second verification by the intermediaries.

*Comment:* One hospital association suggested that the number of late revisions could be reduced if intermediaries completed the wage data desk reviews within 60 days from receipt of hospitals' cost reports and if HCFA and the intermediaries would use the same edits. Others commented that HCFA's edits are unrealistic and that improved edits would reduce the need for a preliminary wage data file.

*Response:* We agree with the commenter's suggestion that the number of late revisions could be reduced if intermediaries completed the wage data desk reviews soon after receipt of the hospitals' cost reports. There is a desk review being developed to perform an automated review of the entire cost report, including the hospital wage index information, as the cost reports are received by the intermediary. The expectation is that desk review would integrate the editing of the wage data and the other cost report data, as well

as eliminate the need for a separate desk review of the wage data by the intermediary and editing of the wage data by HCFA. Until that desk review is in place, the wage data desk review is a necessary part of the annual update to the wage index.

Regarding the edits, the same types of edits are used by HCFA and the intermediaries. The initial edits, performed by the intermediary in the desk review, are broad in order to identify problem areas. We then perform a more focused review, using the same types of edits as in the desk review, once the data are received and aggregated. Also, additional edits on the aggregated data are performed. We update the wage data edits each year and will reevaluate and revise the types and thresholds of the edits to better identify incomplete or inaccurate data.

### 3. The Final Revised Timetable for Finalizing Wage Data

We received approximately 40 comments regarding our proposal to reduce the amount of time for developing the wage index.

*Comment:* Most of the commenters were opposed to our proposal, stating that it would reduce the number of days that the hospital industry has for reviewing the wage data. Another commenter believes that the fact that the preliminary wage data file is released only 2 months prior to the mid-May deadline for revisions is the main cause of late submissions. One hospital added that the expedited timeframe would be disadvantageous for rural hospitals, especially in an environment in which their wage index values are decreasing while the urban values are increasing.

*Response:* We continue to believe that expediting the resolution of all wage data issues earlier in the process will improve the accuracy of the wage index. Hospitals are ultimately responsible for the accuracy of their cost report information. Because intermediaries are required to notify hospitals of changes to their cost reports, including those affecting the wage data, we do not agree that the timing of the release of the preliminary data file is the cause for the volume of last minute revisions. Hospitals should know what is included in their wage data well before the release of this file. In fact, our intent in releasing the preliminary data file is primarily to allow hospitals to verify that the data on file at HCFA matches their latest wage data information. We remain concerned that the release of the preliminary file itself and the final opportunity for revisions it provides actually encourages hospitals to wait to request revisions until after its release.

With regard to the comment that the proposed timetable would adversely impact rural hospitals, it is not clear to us from the comment how this proposal would have that effect. By placing greater emphasis on individual hospitals to ensure the accuracy of their data earlier in the process, we believe the result would be a more accurate wage index overall.

*Comment:* Two commenters stated that they agreed that the schedule for developing the wage data should be shortened, but that HCFA should continue to make available the preliminary wage data file. A few commenters suggested that the preliminary file could be released to the public earlier, for example, in mid-December (about 30 days after the deadline for the intermediaries to transmit the data to HCRIS) to reduce the amount of late changes.

*Response:* Due to the requirement that the changes to the inpatient prospective payment system be published one month earlier (beginning with FY 1999), we have no choice but to expedite this process. Although commenters suggested that a preliminary file could be released in mid-December, that date would not provide sufficient time for the fiscal intermediaries to verify hospitals' data that are included on the file. We believe it would be counterproductive to ask the industry to review the data file prior to the fiscal intermediaries' verification. However, in light of the concerns about eliminating the preliminary file, we plan to make available an edited, preliminary FY 1995 wage data file in February 1998.

*Comment:* Several commenters stated that since the wage data requirements in the FY 1995 cost report have changed significantly from previous years, it would be inappropriate to implement an expedited process for the FY 1999 wage index. Two hospital associations commented that they evaluated preliminary FY 1995 wage data from the HCRIS Minimum Data Set and concluded that the data showed serious reporting problems.

Many of the commenters stated that the hospital industry uses the preliminary file to evaluate the quality of the wage data and to ensure that Medicare payment is properly allocated among hospitals. Some of the commenters said that the wage data would likely be less accurate without the industry's review of the preliminary wage data file. One association added that, without the edited preliminary file, those evaluating hospital wage data would have to rely on the HCRIS file, which is less accurate and less complete.

*Response:* 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), residents, and CRNAs. In addition, in order to analyze the feasibility of excluding overhead costs attributable to skilled nursing facilities and other excluded areas, overhead cost data is collected by cost center. After evaluating these data, we will consider appropriate changes in developing the FY 1999 and future wage index updates.

Thus, we have decided to release a preliminary wage data file for the FY 1999 wage index prior to hospitals' final opportunity to request corrections. The combination of the changes to the FY 1995 wage data, the earlier publication schedule, and the comments we received regarding the timing of intermediaries' audits caused us to reverse our intention to eliminate the preliminary data file during the processing of the FY 1999 wage index and to make other adjustments. Therefore, we are making several changes to the current timetable as well as the timetable we proposed. The most significant of these changes is that the preliminary public use file will now be made available in February (we will contact the hospital industry regarding the precise release date), and that hospitals will then have 30 days (rather than the current 60 days) to request revisions to their data. This shortened review period is necessitated by the earlier publication date and our intent to eliminate the need for an annual correction notice reflecting changes due to data handling errors.

We believe that this will enable us to utilize the hospital industry's analyses to help ensure the accuracy of the data. However, due to the earlier publication schedule, hospitals will have only 30 days to review their data and request adjustments. We believe the trade-off between making preliminary data available earlier and shortening the time for review is fair. Intermediaries will have 30 days to review the requests, make their determinations, and transmit the revised data to HCRIS.

We plan to release a final wage data file in May for the limited purpose of allowing hospitals the opportunity to identify errors made by HCFA or the intermediary in the transmission of the final wage data. We anticipate that this revised timetable will meet our objective of enabling us to correct any data errors contained in the final wage data file prior to publication of the final rule on August 1.

Thus, the final revised timetable is as follows:

Mid-November—All desk reviews for hospital wage data are completed and revised data transmitted by fiscal intermediaries to HCRIS.

Early February—Edited wage data are available for release to the public.

Early March—Deadline for hospitals to request wage data revisions and provide adequate documentation to support the request.

Early April—Deadline for intermediaries to transmit appropriate revised wage data to HCRIS.

April 1—Proposed rule published with 60-day comment period and 45-day withdrawal deadline for geographic reclassification.

Early May—Final wage data are available for release to the public.

Early June—Deadline for hospitals to notify HCFA and their fiscal intermediary that wage data are incorrect due to mishandling of data (that is, an error in data entry or transmission) by intermediary or HCFA.

August 1—Publication of the final rule.

October 1—Effective date of updated wage index.

We believe this timetable, like the timetable reflected in the proposed rule, is a logical step in the evolution of the process for compiling the wage data used to calculate the hospital wage index. For a number of years, the hospital wage index was based on a wage survey that was not updated every year. Applicable policies permitted hospitals to request and receive midyear corrections to the data on the wage survey. Beginning with FY 1994 (beginning on October 1, 1993), we used wage data submitted by hospitals on Worksheet S-3, Part II of the hospital cost report, and we update the wage data every year. We revised our wage data process accordingly—we stopped making midyear corrections to the wage data (except under very limited circumstances, as noted below), and instead attempted to finalize the wage data by the final rule.

The new timetable would shorten the time for revisions somewhat further. Because we have used cost report data for 5 years now, hospitals should be well aware of the importance of submitting accurate wage data on the Worksheet S-3, Part II. Also, as intermediaries and hospitals have become increasingly familiar with the data collection and verification process, handling the data has become more routine and streamlined. For example, over the past year, we have greatly improved the overall efficiency of our communications with the

intermediaries through greater reliance on electronic transmission of wage data. In short, then, there should be less need for revising wage data after desk reviews, and we believe it is reasonable and appropriate to revise the timetable for requesting and resolving wage data revisions.

We would continue to make midyear corrections to the wage index in accordance with § 412.63(s)(2), 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 the fiscal year. Although we do not anticipate that such situations would arise, this regulation would remain unchanged.

#### F. Wage Index Workgroup

As stated in the proposed rule, we are concerned that the rapid and dramatic changes occurring in hospitals' operating environments, combined with the current time lag in the data used to construct the wage index, is leading to a situation where the wage index may be becoming less representative of hospitals' current labor costs. Hospitals' increasing reliance on contract labor for a broadening array of functions, hospital mergers and the development of integrated delivery systems, and the expansion of the prospective payment system to other sites of care are factors that indicate a need for a concerted effort to ensure that the data required for calculating the wage index are available and reliable. Furthermore, despite the improvements that resulted from the work of the special Medicare Technical Advisory Group (MTAG) several years ago, technical questions about the treatment of certain types of labor costs continue to arise.

For these reasons, we believe there is a need for an ongoing workgroup to address wage index related issues periodically. We solicited input from representatives of the hospital industry (and other provider types interested in the collection of wage data) regarding the need for such a workgroup and their willingness to participate. We also sought public input regarding the structure and scope of such a workgroup.

*Comment:* The response to the proposed wage index workgroup was favorable. Some commenters believe the group should be formally established and meet on a regular basis to ensure the attention and resources needed to accomplish its objectives. Several commenters recommended that the wage index workgroup be formed under

the auspices of the MTAG. Another commenter suggested that a workgroup formed on an ad hoc basis, with one or more specific issues to address, might be the best way to structure the group. Several commenters stated that the group's agenda should be broadly defined to encompass input price adjustment issues related to hospitals, skilled nursing facilities, home health agencies, rehabilitation facilities, and managed care plans. Some commenters expressed interest in participating in such a workgroup.

*Response:* We will proceed with the development of the wage index workgroup. We will be in contact with interested parties to arrange a meeting to discuss issues related to its structure and focus. We appreciate the enthusiastic responses, and believe that utilization of a workgroup will expedite many procedural improvements in the wage index process.

## IV. Revising the Hospital Operating Market Baskets

### A. General Discussion

We used a hospital input price index (that is, the hospital "market basket") to develop the inflation component update factors 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 terms rebasing and revising, although often used interchangeably, actually denote different activities. Rebasing moves the base year for the structure of costs of an input price index (for example, 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 for a given base year. In the August 30, 1996 final rule, effective for FY 1997, we both rebased and revised the hospital operating market baskets (61 FR 46186).

### B. Revising the Hospital Market Basket

We used a revised hospital market basket for the FY 1998 update framework for the operating prospective payment rates. In the August 30, 1996 final rule, we discussed the possibility of revising the market basket when additional data became available (61 FR 46187). Consistent with that discussion, we used a revised market basket that still has a base year of FY 1992, but

incorporates additional data, specifically the Asset and Expenditure Survey, 1992 Census of Service Industries, by the Bureau of the Census, Economics and Statistics Administration, U.S. Department of Commerce, which did not become available until after the FY 1997 final rule was published. (For further discussion of the differences between the revised market basket for FY 1998 and the current market basket, see Appendix C of this final rule with comment period.)

In the current market basket, data for four major expense categories (wages and salaries, employee benefits, pharmaceuticals, and a residual category) are from Medicare hospital cost reports for periods beginning in FY 1992 (that is, periods beginning on or after October 1, 1991 and before October 1, 1992). These cost reports, which we refer to as PPS-9 cost reports (the 9th year of the prospective payment system), are reported in the Health Care Provider Cost Report Information System (HCRIS). In the revised hospital market basket, we still use the cost report data, and categories and weights are unchanged from the current market basket. Within the residual category, the

categories and weights for nonmedical professional fees and professional liability insurance are also unchanged. (For a detailed discussion of the determination of weights, see the August 30, 1996 final rule (61 FR 46187)).

Table 1 shows a comparison of the current and the revised operating market basket cost categories, weights, and price proxies. For the revised market basket, weights for the "Utilities" and "All Other" cost categories, as well as most subcategories, were derived using the Asset and Expenditure Survey, published by the Bureau of the Census, Economics and Statistics Administration, U.S. Department of Commerce, in conjunction with the latest available (1987) Input-Output Table, produced by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce. The 1987 input-output cost shares, aged to 1992 using historical price changes between 1987 and 1992 for each category, were allocated to be consistent with the newly available 1992 asset and expenditure data.

The resulting combined data were allocated to be consistent with the 1992 hospital cost report data. Revised

relative weights for the base year were then calculated for various expenditure categories. This work resulted in the identification of 22 separate cost categories in the revised market basket. Four categories previously separate were combined with existing categories. Specifically, Business Services, and Computer and Data Processing Services were combined with All Other Labor-Intensive Services. Transportation Services was combined with All Other Nonlabor-Intensive Services, and the Fuel, Oil, Coal etc. category was split between Fuels (nonhighway) and Miscellaneous Products. We combined these categories so that the market basket would conform more closely with the 1992 Asset and Expenditure Survey. Detailed descriptions of each of the four categories and their respective price proxies can be found in the August 30, 1996 final rule (61 FR 46323). Changing the structure of the market basket using the 1992 Asset and Expenditure Survey allows for a more accurate reflection of the cost structures faced by hospitals. When the Bureau of the Census or the BEA improves methodologies for the collection and categorization of data, it is likely the weights will also change.

TABLE 1.—COMPARISON OF CURRENT 1992-BASED PROSPECTIVE PAYMENT HOSPITAL MARKET BASKET WITH REVISED 1992-BASED PROSPECTIVE PAYMENT HOSPITAL MARKET BASKET

Expense categories	Price proxy	Current 1992-based PPS market basket <sup>1</sup>	Revised 1992-based PPS market basket
1. Compensation:		61.390	61.390
A. Wages and salaries	HCFA occupational wage index	50.244	50.244
B. Employee benefits	HCFA occupational benefits index	11.146	11.146
2. Nonmedical professional fees	ECI-compensation for professional, specialty, and technical	2.127	2.127
3. Utilities:		2.470	1.542
A. Electricity	PPI commercial electric power	1.349	0.927
B. Fuels (nonhighway)	PPI commercial natural gas	1.015	0.369
C. Water and sewerage	CPI-U water and sewerage maintenance	0.106	0.246
4. Professional liability insurance	HCFA professional liability insurance premium index	1.189	1.189
5. All other expenses:		32.825	33.752
A. All other products:		24.033	24.825
(1) Pharmaceuticals	PPI ethical (prescription) drugs	4.162	4.162
(2) Food		3.459	3.386
(a) Direct purchase	PPI processed foods and feeds	2.363	2.314
(b) Contract service	CPI food away from home	1.096	1.072
(3) Chemicals	PPI industrial chemicals	3.795	3.666
(4) Medical instruments	PPI medical instruments and equipment	3.128	3.080
(5) Photographic supplies	PPI photographic supplies	0.399	0.391
(6) Rubber and plastics	PPI rubber and plastic products	4.868	4.750
(7) Paper products	PPI converted paper and paperboard products	2.062	2.078
(8) Apparel	PPI apparel	0.875	0.869
(9) Machinery and equipment	PPI machinery and equipment	0.211	0.207
(10) Miscellaneous products	PPI finished goods	1.074	2.236
B. All other services:		8.792	8.927
(1) Postage	CPI-U postage	0.272	0.272
(2) Telephone services	CPI-U telephone services	0.531	0.581
(3) All other: labor intensive	ECI compensation for private service occupations	7.457	7.277
(4) All other: nonlabor intensive	CPI-U all items	0.532	0.796

TABLE 1.—COMPARISON OF CURRENT 1992-BASED PROSPECTIVE PAYMENT HOSPITAL MARKET BASKET WITH REVISED 1992-BASED PROSPECTIVE PAYMENT HOSPITAL MARKET BASKET—Continued

Expense categories	Price proxy	Current 1992-based PPS market basket <sup>1</sup>	Revised 1992-based PPS market basket
Total .....	.....	100.000	100.000

Note: Due to rounding, weights may not sum to total.

<sup>1</sup> Expense categories based on revised 1992-based hospital market basket for comparison purposes.

In calculating payments to hospitals, the labor-related portion of the standardized amounts is adjusted by the hospital wage index. As discussed in the August 30, 1996 final rule (61 FR 46189), for purposes of determining the labor-related portion of the standardized amounts, we sum the percentages of the labor-related items (that is, wages and salaries, employee benefits, professional fees, business services, computer and data processing services, postage, and all other labor-intensive services) in the operating hospital market basket. Effective for FY 1997, this summation resulted in a labor-related portion of the hospital market basket of 71.246 percent, and a nonlabor-related portion of 28.754 percent. Thus, since October 1, 1996, we have considered 71.2 percent of operating costs to be labor-related for purposes of the prospective payment system (we rounded to the nearest tenth).

In connection with the revisions to the hospital market basket, we have reestimated the labor-related share of the standardized amounts. Based on the relative weights described in Table 2, the labor-related portion (wages and salaries, employee benefits, professional fees, postage, and all other labor-intensive services) is 71.066 percent, and the nonlabor-related portion is 28.934 percent. Accordingly, effective with discharges occurring on or after October 1, 1997, we are revising the labor-related and nonlabor-related shares of the large urban and other areas' standardized amounts used to establish the prospective payment rates to 71.1 and 28.9, respectively. The amounts in Table 2 reflect the revised labor-related and nonlabor-related portions. We note that the labor-related portions of the rates published in Table 2 have remained approximately the same. The labor-related portion has decreased from 71.2 percent to 71.1 percent.

TABLE 2.—LABOR-RELATED SHARE OF REVISED 1992-BASED PROSPECTIVE PAYMENT HOSPITAL MARKET BASKET

Cost category	Weight
Wages and salaries .....	50.244
Employee benefits .....	11.146
Professional fees .....	2.127
Postal services .....	0.272
All other labor intensive .....	7.277
Total labor-related .....	71.066
Total nonlabor-related .....	28.934

*Comment:* We received comments encouraging us to revisit the market basket framework annually to adjust for changes such as additional administrative costs for hospitals that revise their Medicare billing procedures to screen claims in response to current policies such as the 3-day payment window and pending legislation such as the change in definition of a transfer.

*Response:* When slight adjustments are made to individual weights within the hospital market baskets, there is typically little or no change in the historical or forecasted market baskets. A shift in weights from one cost category to another results in a zero sum. Cost categories rising in relative importance are offset by cost categories falling in relative importance. The total weight is 100 before and after the shift. There is an impact on the weighted average of price changes only when the price changes (not levels) of the cost categories shifted are substantially different. This is not typically the case.

Regarding administrative costs, we note that rebasing the market basket is done at 5-year intervals. In the interim, additional costs for administration are appropriately handled in the update framework, which includes factors such as hospital productivity and intensity of services.

*Comment:* We received a comment requesting that the market baskets be revised again when more recent Input-Output Tables become available from the Bureau of Economic Analysis. The

commenter also questioned changes to the market baskets that (1) reduce weights within the utilities cost category by moving some of the weight to the miscellaneous products category and (2) combine business and computer services into all other labor-intensive services.

*Response:* The changes in weights in the revised market baskets are the result of using data from the Asset and Expenditure Survey. We did a sensitivity analysis in which we developed a test index identical to the revised prospective payments market basket except that the weights and proxies for the current version of "All Other Services" were substituted for those in the revised market basket's "All Other Services" category. For the historical and forecast period of 1992–2002, half of the years showed no difference and half showed a 0.1 percentage point difference in the percent change upon which updates are based. We feel that the revised market baskets represent an improvement in cost categories and price proxies, and therefore are better measures of composite price changes. When the Input-Output Tables for 1992 become available we will review these data carefully. Revised Input-Output data are automatically included in rebasing on a regular schedule (approximately every 5 years).

*C. Selection of Price Proxies*

Only four categories that are part of the current hospital market basket do not appear in the revised hospital market basket. Of the 22 categories that are part of both the current and the revised market baskets, only the weights might differ. The wage and price proxies selected for these cost categories are the same as those selected last year. A description and discussion of each price proxy are set forth in the August 30, 1996 final rule (61 FR 46324). The price proxies are shown in Table 1, above. The makeup of the HCFA Blended Occupational Wage Index and the HCFA Blended Occupational Benefits Index used as proxies for Wages and Salaries

and Employee Benefits, respectively, remain the same as last year. (See 61 FR 27463.)

To examine the impact of the changes to the weights and the reduction of the

number of cost categories, we developed a comparison for the period FY 1994 through FY 1999. Using historical data for FY 1994 through FY 1996, and forecasts for FY 1997 through FY 1999

for the prospective payment market basket, we compared the percentage changes for the current and the revised market baskets.

TABLE 3.—COMPARISON OF THE CURRENT PROSPECTIVE PAYMENT HOSPITAL MARKET BASKET AND THE REVISED PROSPECTIVE PAYMENT HOSPITAL MARKET BASKET PERCENT CHANGE, FY 1994–1999

Federal fiscal year	Current hospital market basket	Revised hospital market basket	Difference
Historical:			
1994 .....	2.6	2.6	0.0
1995 .....	3.2	3.2	0.0
1996 .....	2.5	2.4	-0.1
Forecasted:			
1997 .....	2.3	2.1	-0.2
1998 .....	2.7	2.7	0.0
1999 .....	3.0	2.9	-0.1
Historical average: 1994–1996 .....	2.8	2.7	-0.1
Forecasted average: 1997–1999 .....	2.7	2.6	-0.1

Note that the historical average rate of growth for 1994 through 1996 for the improved revised prospective payment hospital market basket is almost equal to that of the current market basket. The 0.1 percentage point difference is less than the +/- 0.25 percent threshold for corrections for forecast error. The forecasted average rate of growth for 1997 through 1999 for the revised

market basket is 0.1 percentage points less than that of the current market basket.

*D. Separate Market Basket for Hospitals and Hospital Units Excluded From the Prospective Payment System*

As in the prospective payment hospital market basket, weights for the six main cost categories contained in the excluded hospital market basket (that is,

weights for wages and salaries, employee benefits, professional fees, malpractice insurance, pharmaceuticals, and the residual category) remain the same. Only the weights for “Utilities” and the categories within “All Other” have been revised. Table 4 below shows weights for the current and revised 1992-based excluded hospital market basket.

TABLE 4.—COMPARISON OF CURRENT 1992-BASED EXCLUDED HOSPITAL MARKET BASKET WITH REVISED 1992-BASED EXCLUDED HOSPITAL MARKET BASKET

Expense categories	Price proxy	Current 1992-based excluded market basket <sup>1</sup>	Revised 1992-based excluded market basket
1. Compensation:		63.721	63.721
A. Wages and salaries	HCFA occupational wage index	52.152	52.152
B. Employee benefits	HCFA occupational benefits index	11.569	11.569
2. Nonmedical professional fees	ECI-compensation for professional, specialty, and technical	2.098	2.098
3. Utilities		2.557	1.675
A. Electricity	WPI commercial electric power	1.396	1.007
B. Fuels (nonhighway)	WPI commercial natural gas	1.051	0.401
C. Water and sewerage	CPI-U water and sewerage maintenance	0.110	0.267
4. Professional liability insurance	HCFA professional liability insurance premium index	1.081	1.081
5. All other expenses		30.541	31.425
A. All other products		23.640	24.227
(1) Pharmaceuticals	PPI ethical (prescription) drugs	3.070	3.070
(2) Food		3.581	3.468
(a) Direct purchase	PPI processed foods and feeds	2.446	2.370
(b) Contract service	CPI food away from home	1.135	1.098
(3) Chemicals	PPI industrial chemicals	3.929	3.754
(4) Medical instruments	PPI medical instruments and equipment	3.238	3.154
(5) Photographic supplies	PPI photographic supplies	0.413	0.400
(6) Rubber and plastics	PPI rubber and plastic products	5.039	4.865
(7) Paper products	PPI converted paper and paperboard products	2.134	2.182
(8) Apparel	PPI apparel	0.906	0.890
(9) Machinery and equipment	PPI machinery and equipment	0.218	0.212
(10) Miscellaneous products	PPI finished goods	1.112	2.232
B. All other services		6.901	7.198
(1) Postage	CPI-U postage	0.282	0.295
(2) Telephone services	CPI-U telephone services	0.549	0.631

TABLE 4.—COMPARISON OF CURRENT 1992-BASED EXCLUDED HOSPITAL MARKET BASKET WITH REVISED 1992-BASED EXCLUDED HOSPITAL MARKET BASKET—Continued

Expense categories	Price proxy	Current 1992-based excluded market basket <sup>1</sup>	Revised 1992-based excluded market basket
(3) All other: labor intensive .....	ECI compensation for private service occupations .....	5.519	5.439
(4) All other: nonlabor intensive .....	CPI-U all items .....	0.551	0.833
Total .....	.....	100.000	100.000

Note: Due to rounding, weights may not sum to total.

<sup>1</sup> Expense categories based on revised 1992-based hospital market basket for comparison purposes.

**V. Other Decisions and Changes to the Prospective Payment System for Inpatient Operating Costs**

**A. Outlier Payments (§§ 412.80, 412.82, 412.84, and 412.86)**

**1. Elimination of Day Outlier Payments**

Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for "outlier" cases, that is, cases involving extraordinarily high costs (cost outliers) or long lengths of stay (day outliers). That section also provides that, beginning with FY 1995, payments for day outliers will be phased out over 3 years. We have discussed this phase out and its implementation in detail in the September 1, 1994, September 1, 1995, and August 30, 1996 final rules (59 FR 45366, 60 FR 45854, and 61 FR 46228, respectively). Since payment for day outliers will be eliminated effective with discharges occurring in FY 1998, we proposed conforming revisions to the regulations at §§ 412.80, 412.82, 412.84, and 412.86. At the same time, we proposed to make a technical change to the provision concerning outlier payments for transfer cases to conform the regulations to policies that we have stated in previous prospective payment system rules but did not codify. See the final rules published September 1, 1995 (60 FR 45804) and September 1, 1993 (58 FR 46306-07).

We received no comments on these conforming changes and are incorporating them in this final rule with comment period as proposed.

**2. Changes to Outlier Payments in Pub. L. 105-33**

Section 4405 of Public Law 105-33 amended sections 1886 (d)(5)(B)(i)(I) and (d)(5)(F)(ii)(I) of the Act to provide that, in determining the additional payment for indirect medical education (IME) and/or disproportionate share hospitals (DSH), the IME and DSH adjustment factors are applied only to the base DRG payment, not the sum of

the base DRG payment and any cost outlier payments, effective with discharges occurring on or after October 1, 1997. The same section of Pub. L. 105-33 also amended section 1886(d)(5)(A)(ii) of the Act to require that the fixed loss cost outlier threshold is based on the sum of DRG payments and IME and DSH payments for purposes of comparing costs to payments. Therefore, we are revising our regulations at § 412.84(g) to remove the provision that costs be reduced by the IME and DSH adjustment factors for purposes of comparing costs to payments to determine if costs exceed the fixed loss cost outlier threshold, as well as deleting current § 412.80(c). Conforming changes are made at current § 412.105(a) (IME) and § 412.106(a)(2) (DSH). We are also making a corresponding change to the capital cost outlier methodology. We received two public comments urging us to implement this provision in the final rule.

As indicated above, one change resulting from Pub. L. 105-33 is that, in determining whether a case meets the cost outlier threshold, we will not standardize the costs of the case to account for IME and DSH payments. The following examples show the effect on two hospitals of this change in methodology. In the example, we use DRG 286, which has a relative weight of 2.2671. Each hospital has a wage index of 1. The labor-related national large urban standardized amount is \$2,776.21; the nonlabor-related large urban standardized amount is \$1,128.44.

*Before the Change*

Standard Cost = (Billed Charges × Cost to Charge Ratio) ÷ (1 + IME + DSH)  
 Outlier Payments = (80 percent of (Standard Cost—Threshold)) \* (1 + IME + DSH)  
 Total Payments = Outlier Payments + (Federal Rate × (1 + IME + DSH))

	IME and DSH hospital	Non-IME, Non-DSH hospital
Billed charges ...	\$100,000	\$100,000
IME adjustment factor .....	0.0744	0.0
DSH adjustment factor .....	0.1413	0.0
Cost to charge ratio .....	0.72	0.72
Standard cost ...	\$59,225.14	\$72,000
Outlier threshold	\$17,806.30	\$17,806.30
Outlier payments	\$40,282.30	\$43,354.96
Total payments	\$51,043.96	\$52,207.19

Even with high IME and DSH adjustments, the IME and DSH hospital receives a lower payment for an identical outlier case. This case uses the fixed loss outlier threshold of \$7,600 from the proposed rule.

In the following example, the IME and DSH hospital's costs are not adjusted for IME and DSH. The outlier threshold amount includes IME and DSH payments. There are no IME and DSH payments for outliers. The outlier threshold increases under this method for all hospitals.

*After the Change*

Standard Cost = (Billed Charges × Cost to Charge Ratio)  
 Outlier Payments = 80 percent of (Standard Cost—Threshold)  
 Total Payments = Outlier Payments + (Federal Rate × (1 + IME + DSH))

	ME and DSH hospital	Non-IME, non-DSH hospital
Billed charges ...	\$100,000	\$100,000
IME adjustment factor .....	0.0744	0.0
DSH adjustment factor .....	0.1413	0.0
Cost to charge ratio .....	0.72	0.72
Standard cost ....	\$72,000	\$72,000
Outlier threshold	\$20,961.91	\$19,052.49
Outlier payments	\$40,830.47	\$42,358.01
Total payments	\$51,592.13	\$51,210.24



This case uses the final fixed loss threshold of \$11,050 for FY 1998. The fixed loss threshold increase from the proposed rule is due to the higher standard costs of IME and DSH hospitals.

**B. Rural Referral Centers (§ 412.96)**

Under section 1886(d) of the Act, hospitals generally are paid by the Medicare program for inpatient hospital services covered by Medicare in accordance with the prospective payment system. Certain hospitals, however, receive special treatment under that system. Section 1886(d)(5)(C)(i) of the Act specifically provides for exceptions and adjustments to prospective payment amounts, as the Secretary deems appropriate, to take into account the special needs of rural referral centers.

Section 412.96(d) of the regulations provides that, for discharges occurring before October 1, 1994, rural referral centers received the benefit of payment for inpatient operating costs per discharge based on the other urban payment amount rather than the rural standardized amount. As of October 1, 1994, 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 ways that a rural hospital may qualify as a rural referral center is to meet two mandatory criteria (specifying a minimum case-mix index and a minimum number of discharges) and at least one of three optional criteria (relating to specialty composition of medical staff, source of inpatients, or volume of referrals). These criteria are described in detail in § 412.96(c).

**1. Case-Mix Index Criteria**

Section 412.96(c)(1) sets forth the case-mix index criteria and provides that, for cost reporting periods beginning on or after October 1, 1986, a hospital's case-mix index for discharges "during the Federal fiscal year that ended 1 year prior to the beginning of the cost reporting period for which the hospital is seeking referral center status" must be at least equal to the national case-mix index value as established by HCFA or the median case-mix value for urban hospitals in the region in which the hospital is located (excluding hospitals receiving indirect medical education payments), whichever is lower. As discussed in the proposed rule, we feel that the language in § 412.96(c)(1) does not clearly address situations in which the Federal

fiscal year does not end exactly 1 year prior to the beginning of the cost reporting period for which the hospitals are seeking referral center status. Therefore, we clarified which case-mix index values are used to determine referral center status. We emphasized that this clarification represents no substantive change in policy.

Our policy, which we have applied consistently since 1986, is that the case-mix index used for an individual hospital in the determination of whether it meets the case-mix index criterion is the case-mix index for discharges during the *most recent* Federal fiscal year that ended *at least* 1 year prior to the beginning of the cost reporting period for which the hospital is seeking referral center status.

We received no comments on our proposal to revise § 412.96(c)(1) to clarify the time period used to calculate the case-mix index, and we are adopting it as proposed.

**2. Updated Case-Mix and Discharge Criteria**

As noted above, a rural hospital can qualify as a rural referral center if the hospital meets two mandatory criteria (case-mix index and number of discharges) 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.)

**a. 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 includes all urban hospitals nationwide,

and the proposed regional values are 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).

These values are based on discharges occurring during FY 1996 (October 1, 1995 through September 30, 1996) and include bills posted to HCFA's records through December 1996. Therefore, in addition to meeting other criteria, we proposed that to qualify for initial rural referral center status, a hospital's case-mix index value for FY 1996 would have to be at least—

- 1.3525; 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 June 2, 1997 proposed rule at 62 FR 29923).

Based on the latest data available (FY 1996 bills received through June 1997), the final national case-mix value is 1.3529 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) .....	1.2322
2. Middle Atlantic (PA, NJ, NY) .....	1.2455
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV) .....	1.3701
4. East North Central (IL, IN, MI, OH, WI) .....	1.2610
5. East South Central (AL, KY, MS, TN) .....	1.3023
6. West North Central (IA, KS, MN, MO, NE, ND, SD) .....	1.2088
7. West South Central (AR, LA, OK, TX) .....	1.3265
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY) .....	1.3476
9. Pacific (AK, CA, HI, OR, WA) ..	1.3450

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 1996 case-mix index value in Table 3C in section IV of the Addendum to this final rule with comment period. 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.

**b. 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 are based on discharges for urban hospitals' cost reporting periods that began during FY 1995 (that is, October 1, 1994 through September 30, 1995). 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, 1997, the number of discharges a hospital must have for its cost reporting period that began during FY 1996 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, 1997 proposed rule at 62 FR 29924.)

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) .....	6658
2. Middle Atlantic (PA, NJ, NY) ....	8367
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV) .....	7515
4. East North Central (IL, IN, MI, OH, WI) .....	7290
5. East South Central (AL, KY, MS, TN) .....	6650
6. West North Central (IA, KS, MN, MO, NE, ND, SD) .....	5189
7. West South Central (AR, LA, OK, TX) .....	5133
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY) .....	7982
9. Pacific (AK, CA, HI, OR, WA) ..	5919

We reiterate that, to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 1997, an osteopathic hospital's number of discharges for its cost reporting period that began during FY 1996 would have to be at least 3,000.

We received no comments on the rural referral center criteria.

### 3. Retention of Referral Center Status

Section 1886(d)(5)(C)(i) of the Act states that "the Secretary shall provide

for such exceptions and adjustments to the payment amounts \* \* \* as the Secretary deems appropriate to take into account the special needs of regional and national referral centers \* \* \*" The Conference Committee Report accompanying Public Law 98-21 (the original legislation implementing the prospective payment system) contained little additional language concerning the definition of "regional and national referral centers." The Report did indicate, however, that they should include very large acute care hospitals located in rural areas. Thus, we established qualifying criteria for referral center status to identify those rural hospitals that, because of bed size, a large number of complicated cases, a high number of discharges, or a large number of referrals from other hospitals or from physicians outside the hospital's service area, were likely to have operating costs more similar to urban hospitals than to the average smaller community hospitals. The regulations implementing the referral center provision are codified at § 412.96.

In 1984, after a year's experience with the referral center criteria, we determined that once approved for the referral center adjustment, a hospital would retain its status for a 3-year period. At the end of the 3-year period, we would review the hospital's performance to determine whether it should be requalified for an additional 3-year period. The requirement for triennial review was added to the regulations in 1984 (§ 412.96(f)) to be effective for cost reporting periods beginning on or after October 1, 1987 (the end of the first 3 years of the referral center adjustment). However, since then, three statutory moratoria on the performance of the triennial reviews were enacted by Congress. When the third of these moratoria expired at the end of cost reporting periods that began during FY 1994, we implemented the triennial review requirements and some hospitals lost their referral center status. (See the September 1, 1993 final rule (58 FR 46310) for a detailed explanation of the moratoria and the implementation of the triennial reviews.)

Hospitals could lose rural referral center status in other ways. With the creation of the Medicare Geographic Classification Review Board (MGCRB) and a hospital's ability, beginning in FY 1992, to request that it be reclassified from one geographic location to another, we stated that if a referral center was reclassified to an urban area for purposes of the standardized amount, it would, in most instances, be voluntarily terminating its referral center status. (See the June 4, 1991 final rule with

comment period (56 FR 25482).) This was true because, in most instances, a hospital's ability to qualify as a "rural referral center" was contingent upon (among other criteria) its status as a rural hospital.

In addition, rural referral centers located in areas that were redesignated as urban by the Office of Management and Budget lost their referral center status. These hospitals had qualified for referral center status under criteria applicable only to hospitals located in rural areas. OMB's designation of the areas to urban status meant that such hospitals were urban for *all* purposes and thus could no longer qualify as *rural* referral centers.

Section 4202(b)(1) of Public Law 105-33 states that, "Any hospital classified as a rural referral center by the Secretary \* \* \* for fiscal year 1991 shall be classified as such a rural referral center for fiscal year 1998 and each subsequent fiscal year." Thus, many of the hospitals that lost their referral center status for the reasons listed above must be reinstated. For the purpose of implementing this provision, we consider that a hospital that was classified as a referral center for any day during FY 1991 (October 1, 1990 through September 30, 1991) meets the reinstatement criterion.

We have identified 136 hospitals that were classified as rural referral centers in 1991 and are no longer classified as referral centers at this time. Of these, approximately 70 lost their referral center status for failure to meet the triennial review requirements; approximately 40 lost their status due to MGCRB reclassification; approximately 20 were in areas redesignated as urban by OMB, and 6 hospitals voluntarily requested withdrawal of their referral center status.

We are reinstating rural referral center status for all hospitals that lost the status due to triennial review or MGCRB reclassification. The HCFA regional offices will notify each hospital (and the hospital's fiscal intermediary) of their reinstatement as referral centers effective October 1, 1997. If a hospital believes it should be reinstated but does not receive notification, it should contact the appropriate regional office.

We are not reinstating rural referral center status to hospitals in areas redesignated as urban by OMB or hospitals that requested withdrawal of such status. The language of section 4202(b)(1) states that any hospital classified as a rural referral center for FY 1991, "\* \* \* shall be classified as such a *rural* referral center for fiscal year 1998 and each subsequent fiscal year." (Emphasis added.) Hospitals located in

areas redesignated as urban by OMB, since FY 1991, are no longer physically located in a rural area and they can no longer be classified as "rural" referral centers. We also do not believe the law intended that referral center classification be forced on hospitals that do not want it and we are, therefore, not reinstating the status of the six hospitals that requested withdrawal. If, however, any of these hospitals wish to be requalified as a referral center, they should contact their HCFA regional office.

We note that section 4202(b)(1) provides reinstatement to only those hospitals that were classified as rural referral centers during FY 1991. That is, any hospital approved as a referral center after FY 1991 would not be protected by this provision. We do not believe that it is equitable or administratively practical to maintain two lists of referral centers, that is, a list of those hospitals approved for referral center status in 1991 and thus protected by the reinstatement provision and a list of those hospitals approved after FY 1991 and not protected by the provision. Therefore, we are terminating the requirement for triennial reviews of referral center status and reinstating all hospitals that lost referral center status due to those reviews. Thus, §§ 412.96 (f) and (g) (1) and (2) are deleted. If we later discover some hospital or class of hospitals that we believe should not be allowed to retain referral center status because they fail to meet some basic requirement we believe is essential to receiving this special designation, we will consider reinstating some type of annual or periodic qualifying criteria.

In addition, we recognize that there are hospitals that qualified for referral center status after 1991 and that may have lost that status in a subsequent year due to reclassification by the MGCRB. Again, we do not believe it is equitable or administratively practical to treat such hospitals differently than those protected by the provision of Public Law 105-33. Thus, we believe that any hospital that lost its referral center status due to reclassification by the MGCRB, regardless of whether it was classified as a referral center during FY 1991, should be reinstated effective October 1, 1997. The regional offices will make every effort to identify and notify all affected hospitals. However, hospitals that believe they meet the criteria for reinstatement but do not receive notification from the regional office or their fiscal intermediary, should contact the appropriate regional office.

We are also eliminating the policy that a hospital loses RRC status if it is

reclassified as urban by the MGCRB. We note that for reclassified hospitals, RRC status would have no payment effect.

Every effort will be made to process all reinstatements as quickly as possible.

#### *C. Payment for Medicare-Dependent, Small Rural Hospitals (§ 412.108)*

Section 4204 of Public Law 105-33 amended section 1886(d)(5)(G) of the Act to reinstate the classification of Medicare-dependent, small rural hospitals (MDHs) for cost reporting periods beginning on or after October 1, 1997 and before October 1, 2001. This category of hospitals was originally created by section 6003(f) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239), enacted on December 19, 1989, which added a new section 1886(d)(5)(G) of the Act. As provided by that law, the special payment for MDHs was to be available for cost reporting periods beginning on or after April 1, 1990 and ending on or before March 31, 1993. Hospitals classified as MDHs were paid using the same methodology applicable to sole community hospitals; that is, based on whichever of the following rates yielded the greatest aggregate payment for the cost reporting period:

- The national Federal rate applicable to the hospital.
- The updated hospital-specific rate using FY 1982 cost per discharge.
- The updated hospital-specific rate using FY 1987 cost per discharge.

Section 13501(e)(1) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66), enacted on August 10, 1993, extended the MDH provision through discharges occurring before October 1, 1994. Under this revised provision, after the hospital's first three 12-month cost reporting periods beginning on or after April 1, 1990, the additional payment to an MDH whose applicable hospital-specific rate exceeded the Federal rate was limited to 50 percent of the amount by which that hospital-specific rate exceeded the Federal rate.

In reinstating the MDH special payment for discharges occurring on or after October 1, 1997 and before October 1, 2001, section 4204 of Public Law 105-33 did not revise either the qualifying criteria for these hospitals nor the most recent payment methodology. Therefore, the criteria a hospital must meet in order to be classified as an MDH are the same as before. Section 1886(d)(5)(G)(iv) of the Act defines an MDH as any hospital that meets all of the following criteria:

- The hospital is located in a rural area.
- The hospital has 100 or fewer beds.

- The hospital is not classified as an SCH (as defined at § 412.92) at the same time that it is receiving payment under this provision.

- In the hospital's cost reporting period that began during FY 1987, not less than 60 percent of its inpatient days or discharges were attributable to inpatients entitled to Medicare Part A benefits.

For the purpose of implementing section 4204 of Pub. L. 105-33, we consider that a hospital that meets the criteria above and that was classified as an MDH on September 30, 1994 is reinstated as an MDH. We have identified 414 hospitals that were classified as MDHs on September 30, 1994. Of these, 20 hospitals no longer participate in the Medicare program, 15 hospitals are now classified as SCHs, 6 hospitals are now located in urban areas, and 5 have more than 100 beds. We will provide fiscal intermediaries with a list of the hospitals we have identified; therefore, hospitals that meet the criteria for classification as an MDH and that were classified as an MDH on September 30, 1994 do not need to take any action in order to be reinstated as an MDH. At the time the year-end settlement is made, the fiscal intermediary will determine for each cost reporting period which hospitals meet the criteria to qualify as MDHs. In addition, the intermediary will determine for each cost reporting period which of the payment options yields the highest rate of payment to a hospital that qualifies as an MDH.

We note that classification as an MDH is not optional. Therefore, hospitals that meet the criteria in § 412.108(a) are not eligible for the temporary special payment provided for in section 4401(b) of Public Law 105-33 (discussed below in section IV-D). However, if a hospital that receives notification that it is being reinstated as an MDH believes it no longer meets the criteria because, for example, it has had an increase in its bed size to more than 100 beds, it should contact its fiscal intermediary.

For purposes of determining a hospital's bed size, we will continue to use the same definition (which is defined for indirect medical education purposes at § 412.105(b)). That is, the number of beds in a hospital is determined by counting the number of available bed days during the hospital's cost reporting period, not including beds or bassinets in the healthy newborn nursery, custodial care, and excluded distinct part units, and dividing that number by the number of days in the cost reporting period.

We are revising §§ 412.90 and 412.108 to reflect the reinstatement of the MDH special payment.

Section 4204(a)(3) of Public Law 105-33 permits those hospitals that applied and were approved for reclassification to a large urban area for purposes of receiving the large urban rates through the MGCRB to decline that reclassification for FY 1998. Normally, hospitals approved for reclassification have only 45 days from the date of the proposed rule to withdraw their request for reclassification. However, the statute provides that, in this situation, hospitals may withdraw their request for FY 1998 reclassification to a large urban area for purposes of the standardized amount. Any hospital that does not requalify for MDH reinstatement for FY 1998 because of a reclassification to an urban area by the MGCRB for FY 1998 will be notified and given the opportunity to decline that reclassification.

*D. Special Payment for Certain Nonteaching, Nondisproportionate Share Hospitals That Do Not Qualify as Medicare-Dependent, Small Rural Hospitals (§ 412.107)*

Section 4401(b) of Public Law 105-33 provides a temporary special payment for FYs 1998 and 1999 for certain hospitals that do not receive any additional payment through the IME or DSH adjustment and do not meet the criteria to be classified as a Medicare-dependent, small rural hospital (MDH). As set forth in section 4401(b)(2), in order to qualify for the special payment, a hospital must be located in a State in which the aggregate operating prospective payment for hospitals that meet the special payment criteria (that is, non-IME, non-DSH, non-MDH hospitals) is less than the aggregate allowable operating costs of inpatient hospital services (referred to hereafter as a negative operating prospective payment margin) for those hospitals for their cost reporting periods that began during FY 1995. In addition, a hospital must have a negative operating prospective payment margin during the cost reporting period at issue (beginning in FY 1998 or 1999).

Under the provisions of section 4401(b)(1), for these hospitals, the percentage increase otherwise applicable to the standardized amount for FY 1998 will be increased by 0.5 percentage points and, for FY 1999, the applicable percentage increase will be increased by 0.3 percentage points. Based on the current law, this means that these hospitals will receive an update of 0.5 percent for FY 1998 (the update for all other hospitals is 0) and, for FY 1999, an update of the market

basket increase minus 1.6 percentage points (1.9 for all other hospitals). Under section 4401(b)(1), in applying these updates, the increase provided in FY 1998 will not apply in computing the update for FY 1999 and neither update will affect the updates provided for discharges in fiscal years after FY 1999.

Under section 4401(b)(2) of Public Law 105-33, in determining whether a hospital qualifies for the special payment for a given cost reporting period, we must look first at statewide aggregate data for non-IME, non-DSH, non-MDH hospitals for cost reporting periods beginning during FY 1995, and second at hospital-specific characteristics for the cost reporting period at issue. With respect to the first criterion, we used the best data currently available. We used the latest update to the provider-specific file to identify those hospitals that do not receive IME or DSH payments. We also identified those hospitals that meet the criteria to be designated as an MDH. Using the latest update to the Health Care Provider Cost Report Information System (HCRIS), we examined the FY 1995 cost report data for the non-IME, non-DSH, and non-MDH hospitals identified above and found that the following States meet the criteria set forth in section 4401(b)(2)(B):

Alaska, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maine, Missouri, New Hampshire, New Jersey, Ohio, Puerto Rico, Rhode Island, Vermont, Wisconsin.

For purposes of determining qualification for special payment under section 4401(b), this is the final list of qualifying States. We recognize that cost reports for cost reporting periods beginning during FY 1995 might be subject to further adjustments, and we considered the option of waiting until all FY 1995 cost reports are finally settled before determining the qualifying States. We rejected this approach because under the prospective payment system, we believe that, to the extent possible, we must set the payment parameters that will be applied to hospitals before the start of the fiscal year. If we waited several years for all FY 1995 cost reports to be settled before making this additional payment to the qualifying hospitals, hospitals would have less certainty about the amount of payments they would receive. Moreover, the intent of Congress to provide relief to hospitals in FYs 1998 and 1999 would be compromised. In addition, for purposes of computing the FY 1998 and 1999 standardized amounts and performing the necessary

related calculations (for example, the budget neutrality adjustments), we need to make a prospective determination about which hospitals are likely to be affected. In short, then, for purposes of determining the qualifying States under section 4401(b)(2)(B), we have decided to use the best data available now.

With respect to hospital-specific characteristics, however, the statute requires that we look at data for the cost reporting period at issue (beginning in FY 1998 or 1999). That is, we must look at the cost reporting period at issue and determine whether the hospital has a negative operating prospective payment margin for that period, and whether the hospital received IME or DSH payments or qualified as an MDH for that period. Thus, the final determination as to whether a hospital is eligible for the add-on cannot be made until cost report settlement. We intend to make interim payment to these hospitals beginning with discharges occurring on or after October 1, 1997, based on the latest information available to the fiscal intermediaries. That is, if a hospital is in one of the 17 designated States, is not receiving IME or DSH payments in FY 1998 or 1999, is not an MDH, and, based on the latest cost report information available to the intermediary, has a negative operating prospective payment margin, the intermediary will pay the hospital based on the higher standardized amount *during* the fiscal year. As noted above, the final decision as to a hospital's qualification for the additional payment will be made at cost report settlement.

We have added a new § 412.107 to the regulations and revised § 412.90 to implement this provision. We note that in the Addendum and Appendix A to this final rule with comment period, we refer to the hospitals that qualify for the higher standardized amount as "temporary relief" hospitals.

*E. Payments to Disproportionate Share Hospitals (§ 412.106)*

Effective for discharges beginning on or after May 1, 1986, hospitals that treat a disproportionately large number of low-income patients receive additional payments through the DSH adjustment. Section 4403(a) of Public Law 105-33 reduces the payment a hospital would otherwise receive under the current disproportionate share formula by 1 percent for FY 1998, 2 percent for FY 1999, 3 percent for FY 2000, 4 percent for FY 2001, 5 percent for FY 2002, and 0 percent for FY 2003 and each subsequent fiscal year. Therefore, the actual payment a hospital receives under DSH will be reduced by 1 percent for FY 1998. We are adding a new

paragraph (e) to § 412.106 to implement this provision.

In addition, section 4403(b) of Public Law 105-33 requires the Secretary to submit to Congress, no later than 1 year after enactment (that is, by August 5, 1998), a report that contains a formula for determining the amount of additional payments to disproportionate share hospitals. In determining the formula, the Secretary is required to establish a single threshold for costs incurred by hospitals in serving low-income patients, and consider the following costs:

- (1) the costs incurred for furnishing hospital services to individuals entitled to Medicare Part A and SSI; and
- (2) the costs incurred for furnishing services to individuals receiving Medicaid who are not entitled to benefits under Part A of Medicare, including individuals enrolled in a managed care organization or any other managed care plan under Medicaid and individuals who receive medical assistance in a State with an 1115 waiver under Medicaid. In developing the formula, the Secretary is given the authority to require hospitals receiving DSH payments to submit any information the Secretary finds necessary in order to develop the formula.

**F. Payment for Blood Clotting Factor for Hemophilia Inpatients (§§ 412.2 and 412.115)**

Hemophilia is a blood disorder characterized by prolonged coagulation time, caused by an inherited deficiency of a factor in plasma necessary for blood to clot. For purposes of this final rule with comment period, hemophilia is considered to encompass the following three conditions: Factor VIII deficiency (classical hemophilia); Factor IX deficiency (plasma thromboplastin component); and Von Willebrand's disease.

Section 6011 of Public Law 101-239 amended section 1886(a)(4) of the Act to provide that prospective payment hospitals receive an additional payment for the costs of administering blood clotting factor to Medicare hemophiliacs who are hospital inpatients. Section 6011(b) specified that the payment is to be based on a predetermined price per unit of clotting factor multiplied by the number of units provided. This add-on payment originally was effective for blood clotting factor furnished on or after June 19, 1990, and before December 19, 1991. Section 13505 of Public Law 103-66 amended section 6011(d) of Public Law 101-239 to extend the period covered by the add-on payment for blood clotting factors

administered to Medicare inpatients with hemophilia through September 30, 1994. Most recently, section 4452 of Public Law 105-33 amended section 6011(d) of Public Law 101-239 to reinstate the add-on payment for the costs of administering blood clotting factor to Medicare beneficiaries who have hemophilia and who are hospital inpatients for discharges occurring on or after October 1, 1997.

We are calculating the add-on payment for FY 1998 using the same methodology we used in the past. That is, we are establishing a price per unit of clotting factor based on the current price listing available from the 1997 Drug Topics Red Book, the publication of pharmaceutical average wholesale prices (AWP). We are setting separate add-on amounts, for the following clotting factors, as described by HCFA's Common Procedure Coding System (HCPCS). The add-on payment amount for each HCPCS code is based on the median AWP of the several products available in that category of factor, discounted by 15 percent.

Based on this methodology, the prices per unit of factor are as follows:

<i>Per unit</i>	
J7190 Factor VIII (antihemophilic factor-human) .....	\$0.76
J7192 Factor VIII (antihemophilic factor-recombinant) .....	1.00
J7194 Factor IX (complex) .....	0.32
J7196 Other hemophilia clotting factors (e.g., anti-inhibitors) .....	1.10

These prices will be effective for add-on payment for blood clotting factors administered to inpatients who have hemophilia for discharges beginning on or after October 1, 1997 through September 30, 1998.

As noted above, we are following the same methodology as we have in previous years in calculating the FY 1998 add-on payment for the cost of administering blood clotting factors to hospital inpatients with hemophilia. In view of the brief period of time between the enactment of Public Law 105-33 and the need to reinstitute the add-on payment for blood clotting factors, we believe that using this methodology is the only viable alternative. However, we understand that hospitals may be able to obtain blood clotting factors at prices substantially below the median AWP. Thus, we believe it is possible that the methodology for determining add-on payment amounts could be revised to better reflect the actual costs of administering the blood clotting factors. We intend to examine our methodology before establishing the add-on payment amount for FY 1999 and are soliciting

comments on the appropriateness of the add-on payment amount and suggestions for the best methodology to calculate this amount.

We have revised §§ 412.2(f)(8) and 412.115(b) to indicate that for discharges occurring on or after October 1, 1997, we will make an add-on payment for the costs of administering blood clotting factor to Medicare hospital inpatients who have hemophilia. We will reissue instructions to Medicare hospitals and fiscal intermediaries concerning the codes to use for clotting factor and how to use them. We note that payment will be made for blood clotting factor only if there is an ICD-9-CM diagnosis code for hemophilia and the appropriate HCPCS code included on the bill.

**G. Payments to Hospitals in Puerto Rico (§ 412.204)**

Currently, the Puerto Rico payment rate for operating costs is based on 75 percent of the Puerto Rico-specific standardized amount and 25 percent of a national standardized amount. Section 4406 of Public Law 105-33 amended section 1886(d)(9)(A) of the Act to revise the Puerto Rico and national shares of the Puerto Rico payment rate. Beginning with discharges occurring on or after October 1, 1997, the Puerto Rico payment rate will be a blend of 50 percent of the Puerto Rico standardized amount and 50 percent of a national standardized amount. We are revising § 412.204 of the regulations to conform with this amendment.

**H. Changes to the Indirect Medical Education Adjustment (§ 412.105)**

**1. Changes in the June 2, 1997 Proposed Rule**

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that have residents in an approved graduate medical education program receive an additional payment to reflect the higher indirect operating costs associated with graduate medical education. The regulations regarding the calculation of this additional payment, known as the IME adjustment, are at § 412.105. The additional payment is based in part on the applicable IME adjustment factor. The adjustment factor is calculated by using a hospital's ratio of residents-to-beds in the formula set forth at section 1886(d)(5)(B)(ii) of the Act.

The criteria governing whether a program is considered approved are currently at § 412.105(g)(1)(i). These criteria are the same as those used to identify approved programs for the direct graduate medical education

payment under § 413.86(b). In the August 30, 1991 final rule (56 FR 43237), we added a criterion to § 413.86(b), but inadvertently did not add it to § 412.105(g)(1)(i). This criterion added the Annual Report and Reference Handbook of the American Board of Medical Specialties (ABMS) as another publication to be used to identify approved programs.

Historically, we have used the same criteria to determine whether a residency training program is approved for payments under both the indirect and the direct graduate medical education payments. This has in fact been our policy with regard to whether programs listed in the ABMS' Annual Report and Reference Handbook are considered approved for IME adjustment payments, even though § 412.105(g)(1)(i) was not changed. To avoid any future confusion, we proposed to revise this section to parallel the changes made at § 413.86(b). We received no public comments on this proposal and are adopting this change in the final rule with comment period.

In addition, we proposed to delete current § 412.105(g)(1)(iv), which excludes from the IME resident count any anesthesiology residents employed to replace anesthesiologists. This exclusion was originally intended to prevent hospitals from hiring residents in lieu of nonphysician anesthesiologists. Given that certain rural hospitals continue to receive pass-through cost-based payment for their anesthesiologist costs, we no longer believe this provision is warranted. Nor are we aware of any specific instances where it has been applied. We received one public comment in support of this proposed revision and no opposing comments. Therefore, we are implementing this change in the final rule with comment period.

## 2. Changes to IME in Public Law 105-33

In addition to making the changes set forth above, we are revising the regulations to incorporate the provisions of section 4621 of Public Law 105-33, which revised section 1886(d)(5)(B) of the Act in several ways. First, it gradually reduces the current level of IME adjustment (approximately a 7.7 percent increase for every 10 percent increase in the resident-to-bed ratio) over the next several years. The schedule for the IME adjustment is as follows: 7.0 percent for discharges during FY 1998; 6.5 percent during FY 1999; 6.0 percent during FY 2000; and 5.5 percent during FY 2001 and thereafter.

Second, section 4621 established certain limits both on the full-time equivalent (FTE) number of residents counted by each hospital and on the resident-to-bed ratio. Effective for discharges on or after October 1, 1997, section 4621(b)(1) added a new section 1886(d)(5)(B)(v) to the Act to provide that a hospital's total number of resident FTEs in the fields of allopathic and osteopathic medicine may not exceed the total number of such resident FTEs in the hospital during its most recent cost reporting period ending on or before December 31, 1996. Furthermore, section 1886(d)(5)(B)(vi)(I), as added by section 4621(b)(1) of Public Law 105-33, provides that the ratio of residents-to-beds may not exceed the ratio of residents-to-beds during the prior cost reporting period (after accounting for the cap on the number of resident FTEs).

Third, for cost reporting periods beginning on or after October 1, 1997, and subject to the new limit on counting residents described above (as well as the expansion of allowable settings to off-site services, as described below), new section 1886(d)(5)(B)(vi)(II) provides that residents will be counted based on a 3-year rolling average. This policy will decrease the financial impact of downsizing residency programs. Resident counts for cost reporting periods beginning during FY 1998 will be based on an average of the number of residents from the past 2 years, and for subsequent periods, resident counts will be based on an average of the past 3 years.

With respect to medical residency training programs established on or after January 1, 1995, section 1886(d)(5)(B)(viii) provides that the Secretary must develop rules to apply these limits to new programs, giving special consideration to "facilities that meet the needs of underserved areas," and to facilitate the application of aggregate limits in the case of affiliated groups (as defined by the Secretary). The Secretary may require any entity that operates a medical residency training program to submit additional information necessary to carry out the limits. We have revised the regulations at § 413.86(g)(6) to comply with these directions. For a more detailed explanation of this provision, see section V.I of the preamble concerning the direct graduate medical education payments.

Finally, section 4621(b)(2) amended section 1886(d)(5)(B)(iv) to allow all the time spent by a resident in patient care activities under an approved medical residency training program at an entity in a nonhospital setting to be counted

towards the determination of full-time equivalency if the hospital incurs all, or substantially all, of the costs for the training program in the nonhospital setting. Therefore, we are revising current § 412.105(g)(1)(ii)(C), which allowed hospitals to include the time residents spent in certain community health centers, to also include nonhospital settings where residents' time may be counted for purposes of IME. The eligibility criteria for this new provision is similar to a provision regarding direct graduate medical education payments at section 1886(h)(4)(E) of the Act, and implemented at § 413.86(f)(iii). We will rely upon the same criteria for direct graduate medical education to identify eligible situations under this new IME provision.

In addition to the regulatory changes, we intend to issue instructions to fiscal intermediaries to implement these changes effective October 1, 1997.

We are also revising § 412.105(d) to reinsert instructions for determining the education adjustment factors that were incorrectly deleted in a correction notice published on January 29, 1996 (61 FR 2725), and deleting current paragraph (f), which describes the determination of full-time resident counts for cost reporting periods beginning prior to July 1, 1991.

Section 4622 of Public Law 105-33 added a new section 1886(d)(11) to the Act to provide for IME payments to teaching hospitals for discharges associated with Medicare managed care beneficiaries for portions of cost reporting periods occurring on or after January 1, 1998. The additional payment is equal to an "applicable percentage" of the estimated average per discharge amount that would have been made for that discharge if the beneficiary were not enrolled in managed care. The applicable percentage is set forth in section 1886(h)(3)(D)(ii) of the Act and is equal to 20 percent in 1998, 40 percent in 1999, 60 percent in 2000, 80 percent in 2001, and 100 percent in 2002 and subsequent years. We are adding a new paragraph (g) to § 412.105 to implement this provision.

### I. Direct Graduate Medical Education (GME)

#### 1. Newly Participating Hospitals (§ 413.86(e))

Under section 1886(h) of the Act and implementing regulations, Medicare pays hospitals for the direct costs of graduate medical education on the basis of per resident costs in a 1984 base year. Under existing regulations at

§ 413.86(e)(4), if a hospital did not have residents in the 1984 base period but later participates in teaching activities, the fiscal intermediaries calculate a per resident amount based on a weighted average of all the hospitals in the same geographic wage area. There must be at least three hospitals for this calculation. If there are fewer than three hospitals, the regulations require the fiscal intermediary to contact the HCFA Central Office for a determination of the appropriate amount to use.

We proposed to revise the regulations for determining base year per resident amounts for hospitals that participated in residency training after the 1984 base period. Under the proposed changes to § 413.86(e)(4)(i)(B), we sequentially follow the criteria listed below until we would base the weighted average calculation on a minimum of 3 per resident amounts:

- If there are fewer than three hospitals in the hospital's geographic wage area, we would determine a weighted average based on the per resident amounts for all hospitals in the hospital's own wage area, plus hospitals in geographically contiguous wage areas.
- If there are still fewer than three hospitals in the hospital's own wage area, plus hospitals in contiguous wage areas, the weighted average would be based on the per resident amounts for all hospitals in the State.
- If there are fewer than three hospitals in the entire State, the weighted average would be based on the per resident amounts for all hospitals in that State plus hospitals in contiguous States.
- If there are fewer than three hospitals in that State and contiguous States, the weighted average per resident amount would be based on the national average per resident amount.

*Comment:* One commenter stated that our proposed policy appears reasonable but we have not indicated how the policy would affect the per resident amounts for hospitals that previously had their payment amounts determined by HCFA Central Office.

*Response:* The proposed policy simply reflects the methodology in effect prior to this final rule with comment period. As discussed below, we are revising the methodology in this final rule with comment period. However hospitals that previously had a per resident amount determined by HCFA Central Office will be unaffected since policy changes can only be effective prospectively.

*Comment:* Two commenters suggested that the proposed methodology may negatively affect the expansion of

training sites, particularly in rural areas where there might not be three hospitals with established per resident amounts. One of these commenters suggested that the hospital with the new training program be given the option of establishing a per resident amount based on its "cost, not to exceed the higher of the contiguous area average, or the national average cost per resident, perhaps adjusted by the appropriate wage index." The other commenter suggested that if there are fewer than three hospitals, that we use the lower of the new hospital's cost per resident or the national average cost per resident adjusted by the hospital wage index. The commenter suggested that this approach would be consistent with HCFA initiatives to move from historical local or regional cost based payments to national averages. Another benefit of this approach according to this commenter is that it is simple and would overwhelmingly benefit rural hospitals.

*Response:* The per resident amounts vary widely among hospitals nationwide. Given this wide variation, we believe it is difficult to know whether a hospital establishing a new program in any given geographic area will receive a high or low per resident amount using our proposed methodology. Although the first commenter's suggested alternative is similar to the proposed policy, it guarantees a per resident amount for the new hospital that is either equal to or higher than the per resident amount under the proposed methodology if the hospital's own costs exceed the contiguous area average or the national average per resident amount. We find merit in the latter commenter's suggested alternative of using the lower of the hospital's own costs or a national average per resident amount. It has the advantage of being simple and equally as likely to produce an equitable rate as our proposed methodology. We support using the commenter's proposed methodology with a modification.

Thus, effective October 1, 1997 the per resident amount for new teaching hospitals is based on the lower of the hospital's actual per resident costs or:

- The weighted average of the per resident amounts for hospitals located in the same geographic area as that term is used in the prospective payment system under 42 CFR part 412.
- Where there are fewer than three hospitals in a geographic wage area, we will use regional weighted average per resident amounts determined for each of the nine census regions established by the Bureau of Census for statistical and reporting purposes.

2. New Legislative Changes to Direct Graduate Medical Education (Direct GME)

a. Limit on the Count of Residents (§ 413.86(g))

Section 4623 of Public Law 105-33 adds section 1886(h)(4)(F) of the Act to establish a limit on the number of allopathic and osteopathic residents that a hospital can include in its full time equivalent (FTE) count for Direct GME payment. Residents in dentistry and podiatry are exempt from the cap. For cost reporting periods beginning on or after October 1, 1997, a hospital's unweighted direct medical education FTE count may not exceed the hospital's unweighted FTE count for its most recent cost reporting period ending on or before December 31, 1996.

Currently, hospitals report their weighted but not their unweighted FTE count on their Medicare cost report. New section 1886(h)(4)(H)(iii) of the Act gives the Secretary authority to collect whatever data are necessary to implement this provision. Hospitals have been required to report resident-specific information to their fiscal intermediaries under longstanding requirements of § 413.86, and we believe it is possible to implement section 1886(h)(4)(F) without mandating significant additional reporting. Since the unweighted direct GME FTE count will be used in calculating direct GME payments, we expect to amend the Medicare cost report to require hospitals to report the unweighted FTE direct GME count for future cost reporting periods. A separate data collection effort will be required to obtain the information for the most recent cost reporting periods ending on or before December 31, 1996.

We believe the hospital's unweighted FTE limit for its most recent cost reporting period ending on or before December 31, 1996 should be based on a 12 month cost reporting period. If the hospital's most recent cost reporting period ending on or before December 31, 1996, is a short period report, the fiscal intermediaries shall make adjustments so that the hospital's unweighted FTE limit corresponds to the equivalent of a 12 month cost reporting period. We are revising § 413.86(g)(4) accordingly.

(1) Counting Residents Based on a 3-Year Average (§ 413.86(g)(5))

Section 1886(h)(4)(G)(iii) of the Act, as added by section 4623 of Public Law 105-33, provides that for the hospital's first cost reporting period beginning on or after October 1, 1997, the hospital's weighted FTE count for payment



purposes equals the average of the weighted FTE count for that cost reporting period and the preceding cost reporting period. For cost reporting periods beginning on or after October 1, 1998, section 1886(h)(4)(G) of the Act requires that hospitals' direct medical education weighted FTE count for payment purposes equal the average of the actual weighted FTE count for the payment year cost reporting period and the preceding 2 cost reporting periods. This provision provides incentives for hospitals to reduce the number of residents in training by phasing in the associated reduction in payment over a 3-year period. We are revising § 413.86(g)(5) accordingly.

For cost reporting periods beginning on or after October 1, 1997, we will determine the hospital's direct GME payment as follows:

Step one. Determine the average of the weighted FTE counts for the payment year cost reporting period and the prior two immediately preceding cost reporting periods (with exception of the hospital's first cost reporting period beginning on or after October 1, 1997, which will be based on the average of the weighted average for that cost reporting period and the immediately preceding cost reporting period).

Step two. Determine the hospital's allowable direct GME costs without regard to the FTE cap (before determining Medicare's share). That is, take the sum of (a) the product of the primary care per resident amount and the primary care weighted FTE count, and (b) the product of the non-primary care per resident amount and the non-primary care weighted FTE count.

Step three. Divide the hospital's allowable direct GME costs by the total number of FTE residents (including the effect of weighting factors) for the cost reporting period to determine the average per resident payment amount (this amount reflects the FTE weighted average of the primary and non-primary care per resident amounts) for the cost reporting period.

Step four. Multiply the average per resident payment amount for the cost reporting period by the 3 year average weighted count to determine the hospital's allowable direct GME costs. This product is then multiplied by the hospital's Medicare patient load for the cost reporting period to determine Medicare's direct GME payment to the hospital.

The following example illustrates determination of direct GME payment under the rolling average methodology:

Assume a hospital with a cost reporting period ending December 31, 1996 (beginning January 1, 1996) had

100 unweighted FTE residents and 90 weighted FTE residents. The hospital's FTE cap is 100 unweighted residents.

Step one. In its cost reporting period beginning January 1, 1997, it had 100 unweighted residents and 90 weighted residents.

- The hospital had 90 unweighted residents and 85 weighted residents for its cost reporting period beginning January 1, 1998.

- In its cost reporting period beginning on January 1, 1999, the hospital had 80 unweighted residents and 80 weighted residents.

- The 3 year weighted average for the hospital's cost reporting period beginning January 1, 1999 is 85  $(90+85+80)/3$ .

Step two. Payment for the cost reporting period is determined by multiplying hypothetical per resident amounts for primary care and non-primary care residents as follows:

- Primary Care—\$50,000×70

weighted FTEs=\$3,500,000

- Other—\$47,000×10 weighted

FTEs=\$470,000

- Total direct GME payments before using the 3-year average FTE counts and applying the Medicare patient load would be \$3,970,000  $(\$3,500,000 + \$470,000)$ .

Step three. Divide \$3,970,000 by 80 total FTEs (70+10) to determine an average per resident FTE payment of \$49,625.

Step four. Multiply this figure by 85 FTEs (from step 1 above) to determine a total payment \$4,218,125. Apply the hospital's Medicare patient load to determine Medicare's direct GME payment.

To address situations in which a hospital increases the number of FTE residents over the cap, notwithstanding the limit established under section 1886(h)(4)(F), we are establishing the following policy for determining the hospital's weighted direct GME FTE count for cost reporting periods beginning on or after October 1, 1997.

- Determine the ratio of the hospital's unweighted FTE count for residents in those specialties for the most recent cost reporting period ending on or before December 31, 1996, to the hospital's number of FTE residents without application of the cap for the cost reporting period at issue.

- Multiply the ratio determined above by the weighted FTE count for those residents for the cost reporting period. Add the weighted count of residents in dentistry and podiatry to determine the weighted FTEs for the cost reporting period. This methodology should be used for purposes of determining payment for cost reporting periods

beginning on or after October 1, 1997. The hospital's unweighted count of interns and residents for a cost reporting period beginning before October 1, 1997 will not be subject to the FTE limit.

For example, if the hospital's FTE count of residents in its cost reporting period ending December 31, 1996 is 100 residents before application of the initial residency weighting factors and the hospital's number of residents for its December 31, 1990 cost reporting period is 110 FTE residents, the ratio of residents in the two cost reporting periods equals 100/110. If the hospital's weighted FTE count is 100 FTE residents in the December 31, 1998 cost reporting period (that is, of the 110 unweighted residents, 20 are beyond the initial residency period and are weighted as 0.5 FTE), the hospital's weighted FTE count for determining direct GME payment is equal to  $(100/110) * 100$ , or 90.9 FTE residents.

If a hospital's unweighted count of residents in specialties other than dentistry and podiatry does not exceed the limit, the weighted FTE count equals the actual weighted FTE count for the cost reporting period. The weighted FTE count in either instance will be used to determine a hospital's payment under the 3 year rolling average payment rules. We believe this proportional reduction in the hospital's unweighted FTE count is an equitable mechanism for implementing the statutory provision.

Section 1886(h)(4)(G)(ii) of the Act provides that the Secretary makes appropriate modifications to ensure that the average FTE resident counts are based on the equivalent of full 12 month cost reporting periods. We are revising § 413.86(g)(5) to allow the fiscal intermediaries to make the appropriate adjustments to ensure that 3 year and 2 year average FTE counts are based on the equivalent of 12 month periods.

(2) Exceptions to the Direct GME FTE Limit (§ 413.86(g)(6))

Under new section 1886(h)(4)(H)(i) of the Act, the Secretary is required, consistent with the principles of establishing a limitation on the number of residents paid for by Medicare and the 3-year rolling average, to establish rules with respect to the counting of residents medical residency training programs established on or after January 1, 1995. Such rules must give special consideration to facilities that meet the needs of underserved rural areas. Language in the Conference Report indicates concern that there be proper flexibility to respond to changing needs given the sizeable number of hospitals



that elect to initiate new (or terminate existing) training programs.

Pursuant to the statute, we are establishing the following rules for applying the FTE limit and determining the FTE count for hospitals that established new medical residency training programs on or after January 1, 1995. For purposes of this provision, a "program" will be considered newly established if it is accredited for the first time, including provisional accreditation on or after January 1, 1995, by the appropriate accrediting body. Although the Secretary has broad authority to prescribe rules for counting residents in new programs, the Conference Report for Public Law 105-33 indicates concern that aggregate number of FTE residents should not increase over current levels. Accordingly, we will continue to monitor growth in the aggregate number of residency positions and may consider changes to the policies described below if there continues to be growth in the number of residency positions. We are providing for adjustments in the following situations:

(i) Hospitals with no Residents prior to January 1, 1995.

If a hospital had no residents before January 1, 1995 and it establishes one or more new medical residency training programs on or after that date, the hospital's FTE cap will be based on the number of first year residents participating in its accredited graduate medical education training programs in the third year of receiving payments for direct GME. The hospital's unweighted FTE resident cap will equal the product of the number of first year residents in that year and the number of years in which residents are expected to complete that program based on the minimum accredited length for the type of program as published in the *Graduate Medical Education Directory*.

For example, assume a hospital that did not receive any direct GME payment in its cost reporting period ending December 31, 1994 (the hospital's most recent cost reporting period ending before January 1, 1995) established an internal medicine program and receives direct GME payment for residents beginning a training program on July 1, 1998. The hospital's cap would be adjusted to reflect the resident cap for residents in the internal medicine program for its cost reporting periods ending in 1998 and 1999. In the hospital's cost reporting period ending December 31, 2000 (the third cost reporting period in which the hospital has residents), there are five first-year FTE residents participating in the hospital's internal medicine program.

Since the minimum length listed for internal medicine programs in the *Graduate Medical Education Directory* is 3 years, this hospital's unweighted FTE cap can subsequently be adjusted by up to 15 FTEs.

(ii) Hospitals with Residents prior to January 1, 1995, not Located in Rural Areas

If a hospital is not located in a rural area and had residents in its most recent cost reporting period ending before January 1, 1995, the hospital's unweighted FTE cap may be adjusted for new medical residency training programs established on or after January 1, 1995 but before August 5, 1997. An adjustment under this policy allows programs which began between January 1, 1995 and enactment of the statute to grow to full capacity. No adjustments to the FTE cap will be allowed for new medical residency training programs established on or after August 5, 1997.

An adjustment in the hospital's FTE limit for a new program will be based on the product of the number of first year residents in the third year of the newly established program and the minimum accredited length for the type of program published in the *Graduate Medical Education Directory*. The hospital's revised unweighted FTE limit reflects the number of residents in its most recent cost reporting period ending on or before December 31, 1996 adjusted for the incremental increase in its FTE count for newly established programs.

We are providing the following example to illustrate how to make adjustments to the FTE cap for newly established medical residency training programs in hospitals that received direct GME payments prior to January 1, 1995. Assume a hospital had an unweighted direct GME count of 100 FTE residents for its cost reporting period ending June 30, 1996 and the hospital, although it had 6 first year positions, began an internal medicine program on July 1, 1995 with only 4 first year residents. On July 1, 1996, the program expands to 10 residents (six first-year residents and four second-year residents). On July 1, 1997, the program has 16 residents (six first-year residents, six second-year residents and four third-year residents). Since the minimum accredited length for allopathic internal medicine programs listed in the *Graduate Medical Education Directory* is 3 years, the hospital's unweighted FTE cap can subsequently be adjusted to reflect 18 residents in the internal medicine program (six first-year residents  $\times$  3 years). In the hospital's cost reporting period ending June 30, 1996 (the initial cap year), the hospital had a total of 100 FTE residents

including 4 in internal medicine. Thus, the hospital's adjusted cap equals 100 residents plus 14 (18-4) or 114 residents.

(iii) Hospitals Located in Rural Areas that had Residents before January 1, 1995 and Other Rural Hospitals that Added Residents Under (i) of this Section.

We would treat these rural hospitals the same as all other hospitals which had residents before January 1, 1995 with the exception that the unweighted FTE limit for these hospitals could be adjusted to reflect residents in new medical residency training programs established on or after August 5, 1997. That is, if these hospitals added new programs on or after August 5, 1997 the cap would be adjusted but not without limit. A hospital's unweighted limit would be adjusted for each new program based on the methodology described above based on the product of the number of first year residents in the third year of the newly established program and the minimum number of years of the accredited program. For these hospitals, the limit will only be adjusted for additional new programs but not for expansions of existing or previously existing programs.

A hospital seeking an adjustment to the unweighted direct GME FTE resident count limit under this exception policy must provide documentation to its fiscal intermediary justifying the adjustment.

(3) Aggregate Direct GME FTE Limit for Affiliated Institutions (§ 413.86(g)(4))

Section 1886(h)(4)(H)(ii) of the Act permits but does not require the Secretary to prescribe rules that allow institutions that are members of the same affiliated group (as defined by the Secretary) to elect to apply the FTE resident limit on an aggregate basis. This provision would permit hospitals flexibility in structuring rotations within a combined cap when they share residents.

Pursuant to the broad authority conferred by the statute, we are establishing the following criteria to define "affiliated group".

- Hospitals in the same geographic wage area. For purposes of this provision, "affiliated group" includes two or more hospitals located in the same geographic wage area (as that term is used for purposes of the inpatient operating prospective payment system), if the hospital rotate residents to the other hospitals of the group during the course of the approved program.

- Hospitals that are not located in the same geographic wage area. If the hospitals are not located in the same

geographic wage area, we will consider them part of the same affiliated group if the hospitals are jointly listed in common as a major participating institution (as that term is used in the *Graduate Medical Education Directory*, 1997–1998) for one or more programs.

We are defining an affiliated group on an institution-wide basis. Hospitals may participate in many different specialty programs and may share residents for one specialty program with one hospital but share residents for a different program with another hospital. We recognize that hospitals may affiliate for the purpose of specific specialty programs, but for purposes of applying an aggregate cap, it is not administratively feasible to apply the cap on a program by program basis.

We are implementing all of the above provisions of section 1886(h)(4) of the Act effective with cost reporting periods beginning on or after October 1, 1997. The statute does not provide a specific effective date for the rules related to affiliated groups aggregating resident FTE counts. Because each of the special rules is operative in conjunction with FTE limit, we believe it is appropriate to implement these provisions on October 1, 1997. We welcome public comments on implementation of the provisions of Public Law 105–33 relating to direct GME payments.

**b. Payments to Hospitals for Direct Costs of Graduate Medical Education of Medicare Managed Care Beneficiaries (§ 413.86(d)(2))**

Section 4624 of Public Law 105–33 amended section 1886(h)(3) of the Act to provide a 5-year phase-in of payments to teaching hospitals for graduate medical education associated with services to Medicare managed care discharges for portions of cost reporting periods occurring on or after January 1, 1998. The amount of payment is equal to the product of the per resident amount, the total weighted number of FTE residents working all areas of the hospital (and nonhospital setting in certain circumstances) subject to the limit on number of FTE residents under section 1886(h)(4)(F) and the averaging rules under section 1886(h)(4)(G) of the Act described above, the ratio of the total number of inpatient bed days that are attributable to Medicare managed care enrollees to total inpatient days and the applicable percentage. The applicable percentages are 20 percent in 1998, 40 percent in 1999, 60 percent in 2000, 80 percent in 2001, and 100 percent in 2002 and subsequent years.

We are revising § 413.86(d)(2) to establish a 5-year phase-in payment methodology to hospitals for direct GME

payments based on Medicare managed care enrollees for portions of cost reporting periods beginning on or after January 1, 1998. We will modify the Medicare cost report to determine direct GME payments associated with services to Medicare managed care enrollees.

Section 4001 of Public Law 105–33 adds section 1853(a)(3)(C) of the Act. New section 1853(a)(3)(C) requires the Secretary to implement a risk adjustment methodology that accounts for variations in per capita costs based on health status and other demographic factors in Medicare payments to managed care organizations by no later than January 1, 2000. Public Law 105–33 also adds section 1853(a)(3)(B) of the Act to require the Secretary to collect data necessary from managed care organizations to implement this provision. We are currently considering the data requirements necessary to implement both the direct and indirect medical education and risk adjustment provisions. We plan to consult with organizations representing hospitals and managed care plans to develop an administrative mechanism for implementing both of these provisions.

**c. Permitting Payment to Nonhospital Providers**

Under section 4625 of Public Law 105–33, for cost reporting periods beginning on or after October 1, 1997, the Secretary is authorized but not required to establish rules for payment to “qualified nonhospital providers” for the direct costs of medical education incurred in the operation of an approved medical residency training program. Under the statute, qualified nonhospital providers include Federally Qualified Health Centers, Rural Health Clinics, Medicare + Choice organizations and such other nonhospital providers the Secretary determines to be appropriate. We expect to establish rules that specify the amounts, form, and manner in which payments will be made and the portion of such payments that will be made from each of the Medicare trust funds. The Secretary must reduce the aggregate amount paid to nonhospital providers to the extent payment is made for residents included in the hospital’s FTE count. Since we have not previously made payments for direct graduate medical education to nonhospital providers, we are interested in receiving comment on how to implement this provision. We are particularly concerned that any methodology assure that Medicare does not pay two entities for the same training time.

In particular, we are interested in receiving public comments on how to

determine appropriate payment for ambulatory sites. Under 42 CFR part 405 subpart E, federally qualified health centers and rural health clinics are paid on the basis of an all inclusive rate for each beneficiary visit for the covered services. We are interested in receiving public comments on whether we should pay these entities for GME on a cost basis, a per resident amount, or some other basis and how to determine Medicare’s share of their costs. Similarly, since we have not previously made explicit payments to managed care plans for direct GME we are interested in how we should pay them.

Section 413.86(f)(1) allows hospitals to include resident time in nonhospital sites when the hospital incurs all or substantially all of the costs. Under § 413.86(f)(1)(iii)(B) we have defined “all or substantially all” to mean that the hospital has a written agreement with the nonhospital site that it will continue to pay the resident’s salary for training time in that setting. We are interested in receiving comments on whether this is an appropriate standard for determining which institution should be paid for the resident’s training time or whether there are other financial arrangements we should consider in determining which entity incurs “all or substantially all” of the costs.

**d. Medicare Special Reimbursement Rule for Primary Care Combined Residency Programs (§ 413.86(g)(1))**

Section 413.86(g)(2) requires full payment for residents within an initial residency period. Section 413.86(g)(3) requires residents beyond the initial residency period to be weighted as 0.5 FTE for purposes of determining GME payment. The initial residency period is defined as the minimum number of years required to become board eligible in specialty and is determined at the time a resident enters a medical residency training program. In the August 30, 1996 final rule (61 FR 46211), we clarified that the initial residency period for residents in combined medical residency training programs is limited to the time required to complete the longer of the composite programs.

Effective for residents in or beginning training on or after July 1, 1997, section 4627 of Public Law 105–33 amends section 1886(h)(5)(G) of the Act to require that the initial residency period for combined programs consisting only of primary care training, equals the longer of the composite programs plus one year. A primary care resident is a resident enrolled in an approved medical residency training program in

family medicine, general internal medicine, general pediatrics, preventive medicine, geriatric medicine, or osteopathic general practice. This provision also adds one year to the initial residency period for combined primary care and obstetrics and gynecology programs. We are amending § 413.86(g)(1) to implement the provisions of section 1886(h)(5)(G) for residents in or beginning training on or after July 1, 1997.

#### *J. Medicare Rural Hospital Flexibility Program*

##### 1. Previous Law—EACH/RPCH Program

Section 1820 of the Act, before the enactment of the Public Law 105-33 of 1997, established the Essential Access Community Hospital (EACH) program. Under that program, seven States received grants to develop rural health networks consisting of Rural Primary Care Hospitals (RPCHs) and EACHs. RPCHs are limited-service rural hospitals that provide outpatient and short-term inpatient hospital care on an urgent or emergency basis. They then release patients or transfer them to an EACH or other acute care hospital. To be designated as RPCHs, hospitals had to meet certain criteria, including requirements that they not have more than 6 inpatient beds for acute (hospital-level) care and maintain an average inpatient length of stay of no more than 72 hours.

Montana also has a separate, limited-service hospital program called the Medical Assistance Facility (MAF) program, which has been in operation since 1988. This program operates under a demonstration waiver from HCFA that allows these limited service hospitals to be reimbursed for providing treatment to Medicare beneficiaries even though they are not required to meet all requirements applicable to hospitals. In addition, HCFA supplies grant funding to the Montana Hospital Research and Education Foundation to provide technical assistance, liaison, public education, and other services to the MAFs. The first MAF was licensed and began participating in the demonstration in 1990. At this point a total of 12 MAFs have been licensed and certified. Additional facilities are in the process of considering a conversion to MAF status.

##### 2. Changes Made by Balanced Budget Act of 1997

The new legislation replaces the current 7-State EACH/RPCH program with a new Medicare Rural Hospital Flexibility Program that will be available in any State that chooses to set

up such a program and provide HCFA with the necessary assurances that it has developed, or is in the process of developing, a State rural health care plan meeting certain requirements, and that it has designated, or is in the process of designating, rural nonprofit hospitals or facilities as critical access hospitals (CAH).

To be eligible as a CAH, a facility must be a rural public or nonprofit hospital located in a State that has established a Medicare rural hospital flexibility program, and must be located more than a 35-mile drive from any other hospital or critical access hospital. In mountainous terrain or in areas with only secondary roads available, the mileage criterion is 15 miles. In addition, the facility must make available 24-hour emergency care services, provide not more than 15 beds for acute (hospital-level) inpatient care, and keep each inpatient for no longer than 96 hours, unless a longer period is required because of inclement weather or other emergency conditions, or a PRO or other equivalent entity, on request, waives the 96-hour restriction. An exception to the 15-bed requirement is made for swing-bed facilities, which are allowed to have up to 25 inpatient beds that can be used interchangeably for acute or SNF-level care, provided that not more than 15 beds are used at any one time for acute care. The facility is also required to meet certain staffing and other requirements that closely parallel the requirements for RPCHs.

The new legislation also defines a rural health network as an organization consisting of at least one CAH and at least one acute care hospital, the members of which have entered into agreements regarding patient referral and transfer, the development and use of communications systems, and the provision of emergency and nonemergency transportation. In addition, each CAH in a network must have an agreement for credentialing and quality assurance with at least one hospital that is a member of the network, or with a PRO or equivalent entity, or with another appropriate and qualified entity identified in the rural health care plan for the State.

##### 3. Grandfathering of Existing Facilities

Under the new legislation, no new EACH designations would be made, but rural hospitals designated as EACHs under previous law would continue to be paid as sole community hospitals. The previous payment provisions applicable to RPCHs are repealed, and the law instead provides that CAHs will be paid on a reasonable cost basis for their inpatient and outpatient services.

The law specifically provides that existing RPCHs and MAFs will be deemed as CAHs if these facilities or hospitals are otherwise eligible to be designated by the State as CAHs. Under a special provision applicable to the MAF program, the MAF demonstration project is extended until at least October 1, 1998, to allow for an appropriate transition between the MAF and CAH programs.

##### 4. Provision of SNF-Level Care in RPCHs

Previous law provided specific rules relating to the number of beds that an RPCH could use to provide SNF-level care. As noted above, the new legislation provides considerable flexibility to a CAH with a swing-bed agreement to use inpatient beds for either SNF or acute care, as long as the total number of inpatient beds does not exceed 25 and the number of beds used at any one time for acute care does not exceed 15.

##### 5. Implementing Regulations

To allow the changes made by the enactment of Public Law 105-33 to be implemented by the statutory effective date of October 1, 1997, we are publishing the interim rules set forth below. In developing these rules, our general approach has been to retain the provisions of existing RPCH regulations, except where the new legislation clearly requires us to make a change. We believe this approach will allow the new amendments to be implemented with a minimum of inconvenience for existing facilities and will serve as the basis for a smooth transition between the RPCH and CAH programs.

To implement the section 4201 amendments, we are revising existing regulations as follows:

- Part 409 (Hospital Insurance Benefits), § 409.30(a) is revised to specify that to qualify for posthospital SNF care in a hospital or CAH, a beneficiary must have received inpatient CAH care for at least 3 consecutive calendar days (rather than the 72 hours required previously for RPCHs). This change ensures that care in CAHs and in acute care hospitals is counted uniformly toward the prior stay requirement.
- Part 410 (Supplementary Insurance Benefits), § 410.2 is revised to add a "CAH" in the definitions of both "Participating" providers and "nonparticipating" providers. Also, § 410.152(k) is revised to delete the description of payment methods for RPCH outpatient services that were mandated under previous law and to reflect the new statutory provision. As

explained more fully below, the statute now provides that payment for these services is to be made on a reasonable cost basis. We are specifying that "reasonable cost" is to be determined under section 1861(v)(1)(A) of the Act and existing regulations in Parts 413 and 415. Then, § 410.155(a) is revised to add a critical access hospital (CAH) that meets the requirements of part 485 in the definition of "Hospital". Furthermore, paragraph (b) is revised to add a CAH as a provider in which inpatient mental health services that are identified in paragraphs (b) (1) through (4) are not subject to mental health services limitations described in paragraph (b).

- Part 412 (Prospective Payment Systems for Inpatient Hospital Services) § 412.109 is revised to reflect the elimination of the EACH designation. However, we are retaining the provisions in current regulations that are needed to allow rural hospitals designated as EACHs under previous law to continue to be paid as sole community hospitals and, where appropriate, to obtain adjustments to their hospital-specific rates. We are revising the regulations to clarify that HCFA will terminate the EACH designation of a hospital that no longer complies with the terms, conditions, and limitations that were applicable when it was designated as an EACH.

- Part 413 (Principles of Reasonable Cost Reimbursement; Payment for End-Stage Renal Disease Services; Optional Prospectively Determined Payment Rates for Skilled Nursing Facilities), §§ 413.1(a)(1)(G), 413.13(c)(2)(iv), and 413.70 are revised to reflect the elimination of the previously applicable payment methods for RPCHs. As noted above, the provisions of the Medicare law applicable to payment for both inpatient and outpatient RPCH services (sections 1814(l) and section 1834(g) of the Act, respectively) were amended by sections 4201 (c)(3)(B) and (c)(5) of Public Law 105-33 to remove the previous payment provisions, including the provisions of section 1834(g)(1)(B), and require that payment to CAHs for these services be made on a reasonable cost basis. Reasonable cost is defined at section 1861(v)(1)(A) of the Act and in regulations. We have specified that "reasonable cost" is to be determined under section 1861(v)(1)(A) of the Act and existing Medicare reimbursement regulations at 42 CFR parts 413 and 415 and in the statute.

- Part 485, Subpart F (previously Conditions of Participation for Rural Primary Care Hospitals) is revised to reflect the new CAH statutory requirements regarding the definition of

a rural health network, status and location requirements, designation requirements for CAHs, the requirements regarding the content of network agreements, number of beds and length of stay permitted, and the special requirements for CAHs that provide SNF-level services.

We recognize that some facilities which received approval from HCFA under previous law to provide SNF-level services, may wish to continue operating under the terms of that approval. To authorize this, the regulations will allow a CAH that participated in the Medicare program as a rural primary care hospital (RPCH) on September 30, 1997 and, on that date, had in effect an approval from HCFA to use its inpatient facilities to provide posthospital SNF care, to continue in that status under the same terms, conditions, and limitations that were applicable at the time those approvals were granted.

However, a CAH that was granted swing-bed approval under previous law may request by January 1, 1998 that HCFA evaluate its application to be a CAH and a swing-bed provider under the current law and the regulations set forth below. If this request is approved, the approval is effective not earlier than October 1997. As of the date of approval, the CAH no longer has any status based on its previous approval and may not request reinstatement under previously effective provisions.

We are also making nomenclature changes in various sections of Parts 400, 409, 410, 411, 413, 414, 424, 440, 485, 488, 489, and 498 to reflect the statutory change from RPCHs to CAHs.

## 6. Other Implementation Issues

### a. Process for Review and Acceptance of State Assurances

States interested in establishing a Medicare rural hospital flexibility program will submit to the Regional Administrator of the HCFA Regional Office responsible for oversight of Medicare and Medicaid in the State, an application signed by an official of the State. The application will express the State's interest in establishing a Medicare rural hospital flexibility program and will contain, at a minimum, the following assurances and other information:

The State must provide assurances that—

(1) The State has developed, or is in the process of developing, a State rural health care plan that provides for the creation of one or more rural health networks as defined in § 485.603(a), promotes regionalization of rural health

services in the State, and improves access to hospitals and other health services for rural residents of the State;

(2) The State has developed a rural health care plan in consultation with the hospital association of the State, rural hospitals located in the State, and the State Office of Rural Health (or, in the case of a State in the process of developing such a plan, that assures the Secretary that the State will consult with these organizations); and

(3) The State has designated or is in the process of designating (consistent with the rural health plan), rural nonprofit or public hospitals or facilities located in the State as critical access hospitals; and

The State must also provide other information to support its assurances, as follows:

(1) A copy of the State rural health care plan. If the State is in the process of developing the plan, the State should submit a copy of the current draft of the plan along with an anticipated completion date;

(2) An explanation of how the State rural health plan will provide for the creation of one or more rural health networks, promote regionalization of rural health services, and improve access to hospitals and other health services for rural residents of the State; and

(3) a listing of the facilities which the State has designated, or plans to designate, as critical access hospitals.

Section 1820(b)(3) of the Act authorizes HCFA to require other information and assurances in support of a State rural health plan. Therefore, HCFA will send the State a written request for any other information it may need to complete review of the application to establish a Medicare Rural Hospital Flexibility Program. HCFA will review the application from the State for the assurances listed above and will notify the State in writing of its decision on the State's application. Facilities designated under an approved plan will be eligible for certification by the HCFA Regional Office as CAHs, in accordance with the regulations in 42 CFR Part 485, Subpart F.

We welcome comments on whether the information and assurances set forth above are sufficient, or whether other information or assurances are needed. We will consider this issue carefully and notify States in writing of any changes in the information or assurances required.

### b. Designation of Facilities in Border States

Section 1820(k), as in effect prior to the enactment of the Public Law 105-

33, explicitly authorized States with EACH programs to designate facilities in adjacent States as EACHs or RPDCHs if certain conditions were met. Section 4201 of Public Law 105-33 deleted that authority. Therefore, a facility can be designated as a CAH only by a State in which it is located. The regulations as revised at § 485.606 have deleted any reference to this authority.

#### c. Designation of Closed Facilities

Section 1820(f)(1)(B), as in effect prior to the enactment of Public Law 105-33, explicitly allowed, under certain circumstances, States with EACH programs to designate facilities as RPDCHs even though the facilities had closed and were not longer functioning as hospitals at the time they applied for RPDCH status. The new legislation removed that authority so there is now no basis on which a closed facility can be designated as a CAH. We have revised § 485.612 to reflect this change.

#### K. Changes to the Update Factors for Federal Rates for Inpatient Operating Costs (§ 412.63)

Public Law 105-33 made several revisions to the applicable percentage change (the update factor) to the Federal rates for prospective payment hospitals. Section 4401(a)(1) of Public Law 105-33 amended section 1886(b)(3)(B)(i) of the Act to revise the update factors for the Federal rates for inpatient operating costs for FYs 1998 through 2002. The update factor for FY 1998 is now 0 percent for hospitals in all areas. For FY 1999, the update for hospitals in all areas is the market basket rate of increase minus 1.9 percentage points. (As discussed in detail in section V.D. of this final rule with comment period, section 4401(b) provides for a higher update in FY 1998 and FY 1999 for certain hospitals that do not receive disproportionate share or indirect medical education payments and are not designated as Medicare-dependent, small rural hospitals.) For FY 2000, the update for all areas is the market basket rate of increase minus 1.8 percentage points. For FY 2001 and FY 2002, the update for all areas is the market basket rate of increase minus 1.1 percentage points. For FY 2003 and subsequent years, the update for all areas is the market basket rate of increase. The specific updates to be applied for FY 1998 are discussed in the addendum and Appendix D to this document.

In this final rule with comment period, we are making the necessary changes to § 412.63 to implement these provisions.

#### L. Change in the Publication Date of the Proposed and Final Rules for the Hospital Inpatient Prospective Payment System (§ 412.8)

Section 4644(b) of Public Law 105-33 amends section 1886(e) of the Act to require the Secretary to publish the proposed and final rules that contain her proposed and final recommendations on the annual update factor applicable to the hospital payment rates by the April 1 and August 1 prior to the start of the fiscal year to which the rates apply beginning with the FY 1999 rates. The current schedule calls for publication on May 1 and September 1. We are revising § 412.8(b) and (c) of the regulations to implement this change. In that section, we are also deleting the current paragraph (a) since it is redundant.

#### M. Technical Change: Correction of Statutory Citation

The August 30, 1996 final rule (61 FR 46165) included an amendment to § 489.27 that reprinted the statutory reference governing the distribution of an "Important Message from Medicare." This reference, "section 1886(a)(1)(M)", was incorrect. We are correcting this reference to read "section 1866(a)(1)(M)".

#### VI. Changes to the Prospective Payment System for Capital-Related Costs

##### A. 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, any 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 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 for previous cost reporting periods exceeds its cumulative minimum payment levels for those cost reporting periods is deducted from the additional payment that would otherwise be payable for a cost reporting period.

Section 412.348(g) also provides for a separate special exceptions process for hospitals undertaking major renovations or replacement of aging facilities during the decade of the transition. For as long as 10 years beyond the end of the transition period, certain hospitals may be eligible to receive special exceptions payments at a 70 percent minimum payment level. For hospitals that qualify for the special exceptions provision before the end of the transition, the general and special exceptions provisions will run concurrently during the later years of the transition. However, since the minimum payment level for the special exceptions provision is at the same level that applies to all hospitals under the general provision (currently 70 percent), the special exceptions provision will generate no additional payment to hospitals until the end of the transition period.

Section 412.348(h) further provides that total aggregate estimated exceptions payments under both the regular exceptions process and the special 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 FY 1997 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 June 2, 1997, proposed rule (62 FR 29951), we discussed the factors and adjustments used to develop the FY 1998 Federal and hospital-specific rates. In particular, we discussed the FY 1998 exceptions payment reduction factor. This factor adjusts the annual payment rates for the estimated level of additional payments for exceptions in FY 1998. In the proposed rule, we estimated that exceptions payments would equal 7.24 percent of aggregate

payments based on the Federal rate and the hospital-specific rate. We indicated that in the final rule we would develop a new estimate of the level of exceptions payments, and revise the exceptions payment adjustment factor accordingly, on the basis of the data that became available to us prior to publication of the final rule for FY 1998. We model exceptions payments based on the best information available on hospitals' actual payment methodology. We also indicated that while it was not necessary at that time to propose reductions in the minimum payment levels, we might find it necessary to implement adjustments to the minimum payment levels in the final rule. We, therefore, provided public notification that adjustments to the minimum payment levels were possible in the FY 1998 final rule.

As explained in Appendix B, since publication of the proposed rule, we have made a change to our model with regard to admissions. This change has caused the number and dollar value of exceptions to drop significantly. We are now estimating that exceptions payments will equal 3.41 percent of aggregate payments based on the Federal rate and hospital-specific rate in FY 1998, instead of the 7.24 percent we estimated in the proposed rule. This also means the exceptions payment reduction factor, which accounts for expected exceptions payments, will reflect a 3.41 percent reduction to the rates for FY 1998, rather than a 7.24 percent reduction. Because of this change in our estimate of exceptions payments, we will not have to adjust minimum payment levels for FY 1998 to keep exceptions within 10 percent of total payments.

In the proposed rule we indicated that when it did become necessary to adjust the minimum payment levels in accordance with § 412.348(h), we would contemplate adjusting 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 and special exceptions) by 5 percentage point increments until estimated exceptions payments were within the 10 percent limit. For example, we would set minimum payment levels at 85 percent for sole community hospitals, 75 percent for large urban DSH hospitals, and 65 percent for all other hospitals and special exceptions, provided that aggregate exceptions payments at those minimum payment levels were projected to be no more than 10 percent of total rate-based payments. We indicated our belief that this policy appropriately provided for all classes of

hospitals to share in the reduction in exceptions payments, while simultaneously preserving the special protections provided by higher minimum payment levels for sole community hospitals and large urban DSH hospitals relative to all other hospitals. If aggregate exceptions payments at those minimum payment levels still exceeded 10 percent of total rate-based payments, we proposed to continue reducing the minimum payment levels by 5 percentage point increments each until the requirement of § 412.348(h) was satisfied. We provided notification of our thinking on this issue in order to solicit public comment on the appropriate method for adjusting the minimum payment levels.

*Comment:* We received several comments expressing concern about our proposal to cut minimum payment levels in five percentage point increments, if necessary, to stay within the ten percent limit on overall exceptions payments. The commenters expressed concern that cutting the minimum payment levels by five percentage increments might reduce exception payments more than necessary to stay within the ten percent cap. Some commenters stated that using five percent incremental adjustments instead of something more exact was not consistent with the level of specificity that HCFA uses to make other types of adjustments, and recommended that we use the same level of specificity in making adjustments to the minimum payment levels that we use in making other types of adjustments. Some commenters recommended that we adjust minimum payment levels by tenths of a percent. One commenter noted that because the minimum payment levels vary by type of hospital—90 percent for sole community hospitals, 80 percent for urban DSH hospitals, and 70 percent for all other hospitals and special exceptions, cutting all hospitals by the same percentages would affect some hospitals more than others.

*Response:* After considering the commenters' concerns, we have decided it would be appropriate to adjust each of the minimum payment levels by one percentage point increments in order to meet the ten percent limit. We are changing the regulations at § 412.348 to reflect this change in our policy. We will make an adjustment to the minimum payment levels when necessary by applying this policy.

We decided not to implement the suggestion made by some commenters that we adjust the minimum payment levels to the tenth of a percent level. We believe such precise adjustments are

inappropriate in this context because our calculations reflect estimates, not exact figures. We have also decided not to adjust groups with higher minimum payment levels, such as sole community hospitals and urban DSH hospitals, more than groups with lower minimum payment levels, such as all other hospitals and special exceptions. At the time we established the minimum payments, at the inception of capital PPS, we decided that some groups warranted higher exception payments because of the type of care they provided or their location in a particular community. We believe it is still appropriate to maintain those higher levels of exception payments for sole community hospitals and urban DSH hospitals.

*Comment:* One commenter suggested that we use excess funds not paid out for outliers to fund the shortfall in capital exceptions.

*Response:* The commenter misunderstands the prospective nature of outlier and capital exceptions policies and projections. We set payment parameters such as outlier thresholds and capital minimum payment levels before a fiscal year based on estimates. We also make prospective adjustments to the applicable rates (operating standardized amounts or capital Federal rates) to account for the projected level of outlier payments or capital exceptions payments. Thus, for example, we set outlier thresholds so that the outlier payments for operating costs are projected to equal 5.1 percent of total DRG operating payments, and we adjust the operating standardized amounts correspondingly. We do not set aside a pool of money to fund outlier cases. Moreover, once the payment parameters and adjustments are established for a fiscal year, we do not make retroactive adjustments based on differences between estimated and actual payments, whether actual payments are higher or lower than estimated payments.

#### *B. Special Exceptions Application Process*

As discussed in section VI.A above, a separate special exceptions provision extends protection to certain hospitals undertaking major renovation or replacement of aging facilities during the decade of the transition. The regulation establishing eligibility for this special exceptions provision, and describing the criteria by which eligible hospitals qualify for special exceptions payments (§ 412.348(g)), was finalized on September 1, 1994 (59 FR 45385). In the proposed rule, we did not propose to make any policy changes to the

special exceptions provision. However, we had received questions from hospitals and intermediaries about the special exceptions process, and we discussed a few aspects of that process particularly with regard to the age of assets test and the excess capacity test. We reviewed the application process, the project need requirement, the project size requirement, and the excess capacity test. We specified that based on the latest data available, we had decided to set the 75th percentile for the age of assets test at 15.4 years rather than the 16.4 years we had originally contemplated.

We received no comments on these clarifications to the special exceptions process.

### C. Reduction to the Standard Federal Capital Payment Rate and the Unadjusted Hospital-Specific Rate

Section 4402 of Public Law 105-33 amended section 1886(g)(1)(A) of the Act to require that, for discharges occurring on or after October 1, 1997, the Secretary must apply the budget neutrality adjustment factor used to determine the Federal capital payment rate in effect on September 30, 1995 (as described in § 412.352) to the unadjusted standard Federal capital payment rate (as described in § 412.308(c)) effective September 30, 1997, and the unadjusted hospital-specific rate (as described in § 412.328(e)(1)) effective September 30, 1997. For discharges occurring on or after October 1, 1997, and before September 30, 2002, the Secretary must reduce the same rates an additional 2.1 percent.

The budget neutrality adjustment factor effective September 30, 1995 was .8432 (59 FR 45416) which is equivalent to a 15.68 percent  $((1.0 - .8432) * 100)$  reduction in the unadjusted standard Federal capital payment rate and the unadjusted hospital-specific rate in effect on September 30, 1997. The additional 2.1 percent reduction to the rates reduces the rates in effect on September 30, 1997 by a total of 17.78 percent. The unadjusted standard Federal rate must be distinguished from the annual Federal rate actually used in making payment under the capital PPS system. The unadjusted standard Federal rate is the underlying or base rate used to determine the Federal rate for each Federal fiscal year by applying the formula described in § 412.308(c). The annual Federal rate is the result of that determination process in § 412.308(c).

Under the statute, the additional 2.1 percent reduction applies for a limited time. The language at section 4402

indicates the 2.1 percent reduction applies to discharges occurring "before September 30, 2002". This would require that we calculate special rates that would be in effect for only one day. We believe that Congress intended to apply the reduction to discharges occurring through September 30, 2002. Accordingly, we plan to seek a technical correction to change the date that the 2.1 percent reduction expires from September 29, 2002, to September 30, 2002. Since we assume this technical error will be corrected, we are using the September 30, 2002 expiration date in our regulations.

When we restore the 2.1 percent reduction to the Federal rate after September 30, 2002, we plan to restore the rate to the level that it would have been without the reduction. We determined the adjustment factor for FY 1998 by deducting both cuts (.1568 and .021) from 1  $(1 - .1568 - .021 = .8222)$ . We then applied .8222 to the unadjusted standard Federal rate. The adjustment factor to restore the 2.1 percent cut would be the adjustment without the 2.1 percent cut (.8432) divided by the adjustment with the 2.1 percent cut  $(.8222)$   $(.8432 / .8222 = 1.02554)$ . To restore the 2.1 percent reduction, we will apply 1.02554 to the unadjusted standard Federal capital payment rate in setting rates for discharges after September 30, 2002.

Section 412.328(e) of the regulations provides that the hospital-specific rate for each fiscal year is determined by adjusting the previous fiscal year's hospital specific rate by the hospital specific rate update factor and the exceptions payment adjustment factor. After these two adjustments are applied, a net adjustment to the rate is determined. The previous year's hospital specific rate is analogous to the standard Federal rate, which is updated each year to become the annual Federal rate.

When the 2.1 percent reduction is restored, most hospitals will have completed the transition to a fully prospective payment system for capital related costs. However, new hospitals might be eligible for hold harmless payments beyond the transition, so we may need to continue to compute a hospital specific rate. If we need to restore the 2.1 percent reduction to the hospital specific rates, we will do so in a manner similar to that described above with respect to the unadjusted standard Federal capital payment rate.

In this final rule with comment period, we are revising two sections of the capital prospective payment system regulations to implement these statutory requirements. Specifically, we are

revising the regulations at §§ 412.308(c) and 412.328(e) to provide for the required 15.68 and 2.1 percent reduction to the rates. The 2.1 percent reduction will be restored after September 30, 2002.

We discuss the effect of this reduction to the standard Federal rate and other changes in the adjustment factors to the FY 1998 Federal rate in section III of the Addendum to this final rule with comment period.

### D. Revision to the Calculation of the Puerto Rico Rate

Currently, operating and capital payments to hospitals in Puerto Rico are paid on a blend of 75 percent of the Puerto Rico rate based on data from Puerto Rico hospitals only, and 25 percent of the national rate based on data from all hospitals nationwide. As described in section V.I of this preamble, the Balanced Budget Act of 1997 increases the national share of the operating payment from 25 percent to 50 percent, and decreases the Puerto Rico share of the operating payment from 75 percent to 50 percent. Under the broad authority of section 1886(g) of the Act, we are revising the calculation of capital payments to Puerto Rico as well, to parallel the change that is being made in the calculation of operating payments to Puerto Rico. Effective October 1, 1997, we will base capital payments to hospitals in Puerto Rico on a blend of 50 percent of the national rate and 50 percent of the Puerto Rico specific rate. This change will increase payments to Puerto Rico hospitals since the national rate is higher than the Puerto Rico rate.

In this final rule with comment period, as required by Public Law 105-33, we are reducing the unadjusted standard Federal rate and hospital-specific rate by 17.78 percent for discharges occurring on or after October 1, 1997, and before October 1, 2002. Section 1886(g) of the Act confers broad authority on the Secretary to implement a capital prospective payment system. In accordance with this authority, we are extending the reduction to the capital rates to the Puerto Rico capital rates as described in § 412.374(a).

## VII. Changes for Hospitals and Units Excluded From the Prospective Payment System

### A. New Requirements for Certain Hospitals Excluded From the Prospective Payment System (§ 412.22(e))

In the September 1, 1994 final rule (59 FR 45330), we established several additional criteria for excluding from



the prospective payment system long-term care hospitals that occupy space in the same building or on the same campus as another hospital (§ 412.23(e)). Under these criteria, such facilities (sometimes called "hospitals within hospitals") could qualify for exclusion only if the two entities have separate governing bodies, chief executive officers, medical staffs, and chief medical officers. In addition, they were required to be capable of performing certain basic hospital functions without assistance from the hospitals with which they are co-located, or they had to receive at least 75 percent of their inpatients from sources other than the co-located hospital. We further revised these regulations on September 1, 1995 (60 FR 45778), by adding a third option under which hospitals that did not meet the criteria specified above could establish separate operation by showing that no more than 15 percent of their inpatient operating costs were attributable to the hospital with which they share space.

The regulations were necessary to prevent inappropriate Medicare payments to entities that are in effect, long-stay units of other hospitals. At the same time, the regulations set forth criteria to ensure that entities may qualify for exclusion from the prospective payment system if an exclusion is warranted. Exclusion of long-term care hospitals from the prospective payment system is appropriate when hospitals have few short-stay or low-cost cases and might be systematically underpaid if the prospective payment system were applied to them. These reasons for exclusion do not apply if the entity that provides the long-term care is part of a larger hospital, which does have short-stay and low-cost cases and can be paid appropriately under the prospective payment system.

ProPAC has recommended that HCFA monitor the growth in the number of long-term care hospitals within hospitals and evaluate whether the current Medicare certification rules that apply to these facilities should be changed (Recommendation 31). ProPAC noted that there is concern that the hospital-within-a-hospital model was devised as a way for acute care hospitals to receive higher payments for their long-stay cases. At the same time, the model may be an appropriate and efficient alternative to acute inpatient care for cases that require additional services, but at a more intense level than those provided in other post-acute settings. ProPAC recommended that HCFA conduct a comprehensive study of the characteristics, patient mix,

treatment patterns, costs, and financial performance of hospitals within hospitals.

We have been monitoring the development of the hospital-within-a-hospital model. We agree with ProPAC that our policy should simultaneously strive to prevent inappropriate exclusions of units as separate hospitals, while allowing an appropriate degree of flexibility for facilities to respond to changing patient care needs. As a result of our monitoring efforts, in the June 2, 1997 proposed rule, we proposed two changes to the hospital-within-a-hospital regulations (62 FR 29928). We proposed to add a new § 412.22(f) to address hospitals that are unable to meet certain exclusion criteria solely because of State law. In addition, we proposed to extend the application of these rules to other classes of facilities that might seek exclusion from the prospective payment system as hospitals-within-hospitals.

As discussed in detail in the proposed rule, the first proposed change concerned the relationship between the exclusion criteria and State laws. Specifically, we proposed to add § 412.22(f) to address hospitals that, as a matter of State law, would be unable to make the necessary organizational changes to meet the hospital-within-a-hospital criteria. Under our proposal, if a hospital could not meet the criteria in §§ 412.23(e)(3) (i) or (iii) (proposed to be redesignated as §§ 412.22(e) (1) and (3)) solely because its governing body or medical staff is under the control of a third entity that also controls the hospital with which it shares a building or a campus or cannot meet the criteria in §§ 412.23(e)(3) (ii) or (iv) (proposed to be redesignated as §§ 412.22 (e)(2) and (e)(4)) solely because its chief medical officer or chief executive officer is employed by or under contract with such a third entity, the hospital could nevertheless qualify for an exclusion if that hospital meets the other applicable criteria and:

- Is owned and operated by a State university;
- Has been continuously owned and operated by that university since October 1, 1994;
- Is required by State law to be subject to the ultimate authority of the university's governing body; and
- Was excluded from the prospective payment system as a long-term care hospital for any cost reporting period beginning on or after October 1, 1993, but before October 1, 1994.

We solicited comments and suggestions on this issue as well as on whether the language of the proposed

rule effectively addressed the situation of hospitals disadvantaged by State law.

We also proposed to redesignate § 412.23 (e)(3) through (e)(5) which specifies the criteria for hospitals-within-hospitals as § 412.22(e), (g), and (h). This change would have extended the application of the hospital-within-a-hospital rules to all types of facilities that can be excluded from the prospective payment system. As we stated in the proposed rule, we believe it is important to exclude, *as hospitals* only bona fide separate hospitals, not units of larger hospitals. We also proposed to incorporate, within this extended hospital-within-a-hospital rule, the above provisions that we proposed for facilities owned and operated by a State university.

At the same time, we were considering whether it was appropriate for new hospitals-within-hospitals to receive the exemption from the TEFRA rate-of-increase ceiling during the first 2 years of operation. We stated that the purpose of the new hospital exemption was to recognize that a hospital might face a period of cost distortions as it began operations and tried to establish its presence in its market. We did not believe that newly established hospitals-within-hospitals would necessarily face the same degree of cost distortion during their initial periods of operation since they operate within existing, identifiable hospitals. While we did not formally propose elimination of the new hospital exemption for hospitals-within-hospitals at this time, we proposed considering adoption of such a provision in this year's final rule. We invited comment on whether elimination of the new hospital exemption for hospitals-within-hospitals would be advisable.

As discussed in detail below, Public Law 105-33 made changes in the treatment of certain long-term care hospitals. As a result of this new legislation, we are withdrawing our proposal regarding State owned hospitals-within-hospitals and implementing our proposal concerning the extension of the hospital-within-hospital rules with some changes. The discussion that follows details the provisions of section 4417 of Public Law 105-33, explains how these provisions will be implemented, and responds to comments on the proposed rule.

Section 4417 of Public Law 105-33 specifies that a hospital that was classified by the Secretary on or before September 30, 1995, as an excluded long-term care hospital shall continue to be so classified notwithstanding that it is located in the same building as, or on the same campus as, another hospital.



This statutory provision supersedes certain aspects of the current regulatory requirements for long-term care hospitals-within-hospitals, and affects our proposal to extend the hospital-within-a-hospital criteria to excluded hospitals other than long-term care hospitals. While the amendment made by section 4417 of Public Law 105-33 is specific to long term care hospitals, we believe the considerations underlying the legislation also apply to other types of hospitals-within-hospitals.

In view of this statutory change and to provide for consistent treatment of all excluded hospitals-within-hospitals, we have decided to withdraw our proposal to include a specific provision for State-owned hospitals-within-hospitals. Instead, we are revising § 412.22(e) of the regulations to provide that for cost reporting periods beginning on or after October 1, 1997, if a hospital occupies space in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital, the hospital must meet the hospital-within-a-hospital criteria unless the hospital was excluded from the prospective payment system on or before September 30, 1995, in which case the hospital-within-a-hospital criteria do not apply. This provision would apply to all types of excluded hospitals, not just long-term care hospitals. The extension of the hospital-within-a-hospital criteria to hospitals not exempt from the criteria based on their status before October 1995 would be prospective only for cost reporting periods beginning on or after October 1, 1997. We wish to emphasize that the grandfathering provision based on a hospital's pre-October 1995 status would not be made available to any hospital which may have been excluded at one time but lost its exclusion for reasons unrelated to hospital-within-a-hospital status.

*Comment:* One commenter argued that many hospitals sharing space with others will need additional time to comply with the hospital-within-a-hospital rules, since they may need to recruit added staff, make arrangements with new vendors, and reorganize their administrative staff and governing bodies. The commenter suggested that, to allow these changes to be made, the effective date should be changed so that these hospitals would first have to meet the requirements for cost reporting periods beginning on or after October 1, 1998 or October 1, 1999. Another commenter suggested that the proposed effective dates would result in impermissible retroactive rulemaking,

and recommended that each hospital potentially subject to the new rules be grandfathered for at least one cost reporting period to allow for an orderly transition. Another commenter suggested that the proposal regarding State-owned hospitals may be moot as a result of section 4417 of Public Law 105-33, which specifically requires grandfathering of all long-term care hospitals-within-hospitals that were excluded on September 30, 1995.

*Response:* We agree that, in view of section 4417 of Public Law 105-33, it would not be appropriate to adopt our proposals regarding hospitals-within-hospitals as stated in the proposed rule. We have considered the commenter's concerns; however, we believe use of a single effective date of October 1, 1997 will result in the most simple and consistent implementation of the rule.

*Comment:* One commenter objected to the parts of the proposal under which a hospital would have been required to have been continuously owned and operated by a State university since October 1, 1994, and would have been required to have been excluded for a cost reporting period beginning after September 30, 1993 but before October 1, 1994. The commenter asserted that these provisions would exclude otherwise qualified facilities from the grandfathering provision.

*Response:* As noted above, we are not adopting the proposal regarding State-owned hospitals, but have extended the grandfathering provision to all types of excluded hospitals which were excluded on or before September 30, 1995.

*Comment:* A commenter suggested that the provisions of the proposed rule not be applied to hospitals co-located with long-term care hospitals or to any excluded hospitals that share space. The commenter reasoned that this would be unnecessary because in such cases where both hospitals are excluded and serve discrete patient types, there is no incentive for inappropriate transfers, referrals, or other abusive practices. The commenter also recommended that the organizational separateness requirements not be applied where 75 percent or more of a hospital's referrals come from outside sources.

*Response:* We believe the rule should be applied to situations in which the hospitals that share space are all excluded. Even in the absence of a new provider exemption to the TEFRA limit, a hospital may have incentives to inappropriately establish a hospital-within-a-hospital. For example, the two facilities may have different target rates and this may lead to the diversion of some patients to one of the hospitals for

reasons of payment rather than for the benefit of the patient. Moreover, the types of populations treated by different types of excluded facilities are not mutually exclusive: rehabilitation patients can be treated in a long-term care hospital, and rehabilitation hospitals are not precluded from accepting and treating long-stay patients. Thus, permitting exclusion of such "hospitals" within other hospitals may create incentives for abuse that would be diluted or absent if the facilities were freestanding. Regarding the 75 percent referral requirement, we note that it is intended to measure functional separateness and thus complements, but cannot replace, the structural separateness tests.

*Comment:* One commenter stated that although some hospitals have been co-located with others for many years they have not gained an unfair advantage. The commenter also believed that the hospital-within-a-hospital criteria relating to control over two co-located hospitals by a third entity are too stringent and do not recognize that such arrangements are common among nonprofit hospitals and are used by organizations to carry out their fiduciary responsibilities with respect to subordinate corporations. The commenter suggested that the proposed rules be withdrawn or, if they are not withdrawn, applied only to requests for exclusion received on or after October 1, 1997, applied only where the rate of referral between hospitals is over 25 percent, or both.

*Response:* As explained above, we agree that our proposals to extend the application of the hospital-within-a-hospital rules should be applied only prospectively, starting with cost reporting periods beginning on or after October 1, 1997. Further, the rules will not apply to all excluded hospitals which were excluded on or before September 30, 1995. However, we do not agree that our criteria regarding control by a third entity are too stringent or that they unfairly disadvantage nonprofit hospitals. While it may be common for corporations to exercise significant control over their subordinate components, we continue to believe this control indicates that the components are part of a larger organization, not bona fide separate hospitals. We also do not agree that a low rate of referrals between co-located hospitals is sufficient to avoid the need to determine that an entity is a bona fide separate hospital. Even in the absence of a significant level of referrals, a hospital unit may be misrepresented as a separate hospital in order to obtain a more favorable reimbursement. Thus,

avoiding referrals does not eliminate all incentives for abuse.

*Comment:* ProPAC recommended that the Secretary conduct an extensive review of hospitals-within-hospitals, to determine if the existence of this model undermines the incentives of the prospective payment system.

*Response:* We share this concern and are monitoring the status of these facilities. We will continue to review the status of these facilities and evaluate the implications of the changes in Public Law 105-33 affecting newly excluded hospitals and the hospital-within-a-hospital issue.

In addition to the changes discussed above, in § 412.22(e)(5) (ii) and (iii), we are adding a reference to "the six-month period immediately preceding the first cost reporting period for which exclusion is sought." This language clarifies that the criteria in these paragraphs also apply to excluded hospitals other than long term care or children's hospitals, since excluded hospitals other than long-term care or children's hospitals do not always have a prior cost reporting period of at least 6 months that is used to establish length of stay or treatment of an inpatient population which is predominantly individuals under age 18.

#### *B. Exclusion of New Rehabilitation Units and Expansion of Existing Rehabilitation Units (§ 412.30(b)(4))*

In the September 1, 1995 final rule (60 FR 45839), we made certain changes to clarify the regulations applicable to the exclusion of new rehabilitation units and the expansion of units already excluded. These changes were intended only to clarify existing policy, not to change it. However, in making these changes we inadvertently omitted a paragraph that explicitly allowed newly participating hospitals to open new rehabilitation units and also to allow the new rehabilitation units to be excluded immediately from the prospective payment system. In omitting this paragraph, we had no intention of rescinding the policy. In the June 2, 1997 proposed rule, we indicated that we would restore this paragraph to the regulations, which the proposed rule would have redesignated at (§ 412.30(b)(4)), to correct this omission and to reaffirm current policy. (For further information on this policy, see the **Federal Register** published September 1, 1992 (57 FR 39746)). We received no comments on this proposal and are implementing the change in this final rule with comment period.

#### *C. Delicensing and Relicensing of Beds (§ 412.30)*

We have received a number of questions about cases in which hospitals remove some bed capacity from their State license and Medicare certifications, then later increase the number of their licensed and certified beds and seek to have the bed capacity "added" and considered part of a new, or newly expanded, prospective payment system-exempt rehabilitation unit. Assuming that simultaneous delicensure and relicensure of beds would not be accepted as the addition of new bed capacity, we also have been asked how long bed capacity would have to be excluded from a hospital's licensure and certification to be considered "new" for purposes of the prospective payment system exclusion rules at § 412.30.

Section 412.30 establishes separate ways for new and converted units to meet the exclusion criterion related to the type of patient population treated. New units are allowed to qualify for initial exclusion based in part on a certification regarding their intent to treat a patient population of the kind described in § 412.23(b)(2), rather than on a showing that they have actually treated such a population during the hospital's most recent cost reporting period. Converted units may not be excluded based on a certification, but must show that they actually met the § 412.23(b) requirement during the hospital's most recent 12-month cost reporting period. New units are defined as those that are part of a hospital that has not previously sought exclusion for any rehabilitation unit and that comprise greater than 50 percent of the newly licensed and certified bed capacity, while converted units are those that do not qualify as new. Section 412.30 also provides for separate treatment of new and converted bed capacity that is used to expand existing units.

Different rules apply to the addition of new (as opposed to converted) bed capacity, and it would not be appropriate to recognize an "increase" in the bed capacity that coincides with a decrease in bed capacity in another area, resulting in no net increase in the hospital's total licensed and certified bed capacity. Similarly, it would not be appropriate to allow a hospital to circumvent those rules simply by removing some bed capacity from its licensure and certification on a temporary basis, and then increasing its bed size a few days, weeks, or months later. Thus, when a hospital seeks to add a new excluded rehabilitation unit,

or to increase the size of an existing unit by adding new bed capacity, the bed size of the hospital in the past must be taken into account.

The current regulations do not specify how long a decrease in a hospital's bed capacity must be effective before a subsequent increase in the hospital's licensure and certification can be considered as "new" capacity. However, to ensure consistent and equitable treatment of all hospitals with excluded rehabilitation units, in the June 2, 1997 proposed rule, we proposed to provide in the regulations (proposed § 412.30(a)) that a decrease in capacity must remain effective for at least a full 12-month cost reporting period before an equal or lesser number of beds can be added to the hospital's licensure and certification and considered "new". This means that when a hospital seeks to establish a new unit, or to enlarge an existing unit, under the criteria in § 412.30, the HCFA Regional Office will review its records on the facility to determine whether any beds have been delicensed and decertified during the 12-month cost reporting period before the period for which the new beds are to be added. To the extent that bed capacity was removed from the hospital's licensure and certification during that period, that amount of bed capacity cannot be considered "new" under § 412.30. For example, if a hospital with a calendar year cost reporting period had removed 15 beds from its licensure and certification in calendar year 1997 and, for calendar year 1998, sought to set up a new rehabilitation unit that would include 20 beds that would be added to its licensure and certification as of January 1, 1998, only 5 of those beds could be considered "new" under § 412.30. The remaining beds would be considered converted beds.

This guideline applies to changes in a hospital's total licensed and certified bed capacity, regardless of whether specific beds or physical areas within a hospital have previously been operational and available to rehabilitation patients. Thus, if a hospital delicensures 25 beds on one floor in the third month of a cost reporting period and, 2 months later, increases its licensure and certification by adding a 25-bed unit in a previously unoccupied area on another floor, that unit could not be considered "new" under § 412.30 even though it occupies different space from the beds that represented the delicensed capacity. This guideline applies only for purposes of exclusion from the prospective payment system and is not intended to limit a hospital's ability to add to its licensed and certified bed capacity for the provision

of services paid for under the prospective payment system.

We are also revising § 412.30(c)(1)(ii) to state that beds that a hospital wishes to add to an excluded rehabilitation unit can be considered "new," and thus subject to earlier exclusion than existing beds, only if the hospital's total inpatient bed capacity has increased by an amount that is more than 50 percent of the number of beds the hospital seeks to add to the unit, so that the added beds represent primarily newly licensed and certified capacity.

*Comment:* One commenter suggested that the proposal is too stringent, in that it does not take into account that hospitals may be pursuing separate CON activities—construction of a new facility to replace an older, larger facility, and creation of a new rehabilitation unit. The commenter suggested that the coincidence of these events could result in an inadvertent appearance of shifting of bed capacity and recommended that we not impose the delicensing rule but instead rely solely on CON approval to determine the appropriateness of expansions in rehabilitation units. Another commenter suggested that the proposal is unnecessarily restrictive.

*Response:* We understand that there may be situations in which it is appropriate for a hospital, acting in response to community needs and changes in demand for specific types of services, to separately pursue changes in bed size as described by this commenter. While such changes would not be undertaken with any intent to evade exclusion requirements, it nevertheless is clear that they would constitute a shift of the hospital's existing net bed capacity from acute to rehabilitation use, rather than an increase in bed capacity. Thus, we believe such shifts would appropriately be treated under the rules for conversion of bed capacity, and thus have not adopted this comment.

#### *D. Special Excluded Hospital Criteria Added by Public Law 105-33 (§ 412.23)*

Public Law 105-33 added special criteria for certain hospitals to be excluded from the prospective payment system. Section 1886(d)(1)(B)(iv) of the Act as amended by section 4417(b) of Public Law 105-33 allows certain hospitals with an average length of stay of less than 25 days to be excluded from the prospective payment system as a long-term care hospital. In order to be excluded under this provision, a hospital must have first been excluded as a long-term care hospital in calendar year 1986, have an average inpatient length of stay of greater than 20 days, and demonstrate that 80 percent or more

of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in Federal fiscal year 1997 have a principal diagnosis that reflects a finding of neoplastic disease. The exclusion under this provision is effective for cost reporting periods beginning on or after August 5, 1997 (the date of enactment of Pub. L. 105-33). We are revising § 412.23(e) to implement this provision.

Section 4418 of Public Law 105-33 provides an additional category of hospitals that can qualify as cancer hospitals for purposes of exclusion from the prospective payment system. As amended, section 1886(d)(1)(B)(v) of the Act includes a hospital that meets the following criteria:

- The hospital was recognized as a comprehensive cancer center or clinical cancer research center by the National Cancer Institute of the National Institutes of Health as of April 20, 1983.
- The hospital must have applied for and been denied, on or before December 31, 1990, classification as a cancer hospital.
- The hospital was licensed for fewer than 50 acute care beds as of the date of enactment of this subclause (that is, August 5, 1997).
- The hospital is located in a State that, as of December 19, 1989, was not operating a demonstration project under section 1814(b) of the Act.
- The hospital demonstrates that, for the 4-year period ending on December 31, 1996, at least 50 percent of the hospital's total discharges have a principal finding of neoplastic disease; that is, the discharge has a principal diagnosis code of 140-239, V58.0, V58.1, V66.1, V66.2, or 990.

A hospital that meets these criteria is classified as an excluded cancer hospital for cost reporting periods beginning on or after January 1, 1991. In addition, for purposes of payment, the base period applicable to such a hospital is the hospital's cost reporting period beginning during FY 1990 or the period under new section 1886(b)(3)(F) of the Act (discussed below). We are revising the regulations at § 412.23(f) to incorporate this provision.

#### *E. Changes Based on New Legislation for the Payment of Hospitals and Units Excluded from the Prospective Payment System (§ 413.40)*

Public Law 105-33 significantly altered the payment provisions for excluded hospitals and units. Prior to the passage of Public Law 105-33, the payment provisions for excluded hospitals and units applied consistently to all categories of excluded providers (that is, psychiatric, rehabilitation, long-

term care, children's, and cancer). However, effective for cost reporting periods beginning on or after October 1, 1997, there are specific payment provisions for psychiatric, rehabilitation, and long-term care providers and modifications to payment provisions for all excluded providers. Following is a complete discussion of the new provisions and the revised regulations.

##### 1. Rate-of-Increase Percentages for Excluded Hospitals and Units (§ 413.40 (c) and (g))

Hospitals and units excluded from the prospective payments system receive payment for inpatient hospital services they furnish on the basis of reasonable costs, subject to a rate-of-increase ceiling. An annual per discharge limit (the target amount as defined in § 413.40(a)) is set for each hospital or hospital unit based on the hospital's own cost experience in its base year. The target amount is multiplied by the Medicare discharges and applied as an aggregate upper limit (the ceiling as defined in § 413.40(a)) on total inpatient operating costs for a hospital's cost reporting period.

Section 4411 of Public Law 105-33 amended sections 1886(b)(3)(B) of the Act regarding the rate-of-increase percentages to be applied to each target amount as set forth below.

The applicable rate-of-increase percentage for the cost reporting period beginning during FY 1998 is 0 percent.

For cost reporting periods beginning in FY 1999 through FY 2002, the applicable rate-of-increase percentage is the market basket rate of increase percentage minus a factor based on the percentage by which the hospital's operating costs exceed the hospital's ceiling for the most recent cost reporting period for which information is available.

- If the hospital's operating costs are equal to or exceed 110 percent of the ceiling amount, the rate-of-increase percentage increase is equal to the market basket percentage.
- If the hospital's costs exceed the ceiling but are less than 110 percent of the ceiling, the rate-of-increase percentage is the market basket rate of increase minus .25 percentage points for each percentage point by which costs are less than 10 percent over the ceiling. The rate-of-increase percentage is in no case less than 0 percent.

- If the hospital's costs are equal to or less than ceiling but greater than 66.7 percent of the ceiling, the rate-of-increase percentage is the greater of the market basket minus 2.5 percentage points or 0 percent.

- If the hospital's costs do not exceed 66.7 percent of the ceiling, the rate-of-increase percentage is 0 percent.

- If the hospital first receives payments as an excluded provider on or after October 1, 1997, the new statutory payment methodology for new hospitals applies.

Examples of how the rate-of-increase percentage provision applies in determining the applicable rate-of-increase percentages are as follows:

*Example 1*

Cost reporting period beginning in FY 1999:	
FY 1997 target amount .....	\$8,000
Medicare discharges .....	×100
<hr/>	
FY 1997 ceiling .....	\$800,000
FY 1997 allowable inpatient operating costs .....	\$1,000,000
FY 1997 costs over (under) of the ceiling .....	\$200,000
FY 1997 costs as percentage of the ceiling .....	125
FY 1998 rate-of-increase percentage .....	0
FY 1999 rate-of-increase percentage: market basket .....	2.60
FY 1999 target amount (FY 1998 target amount of \$8,000×1.026) .....	\$8,208

*Example 2*

Cost reporting period beginning in FY 1999:	
FY 1997 target amount .....	\$9,800
Medicare discharges .....	×100
<hr/>	
FY 1997 ceiling .....	\$980,000
FY 1997 allowable inpatient operating costs .....	\$1,000,000
FY 1997 costs over (under) the ceiling .....	\$20,000
FY 1997 percent by which costs exceed (do not exceed) the ceiling .....	2.04
FY 1998 rate-of-increase percentage .....	0
FY 1999 rate-of-increase percentage:	
Market basket .....	2.60
Percentage point reduction (.25×(10 - 2.04)) .....	(1.99)
<hr/>	
Update (percent) .....	.61
FY 1999 target amount (FY 1998 target amount \$9,800×1.0061) .....	\$9,859.78

*Example 3*

Cost reporting period beginning in FY 1999:	
FY 1997 target amount .....	\$10,500
Medicare discharges .....	×100
<hr/>	
FY 1997 ceiling .....	\$1,050,000
FY 1997 allowable inpatient operating costs .....	\$1,000,000
FY 1997 costs over (under) the ceiling .....	\$(50,000)

*Example 3—Continued*

FY 1997 costs as percentage of the ceiling .....	95.2
FY 1998 rate-of-increase percentage .....	0
FY 1999 percentage increase:	
Market basket .....	2.60
Percentage point reduction ..	(2.50)
<hr/>	
Update (percent) .....	.10
FY 1999 target amount (FY 1998 target amount \$10,500×1.001) .....	\$10,510.50

*Example 4*

Cost reporting period beginning in FY 1999:	
FY 1997 target amount .....	\$16,000
Medicare discharges .....	×100
<hr/>	
FY 1997 ceiling .....	\$1,600,000
FY 1997 allowable inpatient operating costs .....	\$1,000,000
FY 1997 costs over (under) the ceiling .....	\$(600,000)
FY 1997 costs as percentage of the ceiling .....	62.5
FY 1998 rate-of-increase percentage: .....	0
FY 1999 rate-of-increase percentage .....	0
FY 1999 target amount (FY 1998 target amount of \$16,000×1.0) .....	\$16,000

We are revising § 413.40(c)(3)(vi) and adding new paragraphs (c)(3)(vii) and (c)(3)(viii) and (g)(5) to set forth the new rate-of-increase percentage provisions.

2. Request for a new base period (§ 413.40(b))

Sections 4413(a) and 4413(b) of Public Law 105-33 amended sections 1886(b)(3) of the Act in order to permit excluded hospitals and units to elect ("in a form and manner determined by the Secretary") a rebasing of the target amount for the 12-month cost reporting period beginning during FY 1998 (October 1, 1997 through September 30, 1998). Except for a qualified long-term care hospital, as discussed below, each excluded hospital or unit under present or previous ownership that received Medicare payments during cost reporting periods beginning before October 1, 1990 may submit to its fiscal intermediary a request for rebasing its target amount. The new section 1886(b)(3)(F) of the Act instructs the Secretary to determine the rebased target amount as follows:

(1) The Secretary shall determine the hospital's allowable inpatient operating costs "for each of the 5 cost reporting periods for which the Secretary has the most recent settled cost reports as of the date of enactment (August 5, 1997)".

(2) For each of the 5 cost reporting periods, the Secretary shall update the

inpatient operating cost per case to FY 1998 using the update factors cited at section 1886(b)(3)(B) of the Act (§ 413.40(c)).

(3) The Secretary shall exclude the highest and lowest of the five updated amounts for inpatient operating cost per case.

(4) The Secretary shall compute the average for the remaining three updated inpatient operating cost per case.

Under the statute the methodology for determining a rebased target amount uses the updated inpatient operating costs per case from the five most recent cost reports that have been settled as of the date of the enactment of the statute (August 5, 1997). For purposes of this provision, we will not recalculate the target amount to reflect cost report reopenings, changes, or other adjustments made after August 5, 1997. Reopenings (or even multiple reopenings) of any of the five settled cost reports at later dates could create a uncertainty of the applicable FY 1998 target amount until well after the end of FY 1998 and uncertainty about target amounts for subsequent years. Accordingly, the hospital must carefully consider the inpatient operating costs per case of its five most recent settled cost reports as of August 5, 1997 in deciding whether to apply for rebasing under this provision.

Similarly, if a hospital that received payments during cost reporting periods beginning before October 1, 1990 has reorganized or acquired another similar excluded provider so that its five most recent settled cost reports reflect substantial differences in the size and expenses of the excluded hospital or unit, the same considerations apply. It is not permissible to use fewer than (or more than) the five most recent settled cost reports in an attempt to reflect an operational reorganization. Also, if the hospital elects rebasing under this provision, the revised target amount for FY 1998 continues to be subject to the 75th percentile cap established on the target amount by Section 4414 of Public Law 105-33 (discussed below). Exception payments as governed by §§ 413.40(g) and (i) will be evaluated based on a comparison of the hospital's operating costs and its costs during the three years used to calculate the rebased target amount.

In order to implement the statutory provision, we are adding § 413.40(b)(1)(iv) to describe the manner in which a hospital must request a rebased target amount. The hospital submits the request to its fiscal intermediary. Due to the extremely short timeframe between enactment of Public Law 105-33 on August 5, 1997 and the

beginning of FY 1998 (on October 1), we believe it is necessary and appropriate to establish special rules to address those hospitals whose cost reporting periods begin early in FY 1998, in order to treat all hospitals equitably. Therefore, the hospital must submit its request for rebasing by the later of November 1, 1997 or 60 days prior to the beginning of its cost reporting period beginning during FY 1998. We emphasize that the intermediary must receive the request by the deadline. Also, we note that this is a one time request that must be received by the deadline for the FY 1998 cost reporting period.

Upon receipt of a request for a rebased FY 1998 target amount, the fiscal intermediary should verify the submitted request and notify the hospital of its FY 1998 target amount.

The request for a new base period must include the following:

- Cover letter, which must include the items listed below.
  - The name of the excluded hospital or unit;
  - The Medicare provider number;
  - The beginning and ending dates for the FY 1998 cost reporting period;
  - The fiscal year of the existing base period and FY 1998 updated target amount;
  - A statement requesting a rebased FY 1998 target amount under § 413.40(b)(1)(iv);
  - A statement of the rebased FY 1998 target amount per discharge with supporting documentation in attachment work papers;
  - A list of attachments; and
  - A contact person: name, phone number, and address
    - Attachments
  - Copies of the Notices of Program Reimbursement for the five most recent settled cost reporting periods
  - Copies of Worksheet D-1 for the five most recent settled cost reporting periods
  - A list and/or calculation of the following for each of the five most recent settled cost reporting periods:
    - + Total Medicare inpatient operating costs (excluding pass through costs);
    - + Total Medicare discharges;
    - + Medicare inpatient operating costs per case; and
    - + Medicare inpatient operating costs per case updated to FY 1998
  - A list the highest and lowest of the five updated inpatient operating cost per case; and
  - A calculation of the average for the remaining three updated inpatient operating cost per case
- Section 4413(b) of Public Law 105-33 also specified a separate rebasing

election for a qualified long-term care hospital. The statute defines a qualified long-term care hospital as a long-term care hospital that meets the following two conditions for its two most recent settled cost reports as of August 5, 1997:

- (1) The hospital's Medicare inpatient operating costs exceed 115 percent of the ceiling; and
- (2) The hospital would have had a disproportionate patient percentage (as defined in § 412.106) equal to or greater than 70 percent if it were a prospective payment system hospital. A qualified long-term care hospital must submit a request to its fiscal intermediary to have a rebased target amount in the same manner as discussed above for other excluded hospitals. The request must be received by the fiscal intermediary by the later of November 1, 1997 or 60 days prior to the beginning of its cost reporting period during FY 1998. For a qualified long-term care hospital, the methodology for rebasing the target amount differs. The FY 1998 rebased target amount is the hospital's FY 1996 inpatient operating costs updated by the market basket percentage to FY 1997 only, not to FY 1998, subject to the 75th percentile cap.

To assist with the application of the updating of the cost per case to the subject fiscal period, the increase in the market basket and the applicable update factors for excluded hospitals and units since FY 1990 are:

Fiscal year	Market basket (percent)	Update factor
1990 .....	5.5	1.055
1991 .....	5.3	1.053
1992 .....	4.7	1.047
1993 .....	4.2	1.042
1994 .....	4.3	1.043
1995 .....	3.7	1.037
1996 .....	3.4	1.034
1997 .....	2.5	1.025
1998 .....	2.7	1.000

<sup>1</sup> See § 413.40(b)(3)(v) for method of determining applicable reduction.

We are adding §§ 413.40(b) (iv) and (v) to set forth the new provisions regarding request for new base periods.

### 3. Limitation on the Target Amount for Excluded Hospitals and Units (§ 413.40(c))

Section 4414 of Public Law 105-33 amended section 1886(b)(3) of the Act, to establish caps on the target amounts for excluded hospitals or units for cost reporting periods beginning on or after October 1, 1997, through September 30, 2002. The caps on the target amounts apply to the following three categories of excluded hospitals: psychiatric hospitals and units, rehabilitation

hospitals and units, and long-term care hospitals. For purposes of calculating the caps, the statute requires the Secretary to first "estimate the 75th percentile of the target amounts for such hospitals within [each] class for cost reporting periods ending during fiscal year 1996". For cost reporting periods beginning in FY 1998, the Secretary shall update the amount so determined by the market basket percentage increase to FY 1998. For cost reporting periods beginning during FY 1999 through 2002, the Secretary shall update the resulting amount by the market basket percentage.

The estimates of the 75th percentile of the target amounts were developed from the best available data on the hospital specific target amounts for cost reporting periods ending during fiscal year 1996 and then updated by the market basket percentage to FY 1998. Given the extraordinarily short time frame between the enactment of Public Law 105-33 (August 5, 1997) and the required publication date of this final rule, we used the best available data that has been reported to HCFA by the fiscal intermediaries for over 3,000 hospitals and units within the classes specified by the statute.

When an exact target amount was not available for a particular hospital, we used the best available information to estimate the hospital's target amount. For example, if the hospital's target amount for its cost reporting period ending during FY 1996 was not available but the target amount for FY 1995 was available, we updated the FY 1995 target amount by the applicable percentage increase to determine an estimate of the hospital's target amount for its cost reporting ending during FY 1996. We note that, with respect to long-term care hospitals, we were able to obtain exact target amount figures for virtually all hospitals within the class.

A hospital that has a target amount that is capped at the 75th percentile would not be granted an exception payment as governed by §§ 413.40 (a) and (i) based solely on a comparison of its costs or patient mix in its base year to its costs or patient mix in the payment year. Since the hospital's target amount would not be determined based on its own experience in a base year, any comparison of costs or patient mix in its base year to costs or patient mix in the payment year would be irrelevant. However, exception payments would still be available for hospitals that have target amounts that are determined by the hospital's costs in a base year unaffected by the 75th percentile cap.

The 75th percentile of the target amounts for cost reporting periods ending during fiscal year 1996, and updated by the market basket up to FY 1998 are as follows:

- (1) Psychiatric hospitals and units: \$10,188
  - (2) Rehabilitation hospitals and units: \$18,476
  - (3) Long-term care hospitals: \$36,449
- We are revising § 413.40(c)(4) (i) and (ii) to set forth the limitation on the ceiling provisions.

#### 4. Bonus and Relief Payments (§ 413.40(d))

##### a. Bonus Payments

For cost reporting periods beginning before October 1, 1997, a hospital that had inpatient operating costs less than its ceiling is paid costs plus the lower of 50 percent of the difference between the inpatient operating costs and the ceiling; or 5 percent of the ceiling. Section 4415 of Public Law 105-33 amended section 1886(b)(1)(A) of the Act to provide that for cost reporting periods beginning on or after October 1, 1997, the amount of bonus payment is the lower of the following:

- (1) 15 percent of the difference between the inpatient operating costs and the ceiling, or
- (2) 2 percent of the ceiling.

In addition, section 4415 of Public Law 105-33 amended Section 1886(b)(2) of the Act to provide for "continuous improvement bonus payments". Under this new provision, for cost reporting periods beginning on or after October 1, 1997, an "eligible hospital" will receive payments in addition to the bonus payment discussed above. An "eligible hospital" is a hospital that been an excluded provider for at least three full cost reporting periods prior to the subject period and whose operating costs per discharge for the subject period are below the lower of its target amount, trended costs (as defined by the statute), or expected costs (as defined by the statute) for the subject period. The amount of the continuous improvement bonus payment will be equal to the lesser of—

- (1) 50 percent of the amount by which operating costs were less than the expected costs for the period; or
- (2) 1 percent of the ceiling.

Under the statute, for a hospital with its third or subsequent cost reporting period ending in FY 1996, trended costs are the lesser of allowable inpatient costs per discharge or the target amount in FY 1996, increased (in a compounded manner) for each succeeding fiscal year by the percentage increase in the market

basket. For all other hospitals, trended costs are the allowable inpatient operating costs per discharge for its third full cost reporting period increased (in a compounded manner) for each succeeding fiscal year by the percentage increase in the market basket.

Expected costs are the lesser of operating costs per discharge or the target amount for the previous cost reporting period, updated by the percentage increase in the market basket for the fiscal year.

##### b. Relief Payments

For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1991, hospitals that had inpatient operating costs in excess of their ceiling are to be paid no more than the ceiling. Section 4005(a) of Public Law 101-508 (OBRA 1990, enacted November 5, 1990) amended section 1886(b)(1)(B) of the Act to provide that for cost reporting periods beginning on or after October 1, 1991, a hospital could receive relief payments equal to 50 percent of the costs in excess of the ceiling not to exceed 10 percent of the ceiling (after any exceptions or adjustments).

Section 4415 of Public Law 105-33 amended section 1886(b)(1) of the Act to provide that for cost reporting periods beginning on or after October 1, 1997, if a hospital's operating costs are greater than the ceiling but less than 110 percent of the ceiling, payment will be the ceiling. If a hospital's costs are greater than 110 percent of the ceiling, payment will be the ceiling plus 50 percent of the costs in excess of 110 percent of the ceiling. Total payment may not exceed 110 percent of the ceiling.

Because section 4415 of Public Law 105-33 does not provide relief for costs that are within 110 percent of the ceiling, we are making a corresponding change to the exception payment provision at § 413.40(g)(1) so that qualification for the amount of an exception payment does not encompass costs within 110 percent of the ceiling.

We have revised §§ 413.40(d)(3) and added (d)(4) and (d)(5) to implement these provisions.

#### 5. New Excluded Hospitals and Units (§ 413.40(f))

Under § 413.40(f), a new excluded hospital is exempted from the rate-of-increase ceiling until the end of the first cost reporting period ending at least two years after the hospital accepts its first patient (through the second 12-month cost reporting period). As we discussed in the June 2, 1997 proposed rule (62 FR

29937), the growth of new excluded hospitals increasingly includes a large number of hospitals that are merely reconfigurations of existing facilities. These new providers do not require the same length of time to establish a presence in the marketplace and increase patient load. As a result, there is evidence that the new hospital exemption does not always serve its original purpose to recognize certain cost distortions that may be present as a hospital begins operations. In addition, the new hospital exemption period could create incentives to increase costs in the exempt years. In its March 1, 1997 report, ProPAC recommended that the new hospital exemption period should be eliminated and that Medicare payments for new providers should be based on an average target amount for facilities serving comparable types of patients.

With the enactment of sections 4416 and 4419 of Public Law 105-33, which amend section 1886(b)(4) of the Act and add section 1886(b)(7) of the Act, Congress has established a new framework for payments for new excluded providers. First, section 4419(a) amends section 1886(b)(4)(A)(i) of the Act, to eliminate "exemptions" for all classes of excluded entities except children's hospitals. This provision applies to entities that first qualify for exclusion for cost reporting periods beginning on or after October 1, 1997. Thus, effective October 1, 1997, we will no longer grant new provider exemptions under section 1886(b)(4) of the Act except with respect to children's hospitals.

Second, section 4416 adds a new section 1886(b)(7) of the Act to establish a new statutory payment methodology for certain new hospitals. For purposes of this provision, the statute specifies three classes of hospitals: psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals. Under the statutory methodology, for a hospital that is within a class of hospitals specified in the statute and which first receives payments on or after October 1, 1997, the amount of payment shall be determined as follows.

For each of the first two cost reporting periods, the amount of payment is the lesser of (1) the operating costs per case, or (2) 110 percent of the national median of target amounts for the same class of hospitals for cost reporting periods ending during FY 1996, updated and adjusted for differences in area wage levels. For purposes of computing the target amount for the subsequent cost reporting period, the target amount for the preceding cost reporting period

is equal to the amount determined under the methodology above for the preceding period.

To determine payments for a new hospital's first two cost reporting periods, the statute requires a calculation of a national median of the target amounts for hospitals in the same class, updated and adjusted. For each class of hospitals, using the best available data we determined the national median of the target amounts for hospitals within the class for cost reporting periods ending during fiscal year 1996. In determining the national median, the Secretary makes adjustments to account for area differences in wage-related costs. Pursuant to the broad authority conferred on the Secretary to determine an appropriate wage adjustment, we are making an adjustment on the basis of the data used to calculate the FY 1998 hospital wage index under the hospital inpatient prospective payment system (see § 412.63), without taking into account reclassifications under section 1886(d)(10) and (d)(8)(B) of the Act. We recognize that wages may differ for prospective payment hospitals and excluded hospitals, but we believe the wage data do reflect area differences in wage-related costs; moreover, in light of the extraordinarily short timeframe for implementing this provision, this is the only feasible data source.

We note that, under the statute, the special payment methodology for new hospitals applies for each of the hospital's first 2 cost reporting periods. However, a new hospital might begin operations on a date other than the first day of its "usual" cost reporting period, so that its first cost reporting period is a short period. In order to treat these hospitals equitably, we believe the special payment methodology should be applied to the hospital's first two full cost reporting periods.

We also note that, under the calculation prescribed in new section 1886(b)(7)(A)(i)(II), the limit on payment for each of the hospital's first two cost reporting periods is based on the national median target amount for cost reporting periods ending during FY 1996, updated by the hospital market basket "to the fiscal year in which the hospital first received payments". That is, the limit on payment is not updated by the market basket for the second cost reporting period. For example, if a new rehabilitation hospital commences operation on January 1, 1999 (during FY 1999), it receives the lower of the hospital's operating costs or 110 percent of the applicable national median of target amounts for cost reporting periods ending during FY 1996 updated to FY

1999. For its second 12-month cost reporting period (FY 2000), the limit on payment is the same (110 percent of the applicable national median updated to FY 1999). The statute appears to provide that the target amount for succeeding cost reporting periods will be based on the payment amount in the second 12-month cost reporting period increased by the applicable update factors. Although we are codifying the policies for subsequent cost reporting periods in this final rule with comment period, a technical amendment may be needed to clarify statutory intent.

The updating process also raises an issue with respect to hospitals with short cost reporting periods. The statute requires that the national median is updated "to the fiscal year in which the hospital first received payments." Thus, for hospitals with short cost reporting periods, we would calculate the limit based on the beginning of its short cost reporting period, even though the limit would not be applied until its first full cost reporting period (as discussed earlier). We believe these policies treat such hospitals equitably, so that they are neither benefitted nor disadvantaged by the short cost reporting period.

We are revising §§ 413.40(f) (1) and (2) to incorporate these changes for new excluded providers.

The table below lists 110 percent of the national median target amounts for each class of excluded hospitals for cost reporting periods ending during FY 1996, adjusted for area wages updated by the market basket to FY 1998.

(1) Psychiatric hospitals and units	\$8,203
(2) Rehabilitation hospitals and units	16,129
(3) Long-term care hospitals	18,324

6. Capital Payments for Excluded Hospitals and Units (§ 413.40(j))

Section 4412 of Public Law 105-33 amended section 1886(g) of the Act to establish a 15 percent reduction on capital payments for certain hospitals and hospital distinct part units excluded from the prospective payment system for portions of cost reporting periods beginning on or after October 1, 1997, through September 30, 2002. The capital reduction applies to psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals.

We are adding § 413.40(j) to set forth the capital reduction provision.

7. Report on Adjustment Payments to the Ceiling (§ 413.40(g))

Section 1886(b)(4) of the Act provides for an adjustment (exception) payment to the ceiling if a hospital submits a

request to its fiscal intermediary within 180 days of the date of the Notice of Program Reimbursement. Changes in the types of patients served or in-patient care services that distort the comparability of a cost reporting period to the base year are grounds for requesting an adjustment request. The reasons and process for requesting an adjustment request are implemented at § 413.40(g). Section 4419(b) of Public Law 105-33 amended section 1886(b)(4) of the Act. This section requires the Secretary to publish annually, in the **Federal Register**, a report describing the total adjustment payments made to excluded hospitals and units for cost reporting periods ending during the previous fiscal year. Effective with the FY 1999 notice of changes to the hospital inpatient payment systems, we will publish the total adjustment payments made to excluded hospitals and units by category of hospital (psychiatric, rehabilitation, long-term care, cancer, and children's) during the previous fiscal year.

**VIII. ProPAC Recommendations**

As required by law, we reviewed the March 1, 1997 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. 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 or our response to that recommendation, we have not repeated the recommendation and response in the discussion below. Recommendation 2, concerning the update for the prospective payment system operating payment rates, is discussed in Appendix D of this final rule with comment period. Recommendations 3 and 4, concerning the prospective payment system capital payment rates, are discussed in section III. of the Addendum of this final rule with comment period. Recommendation 13, concerning updating the target amounts for excluded hospitals and distinct part units, is discussed in Appendix D of this final rule with comment period. Recommendation 31, concerning long-term care hospitals within hospitals, is discussed in section VII. of this final rule with comment period. The remaining recommendations on which we received comments are discussed below.



*A. Improving Medicare's Disproportionate Share Hospital (DSH) Payments and Distribution of those Payments (Recommendation 9, 10, and 11)*

*Recommendation:* DSH payments should be concentrated among hospitals with the highest shares of poor patients. Therefore, a minimum threshold should be established for the low-income patient cost share. Hospitals falling just above the threshold should receive only a minimal per case payment, with the amount then increasing as low-income share rises. The same general approach for distributing payments should apply to all PPS hospitals.

*Response in the Proposed Rule:* Congress set the current threshold payments for Medicare disproportionate share hospitals in section 6003(c) of the Omnibus Budget Reconciliation Act of 1989. This provision expanded both the number of hospitals that could qualify for disproportionate share payments as well as the level of those payments for some categories. We note that large urban hospitals already receive payments based on this graduated payment structure. ProPAC notes that 95 percent of the hospitals receiving disproportionate share payments are designated as large urban hospitals. A May 1990 Congressional Budget Office (CBO) report to Congress, found that only large urban hospitals were overburdened by the cost of caring for the indigent population.

We agree with ProPAC that the disproportionate share payments should be concentrated on the hospitals in greatest need of assistance.

*Comment:* ProPAC indicated that the goal of DSH payments should be to protect access to hospital care for Medicare beneficiaries, not merely to compensate a hospital for the added costs of treating Medicare patients due to the hospital's indigent patient load. To that end, ProPAC recommended that the same distribution formula be applied to all hospitals, regardless of their size or location. A ProPAC simulation of a payment system based on its recommendations showed that some payments would be redistributed to rural hospitals (largely because the current system imposes a stricter standard for those hospitals to qualify for a DSH payment) and to hospitals with large shares of uncompensated care costs (because the current system does not recognize this important component of the hospital industry's commitment to treating indigent patients). This redistribution would be appropriate, in ProPAC's view, because it would result in DSH payments more closely

reflecting the burden borne by hospitals that treat a large share of poor patients.

ProPAC's approach to distributing DSH payments is aimed at ensuring that available funds are used to help those hospitals most in need of assistance. Accordingly, it is important to reflect all low-income hospital care in the variable upon which payments will be based, and ProPAC's low-income share measure would capture the costs associated with all Medicaid patient days. However, a system based on ProPAC's recommendations could be designed to distribute any level of DSH funding, and so the inclusion of all Medicaid costs need not have any implications for HCFA's overall expenditures. The number of hospitals receiving payments can also be determined through the choice of the threshold (minimum low-income cost share needed to qualify for a DSH payment).

ProPAC firmly agreed with the Secretary's goal of targeting payments to hospitals with the largest shares of low-income patients. But this goal can only be achieved through the development of a comprehensive and consistently measured low-income share indicator. ProPAC's recommended measure reflects all relevant groups of low-income patients (low-income Medicare, Medicaid, local indigent care program, and uncompensated care patients), measured in a consistent fashion that automatically weights each group according to its contribution to the hospital's overall patient care costs.

The Commission believes that including bad debts in its recommended measure of low-income costs would not materially weaken the incentive to attempt collection on unpaid accounts. For the majority of hospitals, the amount of additional DSH payment that might be received by foregoing collection efforts would be dwarfed by the amount they stand to gain from the patient. These institutions, therefore, can be expected to continue their collection efforts. On the other hand, those few hospitals with very large low-income shares, rarely serve the type of patients among whom aggressive collection would be worthwhile.

ProPAC believes that the data needed to implement the low-income cost share measure it recommends could be obtained by straightforward means. Each hospital's low-income patient cost share could be estimated by dividing the sum of charges for all low-income patient groups by total patient charges. In its simplest form, only five variables would need to be collected from each hospital—aggregate charges for: (1) patients sponsored by Medicaid, (2)

patients sponsored by indigent care programs other than Medicaid, (3) Medicare patients, (4) uncompensated care, and (5) all patients. Because hospitals currently must use the same price schedule for all patients, a measure of low-income charges as a percent of total charges would yield reasonable, accurate, and comparable estimates of the proportion of costs devoted to treating low-income patients across all hospitals.

Another commenter supported ProPAC's approach to calculating DSH payments, and urged HCFA to include both bad debt and uncompensated care. This commenter supported HCFA's intention to move away from the current DSH formula, which is based on Medicaid and Supplemental Security Income eligibility.

*Response:* We continue to believe that there are inconsistencies in the current Medicare disproportionate share adjustment calculation, because Medicaid data varies from State to State. Therefore, we continue to be interested in ways to improve the data and the calculation to better target those hospitals that treat a disproportionate share of indigent patients.

We are reluctant to include bad debts in the calculation because we continue to believe that it provides an incentive for hospitals to discontinue their collection efforts. In addition, examination of bad debt data has shown no correlation between bad debts and hospitals that currently receive some level of a Medicare disproportionate share adjustment. In other words, our examination of the data has shown that a hospital that currently receives a large Medicare disproportionate share adjustment does not necessarily have a correspondingly large amount of bad debt.

We also continue to believe that collection of uncompensated care data would be burdensome to both the hospital industry and HCFA and its fiscal intermediaries. In addition, as noted in the proposed rule, HCFA has no means to verify such data. As we have consistently stated on many previous occasions, in order for a data source to be considered usable, it must be nationally available and auditable.

Hospitals should also be aware that a change in the formula will almost certainly produce a change in the universe of qualifying hospitals and the levels of the adjustments that these hospitals receive. We note that section 4403(b) of Public Law 105-33 requires us to submit a report to Congress by August 5, 1998 that contains a revised DSH formula. In determining this formula, we must do the following:



- Establish a single threshold for costs incurred by hospitals in serving low-income patients.

- Consider the costs incurred by the hospital in serving both Medicare Part A beneficiaries who receive SSI and Medicaid beneficiaries (including those enrolled in managed care organizations) who are not entitled to Medicare Part A benefits.

#### *B. Modifying the Tax Equity and Fiscal Responsibility Act (TEFRA) Payment System (Recommendation 14)*

*Recommendation:* Congress should consider modifying the TEFRA payment system to correct for the payment disparity between new and old providers.

*Response in the Proposed Rule:* HCFA has developed legislative proposals to modify the TEFRA payment system. Our proposals include rebasing the target rates for excluded hospitals and units using an average of each facility's two most recent cost reporting periods. This measure would realign payment rates with costs for both old and new providers. In conjunction with rebasing, the new target rates would be capped at 150 percent of a national mean rate for each type of facility in order to prevent newer high cost hospitals from receiving excessive target rates. Lower cost hospitals would be protected by establishing a floor of 70 percent of the national mean rate for each type of facility. Incentive payments would be modified by providing that no such payment would be made where a provider incurs costs that are less than or equal to 110 percent of the target amount. Finally, the President's FY 1998 budget proposal would revise the payment of capital costs to excluded hospitals and units by reducing reimbursement for capital to 85 percent of reasonable costs. TEFRA providers are the only hospitals that continue to be reimbursed for capital on a dollar-for-dollar basis; consequently, they have no incentive to control their capital expenditures. This policy would make capital reimbursement policy more consistent among all hospitals and provide a needed incentive for cost control, particularly for newer excluded hospitals and units that may have more resources for capital expenditures because they are not as limited by the target rates on inpatient operating costs.

*Comment:* Based on its analytic framework, ProPAC supported an average update of 2.0 percent for prospective payment system-excluded facilities. ProPAC believes that imposing the prospective payment system update on prospective payment system-excluded facilities is not

appropriate. Medicare payment policies for specialty hospitals and units excluded from the prospective payment system differ from those for general acute care hospitals because these provider types historically have treated different patient populations. Likewise, the financial performance of prospective payment system-excluded providers is dissimilar from their prospective payment system counterparts, largely because of the underlying payment policy differences. Consequently, ProPAC maintains that separate methodologies should be used to arrive at appropriate updates.

Both the Secretary and ProPAC agree that the payment system for prospective payment system-excluded providers should be modified to correct for the payment disparity between new and old providers. ProPAC will continue to monitor the financial performance of providers paid under this system.

*Response:* We believe that ProPAC's concerns are addressed by Section 4411 of Pub. L. 105-33, which amended sections 1886(b)(3) of the Act regarding the rate-of-increase percentages. We have discussed the statutory changes in section VII of this preamble.

#### *C. Prospective Payment System for Skilled Nursing Facilities (SNFs) (Recommendation 19)*

*Recommendation:* A case-mix adjusted prospective payment system for skilled nursing facilities should be implemented as soon as possible.

*Response in the Proposed Rule:* We concur with the recommendation to implement a prospective payment system for SNFs as soon as possible. The President's FY 1998 budget includes a provision for a prospective payment system for SNFs to be implemented on July 1, 1998. This system will include payment for all costs (routine, ancillary, and capital) related to the services furnished to beneficiaries under Medicare Part A. By including all costs of services in the payment rates, spending growth per day of care can be contained. In addition, the provision includes authority to adjust payments to providers where inappropriate utilization (that is, excessive lengths of stay) of SNF services is found. Finally, the proposed prospective payment system would include case-mix adjustments using a resident classification system based on resource utilization groups. These resource utilization groups are tied to elements contained on the Minimum Data Set (MDS) 2.0 resident assessment instrument for nursing homes.

*Comment:* ProPAC commended the Secretary's efforts to create a

prospective payment system for SNF services, and looks forward to reviewing HCFA's analyses of resource utilization groups and their ability to describe the services provided by SNFs. ProPAC is concerned about the incentive created under a per diem payment system for facilities to increase length of stay, and believes, therefore, that the Secretary should continue efforts to develop a case-mix classification system for use with an admission-based payment system. In addition, ProPAC believes that the Secretary's efforts to discourage inappropriate utilization are particularly important.

*Response:* While the significant copayment associated with the Medicare SNF benefit (\$95.00 per day) acts as a powerful force limiting the growth of overall length of stay in SNFs, HCFA is concerned about increases in utilization under the new prospective payment system and plans to study this issue. In addition, HCFA will continue its efforts towards the development of a per diem integrated payment and delivery system that applies to all Medicare post-acute services. This type of system has the greatest potential for providing system-wide financial integrity, while assuring high quality care.

#### *D. Home Health Visit Coding (Recommendation 26)*

*Recommendation:* Medicare should require consistent home health visit coding. Such information is essential for monitoring and evaluating the home health benefit and developing an effective case-mix adjustment system.

*Response in the Proposed Rule:* Currently, there is no standard definition of what comprises a visit and there is variation in the type of service and length of time for providing those services. We agree such information is critical to developing an effective case-mix measure for a home health prospective payment system. In the case-mix research we are beginning, we will collect information on the length of time and procedures performed during a visit. This information will feed into the development of a prospective payment system and related coding system. We cannot proceed with specific coding refinements until the findings are available and a prospective payment system is designed. We are researching aspects of that approach rather than imposing reporting burdens on all home health agencies.

*Comment:* ProPAC indicated that although the Secretary agrees that information about home health visit length and content is critical to developing an effective case-mix

measure, she does not want to proceed with specific coding refinements until the findings from the case-mix demonstration project are available and a prospective payment system is designed.

ProPAC is concerned that without uniform coding requirements, the implementation of a prospective payment system would be further delayed. ProPAC notes that there is little information about the types of services that are provided during a visit and that the case-mix demonstration project should guide coding requirements. Concurrent with the research on a prospective payment system, the Commission believes it is important to begin gathering basic data about the content of home health visits, which would be critical in any efforts to improve the payment method. The Medicare Home Health Agency Manual contains a series of aggregate code definitions that would capture some detail about the services that are provided during a visit. HCFA's Common Procedure Coding System (HCPCS) describe some skilled nursing services and a range of therapy services. Time increments also could be useful in understanding visit duration.

*Response:* Section 1895(c) of the Act, as added by section 4603 of Public Law 105-33, requires payment information on all claims for home health services furnished on or after October 1, 1998. All claims for home health services must include a unique physician identifier and a code (or codes) specified by the Secretary that identifies the length of time of the home health visit as measured in 15 minute increments. Since there is no standard definition of what comprises a visit and there is variation in the length of time for providing those services, the new payment information requirements will provide needed information on the length of time required for the provision of home health services. Additionally, as discussed in our previous response in the August 30, 1996 final rule, a contract was awarded to develop a case-mix measurement for a home health prospective payment system. Under the terms of this contract, extensive information about the characteristics of patients and resource utilization will be collected. Information also will be collected about visit lengths and procedures performed during all home health visits during an episode of care.

#### *E. Home Health Copayments (Recommendation 27)*

*Recommendation:* Modest beneficiary copayments, subject to an annual limit,

should be introduced for home health care services.

*Response in the Proposed Rule:* We are concerned about the impact that higher beneficiary out-of-pocket expenses would have on poorer Medicare beneficiaries who are not covered by Medicaid and cannot afford supplemental insurance. Poorer beneficiaries spend a greater proportion of their income on out-of-pocket costs. Our proposed interim system of limits should help control the growth in service use.

*Comment:* The Commission continued to maintain its position that copayments for home health services are appropriate. ProPAC believes that Medicare beneficiaries who receive home health services should participate financially in the payment for those services. Such a policy would be consistent with Medicare cost-sharing requirements for other services and could result in increased involvement by beneficiaries in treatment decisions. Copayments also might limit fraudulent billing practices, since beneficiaries could identify services for which Medicare was billed but that were never delivered. ProPAC recognizes that a copayment policy would have a more direct financial impact on beneficiaries who lack Medicaid or supplemental coverage. Accordingly, ProPAC believes that the copayment amount should be minimal and subject to an annual limit.

*Response:* The issue of copayments was thoroughly considered in the deliberations over Public Law 105-33 and ultimately not adopted in the legislation. We remain concerned about the impact that higher beneficiary out-of-pocket costs would have on poorer Medicare beneficiaries who are not covered by Medicaid and cannot afford supplemental insurance. Our interim system of limits should help control the growth in service use.

#### *F. Prospective Payment System for Rehabilitation Hospitals and Distinct-Part Units (Recommendation 29)*

*Recommendation:* A case-mix adjusted prospective payment system for rehabilitation hospitals and distinct-part units should be implemented as soon as possible.

*Response in the Proposed Rule:* We have sponsored research on possible patient classification systems for rehabilitation care. In particular, a study by the RAND Corporation evaluated the prospects for a prospective payment system based on the rehabilitation coding system known as Functional Independence Measure (FIM) and the patient classification system known as Function-Related Groups (FRGs). The

final report on this research will soon be complete. However, the preliminary results indicate much work would be necessary before a prospective payment system based on FRGs could be implemented. There are at least two important implementation issues: the reliability of the patient status measures and the recognition of patient complications and comorbidities. In addition, implementation of a case-mix payment system for rehabilitation hospitals and units would require significant program resources and impose data reporting and collection requirements on providers. As a result, fewer resources would be available for research into developing an integrated payment approach for payment of rehabilitation care across all settings (excluded hospitals, SNFs, HHAs, comprehensive outpatient rehabilitation facilities, etc.) Thus, we prefer to focus our efforts on developing a coordinated payment system for post-acute care that relies on a core assessment tool.

*Comment:* ProPAC strongly supported coordinating payment methods across postacute sites. The Commission believes that a separate prospective payment system for rehabilitation hospitals and units could be implemented in the near term, however, as an incremental step toward a more comprehensive system for all post-acute care services. ProPAC's understanding is that most Medicare-certified inpatient rehabilitation facilities already collect and use the types of data necessary for the FIM or other standardized patient assessment instruments. Therefore, reporting these data to HCFA would not be an undue burden on providers.

*Response:* Section 4421 of Public Law 105-33 amended section 1886 of the Act by adding a new subsection (j), which provides for implementation of a prospective case-mix payment system for excluded rehabilitation hospitals and units, and begins to phase-in payments under that system for cost reporting periods beginning on or after October 1, 2000. The case-mix payment system is to be fully implemented for cost reporting periods beginning on or after October 1, 2002. We will continue to work on developing a prospective payment system for rehabilitation hospitals and units consistent with this statutory requirement.

#### *G. Prospective Payment System for Long-Term Care Hospitals (Recommendation 30)*

*Recommendation:* A case-mix adjusted prospective payment system for long-term care hospitals should be developed and implemented as soon as possible.

*Response in the Proposed Rule:* We continually examine data and analyze proposals to simplify payment mechanisms and ensure that Medicare payments reflect efficient and high quality health care. We will be interested in evaluating the results of independent studies on case-mix measurement for long-stay hospital patients. At the same time, it is evident that many long-term care hospitals furnish extensive rehabilitation care that overlaps with care furnished in rehabilitation hospitals. Thus, a prospective payment system for postacute care providers which includes SNFs and rehabilitation hospitals and units could conceivably be used for patients in long-term care hospitals. As a result, we have concerns that the development and implementation of a separate prospective payment system for fewer than 200 Medicare-certified, long-term care hospitals may not be an efficient use of program resources and may result in overlapping complexity and manipulation of payment.

*Comment:* ProPAC asserted that a better understanding of long-term care hospitals with respect to the types of patients they treat, patterns of care, and facility costs would be necessary before these providers could be folded into an integrated payment system. ProPAC, therefore, believes that the Secretary should begin researching patient classification systems and resource use for long-term care hospitals soon.

*Response:* We will continue to examine data and analyze proposals consistent with the requirements of section 4422 of Public Law 105-33. This section requires the Secretary to submit a report to Congress not later than October 1, 1999, regarding different payment methodologies which may be feasible for paying long-term care hospitals under the Medicare program.

## IX. Other Required Information

### A. 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](http://WWW.HCFA.GOV/STATS/PUBFILES.HTML). In our June 2 proposed rule, we published a list of data files that are available for purchase (62 FR 29939).

### B. Waiver of Notice of Proposed Rulemaking and 30-Day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of the rule take effect. However, section 1871(b) of the Act provides that publication of a notice of proposed rulemaking is not required before a rule takes effect where "a statute establishes a specific deadline for the implementation of the provision and the deadline is less than 150 days after the date of the enactment of the statute in which the deadline is contained." In addition, we may waive a notice of proposed rulemaking if we find good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest.

On June 2, 1997, we published a proposed rule addressing FY 1998 payment rates and policies for prospective payment system hospitals and excluded hospitals (62 FR 29902). Subsequently, on August 5, 1997, Public Law 105-33 was enacted. Public Law 105-33 contains a number of provisions relating to issues addressed in the proposed rule, as well as issues that were not specifically addressed in the proposed rule. These statutory provisions are generally effective October 1, 1997.

In accordance with section 1871(b) of the Act, publication of a notice of proposed rulemaking is not required before implementing the statutory provisions of Public Law 105-33 that take effect on October 1, 1997. In addition, given the extremely short timeframe for implementing these statutory provisions, we find good cause to waive notice and comment procedures with respect to the provisions of this final rule with comment period that implement Public Law 105-33, because it would be impracticable to undertake such procedures *before* those provisions take effect. We are, however, providing a 60-day period for public comment on those provisions.

### C. Response to Comments

Because of the large number of items of correspondence we normally receive on FR documents published for comment, we are not able to acknowledge or respond to them individually. Comments on the provisions of this final rule that implement provisions of the Balanced Budget Act of 1997 will be considered if we receive them by the date specified in the **DATES** section of this preamble.

We will not consider comments concerning provisions that remain unchanged from the June 2, 1997 proposed rule or that were changed based on public comments.

### List of Subjects

#### 42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

#### 42 CFR Part 409

Health facilities, Medicare.

#### 42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

#### 42 CFR Part 411

Kidney diseases, Medicare, Recovery against third parties, Reporting and recordkeeping requirements, Secondary payments.

#### 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 424

Emergency medical services, Health facilities, Health professions, Medicare.

#### 42 CFR Part 440

Grant programs—health, Medicaid.

#### 42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

#### 42 CFR Part 488

Administrative practice and procedure, Forms and guidelines, Health facilities, Survey and certification.

#### 42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

#### 42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as set forth below:

**PART 400—INTRODUCTION;  
DEFINITIONS**

A. Part 400 is amended as follows:  
1. The authority citation for Part 400 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. In § 400.202, the introductory text is republished, the definitions of “Essential access community hospital (EACH)”, “Provider”, and “Services” are revised, the definition of “Rural primary care hospital (RPCH)” is removed, and a new definition of “Critical access hospital (CAH)” is added in alphabetical order, to read as follows:

**§ 400.202 Definitions specific to Medicare.**

As used in connection with the Medicare program, unless the context indicates otherwise—

\* \* \* \* \*

Critical access hospital (CAH) means a facility designated by HFCA as meeting the applicable requirements of section 1820 of the Act and of subpart F of part 485 of this chapter.

\* \* \* \* \*

*Essential access community hospital (EACH)* means a hospital designated by HCFA as meeting the applicable requirements of section 1820 of the Act and of subpart G of part 412 of this chapter, as in effect on September 30, 1997.

\* \* \* \* \*

*Provider* means a hospital, a CAH, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has in effect a similar agreement but only to furnish outpatient physical therapy or speech pathology services, or a community mental health center that has in effect a similar agreement but only to furnish partial hospitalization services.

\* \* \* \* \*

*Services* means medical care or services and items, such as medical diagnosis and treatment, drugs and biologicals, supplies, appliances, and equipment, medical social services, and use of hospital, CAH, or SNF facilities.

\* \* \* \* \*

**PART 409—HOSPITAL INSURANCE  
BENEFITS**

B. Part 409 is amended as follows:  
1. The authority citation for Part 409 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

**Subpart D—Requirements for Coverage of Posthospital SNF Care**

2. In § 409.30, the introductory text of paragraph (a) is republished and paragraph (a)(1) is revised to read as follows:

**§ 409.30 Basic requirements.**

\* \* \* \* \*

(a) *Preadmission requirements.* The beneficiary must—

(1) Have been hospitalized in a participating or qualified hospital or participating CAH, for medically necessary inpatient hospital or inpatient CAH care, for at least 3 consecutive calendar days, not counting the date of discharge; and

\* \* \* \* \*

**PART 410—SUPPLEMENTARY  
MEDICAL INSURANCE (SMI)  
BENEFITS**

C. Part 410 is amended as follows:  
1. The authority citation for Part 410 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

2. Section 410.2 is amended by revising the definition of “Participating” to read as follows:

**§ 410.2 Definitions.**

\* \* \* \* \*

*Participating* refers to a hospital, CAH, SNF, HHA, CORF, or hospice that has in effect an agreement to participate in Medicare; or a clinic, rehabilitation agency, or public health agency that has a provider agreement to participate in Medicare but only for purposes of providing outpatient physical therapy, occupational therapy, or speech pathology services; or a CMHC that has in effect a similar agreement but only for purposes of providing partial hospitalization services, and *nonparticipating* refers to a hospital, CAH, SNF, HHA, CORF, hospice, clinic, rehabilitation agency, public health agency, or CMHC that does not have in effect a provider agreement to participate in Medicare.

3. Section 410.152 is amended by revising paragraph (k) to read as follows:

**§ 410.152 Amounts of payment.**

\* \* \* \* \*

(k) *Amount of payment: Outpatient CAH services.* Payment for critical access hospital outpatient services is the reasonable cost of the CAH in providing these services, as determined in

accordance with section 1861(v)(1)(A) of the Act and with the applicable principles of cost reimbursement in part 413 and in part 415 of this chapter. Payment for CAH outpatient services is subject to the applicable Medicare Part B deductible and coinsurance amounts, as described in § 413.70(b)(3) of this chapter.

**§ 410.155 [Amended]**

4. Section 410.155 is amended by adding the phrase “; or a critical access hospital (CAH) meeting the requirements of Part 485, subpart F of this chapter” at the end of the last sentence of paragraph (a); and adding the phrase “or CAH” at the end of the last sentence of the introductory text of paragraph (b).

D. 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 A—General Provisions**

2. In § 412.2, the introductory text of paragraph (f) is republished and paragraph (f)(8) is revised to read as follows:

**§ 412.2 Basis of payment.**

\* \* \* \* \*

(f) *Additional payments to hospitals.* In addition to payments based on the prospective payment rates for inpatient operating costs and inpatient capital-related costs, hospitals receive payments for the following:

\* \* \* \* \*

(8) For discharges on or after June 19, 1990, and before October 1, 1994, and for discharges on or after October 1, 1997, a payment amount per unit for blood clotting factor provided to Medicare inpatients who have hemophilia.

3. Section 412.8 is amended by revising paragraph (b) to read as follows:

**§ 412.8 Publication of schedules for determining prospective payment rates.**

\* \* \* \* \*

(b) *Annual publication of schedule for determining prospective payment rates.*

(1) HCFA proposes changes in the methods, amounts, and factors used to determine inpatient prospective payment rates in a **Federal Register** document published for public comment not later than the April 1 before the beginning of the Federal

fiscal year in which the proposed changes would apply.

(2) HCFA publishes a **Federal Register** document setting forth final methods, amounts, and factors for determining inpatient prospective payment rates not later than the August 1 before the Federal fiscal year in which the rates would apply.

**Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs**

4. Section 412.22 is amended by revising paragraph (a) and adding new paragraphs (e), (f), and (g), to read as follows:

**§ 412.22 Excluded hospitals and hospital units: General rules.**

(a) *Criteria.* Subject to the criteria set forth in paragraph (e) of this section, a hospital is excluded from the prospective payment systems if it meets the criteria for one or more of the excluded classifications described in § 412.23.

\* \* \* \* \*

(e) *Hospitals within hospitals.* Except as provided in paragraph (f) of this section, for cost reporting periods beginning on or after October 1, 1997, a hospital that occupies space in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital, must meet the following criteria in order to be excluded from the prospective payment system:

(1) *Separate governing body.* The hospital has a governing body that is separate from the governing body of the hospital occupying space in the same building or on the same campus. The hospital's governing body is not under the control of the hospital occupying space in the same building or on the same campus, or of any third entity that controls both hospitals.

(2) *Separate chief medical officer.* The hospital has a single chief medical officer who reports directly to the governing body and who is responsible for all medical staff activities of the hospital. The chief medical officer of the hospital is not employed by or under contract with either the hospital occupying space in the same building or on the same campus or any third entity that controls both hospitals.

(3) *Separate medical staff.* The hospital has a medical staff that is separate from the medical staff of the hospital occupying space in the same building or on the same campus. The

hospital's medical staff is directly accountable to the governing body for the quality of medical care provided in the hospital, and adopts and enforces bylaws governing medical staff activities, including criteria and procedures for recommending to the governing body the privileges to be granted to individual practitioners.

(4) *Chief executive officer.* The hospital has a single chief executive officer through whom all administrative authority flows, and who exercises control and surveillance over all administrative activities of the hospital. The chief executive officer is not employed by, or under contract with, either the hospital occupying space in the same building or on the same campus or any third entity that controls both hospitals.

(5) *Performance of basic hospital functions.* The hospital meets one of the following criteria:

(i) The hospital performs the basic functions specified in §§ 482.21 through 482.27, 482.30, and 482.42 of this chapter through the use of employees or under contracts or other agreements with entities other than the hospital occupying space in the same building or on the same campus, or a third entity that controls both hospitals. Food and dietetic services and housekeeping, maintenance, and other services necessary to maintain a clean and safe physical environment could be obtained under contracts or other agreements with the hospital occupying space in the same building or on the same campus, or with a third entity that controls both hospitals.

(ii) For the same period of at least 6 months used to determine compliance with the criterion regarding the age of patients in § 412.23(d)(2) or the length-of-stay criterion in § 412.23(e)(2), or for hospitals other than children's or long-term care hospitals, for a period of at least 6 months immediately preceding the first cost reporting period for which exclusion is sought, the cost of the services that the hospital obtained under contracts or other agreements with the hospital occupying space in the same building or on the same campus, or with a third entity that controls both hospitals, is no more than 15 percent of the hospital's total inpatient operating costs, as defined in § 412.2(c). For purposes of this paragraph (e)(5)(ii), however, the costs of preadmission services are those specified under § 413.40(c)(2) rather than those specified under § 412.2(c)(5).

(iii) For the same period of at least 6 months used to determine compliance with the criterion regarding the age of inpatients in § 412.23(d)(2) or the

length-of-stay criterion in § 412.23(e)(2), or for hospitals other than children's or long-term care hospitals, for the period of at least 6 months immediately preceding the first cost reporting period for which exclusion is sought, the hospital has an inpatient population of whom at least 75 percent were referred to the hospital from a source other than another hospital occupying space in the same building or on the same campus.

(f) *Application for certain hospitals.* If a hospital has been excluded from the prospective payment systems under this section on or before September 30, 1995, the criteria in paragraph (e) of this section do not apply to the hospital.

(g) *Definition of control.* For purposes of this section, control exists if an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution.

5. Section 412.23 is amended by revising paragraphs (e) and (f) to read as follows:

**§ 412.23 Excluded hospitals: Classifications.**

\* \* \* \* \*

(e) *Long-term care hospitals.* A long-term care hospital must meet the requirements of paragraphs (e)(1) or (e)(2) of this section, and, where applicable, the additional requirements § 412.22(e).

(1) The hospital must have a provider agreement under part 489 of this chapter to participate as a hospital and an average inpatient length of stay greater than 25 days as calculated under paragraph (e)(3) of this section.

(2) For cost reporting periods beginning on or after August 5, 1997, a hospital that was first excluded from the prospective payment system under this section in 1986 must have an average inpatient length of stay of greater than 20 days, as calculated under paragraph (e)(3) of this section, and must demonstrate that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in fiscal year 1997 have a principal diagnosis that reflects a finding of neoplastic disease as defined in paragraph (f)(1)(iv) of this section.

(3) The average inpatient length of stay is calculated—

(i) By dividing the number of total inpatient days (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period;

(ii) If a change in the hospital's average length-of-stay is indicated, by the same method for the immediately preceding 6-month period; or

(iii) If a hospital has undergone a change of ownership (as described in § 489.18 of this chapter) at the start of a cost reporting period or at any time within the preceding 6 months, the hospital may be excluded from the prospective payment system as a long-term care hospital for a cost reporting period if, for the 6 months immediately preceding the start of the period (including time before the change of ownership), the hospital has the required average length of stay, continuously operated as a hospital, and continuously participated as a hospital in Medicare.

(f) *Cancer hospitals*—(1) *General rule.* Except as provided in paragraph (f)(2) of this section, if a hospital meets the following criteria, it is classified as a cancer hospital and is excluded from the prospective payment systems beginning with its first cost reporting period beginning on or after October 1, 1989. A hospital classified after December 19, 1989, is excluded beginning with its first cost reporting period beginning after the date of its classification.

(i) It was recognized as a comprehensive cancer center or clinical cancer research center by the National Cancer Institute of the National Institutes of Health as of April 20, 1983.

(ii) It is classified on or before December 31, 1990, or, if on December 19, 1989, the hospital was located in a State operating a demonstration project under section 1814(b) of the Act, the classification is made on or before December 31, 1991.

(iii) It demonstrates that the entire facility is organized primarily for treatment of and research on cancer (that is, the facility is not a subunit of an acute general hospital or university-based medical center).

(iv) It shows that at least 50 percent of its total discharges have a principal diagnosis that reflects a finding of neoplastic disease. (The principal diagnosis for this purpose is defined as the condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital. For the purposes of meeting this definition, only discharges with ICD-9-CM principal diagnosis codes of 140 through 239, V58.0, V58.1, V66.1, V66.2, or 990 will be considered to reflect neoplastic disease.)

(2) *Alternative.* A hospital that applied for and was denied, on or before December 31, 1990, classification as a cancer hospital under the criteria set forth in paragraph (f)(1) of this section is classified as a cancer hospital and is excluded from the prospective payment systems beginning with its first cost

reporting period beginning on or after January 1, 1991, if it meets the criterion set forth in paragraph (f)(1)(i) of this section and the hospital is—

(i) Licensed for fewer than 50 acute care beds as of August 5, 1997;

(ii) Is located in a State that as of December 19, 1989, was not operating a demonstration project under section 1814(b) of the Act; and

(iii) Demonstrates that, for the 4-year period ending on December 31, 1996, at least 50 percent of its total discharges have a principal diagnosis that reflects a finding of neoplastic disease as defined in paragraph (f)(1)(iv) of this section.

6. Section 412.30 is amended by redesignating paragraphs (a) through (d) as paragraphs (b) through (e), respectively, and adding a new paragraph (a). Redesignated paragraph (b) is further amended by redesignating paragraph (b)(4) as paragraph (b)(5), and adding a new paragraph (b)(4). The introductory text of redesignated paragraph (d)(1) is republished and redesignated paragraph (d)(1)(ii) is revised to read as follows:

**§ 412.30 Exclusion of new rehabilitation units and expansion of units already excluded.**

(a) *Bed capacity in units.* A decrease in bed capacity must remain in effect for at least a full 12-month cost reporting period before an equal or lesser number of beds can be added to the hospital's licensure and certification and considered "new" under paragraph (b) of this section. Thus, when a hospital seeks to establish a new unit under the criteria under paragraph (b) of this section, or to enlarge an existing unit under the criteria under paragraph (d) of this section, the regional office will review its records on the facility to determine whether any beds have been delicensed and decertified during the 12-month cost reporting period before the period for which the hospital seeks to add the beds. To the extent bed capacity was removed from the hospital's licensure and certification during that period, that amount of bed capacity may not be considered "new" under paragraph (b) of this section.

(b) *New units.*

(4) If a hospital that has not previously participated in the Medicare program seeks exclusion of a rehabilitation unit, it may designate certain beds as a new rehabilitation unit for the first full 12-month cost reporting period that occurs after it becomes a Medicare-participating hospital. The written certification described in

paragraph (b)(2) of this section also is effective for any cost reporting period of not less than 1 month and not more than 11 months occurring between the date the hospital began participating in Medicare and the start of the hospital's regular 12-month cost reporting period.

(d) *Expansion of excluded rehabilitation units.*

(1) *New bed capacity.* The beds that a hospital seeks to add to its excluded rehabilitation unit are considered new beds only if—

(ii) The hospital has obtained approval, under State licensure and Medicare certification, for an increase in its hospital bed capacity that is greater than 50 percent of the number of beds it seeks to add to the unit.

**Subpart D—Basic Methodology for Determining Prospective Payment Federal Rates for Inpatient Operating Costs**

7. In § 412.63, paragraph (p) is revised, paragraphs (q) through (s) are redesignated as paragraphs (u) through (w), respectively, and new paragraphs (q) through (t) are added to read as follows:

**§ 412.63 Federal rates for inpatient operating costs for fiscal years after Federal fiscal year 1984.**

(p) *Applicable percentage change for fiscal year 1998.* The applicable percentage change for fiscal year 1998 is 0 percent for hospitals in all areas.

(q) *Applicable percentage change for fiscal year 1999.* The applicable percentage change for fiscal year 1999 is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this subchapter) minus 1.9 percentage points for hospitals in all areas.

(r) *Applicable percentage change for fiscal year 2000.* The applicable percentage change for fiscal year 2000 is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this chapter) minus 1.8 percentage points for hospitals in all areas.

(s) *Applicable percentage change for fiscal years 2001 and 2002.* The applicable percentage change for fiscal years 2001 and 2002 is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this subchapter) minus 1.1 percentage points for hospitals in all areas.

(t) *Applicable percentage change for fiscal year 2003 and for subsequent years.* The applicable percentage change for fiscal year 2003 and for subsequent years is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a)) for hospitals in all areas.

\* \* \* \* \*

**Subpart F—Payment for Outlier Cases**

8. Section 412.80 is revised to read as follows:

**§ 412.80 General provisions.**

(a) *Basic rule—(1) Discharges occurring on or after October 1, 1994 and before October 1, 1997.* For discharges occurring on or after October 1, 1994, and before October 1, 1997, except as provided in paragraph (b) of this section concerning transferring hospitals, HCFA provides for additional payment, beyond standard DRG payments, to a hospital for covered inpatient hospital services furnished to a Medicare beneficiary if either of the following conditions is met:

(i) The beneficiary's length-of-stay (including days at the SNF level of care if a SNF bed is not available in the area) exceeds the mean length-of-stay for the applicable DRG by the lesser of the following:

(A) A fixed number of days, as specified by HCFA; or

(B) A fixed number of standard deviations, as specified by HCFA.

(ii) The beneficiary's length-of-stay does not exceed criteria established under paragraph (a)(1)(i) of this section, but the hospital's charges for covered services furnished to the beneficiary, adjusted to operating costs and capital costs by applying cost-to-charge ratios as described in § 412.84(h), exceed the DRG payment for the case plus a fixed dollar amount (adjusted for geographic variation in costs) as specified by HCFA.

(2) *Discharges occurring on or after October 1, 1997.* For discharges occurring on or after October 1, 1997, except as provided in paragraph (b) of this section concerning transfers, HCFA provides for additional payment, beyond standard DRG payments, to a hospital for covered inpatient hospital services furnished to a Medicare beneficiary if the hospital's charges for covered services, adjusted to operating costs and capital costs by applying cost-to-charge ratios as described in § 412.84(h), exceed the DRG payment for the case plus a fixed dollar amount (adjusted for geographic variation in costs) as specified by HCFA.

(b) *Outlier cases in transferring hospitals.* HCFA provides cost outlier

payments to a transferring hospital that does not receive payment under § 412.2(b) for discharges specified in § 412.4(d)(2), if the hospital's charges for covered services furnished to the beneficiary, adjusted to cost by applying a national cost/charge ratio, exceed the DRG payment for the case plus a fixed dollar amount (adjusted for geographic variation in costs) as specified by HCFA, divided by the geometric mean length of stay for the DRG and multiplied by the beneficiary's length of stay plus 1 day.

(c) *Publication and revision of outlier criteria.* HCFA will issue threshold criteria for determining outlier payment in the annual notice of the prospective payment rates published in accordance with § 412.8(b).

**§ 412.82 [Amended]**

9. In § 412.82(a), in the first sentence, the word "If" is removed and the phrase "For discharges occurring before October 1, 1997, if" is added in its place.

**§ 412.84 [Amended]**

10. In § 412.84, in the first sentence of paragraph (a), the reference "§ 412.80(a)(1)(ii)" is revised to read "§ 412.80(a)", and the last sentence of paragraph (g) is removed.

**§ 412.86 [Amended]**

11. In the introductory text to § 412.86, the word "If" is removed and the phrase "For discharges occurring before October 1, 1997, if" is added in its place.

**Subpart G—Special Treatment of Certain Facilities Under the Prospective Payment System for Inpatient Operating Costs**

12. Section 412.90 is amended by redesignating paragraphs (i) and (j) as paragraphs (j) and (k), respectively, adding a new paragraph (i), and revising newly designated paragraphs (j) and (k), to read as follows:

**§ 412.90 General rules.**

\* \* \* \* \*

(i) *Hospitals that receive an additional update for FYs 1998 and 1999.* For FYs 1998 and 1999, HCFA makes an upward adjustment to the standardized amounts for certain hospitals that do not receive indirect medical education or disproportionate share payments and are not Medicare-dependent, small rural hospitals. The criteria for identifying these hospitals are set forth in § 412.107.

(j) *Medicare-dependent, small rural hospitals.* For cost reporting periods beginning on or after April 1, 1990 and ending before October 1, 1994, or

beginning on or after October 1, 1997 and ending before October 1, 2001, HCFA adjusts the prospective payment rates for inpatient operating costs determined under subparts D and E of this part if a hospital is classified as a Medicare-dependent, small rural hospital. Criteria for identifying these hospitals are set forth in § 412.108.

(k) *Essential access community hospitals (EACHs).* If a hospital was designated as an EACH by HCFA as described in § 412.109(a) and is located in a rural area as defined in § 412.109(b), HCFA determines the prospective payment rate for that hospital, as it does for sole community hospitals, under § 412.92(d).

13. In § 412.96, the introductory text of paragraph (c)(1) is revised, paragraph (f) is removed and reserved, and paragraph (g) is revised, to read as follows:

**§ 412.96 Special treatment: Referral centers.**

\* \* \* \* \*

(c) \* \* \*

(1) *Case-mix index.* HCFA sets forth national and regional case-mix index values in each year's annual notice of prospective payment rates published under § 412.8(b). The methodology HCFA uses to calculate these criteria is described in paragraph (g) of this section. The case-mix index value to be used for an individual hospital in the determination of whether it meets the case-mix index criteria is that calculated by HCFA from the hospital's own billing records for Medicare discharges as processed by the fiscal intermediary and submitted to HCFA. The hospital's case-mix index for discharges (not including discharges from units excluded from the prospective payment system under subpart B of this part) during the most recent Federal fiscal year that ended at least one year prior to the beginning of the cost reporting period for which the hospital is seeking referral center status must be at least equal to—

\* \* \* \* \*

(e)–(f) [Reserved]

(g) *Hospital cancellation of referral center status.* (1) A hospital may at any time request cancellation of its status as a referral center and be paid prospective payments per discharge based on the applicable rural rate as determined in accordance with § 412.63, as adjusted by the hospital's area wage index value.

(2) The cancellation becomes effective no later than 30 days after the date the hospital submits its request.

(3) If a hospital requests that its referral center status be canceled, it may not be reclassified as a referral center unless it meets the qualifying criteria set



forth in paragraph (a) of this section in effect at the time it reapplies.

\* \* \* \* \*

14. In § 412.105, paragraphs (a) and (d) are revised, paragraph (f) is removed, paragraph (g) is redesignated as paragraph (f), and a new paragraph (g) is added. In redesignated paragraph (f), paragraph (f)(1)(i) introductory text is republished, paragraph (f)(1)(i)(B) is revised, paragraph (f)(1)(ii) introductory text is republished and paragraph (f)(1)(ii)(C) is revised, paragraph (f)(1)(iv) is revised, and a new paragraph (f)(1)(v) is added, to read as follows:

**§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.**

\* \* \* \* \*

(a) *Basic data.* HCFA determines the following for each hospital:

(1) The hospital's ratio of full-time equivalent residents, except as limited under paragraph (f) of this section, to the number of beds (as determined in paragraph (b) of this section). For a hospital's cost reporting periods beginning on or after October 1, 1997, this ratio may not exceed the ratio for the hospital's most recent prior cost reporting period.

(2) The hospital's DRG revenue for inpatient operating costs based on DRG-adjusted prospective payment rates for inpatient operating costs, excluding outlier payments for inpatient operating costs determined under subpart F of this part and additional payments made under the provisions of § 412.106 .

\* \* \* \* \*

(d) *Determination of education adjustment factor.* Each hospital's education adjustment factor is calculated as follows:

(1) *Step one.* A factor representing the sum of 1.00 plus the hospital's ratio of full-time equivalent residents to beds, as determined under paragraph (a)(1) of this section, is raised to an exponential power equal to the factor set forth in paragraph (c) of this section.

(2) *Step two.* The factor derived from step one is reduced by 1.00.

(3) *Step three.* The factor derived from completing steps one and two is multiplied by 'c', and where 'c' is equal to the following:

(i) For discharges occurring on or after October 1, 1988, and before October 1, 1997, 1.89.

(ii) For discharges occurring during fiscal year 1998, 1.72.

(iii) For discharges occurring during fiscal year 1999, 1.6.

(iv) For discharges occurring during fiscal year 2000, 1.47.

(v) For discharges occurring on or after October 1, 2000, 1.35.

\* \* \* \* \*

(f) *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 residents must be enrolled in an approved teaching program. An approved teaching program is one that meets one of the following requirements:

\* \* \* \* \*

(B) May count towards certification of the participant in a specialty or subspecialty listed in the current edition of either of the following publications:

(1) The Directory of Graduate Medical Education Programs published by the American Medical Association.

(2) The Annual Report and Reference Handbook published by the American Board of Medical Specialties.

\* \* \* \* \*

(ii) In order to be counted, the resident must be assigned to one of the following areas:

\* \* \* \* \*

(C) Effective for discharges occurring on or after October 1, 1997, the time spent by a resident in a nonhospital setting in patient care activities under an approved medical residency training program is counted towards the determination of full-time equivalency if the criteria set forth at § 413.86(f)(1)(iii) are met.

\* \* \* \* \*

(iv) Effective for discharges occurring on or after October 1, 1997, the total number of full-time equivalent residents in the fields of allopathic and osteopathic medicine in either a hospital or nonhospital setting that meets the criteria listed in paragraph (f)(1)(ii) of this section may not exceed the number of such full-time equivalent residents in the hospital with respect to the hospital's most recent cost reporting period ending on or before December 31, 1996.

(v) For a hospital's cost reporting periods beginning on or after October 1, 1997, and before October 1, 1998, the total number of full-time equivalent residents for payment purposes is equal to the average of the actual full-time equivalent resident counts (subject to the requirements listed in paragraphs (f)(1)(ii)(C) and (f)(1)(iv) of this section) for that cost reporting period and the preceding cost reporting period. For a hospital's cost reporting periods

beginning on or after October 1, 1998, the total number of full-time equivalent residents for payment purposes is equal to the average of the actual full-time equivalent resident count (subject to the requirements listed in paragraphs (f)(10)(ii)(C) and (f)(1)(iv) of this section) for that cost reporting period and the preceding two cost reporting periods.

\* \* \* \* \*

(g) *Indirect medical education payment for managed care enrollees.* For portions of cost reporting periods beginning on or after January 1, 1998, a payment is made to a hospital for indirect medical education costs, as determined under paragraph (e) of this section, for discharges associated with individuals who are enrolled under a risk-sharing contract with an eligible organization under section 1876 of the Act or with a Medicare+Choice organization under title XVIII, Part C of the Act during the period.

15. Section 412.106 is amended by revising paragraphs (a)(2) and (d)(1) and adding a new paragraph (e) to read as follows:

**§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.**

(a) *General considerations.* \* \* \*

\* \* \* \* \*

(2) The payment adjustment is applied to the hospital's DRG revenue for inpatient operating costs based on DRG-adjusted prospective payment rates for inpatient operating costs, excluding outlier payments for inpatient operating costs under subpart F of this part and additional payments made under the provisions of § 412.105.

\* \* \* \* \*

(d) *Payment adjustment.*

(1) *Method of adjustment.* Subject to the reduction factor set forth in paragraph (e) of this section, if a hospital serves a disproportionate number of low-income patients, its DRG revenues for inpatient operating costs are increased by an adjustment factor as specified in paragraph (d)(2) of this section.

\* \* \* \* \*

(e) *Reduction in payments for FYs 1998 through 2002.* The amounts otherwise payable to a hospital under paragraph (d) of this section are reduced by the following:

(1) For FY 1998, 1 percent.

(2) For FY 1999, 2 percent.

(3) For FY 2000, 3 percent.

(4) For FY 2001, 4 percent.

(5) For FY 2002, 5 percent.

(6) For FYs 2003 and thereafter, 0 percent.

16. A new § 412.107 is added to read as follows:



**§ 412.107 Special treatment: Hospitals that receive an additional update for FYs 1998 and 1999.**

(a) *Additional payment update.* A hospital that meets the criteria set forth in paragraph (b) of this section receives the following increase to its applicable percentage amount set forth in § 412.63 (p) and (q):

- (1) For FY 1998, 0.5 percent.
- (2) For FY 1999, 0.3 percent.

(b) *Criteria for classification.* A hospital is eligible for the additional payment update set forth in paragraph (a) of this section if it meets all of the following criteria:

(1) *Definition.* The hospital is not a Medicare-dependent, small rural hospital as defined in § 412.108(a) and does not receive any additional payment under the following provisions:

- (i) The indirect medical education adjustment made under § 412.105.
- (ii) The disproportionate share adjustment made under § 412.106.

(2) *State criteria.* The hospital is located in a State in which the aggregate payment made under § 412.112 (a) and (c) for hospitals described in paragraph (b)(1) of this section for their cost reporting periods beginning in FY 1995 is less than the allowable operating costs described in § 412.2(c) for those hospitals.

(3) *Hospital criteria.* The aggregate payment made to the hospital under § 412.112 (a) and (c) for the hospital's cost reporting period beginning in the fiscal year in which the additional payment update described in paragraph (a) of this section is made is less than the allowable operating cost described in § 412.2(c) for that hospital.

17. In § 412.108 paragraph (a)(1) is revised, the introductory text of paragraphs (c) and (c)(2) are republished, and the introductory text of paragraph (c)(2)(ii) is revised to read as follows:

**§ 412.108 Special treatment: Medicare-dependent, small rural hospitals.**

(a) *Criteria for classification as a Medicare-dependent, small rural hospital.*

(1) *General considerations.* For cost reporting periods beginning on or after April 1, 1990 and ending before October 1, 1994, or beginning on or after October 1, 1997 and ending before October 1, 2001, a hospital is classified as a Medicare-dependent, small rural hospital if it is located in a rural area (as defined in § 412.63(b)) and meets all of the following conditions:

(c) *Payment methodology.* A hospital that meets the criteria in paragraph (a) of this section is paid for its inpatient

operating costs the sum of paragraphs (c)(1) and (c)(2) of this section.

(2) The amount, if any, determined as follows:

(ii) For discharges occurring during any subsequent cost reporting period (or portion thereof) and before October 1, 1994, and for discharges occurring on or after October 1, 1997 and before October 1, 2001, 50 percent of the amount that the Federal rate determined under paragraph (c)(1) of this section is exceeded by the higher of the following:

18. In § 412.109, paragraph (a) is revised, paragraphs (c) and (d) are removed, paragraphs (e), (f), and (g) are redesignated as paragraphs (c), (d), and (e), respectively, and redesignated paragraphs (c)(3)(ii), (d), and (e) are revised to read as follows:

**§ 412.109 Special treatment: Essential access community hospitals (EACHs).**

(a) *General rule.* For payment purposes, HCFA treats as a sole community hospital any hospital that is located in a rural area as described in paragraph (b) of this section and that HCFA designated as an EACH under section 1820(i)(1) of the Act as in effect on September 30, 1997, for as long as the hospital continues to comply with the terms, conditions, and limitations that were applicable at the time HCFA designated the hospital as an EACH. The payment methodology for sole community hospitals is set forth at § 412.92(d).

(c) *Adjustment to the hospital-specific rate for rural EACHs experiencing increased costs.*

(3) *Intermediary recommendation.*

(ii) The intermediary's analysis and recommendation of the request.

(d) *Termination of EACH designation.* If HCFA determines that a hospital no longer complies with the terms, conditions, and limitations that were applicable at the time HCFA designated the hospital as an EACH, HCFA will terminate the EACH designation of the hospital, effective with discharges occurring on or after 30 days after the date of the determination.

(e) *Review of HCFA determination.* A determination by HCFA that a hospital's EACH designation should be terminated, is subject to review under part 405, subpart R of this chapter, including the time limits for filing requests for hearings as specified in

§§ 405.1811(a) and 405.1841(a)(1) and (b) of this chapter.

**Subpart H—Payment to Hospitals Under the Prospective Payment Systems**

19. Section 412.115 is amended by revising paragraph (b) to read as follows:

**§ 412.115 Additional payments.**

(b) *Administration of blood clotting factor.* For discharges occurring on or after June 19, 1990, and before October 1, 1994, and for discharges occurring on or after October 1, 1997, an additional payment is made to a hospital for each unit of blood clotting factor furnished to a Medicare inpatient who is a hemophiliac.

**Subpart K—Prospective Payment System for Inpatient Operating Costs for Hospitals Located in Puerto Rico**

20. Section 412.204 is revised to read as follows:

**§ 412.204 Payment to hospitals located in Puerto Rico.**

(a) *FY 1988 through FY 1997.* For discharges occurring on or after October 1, 1997, payments for inpatient operating costs to hospitals located in Puerto Rico that are paid under the prospective payment system are equal to the sum of—

- (1) 75 percent of the Puerto Rico prospective payment rate for inpatient operating costs, as determined under § 412.208 or § 412.210; and
- (2) 25 percent of a national prospective payment rate for inpatient operating costs, as determined under § 412.212.

(b) *FY 1998 and thereafter.* For discharges occurring on or after October 1, 1997, payments for inpatient operating costs to hospitals located in Puerto Rico that are paid under the prospective payment system are equal to the sum of—

- (1) 50 percent of the Puerto Rico prospective payment rate for inpatient operating costs, as determined under § 412.208 or § 412.210; and
- (2) 50 percent of a national prospective payment rate for inpatient operating costs, as determined under § 412.212.

**§ 412.210 [Amended]**

21. In § 412.210(e), the phrase "the national average hospital wage level" is revised to read "the Puerto Rico average hospital wage level".

**Subpart L—The Medicare Geographic Classification Review Board**

22. Section 412.230 is amended by revising paragraphs (a)(5)(ii), (e)(1) introductory text, and (e)(1)(iv)(B) and adding new paragraphs (e)(3) and (e)(4), to read as follows:

**§ 412.230 Criteria for an individual hospital seeking redesignation to another rural area or an urban area.**

- (a) \* \* \*
- (5) \* \* \*

(ii) For redesignations effective in fiscal years 1997 and 1998 and 2002 and thereafter, a hospital may not be redesignated for purposes of the standardized amount if the area to which the hospital seeks redesignation does not have a higher standardized amount than the standardized amount the hospital currently receives.

(e) *Use of urban or other rural area's wage index.*—(1) *Criteria for use of area's wage index.* Except as provided in paragraphs (e)(3) and (e)(4) of this section, to use an area's wage index, a hospital must demonstrate the following:

(iv) One of the following conditions apply:

(B) For redesignations effective before fiscal year 1999, the hospital's average hourly wage weighted for occupational categories is at least 90 percent of the average hourly wages of hospitals in the area to which it seeks redesignation.

(3) *Rural referral center exception.* If a hospital is a rural referral center, it does not have to demonstrate that it meets the criterion set forth in paragraph (e)(1)(iii) of this section concerning its average hourly wage.

(4) *Special dominating hospital exception.* The requirements of paragraph (e)(1)(i) and (e)(1)(iii) of this section do not apply if a hospital meets the following criteria:

(i) Its average hourly wage is at least 108 percent of the average hourly wage of all other hospitals in the area in which the hospital is located.

(ii) It pays at least 40 percent of the adjusted uninflated wages in the MSA.

(iii) It was approved for redesignation under this paragraph (e) for each year from fiscal year 1992 through fiscal year 1997.

23. Section 412.232 is amended by revising paragraph (c)(2) to read as follows:

**§ 412.232 Criteria for all hospitals in a rural county seeking urban redesignation.**

(c) *Wage criteria.* \* \* \*

(2) *Aggregate hourly wage weighted for occupational mix.* For redesignations effective before fiscal year 1999, the aggregate hourly wage for all hospitals in the rural county, weighted for occupational categories, is at least 90 percent of the average hourly wage in the adjacent urban area.

24. Section 412.234 is amended by revising paragraph (b)(2) to read as follows:

**§ 412.234 Criteria for all hospitals in an urban county seeking redesignation to another urban area.**

(b) *Wage criteria.* \* \* \*

(2) *Aggregate hourly wage weighted for occupational mix.* For redesignations effective before fiscal year 1999, the aggregate average hourly wage for all hospitals in the county, weighted for occupational categories, is at least 90 percent of the average hourly wage in the adjacent urban area.

25. In § 412.256, paragraphs (a)(2) and (c)(1) are revised to read as follows:

**§ 412.256 Application requirements.**

(a) \* \* \*

(2) A complete application must be received not later than the first day of the month preceding the Federal fiscal year for which reclassification is requested.

(c) *Opportunity to complete a submitted application.* (1) The MGCRB will review an application within 15 days of receipt to determine if the application is complete. If the MGCRB determines that an application is incomplete, the MGCRB will notify the hospital, with a copy to HCFA, within the 15 day period, that it has determined that the application is incomplete and may dismiss the application if a complete application is not filed by September 1 .

26. Section 412.274 is amended by revising paragraph (b) to read as follows:

**§ 412.274 Scope and effect of an MGCRB decision.**

(b) *Effective date and term of the decision.* Any classification change is effective for one year beginning with discharges occurring on the first day (October 1) of the second Federal fiscal year following the Federal fiscal year in which the complete application is filed and ending effective at the end of that

Federal fiscal year (the end of the next September 30).

**Subpart M—Prospective Payment System for Inpatient Hospital Capital Costs**

27. Section 412.308 is amended by adding new paragraphs (b)(4) and (b)(5) to read as follows:

**§ 412.308 Determining and updating the Federal rate.**

(b) *Standard Federal rate.* \* \* \*

(4) Effective FY 1998, the unadjusted standard Federal capital payment rate in effect on September 30, 1997, used to determine the Federal rate each year under paragraph (c) of this section is reduced by 15.68 percent.

(5) For discharges occurring on or after October 1, 1997 through September 30, 2002, the unadjusted standard Federal capital payment rate as in effect on September 30, 1997, used to determine the Federal rate each year under paragraph (c) of this section is further reduced by 2.1 percent.

28. Section 412.328 is amended by revising paragraph (e)(4) and adding new paragraphs (e)(5) and (e)(6) to read as follows:

**§ 412.328 Determining and updating the hospital-specific rate.**

(e) *Hospital-specific rate.* \* \* \*

(4) *Payment for transfer cases.* Effective FY 1996, the intermediary reduces the updated amount determined in paragraph (d) of this section by 0.28 percent to account for the effect of the revised policy for payment of transfers under § 412.4(d).

(5) *Reduction of rate: FY 1998.* Effective FY 1998, the unadjusted hospital-specific rate as in effect on September 30, 1997 described in paragraph (e)(1) of this section is reduced by 15.68 percent.

(6) *Reduction of rate: FY 1998 through FY 2002.* For discharges occurring on or after October 1, 1997 through September 30, 2002, the unadjusted hospital-specific rate in effect on September 30, 1997, described in paragraph (e)(1) of this section is further reduced by 2.1 percent.

29. Section 412.348 is amended by revising paragraph (c)(2) to read as follows:

**§ 412.348 Exception payments.**

(c) *Minimum payment level by class of hospital.*

\* \* \* \* \*

(2) When it is necessary to adjust the minimum payment levels set by class of hospitals specified in paragraphs (c)(1)(i) and (g)(6) of this section, HCFA will adjust those levels for each class of hospitals in one percentage point increments as necessary to satisfy the requirement specified in paragraph (h) of this section that total estimated payments under the exception process not exceed 10 percent of the total estimated capital prospective payments (exclusive of hold-harmless payments for old capital) for the same fiscal year.

\* \* \* \* \*

30. Section 412.374 is revised to read as follows:

**§ 412.374 Payments to hospitals located in Puerto Rico.**

(a) Payments for capital-related costs to hospitals located in Puerto Rico that are paid under the prospective payment system are equal to the sum of the following:

- (1) 50 percent of a Puerto Rico capital rate based on data from Puerto Rico hospitals only, which is determined in accordance with procedures for developing the Federal rate; and
- (2) 50 percent of the Federal rate, as determined under § 412.308.

(b) Effective for fiscal year 1998, the Puerto Rico capital rate described in paragraph (a) of this section in effect on September 30, 1997, is reduced by 15.68 percent.

(c) For discharges occurring on or after October 1, 1997 through September 30, 2002, the Puerto Rico capital rate described in paragraph (a) of this section in effect on September 30, 1997 is further reduced by 2.1 percent.

E. Part 413 is amended as set forth below:

**PART 416—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).

2. Section 413.1 is amended by revising paragraph (a)(1)(ii)(G) to read as follows:

**§ 413.1 Introduction.**

(a) \* \* \*

(ii) \* \* \*

(G) Section 1834(g) of the Act provides that payment for critical access hospital (CAH) outpatient services is the reasonable costs of the CAH in providing these services, as determined in accordance with section 1861(v)(1)(A) of the Act and the applicable principles of cost reimbursement in this part and in part 415 of this chapter.

\* \* \* \* \*

**§ 413.13 [Amended]**

3. In § 413.13, paragraph (c)(2)(iv) is removed.

4. Section 413.40 is amended by adding new paragraphs (b)(1)(iv) and (b)(1)(v); revising paragraph (c)(3)(vi) and adding new paragraphs (c)(3)(vii) and (c)(3)(viii); revising paragraph (c)(4); revising paragraphs (d)(2) and (d)(3) and adding new paragraphs (d)(4) and (d)(5); revising paragraphs (f)(1), (f)(2), (g)(1), and (g)(5); and adding a new paragraph (j), to read as follows:

**§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.**

\* \* \* \* \*

(b) *Cost reporting periods subject to the rate-of-increase ceiling.* (1) \* \* \*

(iv) *Request for rebased target amount for the cost reporting period beginning on or after October 1, 1997 and on or before September 30, 1998.* Except for qualified long-term care hospitals as defined in paragraph (b)(1)(v) of this section, each hospital or unit under present or previous ownership that received payment under section 1886(b) of the Act during cost reporting periods beginning before October 1, 1990, may submit a request to its fiscal intermediary to rebase its target amount. The request must be received by the fiscal intermediary by the later of November 1, 1997 or 60 days before the beginning of its cost reporting period beginning during fiscal year 1998. The rebased target amount for the cost reporting period beginning during fiscal year 1998 is determined as follows:

(A) Determine the hospital's inpatient operating costs per case for each of the five most recent settled cost reports as of August 5, 1997.

(B) For each of the five cost reports, update the operating costs per case by the applicable update factors up to the hospital's cost reporting period beginning during FY 1998.

(C) Exclude the highest and lowest of the five updated amounts determined under paragraph (b)(1)(iv)(B) of this section.

(D) Compute the average for the remaining three updated amounts for operating cost per case.

(v) *Request by qualified long-term care hospital.* A qualified long-term care hospital may file a request to its fiscal intermediary for a rebased FY 1998 target amount. The request must be received by the fiscal intermediary by the later of November 1, 1997 or 60 days before the beginning of its cost reporting period beginning during fiscal year 1998. The rebased FY 1998 target amount is the hospital's FY 1996 inpatient operating costs updated to FY 1997. A qualified long-term care hospital means a long-term care hospital that meets the following two conditions for its two most recent settled cost reports as of August 5, 1997:

(A) Its Medicare inpatient operating costs exceed 115 percent of the ceiling.

(B) The hospital would have had a disproportionate patient percentage (as defined in § 412.106) equal to or greater than 70 percent if it were a prospective payment hospital.

\* \* \* \* \*

(c) *Costs subject to the ceiling.*

\* \* \* \* \*

(3) *Rate-of-increase percentages and update factors.* \* \* \*

(vi) *Federal fiscal year 1998.* The applicable rate-of-increase percentage for cost reporting periods beginning on or after October 1, 1997 is 0 percent.

(vii) *Federal fiscal year 1999 through Federal fiscal year 2002.* The applicable rate-of-increase percentage for cost reporting periods beginning on or after October 1, 1998, and before October 1, 2002, based on data from the most recent available cost report, is:

(A) The percentage increase in the market basket, if inpatient operating costs are equal to or exceed the ceiling amount by 10 percent or more of the ceiling.

(B) The percentage increase in the market basket minus .25 percentage points for each percentage point by which inpatient operating costs are less than 10 percent over the ceiling (but not less than 0), if inpatient operating costs exceed the ceiling by less than 10 percent of the ceiling.

(C) The greater of the percentage increase in the market basket minus 2.5 percentage points or 0 percent, if inpatient operating costs are equal to or less than the ceiling but greater than 66.7 percent of the ceiling.

(D) 0 percent, if inpatient operating costs do not exceed 66.7 percent of the ceiling.

(viii) *Federal fiscal year 2003 and following.* The applicable rate-of-increase percentage for cost reporting periods beginning on or after October 1, 2002, is the percentage increase projected by the hospital market basket index.

(4) *Target amount.* The intermediary will establish a target amount for each hospital. The target amount for a cost reporting period is determined as follows:

(i) Except as provided in paragraph (c)(4)(iv) of this section, and subject to the provisions of paragraph (c)(4)(iii) of this section, for the first cost reporting period to which this ceiling applies, the target amount equals the hospital's allowable net inpatient operating costs per case for the hospital's base period increased by the update factor for the subject period.

(ii) Subject to the provisions of paragraph (c)(4)(iii) of this section, for subsequent cost reporting periods, the target amount equals the hospital's target amount for the previous cost reporting period increased by the update factor for the subject cost reporting period, unless the provisions of paragraph (c)(5)(ii) of this section apply.

(iii) In the case of a psychiatric hospital or unit, rehabilitation hospital or unit, or long term care hospital, the target amount may not exceed—

(A) For cost reporting periods beginning during fiscal year 1998, the 75th percentile of target amounts for hospitals in the same class (psychiatric hospital or unit, rehabilitation hospital or unit, or long term care hospital) for cost reporting periods ending during FY 1996, increased by the applicable market basket percentage up to the first cost reporting period beginning on or after October 1, 1997.

(B) For cost reporting periods beginning during FYs 1999 through 2002, the amount determined under paragraph (c)(4)(iii)(A) increased by the market basket percentage increase up through the subject period, subject to paragraph (c)(4)(iv) of this section.

(iv) In the case of a hospital that received payments under paragraph (f)(2)(ii) of this section, for purposes of determining the hospital's target amount for the hospital's third 12-month cost reporting period, the target amount for the preceding cost reporting period is equal to the amount determined under paragraph (f)(2)(ii)(A) of this section.

\* \* \* \* \*

(d) *Application of the target amount in determining the amount of payment.*

\* \* \*

(2) *Net inpatient operating costs are less than or equal to the ceiling.* For cost reporting periods beginning on or after October 1, 1997, if a hospital's allowable net inpatient operating costs do not exceed the hospital's ceiling, payment to the hospital will be determined on the basis of the lower of the—

(i) Net inpatient operating costs plus 15 percent of the difference between inpatient operating costs and the ceiling; or

(ii) Net inpatient operating costs plus 2 percent of the ceiling.

(3) *Net inpatient operating costs are greater than the ceiling.* For cost reporting periods beginning on or after October 1, 1997—

(i) If a hospital's allowable net inpatient operating costs do not exceed 110 percent of the ceiling (or the adjusted ceiling, if applicable), payment will be the ceiling (or the adjusted ceiling, if applicable);

(ii) If a hospital's allowable net inpatient operating costs are greater than 110 percent of the ceiling (or the adjusted ceiling, if applicable), payment will be the ceiling (or the adjusted ceiling, if applicable) plus the lesser of:

(A) 50 percent of the allowable net inpatient operating costs in excess of 110 percent of the ceiling (or the adjusted ceiling, if applicable); or

(B) 10 percent of the ceiling (or the adjusted ceiling, if applicable).

(4) *Continuous improvement bonus payments.* For cost reporting periods beginning on or after October 1, 1997, eligible hospitals (as defined in paragraph (d)(5) of this section) receive payments in addition to those in paragraph (d)(2) of this section, as applicable. These payments are equal to the lesser of—

(i) 50 percent of the amount by which the operating costs are less than the expected costs for the period; or

(ii) 1 percent of the ceiling.

(5) *Eligibility requirements for continuous improvement bonus payments.* To qualify, a hospital must have been paid as a prospective payment excluded hospital for at least three full cost reporting periods prior to the applicable period, and the hospital's operating costs per discharge for the period must be less than the least of the following:

(i) The hospital's target amount.

(ii) The hospital's trended costs.

(A) For a hospital for which its cost reporting period ending during fiscal year 1996 was its third or subsequent full cost reporting period, trended costs are the lesser of the allowable inpatient operating costs per discharge or the target amount for the cost reporting period ending in fiscal year 1996, increased in a compounded manner for each succeeding fiscal year by the market basket percentage increase;

(B) For all other hospitals, trended costs are the allowable inpatient operating costs per discharge for its third full cost reporting period increased in a compounded manner for

each succeeding fiscal year by the market basket increase.

(iii) The hospital's expected costs. The hospital's expected costs are the lesser of its allowable inpatient operating costs per discharge or the target amount for the previous cost reporting period, updated by the market basket percentage increase for the fiscal year.

\* \* \* \* \*

(f) *Comparison to the target amount for new hospitals and units—*(1) *New hospitals and units—*(i) *New hospitals.* For purposes of this section, a new hospital is a provider of hospital inpatient services that—

(A) Has operated as the type of hospital for which HCFA granted it approval to participate in the Medicare program, under present or previous ownership (or both), for less than 2 full years; and

(B) Has provided the type of hospital inpatient services for which HCFA granted it approval to participate in the Medicare program, for less than 2 years.

(ii) *New units.* A newly established unit that is excluded from the prospective payments system under the provisions of §§ 412.25 through 412.30 of this chapter does not qualify for the exemption afforded to a new hospital under paragraph (f)(2)(i) of this section unless the unit is located in an acute care hospital that, if it were subject to the provisions of this section, would qualify as a new hospital under paragraph (f)(1)(i) of this section.

(2) *Comparison—*(i) *Exemptions.* (A) A new children's hospital is exempt from the rate-of-increase ceiling imposed under this section. The exemption begins when the hospital accepts its first patient and ends at the end of the first cost reporting period ending at least 2 years after the hospital accepts its first patient. The first cost reporting period of at least 12 months beginning at least 1 year after the hospital accepts its first patient is the base year, in accordance with paragraph (b) of this section.

(B) Within 180 days of the date a hospital is excluded from the prospective payment system, the intermediary determines whether the hospital is exempt from the rate-of-increase ceiling. The intermediary notifies the hospital of its determination and the hospital's base period.

(C) A decision issued under paragraph (f)(2)(ii)(B) of this section is considered final unless the hospital submits additional information and requests a review of the decision no later than 180 days after the date on the intermediary's notice of the decision. The final

decision is subject to review under subpart R of part 405 of this chapter, provided the hospital has received a notice of program reimbursement (NPR) for the cost reporting period in question and the NPR does not reflect an exemption (see the definitions in § 405.1801(a) of this chapter and the provisions regarding a provider's right to a Board hearing in § 405.1835 of this chapter).

(ii) *Median target amount.* (A) For cost reporting periods beginning on or after October 1, 1997, the amount of payment for a new psychiatric hospital or unit, a new rehabilitation hospital or unit, or a new long-term care hospital that was not paid as an excluded hospital prior to October 1, 1997, is the lower of the hospital's net inpatient operating costs per case or 110 percent of the national median of the target amounts for the class of excluded hospitals and units (psychiatric, rehabilitation, long-term care) as adjusted and updated. This methodology applies to the hospital's first two 12-month cost reporting periods.

(B) The national median of the target amounts is the FY 1996 median target amount—

(1) Adjusted to account for differences in area wage levels;

(2) Updated by the market basket percentage increase to the fiscal year in which the hospital first received payments as an excluded provider.

(g) *Adjustments.—(l) General rule.* HCFA may adjust the amount of the operating costs considered in establishing the rate-of-increase ceiling for one or more cost reporting periods, including both periods subject to the ceiling and the hospital's base period, under the circumstances specified below. When an adjustment is requested by the hospital, HCFA makes an adjustment only to the extent that the hospital's operating costs are reasonable, attributable to the circumstances specified separately identified by the hospital, and verified by the intermediary. HCFA may grant an adjustment requested by the hospital only if a hospital's operating costs exceed the rate-of-increase ceiling imposed under this section. The amount of payment made to a hospital after an adjustment under paragraph (g) of this section is based on the difference between the hospital's operating costs and 110 percent of the ceiling.

(5) *Adjustment limitations.* For cost reporting periods beginning on or after October 1, 1993, and before October 1,

2003, the payment reductions under paragraph (c)(3)(v) through (c)(3)(vii) of this section will not be considered when determining adjustments under this paragraph.

(j) *Reduction to capital-related costs.* For psychiatric hospitals and units, rehabilitation hospitals and units, and long-term hospitals, the amount otherwise payable for capital-related costs is reduced by 15 percent for portions of cost reporting periods occurring on or after October 1, 1997, through September 30, 2002.

5. Section 413.70 is revised to read as follows:

**§ 413.70 Payment for services of a CAH.**

Payment for inpatient and outpatient services of a CAH is the reasonable costs of the CAH in providing such services, as determined in accordance with section 1861(v)(1)(A) of the Act and the applicable principles of cost reimbursement in this part and in part 415 of this chapter.

**Subpart F—Specific Categories of Costs**

6. In § 413.86, the introductory text of paragraph (b) is republished, paragraph (b) is amended by adding the definition of "Affiliated group" in alphabetical order, paragraph (d)(3) is redesignated as paragraph (d)(5) and redesignated paragraph (d)(5) is revised, new paragraphs (d)(3) and (d)(4) are added, paragraph (e)(4)(i)(B) is revised, the introductory text of paragraph (g)(1) is amended by adding a sentence to the end, and new paragraphs (g)(4), (g)(5), (g)(6) and (g)(7) are added, to read as follows:

**§ 413.86 Direct graduate medical education payments.**

(b) *Definitions.* For purposes of this section, the following definitions apply:

*Affiliated group* means two or more hospitals located in the same geographic wage area (as that term is used under part 412 of this subchapter for the prospective payment system) in which individual residents work at each of the hospitals seeking to be treated as an affiliated group during the course of the approved program; or, if the hospitals are not located in the same geographic wage area, the hospitals are jointly listed as major participating institutions for one or more programs as that term is used in *Graduate Medical Education Directory, 1997–1998.*

(d) *Calculating payment for graduate medical education costs.*

(3) *Step three.* For portions of cost reporting periods beginning on or after January 1, 1998, the product derived in step one is multiplied by the proportion of the hospital's inpatient days attributable to individuals who are enrolled under a risk-sharing contract with an eligible organization under section 1876 of the Act and who are entitled to Medicare Part A or with a Medicare+Choice organization under Title XVIII, Part C of the Act. This amount is multiplied by an applicable payment percentage equal to—

- (i) 20 percent for 1998;
- (ii) 40 percent for 1999;
- (iii) 60 percent in 2000;
- (iv) 80 percent in 2001; and
- (v) 100 percent in 2002 and subsequent years.

(4) *Step four.* Add the results of steps 2 and 3.

(5) *Step five.* The product derived in step two is apportioned between Part A and Part B of Medicare based on the ratio of Medicare's share of reasonable costs excluding graduate medical education costs attributable to each part as determined through the Medicare cost report.

(e) *Determining per resident amounts for the base period.*

(4) *Exceptions.* (i) *Base period for certain hospitals.*

(B) The mean value of per resident amounts of hospitals located in the same geographic wage area, as that term is used in the prospective payment system under part 412 of this chapter, for cost reporting periods beginning in the same fiscal years. If there are fewer than three amounts that can be used to calculate the mean value, the calculation of the per resident amounts includes all hospitals in the hospital's region as that term is used in § 412.62(f)(1)(i).

(g) *Determining the weighted number of FTE residents.*

(1) If the resident is enrolled in a combined medical residency training program in which all of the individual programs (that are combined) are for training primary care residents (as defined in paragraph (b) of this section) or obstetrics and gynecology residents, the initial residency period is the time required for individual certification in the longer of the programs plus one year.

(4) For purposes of determining direct graduate medical education payment, for cost reporting periods beginning on or after October 1, 1997, a hospital's

unweighted FTE count for residents in allopathic and osteopathic medicine may not exceed the hospital's unweighted FTE count for these residents for the most recent cost reporting period ending on or before December 31, 1996. If the hospital's number of FTE residents in a cost reporting period beginning on or after October 1, 1997, exceeds the limit described in this paragraph (g), the hospital's weighted FTE count (before application of the limit) will be reduced in the same proportion that the number of FTE residents for that cost reporting period exceeds the number of FTE residents for the most recent cost reporting period ending on or before December 31, 1996. Hospitals that are part of the same affiliated group may elect to apply the limit on an aggregate basis. The fiscal intermediary may make appropriate modifications to apply the provisions of this paragraph (g)(4) based on the equivalent of a 12-month cost reporting period.

(5) For purposes of determining direct graduate medical education payment, for the hospital's first cost reporting period beginning on or after October 1, 1997, the hospital's weighted FTE count is equal to the average of the weighted FTE count for the payment year cost reporting period and the preceding cost reporting period. For cost reporting periods beginning on or after October 1, 1998, the hospital's weighted FTE count is equal to the average of the weighted FTE count for the payment year cost reporting period and the preceding two cost reporting periods. The fiscal intermediary may make appropriate modifications to apply the provisions of this paragraph based on the equivalent of 12-month cost reporting periods.

(6) If a hospital established a new medical residency training program as defined in this paragraph (g) after January 1, 1995, the hospital's FTE cap described under paragraph (g)(4) of this section may be adjusted as follows:

(i) If a hospital had no residents before January 1, 1995, and it establishes a new medical residency training program on or after that date, the hospital's unweighted FTE resident cap under paragraph (g)(4) of this section may be adjusted based on the product of the number of first year residents in the program in the third year of the program's existence and the number of years in which residents are expected to complete that program based on the minimum accredited length for the type of program. For these hospitals, the cap will only be adjusted based on the first program (or programs, if established simultaneously) beginning on or after January 1, 1995. The cap will

not be revised for programs subsequently established.

(ii) If a hospital had residents in its most recent cost reporting period ending before January 1, 1995, the hospital's unweighted FTE cap may be adjusted for new medical residency training programs established on or after January 1, 1995 and August 5, 1997. Increases in the hospital's FTE resident limit are permitted for the new program based on the product of the number of first-year residents in the third year of the newly established program and the number of years in which residents are expected to complete each program based on the minimum accredited length for the type of program. The hospital's unweighted FTE limit for a cost reporting period may be adjusted to reflect the number of residents in its most recent cost reporting period ending on or before December 31, 1996 and up to the incremental increase in its FTE count only for the newly established programs.

(iii) If a hospital with residents in its most recent cost reporting period ending on or before January 1, 1995, is located in a rural area (or other hospitals located in rural areas which added residents under paragraph (g)(6)(i) of this section), the hospital's unweighted FTE limit may be adjusted in the same manner described in paragraph (g)(6)(ii) of this section to reflect the increase for residents in the new medical residency training programs established after August 5, 1997. For these hospitals, the limit will be adjusted for additional new programs but not for expansions of existing or previously existing programs.

(iv) A hospital seeking an adjustment to the limit on its unweighted resident count policy must provide documentation to its fiscal intermediary justifying the adjustment.

(7) For purposes of paragraph (g) of this section, *new medical residency training program* means a medical residency training program that receives initial accreditation by the appropriate accrediting body on or after July 1, 1995.

\* \* \* \* \*  
F. Part 424 is amended as set forth below:

**PART 424—CONDITIONS FOR MEDICARE PAYMENT**

1. The authority citation for Part 424 continues to read as follows:

**Authority:** Section 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 424.1(a)(1), the introductory text is republished and a new statutory

citation is added in numerical order, to read as follows:

**§ 424.1 Basis and scope.**

(a) Statutory basis. (1) This part is based on the indicated provisions of the following sections of the Act:

\* \* \* \* \*  
1820—Conditions for designating certain hospitals as critical access hospitals.  
\* \* \* \* \*

3. In § 424.15, the section heading and paragraph (a) are revised to read as follows:

**§ 424.15 Requirements for inpatient CAH services.**

(a) *Content of certification.* Medicare Part A pays for inpatient CAH services only if a physician certifies that the individual may reasonably be expected to be discharged or transferred to a hospital within 96 hours after admission to the CAH.

\* \* \* \* \*  
H. Part 485 is amended as set forth below:

**PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS**

1. The authority citation for Part 485 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. The heading for Subpart F is revised to read as follows:

**Subpart F—Conditions of Participation: Critical Access Hospitals (CAHs)**

3. In § 485.603, the introductory text is republished, paragraphs (a)(1) and (a)(2) are revised, and a new paragraph (c) is added to read as follows:

**§ 485.603 Rural health network.**

A rural health network is an organization that meets the following specifications:

- (a) It includes—
  - (1) At least one hospital that the State has designated or plans to designate as a CAH; and
  - (2) At least one hospital that furnishes acute care services.

\* \* \* \* \*  
(c) Each CAH that is a member of the rural health network has an agreement with respect to credentialing and quality assurance with at least—

- (1) One hospital that is a member of the network
- (2) One PRO or equivalent entity; or
- (3) One other appropriate and qualified entity identified in the State rural health care plan.

4. Section 485.606 is revised to read as follows:

**§ 485.606 Designation of CAHs.**

(a) *Criteria for State designation.* (1) A State that has established a Medicare rural hospital flexibility program described in section 1820(c) of the Act may designate one or more facilities as CAHs if each facility meets the CAH conditions of participation in this subpart F.

(2) The State must not deny any hospital that is otherwise eligible for designation as a CAH under this paragraph (a) solely because the hospital has entered into an agreement under which the hospital may provide posthospital SNF care as described in § 482.66 of this chapter.

(b) *Criteria for HCFA designation.* HCFA designates a facility as a CAH if—

(1) The facility is designated as a CAH by the State in which it is located; or

(2) The facility is a medical assistance facility operating in Montana or a rural primary care hospital designated by HCFA before August 5, 1997, and is otherwise eligible to be designated as a CAH by the State under the rules in this subpart.

5. Section 485.610 is revised to read as follows:

**§ 485.610 Condition of participation: Status and location.**

(a) *Standard: Status.* The facility is a public or nonprofit hospital.

(b) *Standard: Location.* The CAH meets the following requirements:

(1) The CAH is located outside any area that is a Metropolitan Statistical Area, as defined by the Office of Management and Budget, or that has been recognized as urban under the regulations in § 412.62(f) of this chapter.

(2) The CAH is not deemed to be located in an urban area under § 412.63(b) of this chapter.

(3) The CAH has not been classified as an urban hospital for purposes of the standardized payment amount by HCFA or the Medicare Geographic Classification Review Board under § 412.230(e) of this chapter, and is not among a group of hospitals that have been redesignated to an adjacent urban area under § 412.232 of this chapter.

(4) The CAH is located more than a 35-mile drive (or, in the case of mountainous terrain or in areas with only secondary roads available, a 15-mile drive) from a hospital or another CAH, or the CAH is certified by the State as being a necessary provider of health care services to residents in the area.

6. Section 485.612 is revised to read as follows:

**§ 485.612 Condition of participation: Compliance with hospital requirements at time of application.**

The hospital has a provider agreement to participate in the Medicare program as a hospital at the time the hospital applies for designation as a CAH.

7. Section 485.614 is removed.

8. Section 485.616 is revised to read as follows:

**§ 485.616 Condition of participation: Agreements.**

(a) *Standard: Agreements with network hospitals.* In the case of a CAH that is a member of a rural health network as defined in § 485.603 of this chapter, the CAH has in effect an agreement with at least one hospital that is a member of the network for—

(1) Patient referral and transfer;

(2) The development and use of communications systems of the network, including the network's system for the electronic sharing of patient data, and telemetry and medical records, if the network has in operation such a system; and

(3) The provision of emergency and nonemergency transportation between the facility and the hospital.

(b) *Standard: Agreements for credentialing and quality assurance.* Each CAH that is a member of a rural health network shall have an agreement with respect to credentialing and quality assurance with at least—

(1) One hospital that is a member of the network;

(2) One PRO or equivalent entity; or

(3) One other appropriate and qualified entity identified in the State rural health care plan.

9. Section 485.620 is revised to read as follows:

**§ 485.620 Condition of participation: Number of beds and length of stay.**

(a) *Standard: Number of beds.* Except as permitted for CAHs having swing-bed agreements under § 485.645 of this chapter, the CAH maintains no more than 15 inpatient beds.

(b) *Standard: Length of stay.* The CAH discharges or transfers each inpatient within 96 hours after admission, unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions. A PRO or equivalent entity may also, on request, waive the 96-hour restriction on a case-by-case basis.

10. In § 485.623, the address under paragraphs (d)(1) and (d)(2) "HCFA Information Resource Center, 6325 Security Boulevard, Room G-10-A East High Rise Building, Baltimore, MD 21207" is revised to read "HCFA

Information Resource Center, 7500 Security Boulevard, Room C2-07-13, Central Building, Baltimore, MD 21244-1850".

11. In § 485.645, the section heading, the introductory text, paragraphs (a) and the first sentence of the introductory text of paragraph (b) are revised to read as follows:

**§ 485.645 Special requirements for CAH providers of long-term care services ("swing-beds").**

A CAH must meet the following requirements in order to be granted an approval from HCFA to provide post-hospital SNF care, as specified in § 409.30 of this chapter, and to be paid for SNF-level services, in accordance with paragraph (b) of this section.

(a) *Eligibility.* A CAH must meet the following eligibility requirements:

(1) Effective October 1, 1997, a facility that, at the time it applied to the State for designation as a CAH, had an agreement in effect under § 482.66 of this chapter may continue to use its inpatient facilities for the provision of post-hospital SNF care, so long as the total number of beds that are used at any time for the furnishing of either such services or acute care inpatient services does not exceed 25 beds and the number of beds used at any time for acute care inpatient services does not exceed 15 beds.

(2) Notwithstanding paragraph (a)(1) of this section, a CAH that participated in Medicare as a rural primary care hospital (RPCH) on September 30, 1997 and on that date had in effect an approval from HCFA to use its inpatient facilities to provide post-hospital SNF care may continue in that status under the same terms, conditions, and limitations that were applicable at the time those approvals were granted.

(3) A CAH that was granted swing-bed approval under paragraph (a)(2) of this section may request that its application to be a CAH and a swing-bed provider be reevaluated under paragraph (a)(1) of this section. If this request is approved, the approval is effective not earlier than October 1, 1997. As of the date of approval, the CAH no longer has any status under paragraph (a)(2) of this section, and may not request reinstatement under paragraph (a)(2) of this section.

(4) Any bed of a unit of the facility that is licensed as a distinct-part SNF at the time the facility applies to the State for designation as a CAH is not counted under paragraph (a)(1) of this section.

(b) *Payment.* Payment for inpatient CAH services to a CAH that has qualified as a CAH under the provisions in paragraph (a) of this section is made



in accordance with § 413.70 of this chapter. \* \* \*

\* \* \* \* \*

H. Part 489 is amended as set forth below:

#### **PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL**

1. The authority citation for Part 489 continues to read as follows:

**Authority:** Secs. 1102, 1819, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i-3, 1395x, 1395aa(m), 1395cc, and 1395hh).

#### **§ 489.27 [Amended]**

2. In § 489.27, the reference "section 1886(a)(1)(M) of the Act" is revised to read "section 1866(a)(1)(M) of the Act".

#### **§ 489.53 [Amended]**

3. In § 489.53, paragraph (a)(14) is removed.

#### **Nomenclature Changes**

1. In the following sections, "rural primary care hospital (RPCH)" is revised to read "critical access hospital (CAH)":

§ 410.150(b)(12)  
§ 440.170(g) heading  
§ 498.2 definition of provider

2. In the following parts or sections, "rural primary care hospitals (RPCHs)" is revised to read "critical access hospital (CAHs)":

§ 413.1(a)(2)(i)  
§ 489.2(b)(7)

3. In the following sections or section headings, "an RPCH" is revised to read "a CAH", wherever it appears:

§ 409.10(b)  
§ 409.20(c)(3)  
§ 409.27  
§ 409.60(b)(1)(ii)  
§ 409.61(b) paragraph heading  
§ 409.82(a)(1)  
§ 410.3(a)(1)  
§ 410.10(c)  
§ 410.38(b)  
§ 410.60(b)  
§ 411.15(m)(1)  
§ 440.170 (g)(1) and (g)(2)  
§ 485.601(b)  
§ 485.604 introductory text  
§ 489.20(d)

4. In the following sections, "RPCH" is revised to read "CAH" wherever it appears:

§ 409.5 first sentence  
§ 409.10(a) introductory text and (a)(3)  
§ 409.11 (b)(1)(ii), (b)(1)(iii), (b)(3) introductory text, and (b)(3)(ii)  
§ 409.12 section heading, (a), and (b)  
§ 409.13(a) introductory text, (a)(1), (a)(2), (a)(3), and (b)  
§ 409.14(a) introductory text, (a)(1), (a)(2), (b) introductory text, (b)(1), and (b)(2)

§ 409.15 introductory text  
§ 409.16 introductory text, (a), (b), and (c)  
§ 409.20(a) introductory text  
§ 409.30 introductory text, (a)(2), (b)(1), (b)(2), and footnote 1  
§ 409.31 (b)(2)(i) and (b)(2)(ii)  
§ 409.60(a)  
§ 409.61(a) paragraph heading, (a)(1)(i), (a)(2), (a)(3), (b), and (c)  
§ 409.64(a)(2)(ii)  
§ 409.65 (a)(1), (a)(3), (a)(4), (d)(1), (d)(2), (d)(3), (e)(1), (e)(2) introductory text, (e)(2)(i), and (e)(2)(ii)  
§ 409.66(b) and (c)(2)  
§ 409.68 heading, (a) introductory text, (a)(1), (a)(2), (a)(3), (a)(4), (b)(2), and (c)  
§ 409.80 (a)(1) and (a)(2)  
§ 409.82(c)  
§ 409.83(a)(1) and (c)(1)  
§ 409.87(a)(3) and (b)(1)  
§ 410.10(d)  
§ 410.28 heading, (a) introductory text, (a)(1), (a)(2), and (a)(4)  
§ 410.32(b)(1)  
§ 410.40(a) in the definitions of "Appropriate hospital", "Hospital inpatient", "Locality", and "Outside supplier", (b)(3) introductory text, (b)(3)(i), (c)(1), (c)(2), (c)(3), (e)(1), (e)(2), and (e)(3)  
§ 410.60 (b) and (d)  
§ 410.62 (b) and (c)  
§ 410.150(b)(12)  
§ 410.161(b)(2)  
§ 413.114(b), definition of "Swing-bed hospital"  
§ 424.15 (a) and (b)  
§ 424.20 introductory text  
§ 440.170 (g)(1) and (g)(2)  
§ 485.602  
§ 485.608 introductory text, (a), (c), and (d)  
§ 485.618 introductory text, (b) introductory text, and (e)  
§ 485.623(a), (b) introductory text, (c) introductory text, (c)(4), and (d)(1), (2), (3), and (4)  
§ 485.627(a), (b) introductory text, (b)(1), and (b)(2)  
§ 485.631 (a)(1), (a)(3), (a)(4), (a)(5), (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(2), (c)(1) introductory text, (c)(1)(i), (c)(2)(i), (c)(2)(ii), and (c)(3)  
§ 485.635 (a)(1), (a)(2), (a)(3)(i), (a)(3)(iii), (a)(3)(vii), (a)(4), (b)(1), (b)(2) introductory text, (b)(3), (b)(4), (c)(1) introductory text, (c)(1)(iii), (c)(1)(iv), (c)(2), (c)(3), (c)(4) introductory text, (c)(4)(i), (c)(4)(ii), (d)(1), and (d)(2)  
§ 485.638 (a)(1), (a)(4), (b)(1), and (b)(2)  
§ 485.639 introductory text, (a) introductory text, (b), and (c) introductory text  
§ 485.641(a)(1) introductory text, (a)(1)(i), (a)(1)(iii), (b) introductory text, (b)(3), (b)(4), (b)(5)(i), (b)(5)(ii), and (b)(5)(iii)

§ 485.645(c) introductory text  
§ 489.20(e)

5. In the following sections, "RPCHs" is revised to read "CAHs", wherever it appears:

§ 485.601(a)

6. In the following parts or sections, "rural primary care hospital" is revised to read "critical access hospital", whenever it appears:

Part 409, subpart B heading

§ 409.1(c)  
§ 414.60(b)  
§ 488.1 in the definition of "Provider of services"  
§ 488.10(d)  
§ 488.18(d)  
§ 489.24(b) in the definitions of "Hospital" and "Participating hospital"  
§ 489.53(a)(10) and (b) introductory text

7. In the following sections, "rural primary care hospitals" is revised to read "critical access hospitals", wherever it appears:

§ 413.124(a)  
§ 413.130(j)(1)  
§ 488.6(a)  
§ 489.102(a)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: August 22, 1997.

**Bruce C. Vladeck,**  
*Administrator, Health Care Financing Administration.*

Dated: August 22, 1997.

**Donna E. Shalala,**  
*Secretary.*

**[Editorial Note:** The following addendum and appendixes will not appear in the Code of Federal Regulations.]

#### **Addendum—Schedule of Standardized Amounts Effective With Discharges Occurring On or After October 1, 1997 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 1997**

##### **I. Summary and Background**

In this addendum, we set forth the amounts and factors for determining prospective payment rates for Medicare inpatient operating costs and Medicare inpatient capital-related costs. We also set 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, 1997, except for sole community hospitals, Medicare-dependent, small rural 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 yield 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. Medicare-dependent, small rural hospitals are paid based on the Federal national rate or, if higher, the Federal national rate plus 50 percent of the difference between the Federal national rate and the updated hospital-specific rate based on FY 1982 or FY 1987 cost per discharge, whichever is higher. For hospitals in Puerto Rico, the payment per discharge is based on the sum of 50 percent of a Puerto Rico rate and 50 percent of a national rate (section 4406 of Pub. L. 105-33 amended section 1886(d)(9)(A) of the Act to change the basis of the payment per discharge for hospitals in Puerto Rico from 75 percent of a Puerto Rico rate to 50 percent of a Puerto Rico rate and from 25 percent of a national rate to 50 percent of a national rate).

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, affect the calculation of the Federal rates. In section III, we discuss our changes for 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 1998

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. (See section V.I of the preamble for a discussion of the Puerto Rico payment rate.) 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 will be effective with discharges occurring on or after October 1, 1997. 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 1998.

In summary, the standardized amounts set forth in Tables 1A and 1C of section V of this addendum reflect—

- Updates of 0 percent for all areas;
- 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 1997 budget neutrality factor and applying a revised factor;
- An adjustment to apply the revised outlier offset by removing the FY 1997 outlier offsets and applying a new offset; and
- An adjustment in the Puerto Rico standardized amounts to reflect the application of a Puerto Rico-specific wage index.

The standardized amounts set forth in Tables 1E and 1F of section V of this addendum, which apply to "temporary relief" hospitals (see section V.D of the preamble for a discussion of these hospitals), reflect updates of 0.5 percent for all areas but otherwise reflect the same adjustments as the national standardized amounts.

### 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)(B) and (C) of the Act required that the base-year per discharge costs be updated for FY 1984 and then 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 level, cost of living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

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, 1996, when the market basket was last revised and rebased, we have considered 71.2 percent of costs to be labor-related for purposes of the prospective payment system. As discussed in section IV of the preamble, we are including data not available when the market basket was last rebased to adjust the market basket effective for FY 1998. Based on the proposed revised market basket, we are revising the labor and nonlabor proportions of the standardized amounts. Effective with discharges occurring on or after October 1, 1997, we are establishing a labor-related proportion of 71.1 percent and a nonlabor-related proportion of 28.9 percent. (We are revising the Puerto Rico standardized amounts by the average labor share in Puerto Rico of 71.3 percent. We are revising the discharged-weighted national standardized amount to reflect the proportion of discharges in large urban and other areas from the FY 1996 MedPAR file.)

#### 2. Computing Large Urban and Other Area Averages

Sections 1886(d)(2)(D) and (3) of the Act require 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 50 percent of the applicable Puerto Rico standardized

amount and 50 percent of a national standardized payment amount. (Section 4406 of Public Law 105-33 amended section 1886(d)(9)(A) of the Act to change the payment for hospitals in Puerto Rico from 75 percent of the applicable Puerto Rico standardized payment amount and 25 percent of the applicable national standardized payment amount to 50 percent of the applicable Puerto Rico standardized payment amount and 50 percent of the applicable national standardized payment amount.)

Section 1886(d)(2)(D) of the Act defines "urban area" 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) of the Act. 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 1996 population estimates published by the Bureau of the Census, 60 areas meet the criteria to be defined as large urban areas for FY 1998. These areas are identified by a footnote in Table 4A. We note that the Secretary has chosen to exercise the authority granted by section 4408 of Public Law 105-33 to include Stanly County, North Carolina in the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina MSA for purposes of payment under the prospective payment system.

### 3. Updating the Average Standardized Amounts

Under section 1886(d)(3)(A) of the Act, we update the area average standardized amounts each year. 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 1998 using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. As amended

by section 4401 of Public Law 105-33, Section 1886(b)(3)(B)(i)(XIII) of the Act specifies that, for hospitals in all areas, the update factor for the standardized amounts for FY 1998 is equal to zero percent. Section 4401 of Public Law 105-33 also provides for an update of 0.5 percent for hospitals that are not Medicare-dependent small rural hospitals, that receive no IME or DSH payments, that are located in a State in which aggregate Medicare operating payments for such hospitals were less than their aggregate allowable Medicare operating costs for their cost reporting periods beginning during FY 1995, and whose Medicare operating payments are less than their allowable Medicare operating costs in FY 1998.

As in the past, we are adjusting the FY 1997 standardized amounts to remove the effects of the FY 1997 geographic reclassifications and outlier payments before applying the FY 1998 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliers in FY 1997. After including new offsets to the standardized amounts for outliers and geographic reclassification for FY 1998, we estimate that there will be an overall decrease of 5.6 percent to the large urban and other area standardized amounts.

Although the update factor for FY 1998 is set by law, we are required by section 1886(e)(4)(A) of the Act to report to Congress on our final recommendation of update factors for FY 1998 for both prospective payment hospitals and hospitals excluded from the prospective payment system. We have included our final recommendation in 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 used historical discharge data to simulate payments and compared aggregate payments using the FY 1997 relative weights and wage index to aggregate payments using the FY 1998 relative weights and wage index. The same methodology was used for the FY 1997 budget neutrality adjustment. (See the discussion in the September 1, 1992 final rule (57 FR 39832).) Based on this comparison, we computed a budget neutrality adjustment factor equal to 0.997731. We adjust the Puerto Rico-specific standardized amounts for the effect of DRG reclassification and recalibration. We computed a budget neutrality adjustment factor for Puerto Rico-specific standardized amounts equal to 0.999117. These budget neutrality adjustment factors are applied to the standardized amounts without removing the effects of the FY 1997 budget neutrality adjustments. 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 1998 adjustment factor to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 1997, 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 1998 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 (MGRB). 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 IME and DSH payments) prior to any reclassifications to total prospective payments after reclassifications. We are applying an adjustment factor of 0.994720 to ensure that the effects of reclassification are budget neutral.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 1997 budget neutrality adjustment factor. We note that the FY 1998 adjustment reflects wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of February 27, 1997. The effects of additional reclassification changes resulting from appeals and reviews of the MGCRB decisions for FY 1998 or from a hospital's request for the withdrawal of a reclassification request are reflected in the final budget neutrality adjustment required under section 1886(d)(8)(D) of the Act and published in the final rule for FY 1998.

*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 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. 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 1998 Outlier Payment Thresholds.* For FY 1997, the day outlier threshold is 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 (the percent of Medicare's average per diem payment paid for each outlier day) is 33 percent for FY 1997. The fixed loss cost outlier threshold is equal to the prospective payment for the DRG plus \$9,700 (\$8,850 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 1997 standardized amounts of 0.948766 for the large urban and other areas rates and 0.9481 for the capital Federal rate.

As noted above, section 1886(d)(5)(A)(v) of the Act provides that payment will not be made for day outliers beginning with discharges occurring in FY 1998.

In the proposed rule, we proposed to establish a fixed loss cost outlier threshold in FY 1998 equal to the prospective payment rate for the DRG plus \$7,600 (\$6,950 for hospitals that have not yet entered the prospective payment system for capital-related costs). In addition, we proposed to maintain the marginal cost factor for cost outliers at 80 percent. Section 4405 of Public Law 105-33 amended section 1886(d)(5)(A)(ii) of the Act to revise the definition of the cost outlier threshold. For FY 1997, the statute required the fixed loss cost outlier threshold to be based on "the applicable DRG prospective payment rate plus a fixed dollar amount determined by the Secretary". Public Law 105-33 provides that, beginning in FY 1998, the fixed loss cost outlier threshold is based on "the sum of the applicable DRG prospective payment rate plus any amounts payable under subparagraphs (B) [IME payments] and (F) [DSH payments] plus a fixed dollar amount determined by the Secretary".

Consistent with this statutory change, the methodology for setting the final FY 1998 cost outlier threshold differs from the methodology used for the proposed rule because we no longer adjust hospital costs to exclude IME and DSH payments (see section V.A. of the preamble). In addition, in setting the final FY 1998 outlier thresholds, we used updated data and revised cost inflation factor (discussed below). Thus, for FY 1998, in order for a case to qualify for cost outlier payments, the costs must exceed the prospective payment rate for the DRG plus the IME and DSH payments plus \$11,050 (\$10,080 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.

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 1998 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 proposed thresholds for FY 1998 will result in outlier payments equal to 5.1 percent of operating DRG payments and 6.2 percent of capital payments based on the Federal rate.

The proposed outlier adjustment factors applied to the standardized amounts for FY 1998 were as follows:

	Operating standardized amounts	Capital federal rate
National .....	0.949117	0.9449
Puerto Rico .....	0.961448	0.9449

The final outlier adjustment factors applied to the standardized amounts for FY 1998 are as follows:

	Operating standardized amounts	Capital federal rate
National .....	0.948840	0.9382

	Operating standardized amounts	Capital federal rate
Puerto Rico .....	0.971967	0.9598

As in the proposed rule, we apply the outlier adjustment factors after removing the effects of the FY 1997 outlier adjustment factors on the standardized amounts.

*ii. Other Changes Concerning Outliers.* 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 would replace the ratios published in the August 30, 1996 final rule (61 FR 46302), effective October 1, 1997. Table 8B contains comparable Statewide average capital cost-to-charge ratios. These average ratios would be used to calculate cost outlier payments for those hospitals for which the intermediary computes operating cost-to-charge ratios lower than 0.227808 or greater than 1.29731 and capital cost-to-charge ratios lower than 0.01270 or greater than 0.18955. 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 1998 (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 1996 and FY 1997 Outlier Payments.* In the August 30, 1996 final rule (61 FR 46229), we stated that, based on available data, we estimated that actual FY 1996 outlier payments would be approximately 4.0 percent of actual total DRG payments. This was computed by simulating payments using actual FY 1995 bill data available at the time. That is, the estimate of actual FY 1996 outlier payments did not reflect actual FY 1996 bills but instead reflected the application of FY 1996 rates and policies to available FY 1995 bills. Our current estimate, using available FY 1996 bills, is that actual

outlier payments for FY 1996 were approximately 4.2 percent of actual total DRG payments. We note that the MedPAR file for FY 1996 discharges continues to be updated.

We currently estimate that actual outlier payments for FY 1997 will be approximately 4.8 percent of actual total DRG payments (slightly lower than the 5.1 percent we projected in setting outlier policies for FY 1997). This estimate is based on simulations using the June 1997 update of the provider-specific file and the June 1997 update of the FY 1996 MedPAR file (discharge data for FY 1996 bills). We used these data to calculate an estimate of the actual outlier percentage for FY 1997 by applying FY 1997 rates and policies to available FY 1996 bills.

In FY 1994, we began using a cost inflation factor rather than a charge inflation factor to update billed charges for purposes of estimating outlier payments. This refinement was made to improve our estimation methodology. We believe that actual FY 1996 and FY 1997 outlier payments as a percentage of total DRG payments may be lower than expected in part because actual hospital costs may be lower than reflected in the methodology used to set outlier thresholds for those years. Our most recent data on hospital costs show that rates of increase are continuing to decline. Thus, the cost inflation factor of 0.871 percent used to set FY 1996 outlier policy (based on the best data then available) appears to have been overstated. For FY 1997, we used a cost inflation factor of minus 1.906 percent (a cost per case decrease of 1.906 percent). In the proposed rule, based on data then available, we used a cost inflation factor of minus 1.969 percent to set outlier thresholds for FY 1998. Based on the most recent data available, we are using a cost inflation factor of minus 2.005 percent for purposes of setting the final 1998 outlier thresholds.

Although we estimate that FY 1996 outlier payments will approximate 4.2 percent of total DRG payments, we note that the estimate of the market basket rate of increase used to set the FY 1996 rates was 3.5 percentage points, while the latest FY 1996 market basket rate of increase forecast is 2.7 percent. Thus, the net effect is that hospitals received higher FY 1996 payments than would have been established based on a more

recent forecast of the market basket rate of increase.

*Comment:* One commenter modeled the outlier payments and was able to replicate HCFA's result of 5.1 percent for operating outlier payments, but the commenter's analysis yielded only 5.3 percent for capital outlier payments as compared with HCFA's result of 5.5 percent.

*Response:* Although we are unable to analyze the commenter's modeling methodology before publication of this document, we will attempt to ascertain the source of the discrepancy between the commenter's outlier model and HCFA's outlier model before next year's proposed rule.

#### 5. FY 1998 Standardized Amounts

The adjusted standardized amounts are divided into labor and nonlabor portions. Table 1A (and Table 1E for "temporary relief" hospitals) contain the standardized amounts that are applicable to all hospitals, except for hospitals in Puerto Rico. Under section 1886(d)(9)(A)(ii) of the Act, the Federal portion of the Puerto Rico payment rate is based on the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Tables 1A and 1E). The labor and nonlabor portions of the national average standardized amounts for Puerto Rico hospitals are set forth in Table 1C (and Table 1F for "temporary relief" hospitals). These tables also include the Puerto Rico standardized amounts.

The Puerto Rico standardized amounts reflect application of a Puerto Rico-specific wage index for FY 1998. Thus, before application of the wage index, the FY 1998 Puerto Rico standardized amounts are lower than the FY 1997 standardized amounts. However, after application of the wage index, the FY 1998 Puerto Rico rate is higher than the rate for FY 1997. This is due to the higher Puerto Rico wage index values that will be applied to these standardized amounts in calculating the FY 1998 Puerto Rico rate. Below, we use two wage areas to illustrate that the FY 1998 Puerto Rico wage-adjusted standardized amounts are higher than the FY 1997 Puerto Rico wage-adjusted standardized amounts.

#### Puerto Rico Standardized Amounts

Area	FY 1997		FY 1998	
	Labor	Nonlabor	Labor	Nonlabor
Large Urban .....	\$2,488.70	\$518.65	\$1,323.01	\$532.55
Other Areas .....	\$2,449.31	\$510.45	\$1,302.07	\$524.11

**Puerto Rico Wage-Adjusted Standardized Amount for the San Juan MSA and Rural Puerto Rico**

	FY 1997	FY 1998
San Juan Wage Index .....	0.4506	1.0156
Wage-Adjusted Standardized Amount .....	\$1,640.06	\$1,877.44
Rural Wage Index ....	0.4026	0.9291
Wage-Adjusted Standardized Amount .....	\$1,496.54	\$1,735.01

Table 1E contains the two national standardized amounts that are applicable to the "temporary relief" hospitals discussed in section V.D of the preamble to this rule, except those located in Puerto Rico. The labor and nonlabor portions of the national average standardized amounts for hospitals in that group that are located in Puerto Rico are set forth in Table 1F. This table also includes the Puerto Rico standardized amounts for hospitals in that group.

**B. Adjustments for Area Wage Levels and Cost-of-Living**

Tables 1A, 1C, 1E and 1F, as set forth in this addendum, contain the labor-related and nonlabor-related shares 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. These changes include the calculation of a Puerto Rico-specific wage index that are being applied to the Puerto Rico standardized amounts. The wage index is set forth in Tables 4A through 4F 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 1998, we adjusted 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 .....	1.225
County of Kauai .....	1.225
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 1998. These factors have been recalibrated as explained in section II of the preamble.

One commenter noted that there was a typographical error in the proposed Table 5. The proposed relative weight for DRG 92 was incorrectly printed as .1929 rather than 1.1929. The final weight is 1.1947.

**D. Calculation of Prospective Payment Rates for FY 1998**

**General Formula for Calculation of Prospective Payment Rates for FY 1998**

Prospective payment rate for all hospitals located outside Puerto Rico except sole community hospitals and Medicare-dependent, small rural 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 Medicare-dependent, small rural hospitals = 100 percent of the Federal rate plus, if the greater of the updated FY 1982 hospital-specific rate or the updated FY 1987 hospital-specific rate

is higher than the Federal rate, 50 percent of the difference between the applicable hospital-specific rate and the Federal rate.

Prospective payment rate for Puerto Rico = 50 percent of the Puerto Rico rate + 50 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, 1997 and before October 1, 1998, except for sole community hospitals, Medicare-dependent small rural 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 or 1E, 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 of 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 of section V of this addendum).

**2. Hospital-Specific Rate (Applicable Only to Sole Community Hospitals and Medicare-Dependent, Small Rural 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.

Sections 1886(d)(5)(G) and (b)(3)(D) of the Act (as amended by section 4204 of Publ. L. 105-33) provide that Medicare-dependent, small rural hospitals are

paid based on whichever of the following rates yields the greatest aggregate payment: The Federal rate or the Federal rate plus 50 percent of the difference between the Federal rate and the greater of the updated hospital-specific rate based on FY 1982 and 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 period (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 1998.* We are increasing the hospital-specific rates by 0 percent for sole community hospitals and Medicare-dependent, small rural hospitals located in all areas for FY 1998. Section 1886(b)(3)(C)(iv) 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)(iv) of the Act, which, as amended by section 4401 of Pub. L. 105-33, is 0 percent for FY 1998. Section 1886(b)(3)(D) of the Act (as amended by section 4204 of Publ. L. 105-33) provides that the update factor applicable to the hospital-specific rates for Medicare-dependent, small rural hospitals equals the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, as amended by section 4401 of Pub. L. 105-33, is 0 percent for FY 1998.

*b. Calculation of Hospital-Specific Rate.* For sole community hospitals and Medicare-dependent, small rural hospitals, the applicable FY 1998 hospital-specific rate would be calculated by increasing the hospital's hospital-specific rate for the preceding fiscal year by the applicable update factor (0 percent), which is the same as the update for all prospective payment hospitals except temporary relief hospitals. In addition, the hospital-specific rate would be adjusted by the budget neutrality adjustment factor (that is, 0.997731) as discussed in section II.A.4.a of this Addendum. This resulting rate would be used in determining under which rate a sole community hospital or Medicare-dependent, small rural hospital is paid for its discharges beginning on or after October 1, 1997, based on the formulas set forth above.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1997 and Before October 1, 1998

*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 or 1F of section V of the addendum).

*Step 2*—Multiply the labor-related portion of the standardized amount by the appropriate Puerto Rico-specific wage index (see Table 4F of 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 50 percent.

*Step 5*—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5 of 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 or 1F of section V of the addendum) by the appropriate national wage index (see Tables 4A and 4B of section V of the addendum).

*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 50 percent.

*Step 4*—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5 of 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 1998

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 on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of a 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 1998. The rates are effective for discharges occurring on or after October 1, 1997.

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 proportion of outlier payments under the Federal rate to total capital payments under the Federal rate. In addition, § 412.308(c)(3) requires that the Federal rate be reduced by an adjustment factor equal to the estimated proportion of payments for exceptions under § 412.348.

Furthermore, § 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 FYs 1992 through 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that aggregate payments for inpatient hospital capital costs were projected to equal 90 percent of the 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. Finally, § 412.308(b)(2) describes the 7.4 percent reduction to the rate which was made in FY 1994, and § 412.308(b)(3) describes the 0.28 percent reduction to the rate made in FY 1996 as a result of the revised policy of paying for transfers.

In this final rule with comment period we are implementing section 4402 of Public Law 105-33, which requires that, effective for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted standard Federal rate shall be reduced by 17.78 percent. Part of that reduction will be restored effective October 1, 2002.

For each hospital, the hospital-specific rate 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. Since FY 1992, the hospital-specific rate has been updated annually for inflation and for changes in the exceptions payment adjustment factor. For FYs 1992 through 1995, the hospital-specific rate was also adjusted by a budget neutrality adjustment factor. In this final rule with comment period we are implementing section 4402 of Public Law 105-33, which requires that, effective for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted hospital specific rate shall be reduced by 17.78 percent. Part of that reduction will be restored effective October 1, 2002.

To determine the appropriate budget neutrality adjustment factor 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 in greater detail 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 comprises 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. Under § 412.374, the methodology for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs parallels the blended payment methodology for operating payments to Puerto Rico hospitals. Effective October 1, 1997, as a result of section 4406 of Public Law 105-33, operating payments to hospitals in Puerto Rico shall be based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. However, in conjunction with this change to the operating blend percentage, effective

with discharges on or after October 1, 1997, we are computing capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico rate and 50 percent of the Federal rate.

#### *A. Determination of Federal Inpatient Capital-Related Prospective Payment Rate Update*

For FY 1997, the Federal rate was \$438.92. In the proposed rule, we stated that the proposed FY 1998 Federal rate was \$438.43. In this final rule with comment period, we are establishing a FY 1998 Federal rate of \$371.51.

In the discussion that follows, we explain the factors that were used to determine the FY 1998 Federal rate. In particular, we explain why the FY 1998 Federal rate has decreased 15.36 percent compared to the FY 1997 Federal rate. The major factor contributing to the decrease in the FY 1998 rate in comparison to the FY 1997 rate is the 17.78 percent reduction to the Federal rate required by Public Law 105-33. Also, capital payments per case are estimated to decrease 8.92 percent. Taking into account the effects of increases in projected discharges, we estimate that aggregate capital payments will decrease 6.74 percent.

Total payments to hospitals under the prospective payment system are relatively unaffected by changes in the capital prospective payments. Since capital payments constitute 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.

#### *1. Reduction to the Standard Federal Rate*

Section 4402 of Pub. L. 105-33 requires that for discharges occurring after October 1, 1997 the unadjusted standard Federal rate be reduced by 15.68 percent, and by an additional 2.1 percent from October 1, 1997 through September 30, 2002. Thus, the unadjusted standard Federal rate used to set the Federal rate each year is reduced a total of 17.78 percent from October 1, 1997 through September 30, 2002. After that date the 2.1 percent reduction to the rate will be restored.

The regulation changes we are making to implement this statutory requirement are discussed in section VI.C of the preamble. Here we discuss the effects of the required reduction in computing the FY 1998 Federal capital rate.

Under § 412.308(b), HCFA determines the standard Federal rate by adjusting the FY 1992 updated national average cost per discharge by a factor so that estimated payments based on the

standard Federal rate, adjusted by the payment adjustments described in § 412.312(b), equal estimated aggregate payments based solely on the national average cost per discharge. Section 412.308(c) provides further that the standard Federal rate is updated for inflation each Federal fiscal year and adjusted each year by an outlier payment adjustment factor, and an exceptions payment adjustment factor, to determine the Federal capital payment rate for that year. The standard Federal rate is to be distinguished from the annual Federal rate actually used in making payment under the capital prospective payment system. The standard Federal rate is, in effect, the underlying or base rate used to determine the annual Federal rate by means of the formula in § 412.308(c).

Because the 17.78 percent reduction applies to the standard Federal rate before the application of the adjustment factors for outliers, exceptions, and budget neutrality, the reduction to the standard Federal rate does not have the effect of simply lowering the FY 1998 Federal rate by 17.78 percent compared to FY 1997. Rather, the 17.78 percent reduction is one factor contributing to the overall 15.36 percent reduction in the FY 1998 Federal rate compared to FY 1997. The FY 1998 exceptions reduction factor increases the rate by 3.22 percent relative to the FY 1997 exceptions reduction factor. For a more complete description of changes to the Federal rate, see the table that compares the FY 1997 rate with the FY 1998 rate later in this addendum.

As discussed in the proposed rule, ProPAC recommended that the rate be adjusted to a more appropriate level (Recommendation 3). They indicated that the FY 1997 rate was 15 to 17 percent too high and attributed this to the overstatement of the 1992 base payment rates and the method used to update the rates prior to implementation of the update framework. ProPAC outlined several possible approaches we could use for adjusting the rate by regulation. In our response, we agreed with ProPAC that the capital rates were too high and noted that the President's FY 1998 budget included a provision to reduce the base Federal and hospital-specific rates by approximately the magnitude suggested by ProPAC. We restated our belief that it was most appropriate to make such adjustments to the capital rates in the context of a comprehensive package of Medicare program changes. We therefore did not propose to implement a revision to the base capital rates by regulation for FY 1998.



*Comment:* ProPAC noted that both HCFA and ProPAC had recommended that the base capital rate should be cut. They also noted that a proposal to cut the rate was included in the President's budget under consideration by the Congress. However, ProPAC expressed its belief that absent action by the Congress to cut the capital rate, the Secretary should cut the rate using her regulatory authority.

*Response:* After ProPAC commented, the Congress passed Public Law 105-33 and the President signed it into law in early August. As anticipated, the legislation included a reduction to the unadjusted standard Federal rate and the unadjusted hospital specific rate along with several other changes to the Medicare program. As discussed previously, we are implementing the reduction to the rate as part of this final rule with comment period.

*Comment:* One State hospital association expressed its opposition to a reduction in capital payments. The association stated that reducing capital payments to hospitals would likely increase borrowing costs by making hospitals less attractive to investors, and inhibit hospital's abilities to modernize their physical plants. The commenter was especially concerned about the impact of a rate cut on low volume rural hospitals.

*Response:* As we noted in our response to ProPAC's previous comment, we did not propose to cut the capital rate by regulation in the proposed rule. We stated our belief that the capital rate should be addressed by the Congress in conjunction with other changes to the Medicare program. The Congress included a 17.78 percent reduction to the capital rate and the hospital specific rate in Public Law 105-33, which we are implementing in this final rule with comment period. We have stated on several occasions that due to a variety of factors capital payments to hospitals are over-stated and should be reduced. Based on data we updated for this final rule with comment period, we estimate that for FY 1997 Medicare capital payments to hospitals exceeded Medicare capital costs by 8.7 percent. Many small rural hospitals are also low cost hospitals that have benefitted from the introduction of a capital prospective payment system. Many of these hospitals are paid on the full prospective payment methodology and capital payments are based on an increasing percentage of the Federal rate during the transition to fully prospective capital payment system, where the Federal rate is higher than the hospital specific rate. However, because capital payments are determined on a

per discharge basis, hospitals with few discharges will necessarily receive payments that are consistent with the number of Medicare patients they serve. We note however, that sole community hospitals benefit from a higher minimum payment threshold for purposes of capital exceptions payments. Further, together with this capital rate reduction provision, Congress has made other changes that affect small rural hospitals. For example, as of October 1, 1997, the Medicare-dependent hospital provisions are reinstated and the Critical Access Hospital Program is established nationwide.

## 2. Standard Federal Rate Update

*a. Description of the Update Framework.* Section 412.308(c)(1) provides that the standard Federal rate is updated on the basis of 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 (CIPI) 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 1.1 percent, based on data available at that time. The final update factor for FY 1998 under that framework is 0.9 percent. This update factor is based on a projected 1.1 percent increase in the CIPI, and on policy adjustment factors of -0.2. We explain the basis for the FY 1998 CIPI projection in section D of this addendum. Here we describe the policy adjustments that have been applied.

The case-mix index 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 case-mix index corresponds to an equal percentage increase in hospital payments.

The case-mix index can change for any of several reasons:

- The average resource use of Medicare patients changes ("real" case-mix change);
- Changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"); and
- 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 case-mix index. 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 case-mix index-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 case-mix index adjustment in the capital update framework as well.

For FY 1998, we are projecting a 1.0 percent increase in the case-mix index. We estimate that real case-mix increase will equal 0.8 percent in FY 1998. Therefore, the net adjustment for case-mix change in FY 1998 is -0.2 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 this 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. We estimate that the FY 1996 CIPI was .20 percentage points higher than our current data show, which means that we estimate a forecast error of .20 percentage points for FY 1996. Therefore no adjustment for forecast error will be made in FY 1998.

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 1998, 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, 1.7 percent in FY 1995, and 1.6 percent in FY 1996. For FY 1992, FY 1995, and FY 1996, 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. Based on this analysis, we believe that all of the observed case-mix increase for FY 1993 and FY 1994 is real.

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. Given estimates of real case-mix increase of 1.0 percent for FY 1992, 0.9 percent for FY 1993, 0.8 percent for FY 1994, 1.0 percent for FY 1995, and 1.0 percent for FY 1996, we estimate that case-mix constant intensity declined by an average 1.4 percent during FYs 1992 through 1996, for a cumulative decrease of 7.0 percent. If we assume that real case-mix increase was 1.4 percent for FY 1992, 0.9 percent for FY 1993, 0.8 percent for FY 1994, 1.4 percent for FY 1995, and 1.4 percent for FY 1996, we estimate that case-mix constant intensity declined by an average 1.6 percent during FYs 1992 through 1996, for a cumulative decrease of 7.5 percent. Since we estimate that intensity has declined during that period, we are recommending a 0.0 percent intensity adjustment for FY 1998.

*b. Comparison of HCFA and ProPAC Update Recommendations.* In Recommendation 4 of the proposed rule, ProPAC recommended a zero update to the standard Federal rate, and we recommended a 1.1 percent update. (See the June 2, 1997 proposed rule for a discussion of the differences between the ProPAC and HCFA update frameworks (62 FR 29950). In this final rule with comment period, as discussed in the previous section, we are implementing a 0.9 update to the capital rate. ProPAC recommended a zero update to the rate for FY 1998 because it believed that a zero update applied to revised base rates would permit hospitals to maintain quality of care

while meeting Medicare's responsibility to act as a prudent purchaser.

*Comment:* In response to our statements in the proposed rule about why we recommended an update to the capital rate, ProPAC stated that it had applied the same reasoning for recommending a zero update to the capital rate that it had used in recommending a zero update to the operating rate. ProPAC restated its belief that a zero update was appropriate for both the operating and capital rates.

*Response:* As required by Pub. L. 105–33, we are implementing a 17.78 percent reduction to the unadjusted standard Federal capital payment rate and the unadjusted hospital-specific rate effective October 1, 1997. To the extent this statutory reduction to the base capital rate addresses the issues of the rates being overstated, we believe we should not, at the same time, further address the issue through the update framework.

## 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. We note that as indicated in section V of the preamble, in conjunction with our policy of a unified outlier methodology for operating and capital, we are adopting the change required by Pub. L. 105–33 concerning outlier payments. The law requires the fixed loss cost outlier threshold to be based on the sum of the base DRG payment, indirect medical education (IME) payment and the disproportionate share hospital (DSH) payment effective with discharges occurring on or after October 1, 1997.

Outlier payments are made only on the portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments (for example, 70 percent for cost reporting periods beginning in FY 1998 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 proportion of outlier payments under the Federal rate to total inpatient capital-related payments under the Federal rate. The outlier thresholds are set so that operating outlier payments are projected to be 5.1 percent of total operating DRG payments. The inpatient capital-related outlier reduction factor reflects the 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 they were 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 August 30, 1996 final rule, we estimated that outlier payments for capital in FY 1997 would equal 5.19 percent of inpatient capital-related payments based on the Federal rate. Accordingly, we applied an outlier adjustment factor of 0.9481 to the Federal rate. Based on the thresholds as set forth in section II.A.4.d of this Addendum, we estimate that outlier payments for capital will equal 6.18 percent of inpatient capital-related payments based on the Federal rate in FY 1998. We are, therefore, applying an outlier adjustment factor of 0.9382 to the Federal rate. Thus, estimated capital outlier payments for FY 1998 represent a higher percentage of total capital standard payments than for FY 1997.

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 1998 is 0.9896 (0.9382/0.9481). Thus, the outlier adjustment decreases the FY 1998 Federal rate by 1.04 percent (1 - 0.9896) compared with the FY 1997 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 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 (GAF) are projected to equal aggregate payments that would have been made on the basis of 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 GAF. 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 GAF.

For FY 1997, we calculated a GAF/DRG budget neutrality factor of 0.9987. In the proposed rule for FY 1998, we proposed a GAF/DRG budget neutrality factor of 1.0001. In this final rule with comment period, based on calculations using updated data, we are applying a factor of 0.9989 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 or less than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the GAF. The incremental change in the adjustment from FY 1997 to FY 1998 is 0.9989. The cumulative change in the rate due to this adjustment is 1.0001 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996, FY 1997, and FY 1998:  $0.9980 \times 1.0053 \times 0.9998 \times 0.9994 \times 0.9987 \times 0.9989 = 1.0001$ ).

This factor accounts for DRG reclassifications and recalibration and for changes in the GAF. It also incorporates the effects on the GAF of FY 1998 geographic reclassification decisions made by the MGCRB compared to FY 1997 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 proportion of additional payments for exceptions under § 412.348 relative to total payments under the hospital-specific rate and Federal rate. We use an actuarial model described in Appendix B to determine the exceptions payment adjustment factor.

For FY 1997, we estimated that exceptions payments would equal 6.42 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of 0.9358 (1-0.0642) in determining the FY 1997 Federal rate. For FY 1998, we estimated in the June 2, 1997 proposed rule that exceptions payments would equal 7.24 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore we proposed to apply an exceptions payment reduction factor of .9276 (1-0.0724) to determine

the FY 1998 Federal rate. For this final rule with comment period, we estimate that exceptions payments for FY 1998 will equal 3.41 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We are, therefore, applying an exceptions payment reduction factor of 0.9659 (1-0.0341) to the Federal rate for FY 1998.

The final exceptions reduction factor for FY 1998 is thus 3.22 percent higher than the factor for FY 1997 and 4.13 percent higher than the factor in the FY 1998 proposed rule. This change is due to a modeling refinement we have implemented since publication of the proposed rule described in Appendix B. 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 for exceptions to the FY 1998 Federal rate over the FY 1997 Federal rate is 0.9659/0.9358, or 1.0322.

### 5. Standard Capital Federal Rate for FY 1998

For FY 1997, the capital Federal rate was \$438.92. With the changes we proposed to the factors used to establish the Federal rate, we proposed that the FY 1998 Federal rate would be \$438.43. In this final rule with comment period, we are establishing a FY 1998 Federal rate of \$371.51. The Federal rate for FY 1998 was calculated as follows:

- The FY 1998 update factor is .0090, that is, the update is 0.9 percent.
- The FY 1998 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the GAF is 0.9989.
- The FY 1998 outlier adjustment factor is 0.9382.
- The FY 1998 exceptions payments adjustment factor is 0.9659.

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 have made 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 GAF.

We are providing a chart that shows how each of the factors and adjustments for FY 1998 affected the computation of the FY 1998 Federal rate in comparison to the FY 1997 Federal rate. We have added the effect of the 17.78 percent reduction to the rate required by Public Law 105-33 to the chart. The FY 1998 update factor has the effect of increasing the Federal rate by 0.90 percent

compared to the rate in FY 1997, while the final geographic and DRG budget neutrality factor has the effect of decreasing the Federal rate by 0.11 percent. The FY 1998 outlier adjustment factor has the effect of decreasing the Federal rate by 1.04 percent compared

to FY 1997. The FY 1998 exceptions reduction factor has the effect of increasing the Federal rate by 3.22 percent compared to the exceptions reduction for FY 1997. The combined effect of all the changes is to decrease the Federal rate by 15.36 percent

compared to the Federal rate for FY 1997.

**Comparison of Factors and Adjustments: FY 1997 Federal Rate and FY 1998 Federal Rate**

	FY 97	FY 98	Change	Percent change
Public Law 105-33 Standard Federal Rate Reduction .....	NA	0.8222	0.8222	- 17.78
Update factor <sup>1</sup> .....	1.0070	1.0090	1.0090	0.90
GAF/DRG Adjustment Factor <sup>1</sup> .....	0.9987	0.9989	0.9989	- 0.11
Outlier Adjustment Factor <sup>2</sup> .....	0.9481	0.9382	0.9896	- 1.04
Exceptions Adjustment Factor <sup>2</sup> .....	0.9358	0.9659	1.0322	3.22
Federal Rate .....	\$438.92	\$371.51	0.8464	- 15.36

<sup>1</sup> The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 1997 to FY 1998 resulting from the application of the 0.9989 GAF/DRG budget neutrality factor for FY 1998 is 0.9989.

<sup>2</sup> 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 1998 outlier reduction factor is 0.9382/0.9481, or 0.9896.

We are also providing a chart that shows how the final FY 1998 Federal

rate differs from the proposed FY 1998 Federal rate.

**Comparison of Factors and Adjustments: Proposed FY 1998 Federal Rate and Final FY 1998 Federal Rate**

	Proposed FY 98	Final FY 98	Change	Percent change
Public Law 105-33 Standard Federal Rate Reduction .....	NA	0.8222	0.8222	- 17.78
Update factor .....	1.0110	1.0090	0.9980	- 0.20
GAF/DRG Adjustment Factor .....	1.0001	0.9989	0.9988	- 0.12
Outlier Adjustment Factor .....	0.9449	0.9382	0.9929	- 0.71
Exceptions Adjustment Factor .....	0.9276	0.9659	1.0413	4.13
Federal Rate .....	\$438.43	\$371.51	0.8474	- 15.26

**6. Special Rate for Puerto Rico Hospitals**

As explained at the beginning of this section, in the past, hospitals in Puerto Rico were paid based on 75 percent of the Puerto Rico rate and 25 percent of the Federal rate. To parallel the change to the Puerto Rico blended payment amount mandated for operating payments by Public Law 105-33, effective with discharges on or after October 1, 1997, capital payments to hospitals in Puerto Rico will be based on 50 percent of the Puerto Rico capital rate and 50 percent of the Federal rate. The Puerto Rico rate is derived from the costs of Puerto Rico hospitals only, while the Federal rate is derived from the costs of all acute care hospitals participating in the prospective payment system (including Puerto Rico). To adjust hospitals' capital payments for geographic variations in capital costs, we apply a GAF to both portions of the blended rate. The GAF is calculated using the operating PPS wage index, and varies depending on the MSA or rural area in which the hospital is located. Since the GAF is based on the wage index, we are revising the method of accounting for geographical variation in Puerto Rico, to

parallel the change that is being proposed on the operating rate, where a Puerto Rico-specific wage index is being calculated (see section III.B. of this preamble). Specifically, we used the new Puerto Rico wage index to determine the GAF for the Puerto Rico part of the capital blended rate, and retained the use of the national wage index to determine the GAF for the national part of the blended rate. As noted above, effective October 1, 1997, hospitals in Puerto Rico will be paid based on 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. This means that, in computing the payment for a particular Puerto Rico hospital, the Puerto Rico portion of the rate will be multiplied by the Puerto Rico-specific GAF for the MSA in which the hospital is located, and the national portion of the rate will be multiplied by the national GAF for the MSA in which the hospital is located (which is computed from national data for all hospitals in the United States and Puerto Rico).

We have adjusted the Puerto Rico rate to account for the application of Puerto Rico-specific GAFs. We did this in order to be consistent with the method by which we originally determined the

national and Puerto Rico rates. This resulting standard Puerto Rico rate does not translate into a reduction in payments to Puerto Rico hospitals. The Puerto Rico-specific GAFs are higher than the national GAFs because they use the Puerto Rico mean only rather than the national mean. As a result, application of Puerto Rico-specific GAFs means Puerto Rico hospitals receive more money.

For FY 1997, before application of the GAF, the special rate for Puerto Rico hospitals was \$337.63. With the changes we proposed to the factors used to determine the rate, the proposed FY 1998 special rate for Puerto Rico was \$204.46. In this final rule with comment period, the FY 1998 capital rate for Puerto Rico is \$177.57. Since publication of the proposed rule, the Puerto Rico rate has declined because of the effect of the 17.78 percent reduction to the rate implemented as a result of Public Law 105-33.

**B. Determination of Hospital-Specific Rate Update**

Section 412.328(e) of the regulations provides that the hospital-specific rate for FY 1998 be determined by adjusting the FY 1997 hospital-specific rate by the

hospital-specific rate update factor and the exceptions payment adjustment factor. Before application of these factors the FY 1997 unadjusted hospital-specific rate was reduced 17.78 percent to comply with the provisions of Public Law 105-33. The 17.78 percent reduction will be in force from October 1, 1997 through September 30, 2002. A 15.68 percent reduction to the unadjusted hospital specific rate will remain in effect from October 1, 2002 onward.

1. Impact of Public Law 105-33

Public Law 105-33 reduces the hospital specific rate 17.78 percent through September 30, 2002. After that date a 15.68 percent reduction to the rate shall remain in effect.

2. 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 1998, we

have updated the hospital-specific rate by a factor of 1.0090.

3. Exceptions Payment Adjustment Factor

For FYs 1992 through 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, which is determined as a proportion of the total amount of payments under the hospital-specific rate and the Federal rate. For FY 1998, we estimated in the proposed rule that exceptions payments would be 7.24 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 0.9276. In this final rule with comment period, we estimate that exceptions payments will be 3.53 percent of aggregate payments based on the Federal rate and the hospital specific rate. We are applying

an exceptions reduction factor of 0.9659 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 1998 hospital-specific rate is 0.9659/0.9358, or 1.0322.

4. 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 1997 and FY 1998 and the net adjustment for each factor. It also shows that the cumulative net adjustment from FY 1997 to FY 1998 is 0.8563, which represents a decrease of 13.66 percent to the hospital-specific rate. For each hospital, the FY 1998 hospital-specific rate is determined by multiplying the FY 1997 hospital-specific rate by the cumulative net adjustment of 0.8563.

**FY 1998 Update and Adjustments to Hospital-Specific Rates**

	FY 97	FY 98	Net adjustment	Percent change
Public Law 105-33 Hospital-Specific Rate Reduction .....	( <sup>1</sup> )	0.8222	0.8222	- 17.78
Update Factor .....	1.0070	1.0090	1.0090	0.90
Exceptions Payment Adjustment Factor .....	0.9358	0.9659	1.0322	3.22
Cumulative Adjustments .....	0.9424	0.8070	0.8563	- 14.37

<sup>1</sup> Not applicable.

**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 1997 to FY 1998 is 1.0090. In contrast, the exceptions payment adjustment factor is not applied cumulatively. Thus, for example, the incremental increase in the exceptions reduction factor from FY 1997 to FY 1998 is 0.9659/0.9358, or 1.0322.

*C. Calculation of Inpatient Capital-Related Prospective Payments for FY 1998*

During the capital prospective payment system transition period, a hospital is paid for the 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 was determined by making adjustments as follows:

- 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 GAF, 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) × (GAF) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share Adjustment Factor + IME 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 1998 are 70 percent of the adjusted Federal rate and 30 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 Federal rate that is used to calculate the hospital's inpatient capital-related payments. For fully prospective hospitals, that portion is 70 percent of the Federal rate for discharges occurring in cost reporting periods beginning during FY 1998. Thus, a fully prospective hospital will receive 70 percent of the capital-related outlier payment calculated for the case for discharges occurring in cost reporting periods beginning in FY 1998. 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 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 1998 are published in section II.A.4.c of this Addendum. For FY 1998, a case qualifies as a cost outlier if the cost for the case is greater than the sum of the prospective payment rate for the DRG plus IME and DSH payments plus \$11,050. 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 1998 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.

#### D. Capital Input Price Index

##### 1. Background

Like the prospective payment hospital operating input price index, the Capital Input Price Index (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 indices, the base period is selected and cost category weights are determined using available data on hospitals. Next, appropriate price proxy indices 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 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. 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. Currently, the CIPI is based to FY 1992 and was last rebased in 1997. The most recent explanation of the CIPI was discussed in the proposed rule for FY 1998 published in the June 2, 1997 **Federal Register** (62 FR 29953). The following **Federal Register** documents also 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), May 31, 1996 (61 FR 27466), and August 30, 1996 (61 FR 46196).

##### 2. Research on Reweighting the CIPI

After analyzing various data sources and methodologies for determining capital weights for the HCFA PPS CIPI, we will continue to use the weights published in the August 30, 1996 **Federal Register** (61 FR 46196). We

explained in the June 2, 1997 proposed rule that we had decided not to use the 1992 Department of Commerce Asset and Expenditure data to revise the cost category weights in the CIPI. The three reasons why we are staying with the current HCFA PPS CIPI cost category weights are: (1) HCFA's prefers to continue to use the Medicare Cost Reports for the Medicare subset of hospitals (PPS only); (2) the detail needed for future rebasing of the index will be available from the Medicare Cost Reports; and (3) the CIPI cost shares are similar to those provided by the 1992 Asset and Expenditures Survey. We received no comments on this issue.

### 3. Forecast of the CIPI for Federal Fiscal Year 1998

DRI forecasts a 1.1 percent increase in the CIPI for FY 1998. This is the outcome of a projected 2.2 percent increase in vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 3.2 percent increase in other capital expense prices in FY 1998, partially offset by a 2.0 percent decline in vintage-weighted interest rates in FY 1998. The weighted average of these three factors produces the 1.1 percent increase for the CIPI as a whole.

## IV. Changes to Payment Rates for Excluded Hospitals and Hospital Units: Rate-of-Increase Percentages

### 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.

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, 1997 and before October 1, 1998, the rate-of-increase percentage is 0. In order to

determine a hospital's target amount for its cost reporting period beginning in FY 1998, the hospital's target amount for its cost reporting period that began in FY 1997 is increased by 0. In addition, as indicated in section VII of the preamble, Public Law 105-33 significantly altered several aspects of payments for excluded hospitals and units, effective for cost reporting periods beginning on or after October 1, 1997. Section 4413 of Public Law 105-33 permits certain excluded hospitals—hospitals that were excluded for the cost reporting period beginning before October 1, 1990 and are within certain specified classes, as well as “qualified long-term care hospitals”—to elect a rebasing of the hospital's target amount for the 12-month cost reporting period beginning during FY 1998. The rebased target amount for a hospital would reflect operating costs in recent cost reporting periods. Section 4414 establishes a cap on target amounts for certain classes of excluded hospitals, based on target amounts for hospitals in the same class, for cost reporting periods beginning during FY 1998. Section 4415 revises the formulas for determining bonus and relief payments for excluded hospitals and also establishes an additional bonus payment for continuous improvement, for cost reporting periods beginning during FY 1998. Finally, sections 4416 and 4419 establish a new statutory payment methodology for new hospitals, effective October 1, 1997.

### 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 1995, we would use the rate of increase between the wage index based on 1982 wage data and the wage index based on the FY 1994 data, since the FY 1994 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 rate of 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 show the following increases:

1992 = 4.8 percent  
1993 = 3.6 percent  
1994 = 2.7 percent  
1995 = 3.3 percent

1996 = 3.1 percent  
 1997 = 2.2 percent  
 1998 = 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 with comment period.

**V. Tables**

This section contains the tables referred to throughout the preamble to this final rule with comment period and in this Addendum. For purposes of this final rule with comment period, 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, 1E, 1F, 3C, 4A, 4B, 4C, 4D, 4E, 4F, 5, 6A, 6B, 6C, 6D, 6E, 6F, 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 1E—National Adjusted Operating Standardized Amounts for “Temporary Relief” Hospitals, Labor/Nonlabor

Table 1F—Adjusted Operating Standardized Amounts for “Temporary Relief” Hospitals in Puerto Rico, Labor/Nonlabor

Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1996 and Hospital Average Hourly Wage for Federal Fiscal Year 1998 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 4F—Puerto Rico Wage Index and Capital Geographic Adjustment Factor (GAF)

Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Arithmetic Mean Length of Stay Points Used in the Prospective Payment System

Table 6A—New Diagnosis Codes

Table 6B—New Procedure Codes

Table 6C—Invalid Diagnosis Codes

Table 6D—Revised Diagnosis Code Titles

Table 6E—Additions to the CC Exclusions List

Table 6F—Deletions to the CC Exclusions List

Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 96 MEDPAR Update 06/97 GROUPER V14.0

Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 96 MEDPAR Update 06/97 GROUPER V15.0

Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) August 1997

Table 8B—Statewide Average Capital Cost-to-Charge Ratios (Case Weighted) August 1997

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
2,776.21	1,128.44	2,732.26	1,110.58

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National .....	2,752.36	1,118.74	2,752.36	1,118.74
Puerto Rico .....	1,323.01	532.55	1,302.07	524.11

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National .....	371.51
Puerto Rico .....	177.57

TABLE 1E.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR “TEMPORARY RELIEF” HOSPITALS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2,790.09	1,134.08	2,745.92	1,116.13

TABLE 1F.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR “TEMPORARY RELIEF” HOSPITALS IN PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National .....	2,766.12	1,124.33	2,766.12	1,124.33
Puerto Rico .....	1,329.63	535.21	1,308.58	526.73



TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1996; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1998 WAGE INDEX

PAGE 1 OF 16

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	01.4825	15.78	010095	00.9801	12.06	030004	01.0972	13.75	040002	01.1973	12.84	040107	01.2002	15.29
010004	00.9676	11.63	010097	00.9079	14.47	030006	01.5610	18.02	040003	01.0165	12.72	040109	01.1817	13.56
010005	01.2091	15.74	010098	01.2489	11.65	030007	01.3193	16.96	040004	01.6332	15.84	040114	01.8852	17.60
010006	01.4496	15.81	010099	01.1682	14.38	030008	02.3016	19.75	040005	01.0097	12.83	040116	01.3704	19.05
010007	01.0711	13.52	010100	01.2651	15.26	030009	01.3458	16.25	040007	01.8429	17.91	040118	01.2209	14.54
010008	01.1607	12.11	010101	01.0607	14.05	030010	01.4373	17.79	040008	01.0327	11.22	040119	01.1544	14.58
010009	01.1291	15.17	010102	01.0052	13.60	030011	01.5237	18.32	040010	01.3176	15.80	040124	01.1341	13.82
010010	01.0737	14.78	010103	01.8566	18.70	030012	01.2358	16.41	040011	00.9916	10.85	040126	00.9510	11.98
010011	01.6409	19.62	010104	01.7062	18.20	030013	01.2716	19.56	040014	01.1905	16.40	040132	00.5050	11.69
010012	01.3020	16.65	010108	01.2341	14.48	030014	01.4919	18.50	040015	01.2941	13.52	050002	01.5829	26.90
010015	01.0958	13.70	010109	01.1081	13.36	030016	01.2453	17.47	040016	01.6692	16.02	050006	01.4566	19.54
010016	01.2749	16.88	010110	01.0520	14.12	030017	01.5067	18.11	040017	01.3301	11.89	050007	01.6171	27.21
010018	00.9370	16.77	010112	01.1867	15.28	030018	01.8034	19.31	040018	01.2275	18.03	050008	01.5161	26.68
010019	01.3226	14.52	010113	01.6944	15.80	030019	01.2819	19.75	040019	01.1380	13.94	050009	01.7352	29.57
010021	01.2524	15.75	010114	01.3212	16.45	030022	01.4840	17.44	040020	01.6069	15.06	050013	01.8362	22.18
010022	01.0183	17.25	010115	00.8516	12.02	030023	01.3266	18.26	040021	01.2523	14.96	050014	01.1738	22.16
010023	01.6476	15.43	010117	00.8712	13.59	030024	01.7156	20.56	040022	01.6750	14.96	050015	01.3849	23.94
010024	01.4637	15.95	010118	01.3326	18.41	030025	01.1285	14.24	040024	01.0635	14.26	050016	01.1630	17.90
010025	01.4608	13.24	010119	00.9630	18.53	030027	01.0548	15.39	040025	00.9145	12.38	050017	02.0535	25.36
010027	00.8284	14.12	010120	00.9715	15.39	030030	01.7308	18.21	040026	01.6072	16.65	050018	01.3072	20.37
010029	01.5709	15.54	010121	01.3052	15.80	030033	01.2274	15.72	040027	01.2943	12.96	050021	01.5250	25.59
010031	01.2310	15.57	010123	01.3119	15.81	030034	01.0042	15.05	040028	01.0928	11.93	050022	01.5018	23.58
010032	00.9628	12.86	010124	01.3732	13.53	030035	01.2917	18.82	040029	01.2903	15.78	050024	01.3075	21.10
010033	01.9450	17.81	010125	01.0057	15.83	030036	01.1928	18.51	040030	00.9400	11.36	050025	01.6846	21.84
010034	01.0855	12.64	010126	01.1881	14.11	030037	02.0983	19.86	040032	00.9578	10.60	050026	01.4621	28.03
010035	01.2533	15.94	010127	01.3531	16.36	030038	01.6478	18.39	040035	00.9687	10.26	050028	01.3819	15.43
010036	01.1301	16.08	010128	01.0004	12.39	030040	01.1504	16.07	040036	01.5195	17.87	050029	01.4308	22.42
010038	01.3196	17.78	010129	01.0814	14.62	030041	00.9799	13.77	040037	01.1132	11.92	050030	01.3244	20.23
010039	01.6833	17.26	010130	01.0341	14.47	030043	01.2492	17.86	040039	01.2296	13.00	050032	01.2349	26.01
010040	01.5892	18.14	010131	01.3381	18.57	030044	01.0792	16.15	040040	00.9709	14.02	050033	01.4525	26.08
010043	01.1319	10.75	010134	00.8561	10.10	030046	00.9632	18.53	040041	01.3631	15.91	050036	01.6825	19.57
010044	01.1616	14.54	010137	01.2998	16.93	030047	00.9556	20.45	040042	01.2352	14.76	050038	01.4592	28.87
010045	01.1903	13.53	010138	00.9272	10.96	030049	00.9882	14.67	040044	01.0303	11.22	050039	01.6258	21.59
010046	01.5214	16.79	010139	01.6887	19.60	030054	00.8543	12.51	040045	01.0246	15.07	050040	01.2705	22.01
010047	00.9795	10.30	010143	01.2910	16.04	030055	01.2188	16.56	040047	01.1375	15.13	050042	01.3518	20.78
010049	01.1616	14.77	010144	01.3015	16.55	030059	01.3958	18.88	040048	01.1836	14.02	050043	01.6121	30.35
010050	01.1221	13.88	010145	01.3023	15.68	030060	01.1372	16.21	040050	01.1593	12.27	050045	01.2807	18.28
010051	00.8513	09.93	010146	01.1750	15.81	030061	01.6808	17.13	040051	01.0998	12.97	050046	01.2665	21.20
010052	01.0489	09.88	010148	01.0002	12.52	030062	01.2672	15.94	040053	01.1245	13.04	050047	01.5727	31.60
010053	01.0767	13.31	010149	01.3649	16.73	030064	01.7564	18.53	040054	01.0611	12.44	050051	01.0491	17.04
010054	01.2094	17.02	010150	01.1059	16.28	030065	01.7363	19.65	040055	01.4707	15.29	050054	01.2156	20.60
010055	01.4429	16.99	010152	01.4925	17.56	030067	01.0534	15.78	040058	01.0324	13.64	050055	01.4024	27.81
010056	01.4318	18.78	010155	01.0502	06.99	030068	01.0784	15.77	040060	00.9853	10.20	050056	01.3688	29.73
010058	01.0898	12.93	020001	01.5629	26.31	030069	01.3333	20.13	040062	01.6840	15.85	050057	01.5572	19.64
010059	01.1095	14.92	020002	01.2556	23.88	030071	00.9698	.....	040064	01.0541	11.01	050058	01.4522	21.47
010061	01.1895	15.20	020004	01.1115	25.46	030072	00.8317	.....	040066	01.2232	15.86	050060	01.5351	20.46
010062	01.0358	14.36	020005	00.8208	25.53	030073	01.0031	.....	040067	01.0943	12.18	050061	01.4652	21.87
010064	01.8034	18.52	020006	01.2585	25.07	030074	00.9004	.....	040069	01.1556	14.87	050063	01.4029	21.02
010065	01.3457	15.39	020007	01.0349	22.76	030075	00.8568	.....	040070	00.9323	13.68	050065	01.6381	22.82
010066	00.9479	10.41	020008	01.1380	28.97	030076	01.0931	.....	040071	01.6768	15.73	050066	01.2678	20.99
010068	01.3086	16.70	020009	00.9789	21.88	030077	00.8398	.....	040072	01.1038	13.94	050067	01.3721	21.53
010069	01.1938	13.10	020010	01.0878	26.44	030078	01.1397	.....	040074	01.3224	14.39	050068	01.0669	18.92
010072	01.2125	13.45	020011	00.9374	22.61	030079	00.8800	.....	040075	01.1151	11.73	050069	01.6487	24.14
010073	01.0216	10.41	020012	01.2409	24.23	030080	01.5987	21.05	040076	01.0521	16.33	050070	01.2795	33.06
010078	01.2745	16.51	020013	01.0509	24.21	030083	01.3190	21.06	040077	00.9301	11.30	050071	01.3314	32.76
010079	01.2576	15.43	020014	01.1842	22.13	030084	01.0306	.....	040078	01.5579	17.77	050072	01.3261	32.63
010080	01.0093	11.89	020017	01.6662	24.50	030085	01.5587	23.63	040080	01.1206	14.65	050073	01.3306	32.62
010081	01.8574	14.84	020018	00.7773	.....	030086	01.3371	18.01	040081	00.9499	10.75	050074	01.3610	38.56
010083	01.0102	15.43	020019	00.7868	.....	030087	01.6346	18.93	040082	01.1559	14.31	050075	01.3921	32.75
010084	01.4836	17.66	020020	00.7621	.....	030088	01.4134	19.07	040084	01.1216	14.18	050076	01.8221	32.11
010085	01.2703	17.11	020021	00.9121	.....	030089	01.5854	19.68	040085	01.1894	14.81	050077	01.5831	22.86
010086	01.0808	13.70	020024	01.0845	23.72	030092	01.6117	20.36	040088	01.4011	14.36	050078	01.2955	24.76
010087	01.8483	18.51	020025	00.9808	24.32	030093	01.4070	17.81	040090	00.9226	13.54	050079	01.5781	29.34
010089	01.2615	15.60	020026	01.3051	.....	030094	01.3544	18.46	040091	01.2623	19.82	050080	01.3947	20.59
010090	01.5853	17.57	020027	01.0980	.....	030095	01.1437	18.24	040093	01.0361	10.11	050081	01.7055	22.17
010091	01.0099	14.57	030001	01.3356	20.07	030098	00.9923	.....	040100	01.3209	13.29	050082	01.5529	21.60
010092	01.4076	16.61	030002	01.8070	21.04	030099	00.9435	.....	040105	01.0256	13.29	050084	01.6782	23.55
010094	01.2351	15.11	030003	01.9769	20.37	040001	01.1189	12.95	040106	01.2151	14.08	050088	01.0377	23.02

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
050089	01.4267	20.50	050188	01.3813	26.63	050298	01.2567	21.05	050421	01.3719	24.84	050546	00.7784	22.14
050090	01.2947	23.06	050189	01.0628	21.87	050299	01.3551	22.62	050423	01.0305	19.52	050547	00.8743	21.94
050091	01.1912	22.02	050191	01.4969	20.99	050300	01.3966	22.60	050424	01.8245	22.86	050549	01.7309	25.79
050092	00.9918	15.98	050192	01.1894	18.17	050301	01.3386	22.43	050425	01.3271	33.00	050550	01.5817	23.60
050093	01.5676	23.44	050193	01.3103	23.13	050302	01.3707	27.57	050426	01.3357	22.53	050551	01.2992	24.63
050095	00.7794	29.00	050194	01.2778	28.00	050305	01.5747	30.80	050427	00.8258	17.79	050552	01.2447	21.99
050096	01.3087	19.75	050195	01.6036	32.79	050307	01.3606	21.59	050430	00.8488	17.06	050557	01.5742	21.58
050097	01.4627	18.53	050196	01.4084	17.33	050308	01.5170	30.55	050431	01.0903	19.94	050559	01.4058	24.92
050099	01.4724	23.23	050197	01.8388	28.44	050309	01.3687	24.92	050432	01.6738	24.04	050560	01.4220	.....
050100	01.7325	28.66	050204	01.5056	24.18	050310	01.2220	19.66	050433	01.1020	17.37	050561	01.1895	32.17
050101	01.4330	28.42	050205	01.3804	17.74	050312	01.9988	24.11	050434	01.2082	20.09	050564	01.1459	17.84
050102	01.4247	18.79	050207	01.2943	19.79	050313	01.2235	21.97	050435	01.2970	23.02	050565	01.1268	21.68
050103	01.6353	26.99	050208	00.9009	28.76	050315	01.2143	19.97	050436	00.9665	14.81	050566	00.9128	23.47
050104	01.5264	22.61	050211	01.3133	30.44	050317	01.3259	18.92	050438	01.7470	25.46	050567	01.6154	24.19
050107	01.4795	20.75	050213	01.5197	21.12	050320	01.3153	27.83	050440	01.3246	21.46	050568	01.3628	19.64
050108	01.7215	21.54	050214	01.4983	20.90	050324	01.9108	25.52	050441	02.0088	28.23	050569	01.3434	23.05
050109	02.4142	23.68	050215	01.5327	28.12	050325	01.2376	21.42	050443	00.9266	16.07	050570	01.7746	23.41
050110	01.3004	19.33	050217	01.3523	20.45	050327	01.5961	22.32	050444	01.3956	23.98	050571	01.4447	22.36
050111	01.3067	19.21	050219	01.1281	20.76	050328	01.5403	30.01	050446	00.9652	21.02	050573	01.6566	23.85
050112	01.5376	24.56	050222	01.5805	30.02	050329	01.3549	22.38	050447	01.1512	19.37	050575	01.1815	.....
050113	01.3358	28.10	050224	01.6094	22.29	050331	01.4005	26.07	050448	01.2546	20.75	050577	01.4076	19.70
050114	01.4946	20.53	050225	01.4968	20.67	050333	01.1112	19.36	050449	01.3307	20.38	050578	01.2150	24.65
050115	01.5823	20.21	050226	01.3707	23.58	050334	01.7852	31.52	050454	01.8478	27.56	050579	01.5024	27.75
050116	01.4891	23.17	050228	01.3742	27.09	050335	01.4100	21.78	050455	01.8811	21.07	050580	01.3773	26.95
050117	01.3288	20.76	050230	01.2962	25.94	050336	01.4158	20.42	050456	01.1970	20.18	050581	01.3786	24.80
050118	01.2326	23.37	050231	01.6983	24.69	050337	01.1495	.....	050457	01.9759	28.16	050583	01.6338	23.49
050121	01.3924	19.17	050232	01.7470	25.52	050342	01.3596	18.03	050459	01.2153	28.95	050584	01.3161	19.70
050122	01.7008	25.77	050233	01.2032	27.97	050343	01.0652	16.57	050464	01.8583	23.28	050585	01.3144	25.79
050124	01.2435	19.10	050234	01.3174	22.79	050348	01.6833	23.57	050468	01.4947	16.95	050586	01.3705	21.47
050125	01.3780	27.26	050235	01.6162	27.60	050349	00.9539	14.75	050469	01.1172	18.34	050588	01.3156	27.41
050126	01.4894	23.86	050236	01.4925	23.47	050350	01.3637	23.74	050470	01.1185	18.14	050589	01.3256	24.78
050127	01.3466	23.71	050238	01.5330	22.98	050351	01.4729	25.97	050471	01.8600	22.75	050590	01.4116	23.26
050128	01.6460	23.71	050239	01.5401	23.40	050352	01.3231	23.99	050476	01.3719	21.89	050591	01.3412	24.97
050129	01.6057	20.66	050240	01.4210	25.28	050353	01.6090	24.23	050477	01.5088	26.49	050592	01.3612	10.96
050131	01.2856	30.45	050241	01.1957	25.59	050355	00.9765	14.97	050478	00.9877	20.58	050593	01.2930	29.77
050132	01.3951	24.69	050242	01.4391	28.77	050357	01.6573	22.99	050481	01.4382	25.47	050594	01.7808	24.64
050133	01.3417	21.73	050243	01.5626	20.95	050359	01.3024	19.88	050482	00.9894	17.87	050597	01.2691	22.40
050135	01.4325	26.20	050245	01.4680	22.03	050360	01.4636	31.81	050483	01.2210	22.32	050598	01.3740	28.26
050136	01.3721	22.84	050248	01.2419	24.55	050366	01.4377	20.59	050485	01.6259	22.39	050599	01.6899	23.22
050137	01.4279	33.54	050251	01.0788	18.41	050367	01.2687	27.02	050486	01.4102	24.19	050601	01.5778	29.22
050138	01.8973	33.14	050253	00.4249	18.80	050369	01.3261	23.77	050488	01.3907	29.71	050603	01.4323	20.95
050139	01.3177	32.31	050254	01.1834	20.57	050373	01.4652	23.73	050491	01.2715	24.39	050604	01.5612	32.65
050140	01.3995	31.70	050256	01.7909	19.46	050376	01.5358	29.05	050492	01.3788	21.96	050607	01.1803	21.26
050144	01.6110	25.92	050257	01.1487	21.76	050377	01.0097	16.14	050494	01.3412	24.67	050608	01.3296	18.75
050145	01.3651	30.22	050260	00.9841	19.43	050378	01.1780	21.42	050496	01.7003	32.52	050609	01.4420	33.78
050146	01.3676	.....	050261	01.2252	18.54	050379	01.2054	16.93	050497	00.7910	.....	050613	01.1557	19.90
050147	00.7180	22.54	050262	01.9975	26.95	050380	01.6598	29.85	050498	01.2875	22.93	050615	01.6623	25.67
050148	01.0774	19.07	050264	01.4160	28.04	050382	01.4271	22.15	050502	01.6469	21.94	050616	01.3571	21.21
050149	01.5033	22.14	050267	01.6376	27.72	050385	01.3306	23.94	050503	01.3565	23.35	050618	01.1709	20.05
050150	01.2365	22.69	050270	01.3329	22.02	050388	00.9186	18.08	050506	01.3762	24.67	050623	01.1288	23.78
050152	01.4223	25.51	050272	01.3322	20.79	050390	01.2318	22.09	050510	01.3492	32.12	050624	01.3769	22.51
050153	01.6645	27.98	050274	00.9860	19.47	050391	01.3459	23.34	050512	01.5448	33.56	050625	01.6065	24.95
050155	01.1105	25.69	050276	01.1316	26.93	050392	00.9991	18.23	050515	01.3429	31.82	050630	01.4308	21.07
050158	01.3725	25.37	050277	01.5097	19.57	050393	01.4471	23.72	050516	01.5785	24.92	050633	01.2932	21.92
050159	01.3833	21.88	050278	01.6190	22.89	050394	01.6194	20.12	050517	01.3047	20.14	050635	01.3192	32.09
050167	01.2762	22.00	050279	01.2257	21.00	050396	01.6165	22.02	050522	01.3442	31.46	050636	01.4725	22.11
050168	01.5431	23.71	050280	01.6873	24.62	050397	01.0470	18.22	050523	01.3228	28.96	050638	01.0334	19.35
050169	01.5183	22.75	050281	01.4700	15.36	050401	01.1317	19.06	050526	01.3231	24.45	050641	01.1948	18.27
050170	01.5727	21.33	050282	01.3631	23.18	050404	01.1069	16.60	050528	01.3531	21.06	050643	00.7614	.....
050172	01.2438	18.44	050283	01.1136	26.91	050406	01.0309	15.92	050531	01.1935	20.24	050644	00.8951	22.79
050173	01.3490	20.24	050286	00.9444	17.82	050407	01.3244	28.37	050534	01.4117	24.32	050660	01.3514	.....
050174	01.6348	29.60	050289	01.8946	26.67	050410	01.0841	16.71	050535	01.4595	22.87	050661	00.8437	20.15
050175	01.3591	27.08	050290	01.6535	20.42	050411	01.3692	31.16	050537	01.2746	21.53	050662	00.8759	22.31
050177	01.2483	20.35	050291	01.2360	25.51	050414	01.3039	24.60	050539	01.2817	22.25	050663	01.1244	25.63
050179	01.3109	19.55	050292	01.0631	21.76	050417	01.3222	20.22	050541	01.5423	32.88	050666	00.8852	20.95
050180	01.6207	31.19	050293	01.1601	20.14	050418	01.3206	22.71	050542	01.2228	14.92	050667	00.9877	25.58
050183	01.1383	20.36	050295	01.4631	21.39	050419	01.3474	20.46	050543	00.9027	21.76	050668	01.1152	28.90
050186	01.3308	23.83	050296	01.2093	22.43	050420	01.5283	23.03	050545	00.7751	21.20	050670	00.8585	.....

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
050674	01.2985	30.04	060047	01.1034	11.84	080004	01.3471	18.69	100071	01.3332	16.21	100167	01.4606	19.21
050675	01.8407	17.60	060049	01.4796	17.34	080005	01.3302	18.53	100072	01.3115	16.55	100168	01.3946	20.23
050676	00.9699	14.37	060050	01.2714	14.36	080006	01.3735	19.73	100073	01.7705	21.99	100169	01.8544	16.46
050677	01.4370	34.53	060052	01.0914	13.04	080007	01.4046	17.29	100075	01.5930	18.14	100170	01.4624	16.86
050678	01.1143	24.44	060053	01.0018	14.81	090001	01.5345	21.36	100076	01.3531	16.80	100172	01.3777	13.93
050680	01.2283	26.19	060054	01.3927	17.69	090002	01.2858	19.74	100077	01.4074	16.10	100173	01.6794	16.87
050682	00.9226	15.55	060056	00.9237	14.05	090003	01.3454	20.56	100078	01.1916	16.86	100174	01.5820	20.80
050684	01.2016	21.85	060057	01.0693	21.47	090004	01.8143	23.95	100079	01.6005	20.49	100175	01.2618	16.65
050685	01.2131	28.69	060058	00.9407	13.87	090005	01.3518	17.58	100080	01.6309	23.98	100176	02.1175	22.94
050686	01.3154	32.30	060060	00.8480	12.53	090006	01.3509	19.77	100081	01.0598	17.93	100177	01.3710	18.76
050688	01.2787	27.87	060062	00.9361	14.11	090007	01.2828	20.38	100082	01.4572	17.52	100179	01.6384	19.38
050689	01.3938	29.96	060063	00.9516	11.82	090008	01.5419	23.59	100083	01.3327	17.98	100180	01.3734	19.01
050690	01.5106	32.26	060064	01.4668	20.71	090010	01.1704	22.39	100084	01.4579	18.10	100181	01.2699	19.10
050693	01.6216	28.58	060065	01.3170	21.03	090011	01.9805	25.13	100085	01.4188	18.83	100183	01.3911	19.62
050694	01.5184	22.78	060066	00.9696	12.79	090015	01.1274	.....	100086	01.3132	22.05	100187	01.4032	18.31
050695	01.0993	25.42	060068	01.1323	13.46	100001	01.5737	18.08	100087	01.8737	21.91	100189	01.4251	20.96
050696	02.1091	28.17	060070	01.0209	16.03	100002	01.4879	19.10	100088	01.7306	17.43	100191	01.3109	18.63
050697	01.2473	18.05	060071	01.2383	14.39	100004	01.0696	13.13	100090	01.4094	16.46	100199	01.4361	18.30
050698	00.8012	.....	060073	00.9705	15.25	100006	01.6454	19.01	100092	01.4490	16.27	100200	01.3447	22.72
050699	00.6001	23.01	060075	01.3327	21.20	100007	01.8737	19.63	100093	01.5386	15.36	100203	01.3411	19.70
050700	01.4904	32.32	060076	01.4838	16.86	100008	01.7737	20.00	100098	01.1592	18.36	100204	01.6730	21.27
050701	01.3580	29.00	060085	00.9510	10.30	100009	01.5015	19.22	100099	01.2974	13.12	100206	01.4404	19.98
050702	00.9243	19.02	060087	01.7036	21.04	100010	01.5351	22.50	100102	01.0900	17.62	100207	01.0774	20.37
050704	01.0845	20.41	060088	01.0231	13.86	100012	01.6899	16.77	100103	01.0706	15.41	100208	01.5784	16.92
050707	01.0506	25.90	060090	00.8731	14.19	100014	01.4574	18.79	100105	01.4631	18.87	100209	01.6095	18.40
050708	00.9919	27.17	060096	01.0859	21.65	100015	01.3414	18.06	100106	01.1228	16.92	100210	01.6357	19.34
050709	01.3400	20.44	060100	01.4754	21.75	100017	01.5625	16.86	100107	01.4044	18.26	100211	01.3504	18.47
050710	01.3425	.....	060103	01.3627	22.66	100018	01.3521	20.31	100108	01.0646	13.74	100212	01.6492	18.75
050711	02.0900	.....	060104	01.2956	21.84	100019	01.5370	18.40	100109	01.3642	18.44	100213	01.5697	18.46
050712	01.5251	.....	060107	01.0652	.....	100020	01.3432	20.82	100110	01.4230	17.14	100217	01.2974	.....
050713	00.8063	.....	070001	01.7289	26.42	100022	01.8823	23.14	100112	01.0152	12.61	100220	01.9425	18.82
050714	01.3579	.....	070002	01.7836	26.03	100023	01.3698	16.89	100113	02.1189	19.34	100221	01.6934	19.65
050715	02.1945	.....	070003	01.1170	25.30	100024	01.4033	19.26	100114	01.4437	19.70	100222	01.3988	18.63
060001	01.6077	20.29	070004	01.2533	23.33	100025	01.8800	16.92	100117	01.3112	18.77	100223	01.4942	17.42
060003	01.2643	18.34	070005	01.4033	25.79	100026	01.7115	16.88	100118	01.2401	17.18	100224	01.4283	21.35
060004	01.3542	20.06	070006	01.3414	28.36	100027	00.9127	14.31	100121	01.3095	15.75	100225	01.4063	20.63
060006	01.1533	16.89	070007	01.4048	23.69	100028	01.2619	17.30	100122	01.3639	16.54	100226	01.4196	17.73
060007	01.2498	14.98	070008	01.2617	23.02	100029	01.3384	19.04	100124	01.3668	18.33	100228	01.3737	20.28
060008	01.0677	14.75	070009	01.3499	23.68	100030	01.4021	18.54	100125	01.2986	16.50	100229	01.3312	16.87
060009	01.4393	19.81	070010	01.6244	23.63	100032	01.9493	18.08	100126	01.4869	19.41	100230	01.4397	19.70
060010	01.5808	21.74	070011	01.3465	25.98	100034	01.7164	18.88	100127	01.6995	18.39	100231	01.6894	16.90
060011	01.2815	20.17	070012	01.2220	23.53	100035	01.6455	17.26	100128	02.1390	21.19	100232	01.2868	18.29
060012	01.4711	17.66	070013	01.3776	26.05	100038	01.5655	21.34	100129	01.2599	17.91	100234	01.5399	19.22
060013	01.3100	19.42	070015	01.4402	24.61	100039	01.5702	21.69	100130	01.2298	19.48	100235	01.4441	18.19
060014	01.7947	22.41	070016	01.3413	24.32	100040	01.6728	17.79	100131	01.3976	19.68	100236	01.4010	18.30
060015	01.5818	20.04	070017	01.3508	24.82	100043	01.4510	15.12	100132	01.3755	15.46	100237	02.1834	21.32
060016	01.1928	13.66	070018	01.4211	27.48	100044	01.4336	19.86	100134	01.0399	14.63	100238	01.5873	17.06
060018	01.2683	16.89	070019	01.1945	25.50	100045	01.4240	16.32	100135	01.6183	16.63	100239	01.4590	19.01
060020	01.6399	16.15	070020	01.3551	25.82	100046	01.4939	18.40	100137	01.3818	21.08	100240	00.9266	19.10
060022	01.6763	18.46	070021	01.2943	25.42	100047	01.8198	18.47	100138	00.9577	12.12	100241	00.9718	13.68
060023	01.6681	18.98	070022	01.8465	24.06	100048	00.9769	12.80	100139	01.0680	14.97	100242	01.4999	16.47
060024	01.7950	23.68	070024	01.3757	24.79	100049	01.3204	18.49	100140	01.1672	17.64	100243	01.4291	17.93
060027	01.6711	20.38	070025	01.8612	25.92	100050	01.2284	15.21	100142	01.3319	18.12	100244	01.4738	18.36
060028	01.5301	20.69	070026	01.1913	25.91	100051	01.1799	17.96	100144	01.2106	15.29	100246	01.4064	21.86
060029	00.8982	11.90	070027	01.2398	25.65	100052	01.3791	15.15	100145	01.3341	19.01	100248	01.7042	17.76
060030	01.2955	18.79	070028	01.5045	24.91	100053	01.3588	17.17	100146	01.0803	16.01	100249	01.3760	19.41
060031	01.6946	18.97	070029	01.4122	22.06	100054	01.3015	17.75	100147	01.0947	13.18	100252	01.2387	19.72
060032	01.5169	17.36	070030	01.3122	26.51	100055	01.4205	17.02	100150	01.4309	19.30	100253	01.4817	19.73
060033	01.0987	12.53	070031	01.2814	22.20	100056	01.5137	18.89	100151	01.7824	19.37	100254	01.6114	17.99
060034	01.4683	22.34	070033	01.3695	26.22	100057	01.3921	16.01	100154	01.6732	19.96	100255	01.2325	19.80
060036	01.0990	14.70	070034	01.3677	27.52	100060	01.8118	15.28	100156	01.1559	19.34	100256	01.9087	18.78
060037	01.0476	13.16	070035	01.4409	23.11	100061	01.4753	20.71	100157	01.6173	20.46	100258	01.6458	21.27
060038	01.0363	12.96	070036	01.6080	27.46	100062	01.7555	17.75	100159	00.9163	12.79	100259	01.4904	17.31
060041	00.9054	14.99	070038	00.6569	.....	100063	01.3311	16.56	100160	01.2200	18.48	100260	01.4650	20.13
060042	01.1304	16.83	070039	00.9101	.....	100067	01.4572	16.77	100161	01.7317	20.07	100262	01.4430	18.60
060043	00.9371	13.31	080001	01.6742	24.79	100068	01.3780	16.37	100162	01.4422	17.78	100263	01.4125	17.42
060044	01.2746	16.98	080002	01.2519	17.15	100069	01.3870	17.95	100165	01.1791	17.55	100264	01.3958	17.27
060046	01.0985	16.64	080003	01.3456	20.79	100070	01.4506	18.13	100166	01.5356	20.44	100265	01.3923	14.58

## PAGE 4 OF 16

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
100266	01.3567	16.53	110066	01.5392	18.78	110163	01.4700	18.54	130010	00.9235	15.97	140043	01.2331	17.04
100267	01.3515	15.67	110069	01.2619	19.05	110164	01.4737	19.49	130011	01.3075	17.11	140045	01.0692	13.11
100268	01.2095	23.23	110070	01.0212	12.19	110165	01.3694	18.35	130012	01.0283	20.53	140046	01.3163	14.79
100269	01.4373	19.39	110071	01.1784	10.43	110166	01.5345	17.45	130013	01.2638	17.73	140047	01.1477	14.21
100270	00.8362	14.31	110072	01.0009	12.37	110168	01.7282	21.92	130014	01.3868	16.50	140048	01.4278	22.08
100271	01.7347	20.00	110073	01.2226	13.04	110169	01.1751	21.80	130015	00.8545	13.50	140049	01.5605	20.48
100275	01.4042	21.30	110074	01.4618	18.47	110171	01.4770	23.10	130016	00.9422	17.37	140051	01.5469	19.42
100276	01.2982	22.26	110075	01.3606	15.50	110172	01.4150	19.98	130017	01.1854	12.16	140052	01.3706	18.11
100277	01.0751	13.03	110076	01.4355	19.08	110174	00.9636	13.19	130018	01.7030	17.05	140053	01.9782	18.04
100279	01.3599	18.73	110078	01.7043	20.66	110176	01.4585	20.47	130019	01.1185	14.30	140054	01.3506	24.77
100280	01.3734	16.76	110079	01.4037	19.53	110177	01.5652	26.92	130021	01.0006	11.89	140055	01.0313	12.61
100281	01.2594	20.52	110080	01.2684	18.15	110178	01.4061	17.41	130022	01.2169	16.88	140058	01.2470	15.74
100282	01.1224	14.86	110082	02.0407	20.53	110179	01.2257	21.81	130024	01.1092	16.52	140059	01.1860	13.96
110001	01.3100	17.26	110083	01.7837	20.63	110181	00.9756	12.32	130025	01.0874	14.90	140061	01.0964	14.14
110002	01.3087	15.75	110086	01.2402	16.50	110183	01.4248	19.97	130026	01.1228	18.80	140062	01.2675	25.30
110003	01.3377	12.66	110087	01.3393	19.53	110184	01.2670	18.82	130027	00.9792	17.34	140063	01.4672	24.56
110004	01.3711	14.62	110088	00.9425	12.52	110185	01.1241	12.44	130028	01.2707	18.86	140064	01.3583	17.02
110005	01.1453	19.77	110089	01.2363	16.07	110186	01.3818	16.69	130029	01.0342	15.77	140065	01.5866	23.89
110006	01.3772	17.90	110091	01.3388	20.17	110187	01.3395	18.27	130030	01.0073	17.62	140066	01.3048	14.92
110007	01.5469	15.29	110092	01.1788	12.84	110188	01.4320	18.16	130031	01.0779	12.21	140067	01.7828	18.84
110008	01.3463	16.25	110093	00.9510	12.42	110189	01.1175	18.39	130034	00.9862	17.80	140068	01.2205	18.58
110009	00.9912	13.65	110094	01.0040	11.90	110190	01.1014	14.95	130035	01.0837	19.75	140069	01.0061	14.69
110010	02.1198	21.49	110095	01.3281	14.45	110191	01.3767	18.34	130036	01.3041	13.11	140070	01.2445	16.86
110011	01.2429	16.73	110096	01.1410	13.95	110192	01.4551	18.88	130037	01.1847	16.09	140074	00.9695	14.23
110013	01.1032	14.97	110097	01.0230	13.43	110193	01.2501	17.43	130043	01.0073	15.45	140075	01.4790	20.98
110014	01.0237	14.25	110098	01.0524	12.75	110194	01.0069	13.81	130044	01.1645	12.49	140077	01.1879	16.68
110015	01.2373	16.42	110100	01.0948	12.76	110195	01.0547	11.35	130045	01.0068	12.07	140079	01.2407	19.72
110016	01.3097	14.79	110101	01.1680	11.58	110198	01.3714	24.04	130048	01.0818	13.31	140080	01.6437	21.22
110017	00.8642	13.54	110103	00.9614	10.15	110200	01.8297	17.05	130049	01.2812	18.00	140081	01.0873	13.46
110018	01.1504	17.79	110104	01.0884	14.01	110201	01.5086	17.52	130054	00.8937	17.61	140082	01.4347	19.59
110020	01.3479	16.21	110105	01.1841	14.60	110203	00.9967	17.25	130056	00.8733	11.05	140083	01.2436	17.22
110023	01.3398	18.43	110107	01.8230	18.50	110204	00.8066	14.34	130058	00.7670	14.21	140084	01.2282	18.60
110024	01.4870	16.41	110108	00.9444	11.26	110205	01.1252	17.06	130060	01.3323	19.41	140086	01.0865	14.36
110025	01.4319	17.54	110109	01.0931	13.63	110207	01.0857	14.02	130061	00.9433	.....	140087	01.3968	16.15
110026	01.2107	14.59	110111	01.0973	16.55	110208	00.9420	16.97	130062	00.6589	.....	140088	01.6745	24.52
110027	01.0937	13.41	110112	01.0839	11.88	110209	00.7487	16.39	140001	01.2820	14.89	140089	01.2535	16.59
110028	01.6530	19.36	110113	01.0936	12.40	110211	00.8898	.....	140002	01.3159	18.78	140090	01.5327	27.83
110029	01.4107	18.29	110114	01.0737	14.35	110212	01.1691	.....	140003	01.0178	16.52	140091	01.8062	17.60
110030	01.3315	17.58	110115	01.6022	18.84	110213	00.5284	.....	140004	01.1142	14.34	140093	01.2077	17.01
110031	01.3091	19.99	110118	00.9737	13.49	120001	01.8272	25.27	140005	00.9615	09.56	140094	01.3943	19.46
110032	01.2694	12.68	110120	01.0244	12.28	120002	01.1994	21.80	140007	01.4823	21.10	140095	01.4094	20.09
110033	01.4346	19.79	110121	01.2007	12.83	120003	01.0674	22.69	140008	01.5818	19.43	140097	00.9670	12.49
110034	01.6452	17.89	110122	01.3894	16.17	120004	01.2661	21.72	140010	01.3786	22.90	140100	01.2485	18.78
110035	01.4345	20.02	110124	01.0847	15.63	120005	01.2518	18.94	140011	01.1969	16.24	140101	01.2227	18.49
110036	01.6988	18.37	110125	01.2361	15.97	120006	01.3096	24.62	140012	01.2719	18.60	140102	01.1121	14.37
110037	01.1697	11.02	110127	00.9362	18.26	120007	01.6811	20.90	140013	01.5844	15.59	140103	01.3623	16.25
110038	01.4667	15.98	110128	01.1766	19.01	120009	01.0424	20.40	140014	01.1687	16.19	140105	01.3043	20.28
110039	01.3795	18.62	110129	01.7851	15.69	120010	01.8716	22.71	140015	01.2876	14.20	140107	01.0708	11.82
110040	01.1215	15.52	110130	01.1632	11.11	120011	01.2451	31.56	140016	00.9556	11.89	140108	01.3553	21.81
110041	01.2723	15.82	110132	01.1253	12.99	120012	00.8969	20.20	140018	01.3988	19.38	140109	01.1761	13.08
110042	01.2739	14.92	110134	00.8917	12.19	120014	01.4437	22.59	140019	01.1687	12.65	140110	01.1910	17.31
110043	01.7887	16.83	110135	01.2956	14.04	120015	00.9237	22.77	140024	01.0067	13.99	140112	01.2391	13.42
110044	01.1492	14.51	110136	01.1900	17.74	120016	00.8833	24.58	140025	01.0608	16.65	140113	01.5191	17.90
110045	01.3219	21.18	110140	01.0284	16.75	120018	00.9540	20.92	140026	01.2846	15.90	140114	01.3524	19.55
110046	01.3460	17.14	110141	00.9531	12.29	120019	01.2500	19.16	140027	01.3405	16.37	140115	01.3228	19.66
110048	01.3732	13.59	110142	00.9502	11.78	120021	00.9273	18.74	140029	01.3589	21.43	140116	01.3016	20.98
110049	01.1274	14.58	110143	01.4557	20.77	120022	01.7000	20.74	140030	01.8079	21.56	140117	01.5393	20.42
110050	01.2024	13.35	110144	01.1608	17.41	120026	01.2756	24.26	140031	01.2719	13.76	140118	01.6536	23.74
110051	01.0340	16.68	110146	01.1436	15.09	120027	01.5804	23.43	140032	01.2657	16.71	140119	01.7239	23.27
110052	01.1173	10.83	110149	01.1587	16.88	120028	01.0146	.....	140033	01.2783	19.82	140120	01.4592	15.45
110054	01.3574	16.85	110150	01.3259	17.62	130001	01.0126	15.75	140034	01.1745	17.31	140121	01.5391	11.54
110056	01.1733	14.40	110152	01.1022	14.44	130002	01.4330	15.30	140035	00.9305	11.22	140122	01.6581	21.47
110059	01.3155	13.38	110153	01.0153	19.87	130003	01.3679	19.28	140036	01.2088	16.60	140124	01.2722	23.81
110061	01.0721	12.61	110154	00.8230	13.98	130005	01.5281	19.70	140037	01.1042	12.49	140125	01.3597	15.71
110062	00.8945	10.97	110155	01.0562	13.62	130006	01.8420	17.59	140038	01.1785	16.23	140127	01.3922	17.32
110063	01.1481	12.76	110156	01.0376	12.34	130007	01.6306	18.20	140040	01.2942	14.72	140128	01.1103	14.92
110064	01.3339	17.46	110161	01.3272	21.00	130008	01.0035	11.00	140041	01.3305	16.02	140129	01.2226	14.94
110065	01.0391	13.40	110162	00.8006	.....	130009	00.9620	10.74	140042	01.0137	14.16	140130	01.3646	21.74

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
140132	01.4451	19.03	140230	00.9258	10.84	150043	01.0838	21.96	150127	01.0241	13.90	160073	00.9761	12.18
140133	01.3392	21.21	140231	01.5927	20.80	150044	01.2610	18.32	150128	01.2162	19.14	160074	01.0986	14.36
140135	01.3065	14.91	140233	01.7888	18.47	150045	01.0998	15.68	150129	01.2317	22.47	160075	01.1442	13.73
140137	01.0630	14.58	140234	01.2898	16.47	150046	01.5284	15.90	150130	01.3599	16.61	160076	01.0731	15.50
140138	00.9835	12.15	140236	00.9644	13.24	150047	01.5639	22.77	150132	01.4214	19.24	160077	01.1723	10.60
140139	01.1361	14.70	140239	01.6836	18.73	150048	01.2057	16.52	150133	01.2178	14.12	160079	01.4096	16.28
140140	01.1398	13.06	140240	01.4851	20.44	150049	01.1663	13.29	150134	01.1751	17.17	160080	01.2022	16.06
140141	01.2514	13.76	140242	01.6293	21.68	150050	01.2047	14.73	150136	01.0683	18.42	160081	01.0670	14.77
140143	01.1478	16.64	140245	01.1694	14.47	150051	01.4788	18.34	150138	01.2073	17.33	160082	01.8242	17.03
140144	01.10291	17.83	140246	01.0832	12.05	150052	01.1504	14.14	150139	01.4731	14.62	160083	01.6850	18.37
140145	01.1791	15.14	140250	01.3797	21.98	150053	01.0508	18.10	160001	01.2891	17.61	160085	01.0802	11.50
140146	01.0442	16.38	140251	01.3829	19.16	150054	01.1554	12.55	160002	01.1697	13.74	160086	00.9984	13.93
140147	01.2801	16.29	140252	01.4473	23.41	150056	01.7839	22.38	160003	01.0195	12.61	160088	01.1633	12.75
140148	01.8518	17.11	140253	01.4156	17.49	150057	02.3206	18.94	160005	01.1311	13.80	160089	01.1873	14.80
140150	01.6279	25.55	140258	01.5772	20.93	150058	01.7195	19.57	160007	01.0323	12.37	160090	00.9797	15.58
140151	01.1103	16.64	140271	01.0850	13.01	150059	01.4121	19.81	160008	01.1305	14.02	160091	01.0810	10.80
140152	01.1184	22.91	140275	01.2390	16.50	150060	01.1657	14.93	160009	01.2378	13.73	160092	01.0879	13.23
140155	01.2969	16.96	140276	01.9603	21.37	150061	01.2378	15.73	160012	01.0294	13.15	160093	01.2058	13.86
140158	01.3077	21.36	140280	01.3142	17.16	150062	01.0996	16.55	160013	01.2266	15.35	160094	01.1302	14.17
140160	01.2232	15.93	140281	01.6474	20.89	150063	01.0938	17.57	160014	01.0125	12.59	160095	01.0915	12.79
140161	01.2168	17.76	140285	01.2802	15.37	150064	01.2141	15.84	160016	01.2505	16.32	160097	01.1409	13.00
140162	01.7542	17.96	140286	01.1253	17.93	150065	01.1631	18.49	160018	00.9298	13.27	160098	00.9679	14.81
140164	01.3924	17.44	140288	01.8518	23.17	150066	00.9993	15.93	160020	01.0718	12.38	160099	00.9671	11.69
140165	01.1383	12.90	140289	01.3190	15.79	150067	01.1295	15.48	160021	01.0703	13.57	160101	01.1730	18.64
140166	01.3636	17.21	140290	01.4617	21.07	150069	01.2618	16.90	160023	01.0386	12.35	160102	01.3886	17.51
140167	01.1286	14.97	140291	01.4126	22.95	150070	01.0279	14.83	160024	01.5221	18.06	160103	01.0399	13.57
140168	01.1895	15.57	140292	01.1602	20.63	150071	01.1162	13.86	160026	01.0593	14.43	160104	01.3168	17.37
140170	01.1141	12.53	140294	01.1859	16.20	150072	01.2089	15.48	160027	01.1570	13.19	160106	01.0620	14.03
140171	00.9150	13.87	140297	01.5673	27.06	150073	01.0134	19.47	160028	01.3255	17.39	160107	01.1797	14.12
140172	01.6091	18.71	140300	01.4471	18.71	150074	01.5964	18.80	160029	01.5134	18.14	160108	01.2018	14.95
140173	00.9277	13.77	150001	01.1125	17.36	150075	01.1711	14.49	160030	01.3852	17.37	160109	01.0406	12.35
140174	01.5683	18.33	150002	01.5434	18.35	150076	01.2164	20.39	160031	01.1197	13.37	160110	01.5234	17.97
140176	01.3064	21.33	150003	01.7180	19.57	150077	01.1796	16.58	160032	01.0998	15.56	160111	01.0272	11.04
140177	01.1644	16.52	150004	01.4342	19.97	150078	01.0840	15.66	160033	01.7885	16.80	160112	01.4213	15.00
140179	01.3195	20.12	150005	01.1913	18.43	150079	01.1368	13.96	160034	01.2092	14.53	160113	01.0022	12.03
140180	01.5086	21.03	150006	01.2242	17.31	150082	01.5181	17.44	160035	01.0318	12.57	160114	01.0662	14.21
140181	01.3825	19.20	150007	01.2036	17.98	150084	01.8769	22.28	160036	00.9707	14.66	160115	01.0262	14.32
140182	01.3711	20.67	150008	01.3534	20.70	150086	01.3365	16.45	160037	01.1614	15.14	160116	01.1790	15.68
140184	01.2542	14.26	150009	01.3747	17.26	150088	01.3466	17.20	160039	01.0809	15.84	160117	01.4518	15.96
140185	01.4152	16.78	150010	01.1825	15.87	150089	01.4284	18.43	160040	01.3187	16.30	160118	01.0205	13.15
140186	01.3530	17.75	150011	01.2266	17.83	150090	01.2517	18.72	160041	01.0854	13.45	160120	01.0296	10.62
140187	01.4893	16.54	150012	01.6946	21.01	150091	01.1381	15.75	160043	01.0374	13.44	160122	01.1314	16.24
140188	01.0402	10.77	150013	01.1254	13.90	150092	01.0304	15.04	160044	01.3190	13.86	160123	01.0588	13.19
140189	01.1952	16.64	150014	01.5059	20.39	150094	01.0148	16.85	160045	01.7651	17.72	160124	01.2799	15.87
140190	01.1402	15.99	150015	01.2169	18.32	150095	01.1048	17.97	160046	01.0014	12.75	160126	01.0198	13.59
140191	01.4511	21.87	150017	01.8651	17.20	150096	01.1653	17.34	160047	01.3677	15.37	160129	01.0290	13.75
140193	01.0432	13.31	150018	01.2899	18.23	150097	01.1381	17.09	160048	01.0373	11.54	160130	01.1777	13.02
140197	01.2610	16.96	150019	01.1022	15.47	150098	01.1494	13.03	160049	00.9485	12.21	160131	01.0519	13.55
140199	01.1014	15.72	150020	01.1488	12.96	150099	01.2905	17.79	160050	01.0755	14.64	160134	01.0482	11.84
140200	01.4765	21.79	150021	01.6386	18.34	150100	01.7163	17.65	160051	00.9646	13.54	160135	01.0968	13.67
140202	01.3540	19.71	150022	01.0910	16.65	150101	01.1111	14.50	160052	01.0875	14.79	160138	01.1290	14.36
140203	01.1609	19.32	150023	01.5116	18.19	150102	01.0431	14.93	160054	01.0755	12.37	160140	01.1716	14.76
140205	00.8789	13.64	150024	01.4348	15.82	150103	01.0075	15.02	160055	00.9798	12.37	160142	01.0866	13.98
140206	01.1121	20.81	150025	01.3892	17.57	150104	01.0990	15.63	160056	01.0863	13.11	160143	01.0270	14.24
140207	01.3959	20.01	150026	01.1868	18.29	150105	01.3508	16.20	160057	01.3465	16.15	160145	01.1210	14.16
140208	01.6948	24.07	150027	01.0461	15.55	150106	01.0805	16.06	160058	01.7461	19.00	160146	01.4322	14.59
140209	01.6697	15.99	150029	01.3137	20.17	150109	01.4613	16.85	160060	01.0442	13.44	160147	01.3056	16.09
140210	01.1194	14.00	150030	01.2098	16.69	150110	01.0000	17.16	160061	01.0428	14.27	160151	01.0503	13.74
140211	01.1916	20.84	150031	01.0741	15.56	150111	01.1642	14.02	160062	00.9492	12.22	160152	00.9935	13.78
140212	01.2953	22.47	150032	01.8880	19.50	150112	01.3074	17.80	160063	01.1653	15.88	160153	01.7437	17.53
140213	01.2782	22.67	150033	01.6073	21.09	150113	01.2230	17.88	160064	01.7113	17.38	170001	01.1849	16.35
140215	01.1308	13.49	150034	01.3884	21.18	150114	01.0122	14.58	160065	01.0284	14.73	170004	01.0730	13.57
140217	01.3185	21.67	150035	01.5318	18.97	150115	01.3808	17.55	160066	01.1723	14.74	170006	01.1492	15.02
140218	00.9966	13.65	150036	01.0412	17.43	150122	01.1253	17.11	160067	01.4125	17.13	170008	01.0265	14.53
140220	01.0925	15.16	150037	01.2684	18.20	150123	01.2043	12.98	160068	01.0660	13.52	170009	01.1988	16.31
140223	01.6457	28.66	150038	01.4044	17.22	150124	01.1085	15.97	160069	01.4620	16.42	170010	01.2496	15.77
140224	01.3885	22.97	150039	00.9657	16.33	150125	01.3906	18.69	160070	01.0507	14.47	170011	01.2378	15.40
140228	01.6939	18.22	150042	01.2975	16.00	150126	01.5082	20.17	160072	01.0756	11.60	170012	01.4732	16.08

## PAGE 6 OF 16

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
170013	01.3228	15.33	170098	01.0500	17.00	180023	00.8812	13.12	180122	01.0903	15.01	190088	01.3480	.....
170014	01.0365	16.40	170099	01.2666	11.34	180024	01.3911	17.24	180123	01.4774	20.98	190089	01.0784	11.47
170015	01.0652	14.36	170100	00.9917	14.47	180025	01.2141	17.17	180124	01.4878	16.52	190090	01.1650	16.84
170016	01.6876	19.52	170101	00.9485	13.26	180026	01.2402	12.39	180125	00.9976	16.46	190092	01.3982	.....
170017	01.2527	15.34	170102	00.9926	13.11	180027	01.2873	15.58	180126	01.2371	12.22	190095	01.0677	14.66
170018	01.1576	13.13	170103	01.2089	15.62	180028	00.9959	16.39	180127	01.4053	17.22	190098	01.5464	18.86
170019	01.2248	15.65	170104	01.4508	19.81	180029	01.2772	15.97	180128	01.1761	16.64	190099	01.1522	17.98
170020	01.2898	14.98	170105	01.0962	15.91	180030	01.2383	13.31	180129	01.0116	14.45	190102	01.5617	17.77
170022	01.1756	14.80	170106	00.8948	12.18	180031	01.2070	12.60	180130	01.4718	17.91	190103	00.8823	09.75
170023	01.4656	16.42	170109	01.0364	14.50	180032	00.9250	15.83	180132	01.2950	15.20	190106	01.1721	17.69
170024	01.1515	12.84	170110	00.9577	13.67	180033	01.1365	12.86	180133	01.3505	24.67	190109	01.2153	13.50
170025	01.2269	15.81	170112	00.9853	13.90	180034	01.2655	14.14	180134	01.0389	13.87	190110	00.9437	12.43
170026	01.0417	12.83	170113	01.1475	14.95	180035	01.5526	18.73	180136	01.6029	16.47	190111	01.5997	18.33
170027	01.3447	15.50	170114	01.0128	13.80	180036	01.2050	17.11	180137	01.8119	18.38	190112	01.5901	19.46
170030	01.0153	13.99	170115	01.0238	11.34	180037	01.3414	19.79	180138	01.2091	17.99	190113	01.3584	18.49
170031	00.9092	12.62	170116	01.0473	15.74	180038	01.4104	15.04	180139	01.1543	18.64	190114	01.0182	12.20
170032	01.1647	14.89	170117	00.9415	13.50	180040	02.0226	19.20	180140	00.8743	.....	190115	01.2236	18.33
170033	01.3701	14.59	170119	00.9812	12.09	180041	01.1036	13.42	180141	01.8022	.....	190116	01.1871	.....
170034	00.9962	14.61	170120	01.2988	16.06	180042	01.1987	13.59	190001	00.8702	17.98	190118	01.0964	12.38
170035	00.8580	14.82	170122	01.7447	19.93	180043	01.0028	15.84	190002	01.6861	18.15	190120	01.0003	13.75
170036	00.9007	13.19	170123	01.7667	19.02	180044	01.1644	16.29	190003	01.3867	17.41	190122	01.2265	15.70
170037	01.2485	16.31	170124	01.0109	14.25	180045	01.2627	16.79	190004	01.4153	15.24	190124	01.6508	20.23
170038	00.9237	11.46	170126	00.9445	11.50	180046	01.2348	16.65	190005	01.6473	17.60	190125	01.5592	17.99
170039	01.1505	13.62	170128	00.9794	14.42	180047	01.0286	13.80	190006	01.2974	14.32	190128	01.0852	18.56
170040	01.6026	18.83	170131	01.2140	09.38	180048	01.2851	16.17	190007	01.0081	13.52	190130	01.0318	12.09
170041	00.9985	11.29	170133	01.1285	14.20	180049	01.3320	15.45	190008	01.6674	17.72	190131	01.2019	16.12
170043	01.0095	13.49	170134	00.9462	12.48	180050	01.2528	16.12	190009	01.1614	13.79	190133	00.9749	12.08
170044	01.1045	14.42	170137	01.1888	17.30	180051	01.4299	14.78	190010	01.0337	16.62	190134	01.0188	14.79
170045	01.0555	10.72	170139	01.0392	11.82	180053	01.0895	14.30	190011	01.1664	14.41	190135	01.4616	22.58
170049	01.2898	18.28	170142	01.3501	16.49	180054	01.1107	13.76	190013	01.3986	15.95	190136	01.2005	11.22
170051	00.9202	13.66	170143	01.1128	13.82	180055	01.1648	14.00	190014	01.1133	15.35	190138	00.8846	17.51
170052	01.0589	12.60	170144	01.6127	14.73	180056	01.0761	16.38	190015	01.2521	17.78	190140	01.0146	12.16
170053	00.9478	15.39	170145	01.1395	14.83	180058	00.9870	12.63	190017	01.4478	16.02	190142	00.9041	12.39
170054	01.0865	13.19	170146	01.5244	19.54	180059	00.9160	12.59	190018	01.1910	15.92	190144	01.3101	15.22
170055	01.0974	14.55	170147	01.2724	20.70	180060	01.0317	10.17	190019	01.6081	18.39	190145	00.9987	13.66
170056	00.9193	13.72	170148	01.4120	17.64	180063	00.9916	10.79	190020	01.1829	15.85	190146	01.6349	19.61
170057	01.0283	13.90	170150	01.0938	13.41	180064	01.3317	14.03	190025	01.3560	13.62	190147	01.0237	13.69
170058	01.1682	15.80	170151	01.0380	11.66	180065	01.0472	10.82	190026	01.4931	16.17	190148	00.9081	12.77
170060	01.0543	13.41	170152	00.9840	12.99	180066	01.1561	18.09	190027	01.5790	16.49	190149	01.0591	11.47
170061	01.1320	12.90	170160	00.9790	11.17	180067	01.8053	16.40	190029	01.1538	15.40	190151	01.2260	11.73
170063	00.8933	10.92	170164	00.9859	14.42	180069	01.0138	15.33	190033	00.9378	09.66	190152	01.5161	21.27
170064	01.0420	12.09	170166	01.2016	13.65	180070	01.1195	14.66	190034	01.2429	.....	190155	01.0392	12.29
170066	00.9793	12.58	170168	00.9222	09.33	180072	01.0649	13.91	190035	01.3660	.....	190156	00.8732	11.99
170067	01.1302	11.76	170171	01.0731	11.22	180075	01.0012	14.13	190036	01.6990	19.10	190158	01.1877	21.59
170068	01.3080	15.24	170175	01.3540	17.53	180078	01.1591	17.57	190037	00.8934	10.84	190160	01.3255	17.03
170069	00.8338	14.01	170176	01.6200	19.83	180079	01.3352	13.03	190039	01.4034	17.21	190161	01.1212	12.65
170070	01.0108	12.56	170182	01.2299	19.43	180080	01.0543	15.57	190040	01.4397	19.32	190162	01.0388	18.47
170073	01.0663	14.67	170183	02.0361	.....	180085	02.2480	17.70	190041	01.5692	19.72	190164	01.2269	16.05
170074	01.2456	14.34	170184	01.1905	.....	180087	01.1722	13.74	190043	01.0383	11.79	190166	00.9327	14.04
170075	00.9439	10.67	180001	01.2323	17.03	180088	01.5598	19.99	190044	01.1678	17.11	190167	01.2338	18.49
170076	01.0546	11.60	180002	01.0634	16.78	180092	01.2627	15.25	190045	01.4070	20.17	190170	00.9454	13.08
170077	00.9418	12.07	180004	01.1027	14.47	180093	01.3756	16.05	190046	01.4636	17.58	190173	01.4730	20.12
170079	01.0260	12.66	180005	01.1767	18.54	180094	01.0358	11.51	190048	01.2833	13.72	190175	01.3200	20.26
170080	00.9806	10.65	180006	00.9857	08.51	180095	01.2459	12.94	190049	00.9962	15.70	190176	01.7427	19.11
170081	01.0204	10.44	180007	01.5365	16.29	180099	01.3192	12.31	190050	01.0311	14.58	190177	01.6579	22.84
170082	01.0284	10.80	180009	01.4058	19.11	180101	01.3237	18.01	190053	01.0753	12.11	190178	00.9581	10.87
170084	00.9539	10.93	180010	01.8565	18.19	180102	01.4761	16.43	190054	01.3375	14.09	190182	00.9681	20.02
170085	00.9648	12.69	180011	01.2791	15.29	180103	02.1571	17.93	190059	00.9187	13.44	190183	01.1238	14.79
170086	01.7259	18.50	180012	01.4064	17.51	180104	01.5751	18.07	190060	01.4553	15.43	190184	01.0796	13.09
170087	16.1090	18.78	180013	01.4569	16.63	180105	01.0042	12.82	190064	01.6010	18.33	190185	01.3600	18.53
170088	00.9759	10.80	180014	01.7118	19.99	180106	00.8943	12.27	190065	01.4987	14.71	190186	00.9457	13.16
170089	00.9506	15.53	180015	01.3127	15.02	180108	00.8561	13.54	190071	00.8980	12.15	190189	01.0752	13.17
170090	01.0397	09.80	180016	01.3243	14.50	180115	01.0271	15.07	190077	00.9526	13.65	190190	00.9250	12.66
170092	00.8270	11.80	180017	01.3423	13.87	180116	01.4484	15.66	190078	01.1690	11.60	190191	01.3301	17.54
170093	00.9986	11.76	180018	01.2533	14.59	180117	01.1145	17.03	190079	01.2555	16.98	190196	00.8663	16.29
170094	00.9536	15.42	180019	01.3260	16.70	180118	01.0362	12.03	190081	00.9078	10.23	190197	01.2380	18.98
170095	01.1349	13.69	180020	01.0728	15.86	180120	01.0568	13.12	190083	01.0600	15.02	190199	01.1999	16.26
170097	01.0695	13.17	180021	01.1131	13.69	180121	01.2249	13.68	190086	01.4128	15.47	190200	01.5575	21.70

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
190201	01.2734	18.93	210015	01.2807	18.58	220051	01.2093	20.56	230019	01.5032	22.60	230118	01.2187	16.37
190202	01.4760	17.85	210016	01.7192	23.30	220052	01.3214	23.88	230020	01.7231	22.21	230119	01.3042	22.31
190203	01.5075	20.83	210017	01.2275	14.51	220053	01.2594	19.48	230021	01.6150	17.90	230120	01.1809	17.47
190204	01.5863	20.85	210018	01.2493	21.26	220055	01.3462	23.52	230022	01.3615	18.27	230121	01.2510	19.69
190205	01.9236	17.90	210019	01.4990	18.17	220057	01.4076	21.39	230024	01.4369	23.71	230122	01.4028	19.20
190206	01.5515	21.53	210022	01.4499	20.79	220058	01.0836	16.26	230027	01.1510	15.73	230124	01.1633	16.89
190207	01.2969	16.42	210023	01.3678	20.78	220060	01.3041	25.32	230029	01.5797	20.36	230125	01.2952	14.51
190208	00.8122	11.17	210024	01.5604	19.73	220062	00.5838	18.49	230030	01.2204	16.47	230128	01.3852	21.24
190218	01.1988	15.33	210025	01.4143	18.21	220063	01.2285	19.40	230031	01.4361	19.72	230129	01.7824	19.92
190223	00.4249	16.58	210026	01.3749	19.52	220064	01.2338	20.51	230032	01.7412	19.08	230130	01.6730	23.74
190227	00.8255	10.56	210027	01.3029	18.58	220065	01.2265	19.58	230034	01.2288	17.99	230132	01.4154	23.25
190231	01.3079	16.00	210028	01.2217	17.19	220066	01.3350	20.73	230035	01.1178	16.17	230133	01.2207	15.07
190233	02.1157	.....	210029	01.3174	17.99	220067	01.2868	22.58	230036	01.2775	18.79	230134	01.1074	17.91
190234	01.0506	.....	210030	01.1539	19.44	220068	00.5263	16.67	230037	01.1284	17.40	230135	01.2642	20.25
190235	01.2869	.....	210031	01.5487	16.42	220070	01.2498	18.77	230038	01.7083	21.21	230137	01.1949	18.51
190236	01.2668	.....	210032	01.1789	17.90	220071	01.9236	21.67	230040	01.2243	20.53	230141	01.6822	22.44
200001	01.3804	16.92	210033	01.2620	18.58	220073	01.4101	24.14	230041	01.2174	20.75	230142	01.2188	18.90
200002	01.0723	17.70	210034	01.3689	20.34	220074	01.1894	22.82	230042	01.2231	19.32	230143	01.3145	16.58
200003	01.0974	16.02	210035	01.2687	18.11	220075	01.2619	19.51	230046	01.8844	25.32	230144	01.2250	21.19
200006	01.0590	14.97	210037	01.2433	17.38	220076	01.1859	25.46	230047	01.3420	20.37	230145	01.1856	15.96
200007	01.1251	17.01	210038	01.3320	21.63	220077	01.7917	22.92	230053	01.6445	24.16	230146	01.3105	19.56
200008	01.2258	20.19	210039	01.1897	17.55	220079	01.1692	21.68	230054	01.8208	21.45	230147	01.4445	19.70
200009	01.8129	19.95	210040	01.3323	21.01	220080	01.2719	19.58	230055	01.1628	18.26	230149	01.1767	15.51
200012	01.1117	16.55	210043	01.3063	21.32	220081	01.0044	24.81	230056	00.9866	14.55	230151	01.3931	22.02
200013	01.1261	15.69	210044	01.2665	19.38	220082	01.3096	23.04	230058	01.1539	18.69	230153	01.1329	19.70
200015	01.2305	17.41	210045	01.0746	11.42	220083	01.1972	20.43	230059	01.4456	19.01	230154	00.9371	12.43
200016	01.0109	15.76	210048	01.2050	23.30	220084	01.3134	23.23	230060	01.3047	17.97	230155	00.9383	16.62
200017	01.2501	17.94	210049	01.1551	17.77	220086	01.6491	26.01	230062	01.0249	14.41	230156	01.7141	22.91
200018	01.1961	15.20	210051	01.4237	20.03	220088	01.6090	22.68	230063	01.3178	19.15	230157	01.2020	20.15
200019	01.2392	18.59	210054	01.3311	21.05	220089	01.3337	22.69	230065	01.3391	19.44	230159	01.5106	19.64
200020	01.1405	20.96	210055	01.2655	24.26	220090	01.2575	20.95	230066	01.3879	20.58	230162	01.0467	15.60
200021	01.1723	17.78	210056	01.3809	17.67	220092	01.2336	20.66	230068	01.4483	22.15	230165	01.8519	21.91
200023	00.9047	16.15	210057	01.4140	25.76	220094	01.4156	19.82	230069	01.1621	21.95	230167	01.7996	19.23
200024	01.3279	19.84	210058	01.5351	18.09	220095	01.2483	19.06	230070	01.5713	19.57	230169	01.3465	20.88
200025	01.0790	19.51	210059	01.2620	21.44	220098	01.2576	19.71	230071	01.1340	22.00	230171	01.0260	14.42
200026	01.0265	15.97	210060	01.1836	23.61	220100	01.2637	23.69	230072	01.2305	19.32	230172	01.2797	18.87
200027	01.1183	17.27	210061	01.1780	17.65	220101	01.4392	23.41	230075	01.4720	19.41	230174	01.2978	19.50
200028	00.9729	16.24	220001	01.2880	21.80	220104	01.3000	24.79	230076	01.3501	22.67	230175	03.1496	11.15
200031	01.2812	15.26	220002	01.5420	23.02	220105	01.2698	22.16	230077	02.0635	18.62	230176	01.2352	20.69
200032	01.3456	18.90	220003	01.0746	16.71	220106	01.2620	22.14	230078	01.1336	15.79	230178	01.0050	17.92
200033	01.7912	20.16	220004	01.1627	18.66	220107	01.1929	19.21	230080	01.2285	20.74	230180	01.1057	15.79
200034	01.2381	18.05	220006	01.4307	21.04	220108	01.1992	21.13	230081	01.2949	16.73	230184	01.1534	17.45
200037	01.1963	16.09	220008	01.2955	20.45	220110	02.0108	31.74	230082	01.2055	15.97	230186	01.2243	17.37
200038	01.1101	18.23	220010	01.3125	21.44	220111	01.2703	21.76	230085	01.1164	17.76	230188	01.1813	16.01
200039	01.2718	19.03	220011	01.1494	27.00	220116	02.0069	24.40	230086	01.0061	14.88	230189	00.9246	14.93
200040	01.1080	17.37	220012	01.3759	30.46	220118	02.0709	27.44	230087	01.0463	17.12	230190	01.0342	20.21
200041	01.0933	16.19	220015	01.2323	20.94	220119	01.3231	24.27	230089	01.2842	21.86	230191	00.9118	16.65
200043	00.5276	16.46	220016	01.3819	20.87	220123	01.0394	22.86	230092	01.3128	18.29	230193	01.2127	16.97
200050	01.1870	17.84	220017	01.3926	23.16	220126	01.3385	20.63	230093	01.2211	18.91	230194	01.1254	15.94
200051	00.9682	18.29	220019	01.1521	17.57	220128	01.2038	22.97	230095	01.1969	16.51	230195	01.3147	21.44
200052	00.9788	14.12	220020	01.2411	18.68	220133	00.8368	29.15	230096	01.1728	20.60	230197	01.3474	21.41
200055	01.1748	15.29	220021	01.3635	23.88	220135	01.2397	24.67	230097	01.5928	19.03	230199	01.1846	16.61
200062	00.9125	15.03	220023	01.1724	19.92	220153	00.9842	19.37	230099	01.1191	18.90	230201	01.1826	14.03
200063	01.2548	18.27	220024	01.2011	20.61	220154	01.0025	20.72	230100	01.2050	14.82	230204	01.3955	20.13
200066	01.2157	15.65	220025	01.2146	19.07	220162	01.1174	.....	230101	01.0781	17.28	230205	01.0457	13.00
210001	01.4359	19.45	220028	01.4903	21.29	220163	02.0494	24.21	230103	01.0526	17.37	230207	01.2669	21.19
210002	02.0301	16.46	220029	01.1504	23.54	220171	01.6465	21.72	230104	01.6096	21.24	230208	01.2412	18.18
210003	01.5454	22.78	220030	01.1142	17.02	230001	01.1916	18.72	230105	01.6864	19.47	230211	00.9096	14.11
210004	01.3604	21.20	220031	02.0045	29.21	230002	01.2641	18.80	230106	01.3011	18.64	230212	01.0720	22.89
210005	01.2337	18.52	220033	01.3844	19.62	230003	01.1456	18.79	230107	00.9245	11.54	230213	01.0473	13.19
210006	01.0987	17.09	220035	01.3148	19.49	230004	01.6847	24.03	230108	01.2350	18.02	230216	01.6086	19.50
210007	01.6811	20.55	220036	01.5951	22.33	230005	01.2549	18.69	230110	01.3936	17.31	230217	01.2395	19.60
210008	01.3385	19.03	220038	01.2902	21.60	230006	01.1078	15.91	230111	00.9900	17.97	230219	00.9318	16.58
210009	01.8256	19.93	220041	01.2145	21.02	230007	01.0590	17.82	230113	00.9699	18.07	230221	01.1033	17.78
210010	01.1897	16.40	220042	01.2037	25.43	230012	00.9618	11.92	230114	00.6644	25.66	230222	01.3910	18.46
210011	01.2790	21.24	220046	01.3759	23.55	230013	01.3026	20.55	230115	01.0034	15.79	230223	01.3134	21.86
210012	01.6303	21.50	220049	01.3204	21.16	230015	01.1338	19.54	230116	00.9514	14.84	230227	01.4686	22.63
210013	01.2454	18.65	220050	01.0930	18.78	230017	01.5755	20.51	230117	01.9294	25.77	230230	01.6739	21.30

## PAGE 8 OF 16

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
230232	00.9775	18.31	240065	01.0639	10.79	240152	01.0432	18.30	250057	01.2901	14.84	260012	01.1120	12.21
230235	01.0780	14.12	240066	01.4080	18.87	240153	01.0196	15.01	250058	01.1584	13.20	260013	01.1128	13.85
230236	01.3039	21.82	240069	01.2138	18.58	240154	01.0483	14.45	250059	01.0879	14.15	260014	01.7531	18.62
230239	01.1599	16.38	240071	01.1332	17.67	240155	00.9544	16.25	250060	00.7832	10.79	260015	01.3476	12.13
230241	01.1124	17.56	240072	01.0874	17.53	240157	01.1163	11.54	250061	00.8589	09.59	260017	01.2927	14.90
230244	01.3635	21.20	240073	00.9506	15.03	240160	00.9811	15.61	250063	00.8529	12.96	260018	00.9297	10.14
230253	00.9665	18.09	240075	01.1877	19.26	240161	00.9741	14.77	250065	00.9859	11.60	260019	01.0453	12.50
230254	01.2864	21.85	240076	01.1076	20.82	240162	00.9992	15.08	250066	00.9305	14.05	260020	01.6738	20.95
230257	00.8638	18.77	240077	00.9344	12.01	240163	00.9475	14.68	250067	01.1461	15.22	260021	01.5109	18.46
230259	01.1898	19.63	240078	01.5036	21.81	240166	01.0721	15.70	250068	00.8507	09.05	260022	01.2923	16.51
230264	01.0486	19.01	240079	01.0478	13.53	240169	00.9590	15.46	250069	01.4098	13.92	260023	01.3274	16.81
230269	01.3682	22.82	240080	01.4004	21.73	240170	01.1711	14.40	250071	00.9012	10.90	260024	00.9475	12.58
230270	01.2231	20.42	240082	01.0933	15.87	240171	01.0599	14.30	250072	01.3508	16.19	260025	01.2408	14.22
230273	01.5791	21.61	240083	01.3701	16.80	240172	01.0622	14.86	250076	01.5698	08.95	260027	01.5512	20.66
230275	00.5037	16.62	240084	01.3013	17.76	240173	00.9750	14.79	250077	00.9415	11.54	260029	01.1498	16.88
230276	00.6974	17.39	240085	00.9624	15.55	240179	01.0875	15.05	250078	01.4511	14.35	260030	01.1773	10.28
230277	01.2458	21.07	240086	01.0731	15.22	240184	01.0888	11.77	250079	00.8988	13.59	260031	01.5415	18.47
230278	01.8501	21.54	240087	01.1736	15.74	240187	01.1716	18.89	250081	01.3350	15.13	260032	01.6162	18.24
230279	00.6949	15.06	240088	01.4370	18.72	240193	01.0850	15.54	250082	01.2696	12.99	260034	01.0286	15.30
230280	01.0876	14.88	240089	00.9741	15.79	240196	00.6148	22.86	250083	01.0209	10.67	260035	01.0432	11.67
240001	01.5822	22.07	240090	01.0671	13.53	240200	00.9038	13.54	250084	01.1159	15.95	260036	01.0354	18.28
240002	01.7315	20.58	240093	01.3382	16.86	240205	01.0346	.....	250085	00.9834	12.43	260037	01.4487	15.56
240004	01.5268	21.05	240094	00.9928	17.38	240206	00.9570	.....	250088	00.9081	14.66	260039	01.1663	12.17
240005	01.0266	15.07	240096	00.9783	14.74	240207	01.2804	22.23	250089	01.1680	13.27	260040	01.6549	15.94
240006	01.1154	20.02	240097	01.1033	18.17	240210	01.2460	22.69	250093	01.1083	12.75	260042	01.2618	16.78
240007	01.0769	15.81	240098	00.9425	16.39	240211	01.0014	11.52	250094	01.2614	14.92	260044	01.0934	14.86
240008	01.0662	16.32	240099	01.0621	10.76	250001	01.4559	16.92	250095	01.0168	14.72	260047	01.4644	15.90
240009	01.0015	14.35	240100	01.2967	18.25	250002	00.8370	14.44	250096	01.2783	15.77	260048	01.2365	19.25
240010	01.9744	21.16	240101	01.1792	17.70	250003	01.0137	15.14	250097	01.3211	13.86	260050	01.0968	14.63
240011	01.1601	15.71	240102	00.9227	12.87	250004	01.4726	16.68	250098	00.8662	14.72	260052	01.3373	16.89
240013	01.3128	16.96	240103	01.0701	13.76	250005	01.0613	10.43	250099	01.3168	12.67	260053	01.1651	10.83
240014	01.0839	19.10	240104	01.1850	21.72	250006	00.9608	14.73	250100	01.2729	14.27	260054	01.3178	14.83
240016	01.3772	16.31	240105	01.0170	12.35	250007	01.2974	18.24	250101	00.8766	09.75	260055	01.0236	08.93
240017	01.2008	15.66	240106	01.3884	23.85	250008	00.9270	11.91	250102	01.6510	14.56	260057	01.1559	14.12
240018	01.3331	17.17	240107	00.9699	14.74	250009	01.1951	15.81	250104	01.4468	16.31	260059	01.2358	11.75
240019	01.1997	20.69	240108	00.9753	12.35	250010	01.0272	11.88	250105	00.9242	11.52	260061	01.1323	11.91
240020	01.1545	20.05	240109	00.9763	12.06	250012	00.9493	13.18	250107	00.8879	14.99	260062	01.2004	17.75
240021	01.0040	13.13	240110	00.9880	14.66	250015	01.1025	10.43	250109	00.9619	12.97	260063	01.1235	15.61
240022	01.1171	18.13	240111	01.0264	15.65	250017	00.9743	14.92	250112	00.9503	14.95	260064	01.3135	15.06
240023	01.1030	16.17	240112	01.0120	14.22	250018	01.0885	11.21	250117	01.0158	13.39	260065	01.7978	16.07
240025	01.1265	14.54	240114	00.8971	13.21	250019	01.4948	16.51	250119	01.1128	11.94	260066	01.0288	15.31
240027	01.0280	15.50	240115	01.6575	21.53	250020	00.9503	11.47	250120	01.0898	13.47	260067	00.9511	10.89
240028	01.1803	18.14	240116	00.9560	12.54	250021	00.9206	08.33	250122	01.2659	.....	260068	01.6925	19.07
240029	01.2190	17.00	240117	01.1415	17.40	250023	00.8554	.....	250123	01.3245	18.31	260070	01.0637	12.16
240030	01.2864	17.33	240119	00.8838	17.45	250024	00.9613	08.37	250124	00.9107	11.28	260073	01.0411	11.87
240031	00.9918	13.83	240121	00.9377	17.85	250025	01.1325	15.43	250125	01.3265	18.00	260074	01.3241	17.22
240036	01.5677	19.89	240122	01.0774	16.25	250027	01.0193	11.14	250126	00.9963	13.81	260077	01.7094	16.86
240037	01.0459	17.05	240123	01.0887	13.80	250029	00.8793	11.91	250127	00.7981	10.67	260078	01.2180	14.84
240038	01.4768	24.33	240124	00.9980	16.84	250030	00.9894	11.26	250128	01.1054	11.86	260079	01.0338	11.96
240040	01.1838	19.00	240125	00.9119	12.16	250031	01.3401	17.65	250131	00.9853	10.41	260080	01.0487	10.85
240041	01.2688	15.42	240127	01.0956	12.16	250032	01.2651	15.27	250134	00.9847	15.67	260081	01.5242	18.50
240043	01.2180	17.60	240128	01.1103	14.99	250033	01.1179	12.63	250136	00.9293	15.06	260082	01.1931	13.85
240044	01.1777	16.75	240129	01.0683	13.13	250034	01.6275	13.70	250138	01.2493	16.52	260085	01.5683	18.89
240045	01.1170	18.25	240130	01.0694	15.14	250035	00.8775	13.38	250141	01.2384	16.11	260086	00.9991	13.83
240047	01.5112	19.66	240132	01.2511	21.26	250036	01.0177	10.97	250145	00.9805	.....	260089	01.0806	12.16
240048	01.2509	21.83	240133	01.1407	16.89	250037	00.8394	09.52	250146	01.0293	12.44	260091	01.6447	20.21
240049	01.7860	21.16	240135	00.9022	11.98	250038	00.9491	12.49	250148	01.1361	14.14	260094	01.2142	17.53
240050	01.1382	22.26	240137	01.2280	15.99	250039	01.0330	12.23	250149	00.9158	12.56	260095	01.4130	15.92
240051	00.9385	14.60	240138	00.9613	12.39	250040	01.3378	16.36	260001	01.6347	16.79	260096	01.5959	23.01
240052	01.2651	18.14	240139	00.9705	14.07	250042	01.2431	13.72	260002	01.4563	20.60	260097	01.1569	16.79
240053	01.5135	19.37	240141	01.1692	18.92	250043	01.0021	11.48	260003	00.9752	13.10	260100	01.0555	13.31
240056	01.2694	21.66	240142	01.1055	15.56	250044	00.9974	14.17	260004	01.0307	12.81	260102	01.0467	17.58
240057	01.7845	21.08	240143	01.1220	11.76	250045	01.1352	17.75	260005	01.6959	20.17	260103	01.3939	16.96
240058	00.9705	08.83	240144	01.0129	13.66	250047	00.9859	11.39	260006	01.4637	16.81	260104	01.7038	18.80
240059	01.1096	19.63	240145	00.9274	12.01	250048	01.5334	14.39	260007	01.6391	14.42	260105	01.8450	21.41
240061	01.7813	21.05	240146	00.9883	18.68	250049	00.9044	11.19	260008	01.2715	16.18	260107	01.4336	19.39
240063	01.5152	22.26	240148	01.0915	08.84	250050	01.2911	12.79	260009	01.2277	15.64	260108	01.8662	18.57
240064	01.2556	20.39	240150	00.8854	12.16	250051	00.8720	08.88	260011	01.6403	17.12	260109	00.9885	11.86



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
260110	01.5703	14.92	270035	01.0128	16.94	280050	00.9679	13.74	290021	01.6450	19.51	310041	01.3388	21.96
260113	01.0828	14.31	270036	00.9373	09.94	280051	01.2066	13.85	290022	01.6828	20.47	310042	01.2149	22.13
260115	01.2400	14.59	270039	01.0684	12.96	280052	00.9828	12.52	290027	00.9732	15.03	310043	01.2896	19.99
260116	01.1030	13.89	270040	01.0918	19.79	280054	01.2703	16.10	290029	00.8983	.....	310044	01.3360	20.03
260119	01.1917	13.28	270041	01.0796	11.52	280055	00.9249	12.19	290032	01.4471	18.24	310045	01.4249	27.62
260120	01.2217	14.60	270044	01.1485	14.40	280056	01.0135	13.28	290036	01.0870	13.90	310047	01.3531	24.05
260122	01.1474	13.40	270046	00.9270	13.70	280057	00.9801	15.61	290038	00.9351	17.61	310048	01.2560	21.34
260123	01.0221	12.27	270048	01.0968	14.13	280058	01.3647	14.36	290039	01.3412	.....	310049	01.3224	23.91
260127	00.9860	13.88	270049	01.8343	19.33	280060	01.5785	18.24	300001	01.3841	21.03	310050	01.2281	21.48
260128	01.0214	09.22	270050	01.0747	17.43	280061	01.4895	15.95	300003	01.8856	21.59	310051	01.3357	23.27
260129	01.2018	13.53	270051	01.3399	19.12	280062	01.1451	12.55	300005	01.2741	19.13	310052	01.2886	21.19
260131	01.4057	15.91	270052	01.0912	12.73	280064	01.0800	13.94	300006	01.1402	17.36	310054	01.3056	23.97
260134	01.1561	14.28	270053	00.9396	09.78	280065	01.2745	17.49	300007	01.1618	17.04	310056	01.3867	20.63
260137	01.5544	14.25	270057	01.2164	18.21	280066	01.0357	11.48	300008	01.2110	18.30	310057	01.2922	23.67
260138	01.8949	21.17	270058	00.9476	11.51	280068	01.0870	09.89	300009	01.1504	18.16	310058	01.0906	26.79
260141	01.9549	17.43	270059	00.8656	15.65	280070	01.0149	11.63	300010	01.2297	17.88	310060	01.2000	18.73
260142	01.2382	13.99	270060	00.9067	13.00	280073	01.0115	13.94	300011	01.3613	22.07	310061	01.2538	20.23
260143	00.9915	11.96	270063	00.9363	14.23	280074	01.1316	13.76	300012	01.3381	21.42	310062	01.2965	24.98
260147	01.0190	12.74	270068	00.9009	15.59	280075	01.2322	13.10	300013	01.1476	17.06	310063	01.3660	21.28
260148	00.9522	09.30	270072	00.7740	11.39	280076	01.0519	12.93	300014	01.2209	19.36	310064	01.2783	22.29
260158	01.1057	11.77	270073	01.1623	11.16	280077	01.3421	17.26	300015	01.1797	18.08	310067	01.3279	23.76
260159	01.0850	19.81	270074	00.8787	.....	280079	01.2143	10.42	300016	01.2009	15.73	310069	01.2838	20.03
260160	01.0947	11.84	270075	00.9757	.....	280080	01.0583	12.11	300017	01.2344	21.96	310070	01.4058	22.98
260162	01.5751	19.55	270076	00.7949	.....	280081	01.6898	18.79	300018	01.2172	19.62	310072	01.2874	20.57
260163	01.3342	15.35	270079	00.9165	13.66	280082	01.0127	13.48	300019	01.2814	18.78	310073	01.6854	23.77
260164	00.9984	12.17	270080	01.2060	15.54	280083	01.1020	14.54	300020	01.2710	20.72	310074	01.4715	22.61
260166	01.2345	21.39	270081	01.0741	12.39	280084	01.0433	11.01	300021	01.1849	15.34	310075	01.3895	23.13
260172	00.9976	12.72	270082	01.0736	14.48	280088	01.7915	17.98	300022	01.1134	17.22	310076	01.4399	28.74
260173	01.0104	11.78	270083	01.0503	16.28	280089	01.0285	14.37	300023	01.2978	19.78	310077	01.5635	23.51
260175	01.1633	14.99	270084	00.9318	14.12	280090	00.9935	13.49	300024	01.1828	16.74	310078	01.3027	24.59
260176	01.7313	18.43	280001	01.1150	12.98	280091	01.2088	14.18	300028	01.2388	16.75	310081	01.2885	21.29
260177	01.3273	20.42	280003	02.0371	19.15	280092	00.8942	12.18	300029	01.3275	22.39	310083	01.2987	22.33
260178	01.4928	18.91	280005	01.4351	17.19	280094	01.0535	14.07	300033	01.1132	13.69	310084	01.3541	21.20
260179	01.6451	18.70	280009	01.7538	17.25	280097	01.0852	12.27	300034	02.0364	23.29	310086	01.2266	21.30
260180	01.7006	20.07	280011	00.8644	11.91	280098	00.9677	10.40	310001	01.7992	26.40	310087	01.2818	19.26
260183	01.5643	16.14	280012	01.3040	15.43	280101	01.0917	13.18	310002	01.7327	26.31	310088	01.2278	20.64
260186	01.2995	15.97	280013	01.8405	20.57	280102	01.1442	12.76	310003	01.2627	24.08	310090	01.2294	25.46
260188	01.2526	18.64	280014	00.9583	13.39	280104	00.9763	10.84	310005	01.2319	20.54	310091	01.3343	20.80
260189	00.8480	11.26	280015	01.0124	15.19	280105	01.3758	17.28	310006	01.2052	19.62	310092	01.3108	20.70
260190	01.2528	18.90	280017	01.1012	13.94	280106	00.9288	13.93	310008	01.3806	22.73	310093	01.1706	19.79
260191	01.2514	17.92	280018	01.0931	13.35	280107	01.0876	11.13	310009	01.2807	22.80	310096	01.8668	23.17
260193	01.2323	18.75	280020	01.6154	18.93	280108	01.2167	13.96	310010	01.2537	20.92	310105	01.2442	23.63
260195	01.1679	14.49	280021	01.3263	15.49	280109	00.9153	09.80	310011	01.2873	21.55	310108	01.4315	21.85
260197	01.1444	20.98	280022	01.0087	12.52	280110	01.0169	11.19	310012	01.5915	24.33	310110	01.2368	20.38
260198	01.3378	15.86	280023	01.4093	15.69	280111	01.2161	15.63	310013	01.2770	21.84	310111	01.3068	20.46
260200	01.3613	19.10	280024	00.9413	13.05	280114	00.9765	12.99	310014	01.7131	24.26	310112	01.3241	21.02
270002	01.2856	15.06	280025	00.9422	12.14	280115	00.9474	14.77	310015	01.9529	24.97	310113	01.2395	20.60
270003	01.2214	19.98	280026	01.0265	15.28	280117	01.1921	14.47	310016	01.2564	22.34	310115	01.2923	19.31
270004	01.7045	19.96	280028	01.0549	14.53	280118	00.9889	15.17	310017	01.3661	23.40	310116	01.2370	21.96
270006	01.0898	14.78	280029	01.2195	14.02	280119	00.8659	.....	310018	01.1268	20.55	310118	01.2551	22.53
270007	00.9224	13.18	280030	01.7278	24.40	280123	00.9506	15.63	310019	01.6124	23.53	310119	01.6198	30.37
270009	01.0810	15.34	280031	01.0191	13.10	290001	01.6662	21.85	310020	01.2521	21.55	310120	01.0709	17.44
270011	01.0719	15.52	280032	01.3303	15.57	290002	00.9831	17.79	310021	01.3931	22.03	310121	01.1650	20.34
270012	01.6741	17.63	280033	01.0971	14.24	290003	01.6600	20.74	310022	01.2806	21.47	320001	01.4682	17.14
270013	01.4138	17.77	280034	01.3131	13.86	290005	01.4915	19.03	310024	01.3560	22.85	320002	01.3511	20.74
270014	01.7987	16.83	280035	00.9238	11.81	290006	01.1731	16.15	310025	01.2619	22.27	320003	01.1841	15.65
270016	00.9321	13.23	280037	01.0168	14.28	290007	01.9114	27.06	310026	01.2312	22.67	320004	01.2645	17.19
270017	01.3064	18.66	280038	01.0809	14.53	290008	01.1790	18.73	310027	01.3355	20.94	320005	01.3203	18.87
270019	01.0378	14.02	280039	01.1314	13.99	290009	01.5603	22.25	310028	01.1787	21.21	320006	01.3638	15.96
270021	01.1545	16.23	280040	01.6214	18.67	290010	01.1286	11.93	310029	01.9766	22.49	320009	01.5899	16.52
270023	01.3584	20.28	280041	00.9179	11.80	290011	01.0396	14.67	310031	02.8736	24.35	320011	01.0253	17.06
270024	00.9913	13.05	280042	01.1032	13.11	290012	01.3984	20.71	310032	01.3445	21.17	320012	00.9834	16.21
270026	00.9309	12.95	280043	01.0605	14.76	290013	01.0682	15.39	310034	01.2696	21.26	320013	01.1618	19.19
270027	01.0785	11.91	280045	01.2844	13.63	290014	01.0288	16.38	310036	01.1474	19.86	320014	01.1042	13.79
270028	01.0841	15.37	280046	01.1494	11.04	290015	01.0036	15.04	310037	01.3407	26.92	320016	01.1839	13.77
270029	00.9507	16.24	280047	01.0939	15.54	290016	01.2251	19.81	310038	02.0204	24.49	320017	01.1548	16.85
270032	01.1189	15.80	280048	01.1833	12.06	290019	01.3517	19.06	310039	01.2885	21.42	320018	01.5098	17.37
270033	00.8853	12.22	280049	01.0480	13.94	290020	01.0868	17.08	310040	01.2597	24.06	320019	01.5443	22.95

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
320021	01.7533	17.31	330057	01.6977	16.97	330167	01.7092	28.82	330265	01.3607	16.53	340021	01.2689	16.22
320022	01.2423	16.07	330058	01.3103	15.76	330169	01.4110	32.57	330267	01.2246	23.35	340022	01.0375	14.98
320023	00.9909	16.72	330059	01.5940	29.90	330171	01.3203	21.95	330268	01.0334	14.44	340023	01.4060	17.97
320030	01.0487	18.27	330061	01.3131	23.60	330175	01.1554	14.35	330270	01.9732	32.47	340024	01.1772	15.07
320031	00.9027	12.36	330062	01.1628	15.58	330177	01.0005	13.74	330273	01.3707	23.35	340025	01.1840	14.99
320032	00.9301	15.10	330064	01.4496	29.63	330179	00.8725	14.38	330275	01.3082	18.58	340027	01.1891	15.59
320033	01.1267	20.90	330065	01.1872	17.24	330180	01.1898	16.40	330276	01.1936	17.02	340028	01.5458	17.32
320035	00.9731	14.58	330066	01.3095	17.55	330181	01.3087	30.46	330277	01.1398	16.32	340030	02.0708	20.58
320037	01.2157	15.59	330067	01.3397	20.60	330182	02.4691	28.41	330279	01.3457	18.52	340031	01.0081	11.97
320038	01.2291	13.85	330072	01.3517	27.84	330183	01.5101	18.74	330285	01.7862	22.52	340032	01.3860	18.60
320046	01.2573	18.15	330073	01.1565	14.87	330184	01.3734	26.85	330286	01.3224	24.25	340035	01.1828	15.73
320048	01.3064	17.40	330074	01.2166	18.14	330185	01.3291	25.44	330290	01.7785	29.90	340036	01.2472	17.33
320056	00.9777	.....	330075	01.0853	17.25	330186	00.8858	19.79	330293	01.1588	13.48	340037	01.1215	15.85
320057	00.9860	.....	330078	01.3888	17.05	330188	01.2089	18.28	330304	01.2571	27.34	340038	01.0707	15.42
320058	00.8563	.....	330079	01.2315	17.05	330189	01.4328	16.85	330306	01.4672	27.44	340039	01.2910	19.52
320059	01.1562	.....	330080	01.4550	27.21	330191	01.3345	17.14	330307	01.2474	19.43	340040	01.7921	18.22
320060	00.9435	.....	330084	01.0610	16.46	330193	01.3182	27.97	330308	01.2507	29.68	340041	01.2364	17.24
320061	01.1137	.....	330085	01.3273	18.64	330194	01.8320	29.32	330309	01.2698	24.10	340042	01.1970	14.01
320062	00.9094	.....	330086	01.2423	24.99	330195	01.6507	29.85	330314	01.4593	22.18	340044	01.0253	13.44
320063	01.2911	16.46	330088	01.0571	24.62	330196	01.3114	00.34	330315	16.1090	25.23	340045	00.9968	09.61
320065	01.3721	17.00	330090	01.5514	16.76	330197	01.0574	14.99	330316	01.2635	21.85	340047	01.8734	18.38
320067	00.8637	17.64	330091	01.3268	18.50	330198	01.4037	22.87	330327	00.9920	16.17	340048	00.8186	14.02
320068	00.8763	15.36	330092	01.1180	14.07	330199	01.4010	25.87	330331	01.2269	29.77	340049	00.6961	13.94
320069	00.9960	10.67	330094	01.1768	16.51	330201	01.6465	27.62	330332	01.2958	26.61	340050	01.1941	17.37
320070	00.9059	.....	330095	01.2330	17.55	330202	01.6534	28.76	330333	01.2526	23.81	340051	01.3394	16.08
320074	01.0785	17.04	330096	01.0917	15.45	330203	01.3909	19.06	330336	01.3450	28.99	340052	01.0093	18.41
320079	01.1533	17.22	330097	01.2483	15.36	330204	01.4006	30.31	330338	01.2358	23.09	340053	01.6663	19.08
330001	01.1757	25.49	330100	00.7182	26.07	330205	01.1539	20.29	330339	00.8847	18.73	340054	01.1083	13.09
330002	01.4142	25.22	330101	01.7684	33.56	330208	01.2513	24.55	330340	01.1880	21.17	340055	01.1907	17.40
330003	01.3152	17.67	330102	01.3513	17.47	330209	01.2154	23.11	330350	01.8015	28.27	340060	01.1491	16.69
330004	01.3320	19.08	330103	01.2733	16.46	330211	01.1993	17.23	330353	01.3368	30.33	340061	01.7040	19.91
330005	01.7984	20.49	330104	01.3905	26.74	330212	01.1041	21.12	330354	01.5264	.....	340063	01.0417	13.08
330006	01.2710	23.92	330106	01.5962	34.42	330213	01.1771	16.58	330357	01.3809	33.49	340064	01.2144	17.12
330007	01.3464	17.71	330107	01.3262	25.92	330214	01.7550	29.72	330359	00.9243	19.54	340065	01.3430	14.39
330008	01.2061	15.62	330108	01.2139	16.28	330215	01.2276	15.66	330372	01.2018	24.47	340067	01.2792	15.88
330009	01.3815	30.32	330111	01.0633	14.81	330218	01.1335	17.94	330381	01.1971	28.03	340068	01.2351	14.77
330010	01.2801	15.07	330114	00.9802	16.13	330219	01.6778	19.13	330385	01.1776	-2.89	340069	01.7382	19.47
330011	01.3290	17.81	330115	01.2248	15.23	330221	01.3386	27.53	330386	01.2009	22.53	340070	01.3823	17.57
330012	01.7038	31.01	330116	00.9813	14.21	330222	01.2772	17.64	330387	01.0268	23.95	340071	01.0851	15.08
330013	02.0608	17.36	330118	01.6299	18.94	330223	01.0642	15.37	330389	01.7489	29.43	340072	01.0654	15.20
330014	01.3788	30.31	330119	01.7640	33.48	330224	01.2453	20.32	330390	01.2900	30.36	340073	01.5496	20.23
330016	01.0547	15.47	330121	01.0392	16.10	330225	01.1722	24.43	330393	01.7141	27.22	340075	01.2024	16.26
330019	01.2902	25.33	330122	01.0867	21.84	330226	01.2740	17.05	330394	01.5390	17.96	340080	01.0607	12.72
330020	01.0620	15.26	330125	01.8729	19.78	330229	01.3074	15.73	330395	01.3045	30.64	340084	01.0587	15.61
330023	01.2479	23.30	330126	01.1881	22.34	330230	01.4285	28.69	330396	01.3520	24.91	340085	01.1720	15.65
330024	01.8143	30.17	330127	01.3437	24.82	330231	01.0938	30.02	330397	01.2858	25.47	340087	01.1024	16.01
330025	01.1813	18.51	330128	01.3917	28.29	330232	01.2394	16.42	330398	01.2749	26.92	340088	01.1388	16.42
330027	01.4780	30.17	330132	01.0770	14.60	330233	01.5512	29.70	330399	01.2737	29.65	340089	01.0348	12.85
330028	01.4234	24.95	330133	01.3665	30.50	330234	02.2563	29.60	340001	01.5504	19.47	340090	01.1542	17.15
330029	01.0148	19.09	330135	01.1572	18.28	330235	01.1452	18.33	340002	01.8974	18.38	340091	01.7238	19.42
330030	01.2083	14.75	330136	01.2992	16.54	330236	01.4044	27.87	340003	01.1484	17.08	340093	01.0733	12.10
330033	01.2824	13.81	330140	01.7638	17.79	330238	01.2306	14.19	340004	01.4886	17.16	340094	01.4431	17.65
330034	00.7369	32.72	330141	01.3548	24.27	330239	01.1936	15.39	340005	01.1591	13.24	340096	01.1673	17.33
330036	01.2231	22.66	330144	00.9791	13.70	330240	01.3305	28.41	340006	01.0881	14.60	340097	01.1830	16.61
330037	01.1592	14.92	330148	01.0830	14.58	330241	01.9102	22.54	340007	01.1617	16.20	340098	01.7209	19.46
330038	01.2065	14.81	330151	01.0751	14.55	330242	01.3802	23.99	340008	01.1475	16.97	340099	01.1578	12.70
330039	00.8432	14.25	330152	01.4444	28.88	330245	01.3022	17.51	340009	01.4763	19.70	340101	01.1697	11.80
330041	01.3306	30.19	330153	01.7128	17.15	330246	01.3541	25.33	340010	01.3236	16.97	340104	00.8600	12.36
330043	01.3108	26.60	330154	01.6429	.....	330247	00.7659	29.15	340011	01.1355	14.36	340105	01.3859	17.94
330044	01.2722	17.63	330157	01.3608	19.48	330249	01.1711	15.98	340012	01.3193	15.92	340106	01.2109	18.52
330045	01.4075	26.13	330158	01.4129	23.06	330250	01.3086	16.89	340013	01.2557	15.63	340107	01.4165	16.65
330046	01.4956	29.75	330159	01.3177	17.67	330252	00.8785	15.72	340014	01.5864	22.01	340109	01.3485	16.84
330047	01.2551	16.37	330160	01.4457	29.16	330254	01.1651	15.21	340015	01.3037	17.05	340111	01.1783	13.75
330048	01.2230	16.94	330161	00.7222	16.75	330258	01.3696	26.99	340016	01.2047	15.58	340112	01.0683	13.87
330049	01.3252	17.74	330162	01.2585	26.51	330259	01.5046	22.78	340017	01.2671	16.06	340113	02.0121	21.03
330053	01.1943	15.15	330163	01.2523	18.88	330261	01.2906	25.24	340018	01.1777	15.29	340114	01.5618	19.74
330055	01.4882	31.04	330164	01.3928	19.40	330263	01.0194	18.52	340019	01.0467	13.86	340115	01.5417	18.15
330056	01.3144	27.86	330166	01.0011	15.11	330264	01.2443	23.18	340020	01.2083	17.65	340116	01.8211	20.54

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
340119	01.2911	16.28	350041	00.9769	14.99	360062	01.5165	19.27	360143	01.3986	18.13	370012	00.8913	09.07
340120	01.0917	12.31	350042	01.0876	11.16	360063	01.1515	18.08	360144	01.3179	20.90	370013	01.7919	19.41
340121	01.1182	15.36	350043	01.7067	16.69	360064	01.6063	21.61	360145	01.6494	17.67	370014	01.2905	18.49
340123	01.1194	16.92	350044	00.8710	10.29	360065	01.2762	17.59	360147	01.2388	15.85	370015	01.2695	14.88
340124	01.0603	13.70	350047	01.1747	16.78	360066	01.4343	18.88	360148	01.1249	17.65	370016	01.4272	15.52
340125	01.4926	18.36	350049	01.2578	10.74	360067	01.2705	12.77	360149	01.2285	17.72	370017	01.0956	11.48
340126	01.4258	16.47	350050	00.9330	10.74	360068	01.7423	22.41	360150	01.2490	19.17	370018	01.3350	16.66
340127	01.2939	15.72	350051	00.9947	15.46	360069	01.1370	16.74	360151	01.3513	17.46	370019	01.2757	13.17
340129	01.2939	17.50	350053	01.0948	10.34	360070	01.7333	17.18	360152	01.4715	17.88	370020	01.3047	12.51
340130	01.4419	17.78	350055	00.8596	12.12	360071	01.3523	16.78	360153	01.1796	14.12	370021	00.8951	09.76
340131	01.5338	17.10	350056	00.9765	12.81	360072	01.2124	16.99	360154	01.0368	12.79	370022	01.2941	16.91
340132	01.4383	13.48	350058	00.8563	12.32	360074	01.3725	19.42	360155	01.3327	19.43	370023	01.3248	15.36
340133	01.0956	14.59	350060	00.7725	07.81	360075	01.4496	20.74	360156	01.3468	17.17	370025	01.3637	16.03
340137	01.1410	16.93	350061	01.0745	14.05	360076	01.3490	17.88	360159	01.2231	19.63	370026	01.4154	16.34
340138	01.0567	14.77	350063	00.8461	.....	360077	01.5389	19.34	360161	01.2521	19.38	370028	01.9042	19.01
340141	01.6716	19.46	350064	00.9598	.....	360078	01.3080	20.54	360162	01.2452	18.42	370029	01.2199	13.67
340142	01.2340	14.52	350066	00.4249	.....	360079	01.8681	21.00	360163	01.8349	19.83	370030	01.2212	15.66
340143	01.4482	17.07	360001	01.3384	16.97	360080	01.1083	15.47	360164	00.9007	14.82	370032	01.5792	15.46
340144	01.3645	18.62	360002	01.2162	16.93	360081	01.3841	19.32	360165	01.1742	14.70	370033	01.0221	11.30
340145	01.4125	16.83	360003	01.7712	21.00	360082	01.3414	20.33	360166	01.2030	14.95	370034	01.2616	13.35
340146	01.0456	12.52	360006	01.7607	20.88	360083	01.2828	16.28	360170	01.3775	17.38	370035	01.6378	16.49
340147	01.3150	18.57	360007	01.0849	16.02	360084	01.6067	19.41	360172	01.3901	16.51	370036	01.1174	10.48
340148	01.5007	18.58	360008	01.2525	17.40	360085	01.7980	20.40	360174	01.3088	17.57	370037	01.7461	17.69
340151	01.2148	15.08	360009	01.3939	17.80	360086	01.4480	18.21	360175	01.2520	18.78	370038	00.9834	11.67
340153	01.8980	19.07	360010	01.1941	16.42	360087	01.4085	17.90	360176	01.1680	14.85	370039	01.4126	14.24
340155	01.4119	20.03	360011	01.3105	18.17	360088	01.2530	16.38	360177	01.2971	16.97	370040	01.0732	12.21
340156	00.8453	.....	360012	01.2907	19.29	360089	01.1458	17.82	360178	01.1892	16.88	370041	01.0325	14.17
340158	01.2122	16.64	360013	01.1167	17.72	360090	01.2435	19.06	360179	01.2990	19.34	370042	00.8601	12.67
340159	01.1730	17.58	360014	01.1749	17.98	360091	01.2344	19.17	360180	02.1407	22.61	370043	00.9385	13.83
340160	01.1167	13.34	360016	01.5907	17.92	360092	01.1738	18.70	360184	00.4826	16.57	370045	01.0062	10.45
340162	01.1881	17.44	360017	01.8253	20.42	360093	01.2307	16.69	360185	01.2327	17.09	370046	01.0062	11.67
340164	01.5860	18.61	360018	01.6307	19.25	360094	01.3184	19.51	360186	01.1293	14.23	370047	01.3674	15.46
340166	01.3553	19.31	360019	01.2457	19.11	360095	01.2967	17.00	360187	01.3884	16.45	370048	01.2342	14.10
340168	00.5173	14.86	360020	01.4476	19.77	360096	01.1102	16.11	360188	00.9743	15.83	370049	01.3882	15.65
340171	01.1321	20.34	360021	01.2174	17.75	360098	01.3556	17.96	360189	01.0811	16.02	370051	00.9683	12.64
340173	01.2798	.....	360024	01.4071	18.60	360099	01.0454	15.01	360192	01.3259	20.42	370054	01.4885	15.15
350001	01.0123	11.96	360025	01.2808	18.44	360100	01.2628	16.54	360193	01.3581	16.93	370056	01.5839	18.24
350002	01.7471	15.76	360026	01.3129	15.99	360101	01.5606	19.00	360194	01.2097	16.98	370057	01.1540	13.78
350003	01.1860	16.16	360027	01.5042	19.53	360102	01.3166	20.31	360195	01.1428	18.15	370059	01.1079	17.59
350004	01.9396	17.55	360028	01.4059	16.15	360103	01.3796	19.64	360197	01.2406	18.15	370060	01.0892	12.84
350005	01.1759	12.94	360029	01.1959	17.00	360106	01.0886	14.96	360200	01.0117	14.16	370063	01.0280	13.43
350006	01.4658	15.92	360030	01.3039	16.35	360107	01.2908	17.73	360203	01.1555	15.13	370064	01.0078	10.63
350007	00.9387	11.95	360031	01.3375	18.56	360108	01.0396	15.34	360204	01.1930	17.97	370065	00.9975	15.50
350008	00.9673	15.65	360032	01.0924	18.26	360109	01.0923	17.32	360210	01.1623	19.78	370071	01.0650	11.99
350009	01.2044	15.95	360034	01.2896	13.90	360112	01.8045	22.51	360211	01.2500	18.78	370072	00.9083	12.83
350010	01.1975	12.15	360035	01.5988	20.13	360113	01.3367	19.20	360212	01.3950	19.17	370076	01.2782	12.00
350011	01.9030	17.35	360036	01.3855	17.71	360114	01.0906	17.10	360213	01.1504	17.17	370077	01.1968	16.27
350012	01.2136	11.99	360037	02.0437	20.51	360115	01.2874	17.65	360218	01.3232	16.46	370078	01.6803	14.49
350013	01.0734	15.32	360038	01.5766	18.07	360116	01.1189	16.64	360230	01.5121	19.37	370079	00.9507	12.41
350014	01.0049	15.46	360039	01.3052	16.07	360118	01.3818	18.32	360231	01.0866	12.11	370080	00.9633	11.68
350015	01.6959	15.63	360040	01.4268	17.31	360121	01.2342	17.90	360234	01.3527	18.54	370082	00.8647	13.46
350016	01.0278	10.92	360041	01.3556	18.33	360123	01.1997	18.37	360236	01.2897	17.59	370083	00.9410	11.35
350017	01.4347	15.24	360042	01.1551	17.62	360125	01.0747	17.38	360239	01.3234	19.51	370084	01.1272	11.02
350018	01.0690	11.21	360044	01.1741	15.64	360126	01.2090	20.09	360241	00.5799	18.86	370085	00.8936	14.52
350019	01.6318	18.43	360045	01.5348	20.90	360127	01.2236	16.48	360242	01.6800	.....	370086	01.1242	07.79
350020	01.7038	20.24	360046	01.1457	17.85	360128	01.2053	14.73	360243	00.7547	15.52	370089	01.2565	13.16
350021	01.0657	11.41	360047	01.1558	13.65	360129	01.0204	14.59	360244	00.6212	15.74	370091	01.7693	17.18
350023	00.9056	12.86	360048	01.7911	21.55	360130	01.1377	15.59	360245	00.7563	14.33	370092	01.0486	14.38
350024	01.0901	15.40	360049	01.2049	18.18	360131	01.3624	17.38	360247	00.4249	.....	370093	01.8714	18.71
350025	01.0197	13.34	360050	01.1543	12.37	360132	01.3101	18.78	360248	01.7716	.....	370094	01.4088	17.00
350027	00.9438	12.32	360051	01.6080	21.90	360133	01.4858	18.44	370001	01.7032	18.73	370095	00.9450	11.66
350029	00.8818	13.02	360052	01.7565	18.41	360134	01.7139	19.43	370002	01.2588	13.98	370097	01.4520	18.02
350030	00.9794	15.93	360054	01.2912	15.83	360135	01.1809	16.82	370004	01.3080	15.35	370099	01.1924	12.65
350033	00.9672	14.33	360055	01.2726	19.12	360136	01.0773	15.96	370005	01.0106	13.12	370100	00.9622	13.45
350034	00.9622	18.05	360056	01.4296	16.47	360137	01.6206	18.82	370006	01.2229	15.45	370103	00.9375	15.07
350035	00.8570	09.95	360057	01.1168	13.87	360140	01.0258	16.19	370007	01.2061	13.82	370105	01.9923	16.23
350038	01.0479	14.07	360058	01.3461	16.66	360141	01.4692	21.06	370008	01.4030	16.68	370106	01.5356	16.46
350039	01.0484	13.84	360059	01.5754	20.39	360142	00.9969	15.98	370011	01.0547	12.95	370108	01.0528	11.73

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
370112	01.0771	13.21	380029	01.1586	18.45	390032	01.2762	18.10	390115	01.3809	22.31	390205	01.4138	20.63
370113	01.2416	16.23	380031	01.0219	18.48	390035	01.2570	17.79	390116	01.2586	21.78	390206	01.4057	20.14
370114	01.6787	15.49	380033	01.7402	24.13	390036	01.4202	18.06	390117	01.1972	15.62	390209	01.0481	15.09
370121	01.1451	17.38	380035	01.3725	19.01	390037	01.3360	18.93	390118	01.2115	16.26	390211	01.2749	16.99
370122	01.1357	07.58	380036	01.0566	20.26	390039	01.1244	15.66	390119	01.3748	17.59	390213	01.0016	16.41
370123	01.2119	12.32	380037	01.1645	19.53	390040	00.9686	13.13	390121	01.3448	17.47	390215	01.2812	21.06
370125	01.0097	13.37	380038	01.3393	22.64	390041	01.3187	17.07	390122	01.0693	17.57	390217	01.2357	18.51
370126	00.9543	15.34	380039	01.3779	29.30	390042	01.5624	21.73	390123	01.3537	20.71	390219	01.3287	19.67
370131	01.0012	12.88	380040	01.2637	19.96	390043	01.1719	14.85	390125	01.2284	15.61	390220	01.1983	19.08
370133	01.1472	10.09	380042	01.1612	20.57	390044	01.6556	19.63	390126	01.2945	21.03	390222	01.3122	20.33
370138	01.1325	15.23	380047	01.7067	22.12	390045	01.7661	18.05	390127	01.2538	20.96	390223	01.5528	23.17
370139	01.1354	12.56	380048	01.0410	14.68	390046	01.6117	19.79	390128	01.2119	18.14	390224	00.9223	13.35
370140	00.9528	10.99	380050	01.3901	17.45	390047	01.7852	28.26	390130	01.1560	17.20	390225	01.2083	17.19
370141	01.3715	17.30	380051	01.5648	20.05	390048	01.1647	16.60	390131	01.2907	16.30	390226	01.7768	24.15
370146	01.0085	10.73	380052	01.1918	16.61	390049	01.6474	20.69	390132	01.3448	15.42	390228	01.2582	19.38
370148	01.5151	18.46	380055	01.1757	24.14	390050	02.1314	22.39	390133	01.8281	21.71	390231	01.3348	25.11
370149	01.2706	15.35	380056	01.0666	17.36	390051	02.2272	25.28	390135	01.3066	21.05	390233	01.3161	17.22
370153	01.1557	14.05	380060	01.4373	21.98	390052	01.2179	19.41	390136	01.1980	15.39	390235	01.6702	24.38
370154	00.9897	13.05	380061	01.5351	22.07	390054	01.2347	16.08	390137	01.5015	16.35	390236	01.2217	15.88
370156	01.0800	12.49	380062	01.1543	14.40	390055	01.8450	21.81	390138	01.3173	17.93	390237	01.5935	20.36
370158	00.9865	11.75	380063	01.2864	19.01	390056	01.1639	16.81	390139	01.5607	23.54	390238	01.4213	16.51
370159	01.2594	15.59	380064	01.3688	21.25	390057	01.2716	18.70	390142	01.6526	23.18	390242	01.2889	18.48
370163	00.8591	12.16	380065	01.0800	22.49	390058	01.3370	18.67	390145	01.3905	19.48	390244	00.8920	09.83
370165	01.2006	12.46	380066	01.4293	18.58	390060	01.1510	16.92	390146	01.2882	16.44	390245	01.3803	24.05
370166	01.1406	16.32	380068	01.0516	19.05	390061	01.4893	19.08	390147	01.2376	19.08	390246	01.2473	17.25
370169	01.1037	11.25	380069	01.1438	18.59	390062	01.2096	16.01	390150	01.1109	18.10	390247	01.0371	18.26
370170	01.0855	.....	380070	01.3961	21.24	390063	01.7640	19.24	390151	01.2813	18.58	390249	00.9800	12.06
370171	01.0678	.....	380071	01.3440	20.07	390065	01.2780	19.30	390152	01.0750	18.81	390256	01.8586	23.45
370172	00.9962	.....	380072	00.9537	14.66	390066	01.3186	17.77	390153	01.2419	22.46	390258	01.2671	20.08
370173	01.1933	.....	380075	01.4047	19.72	390067	01.7794	18.91	390154	01.2332	16.67	390260	01.2216	21.17
370174	01.1211	.....	380078	01.1150	17.41	390068	01.2742	17.23	390155	01.2835	19.44	390262	02.1059	17.77
370176	01.1972	15.29	380081	01.0847	18.84	390069	01.2051	17.75	390156	01.4396	21.37	390263	01.4786	19.16
370177	01.0146	10.09	380082	01.3405	22.96	390070	01.2858	20.39	390157	01.3451	17.99	390265	01.2976	18.82
370178	01.0055	10.96	380083	01.2349	20.06	390071	01.1351	13.68	390158	01.5819	18.96	390266	01.1930	16.81
370179	00.8169	17.33	380084	01.3216	21.43	390072	01.0913	15.91	390160	01.2468	18.50	390267	01.2771	19.80
370180	00.9740	.....	380087	01.0052	15.38	390073	01.6266	19.03	390161	01.1266	14.43	390268	01.3964	20.44
370183	01.0165	12.06	380088	01.0315	16.16	390074	01.3127	16.05	390162	01.4556	19.59	390270	01.3202	16.67
370186	01.0206	13.15	380089	01.3738	22.25	390075	01.3025	16.41	390163	01.2420	15.99	390272	00.5074	.....
370189	00.9532	07.82	380090	01.3211	25.71	390076	01.3566	21.07	390164	02.1542	20.37	390277	00.4880	22.55
370190	01.5794	15.31	380091	01.2631	25.13	390078	01.0424	16.88	390166	01.1022	18.31	390278	00.6661	18.42
370192	01.3093	17.57	390001	01.3373	18.25	390079	01.7564	16.81	390167	01.3544	21.30	390279	01.0584	15.32
370194	01.8180	.....	390002	01.3644	18.62	390080	01.3323	19.14	390168	01.2625	18.43	390281	02.6697	.....
370195	01.7401	.....	390003	01.2554	15.88	390081	01.3776	22.88	390169	01.2856	18.72	390282	02.9409	.....
370196	01.1671	.....	390004	01.4319	18.12	390083	01.1662	22.01	390170	01.9087	21.25	400001	01.3065	08.65
370197	01.0898	.....	390005	01.0806	14.24	390084	01.1944	15.57	390173	01.1949	16.79	400002	01.6129	11.34
380001	01.3616	21.21	390006	01.7592	18.17	390086	01.2005	15.86	390174	01.7675	25.41	400003	01.2768	08.61
380002	01.1954	19.35	390007	01.1638	21.90	390088	01.3124	22.62	390176	01.1748	18.14	400004	01.1628	08.18
380003	01.2096	20.71	390008	01.1579	15.47	390090	01.8633	18.97	390178	01.2993	18.44	400005	01.0828	06.61
380004	01.7682	23.34	390009	01.6174	17.81	390091	01.1348	17.40	390179	01.3019	22.12	400006	01.1998	07.59
380005	01.2457	21.15	390010	01.1940	17.10	390093	01.1530	14.99	390180	01.5552	23.40	400007	01.2160	07.46
380006	01.3673	19.26	390011	01.2706	16.82	390095	01.1941	14.46	390181	01.0669	18.59	400009	01.0124	07.71
380007	01.5837	23.43	390012	01.2607	19.75	390096	01.3470	17.00	390183	01.2194	18.03	400010	00.9370	08.53
380008	01.0565	17.83	390013	01.2410	16.90	390097	01.3270	21.56	390184	01.1453	18.07	400011	00.9932	08.12
380009	01.8640	23.30	390015	01.1668	13.12	390098	01.7998	20.75	390185	01.2099	16.34	400012	01.2679	07.40
380010	01.1177	20.67	390016	01.2448	16.40	390100	01.6693	20.03	390189	01.0930	16.73	400013	01.2504	07.44
380011	01.0880	20.97	390017	01.1347	15.43	390101	01.2430	16.62	390191	01.1775	14.33	400014	01.3895	08.92
380013	01.2741	17.76	390018	01.3507	20.05	390102	01.3992	20.51	390192	01.1868	16.36	400015	01.2239	09.83
380014	01.5560	20.77	390019	01.1182	15.59	390103	01.1030	18.00	390193	01.2146	16.13	400016	01.3497	10.89
380017	01.8253	23.17	390022	01.3276	21.40	390104	01.0899	14.99	390194	01.1010	18.91	400017	01.2425	07.70
380018	01.7644	21.22	390023	01.3010	18.98	390106	01.0768	15.15	390195	01.8873	22.93	400018	01.2993	09.67
380019	01.3170	19.33	390024	00.9898	23.26	390107	01.2972	19.04	390196	01.4406	.....	400019	01.8030	09.34
380020	01.4406	21.43	390025	00.6308	15.97	390108	01.3512	20.08	390197	01.3014	18.49	400021	01.4988	08.78
380021	01.2983	19.44	390026	01.2830	20.94	390109	01.1606	14.14	390198	01.2247	15.75	400022	01.3222	10.01
380022	01.2344	21.01	390027	01.8940	25.88	390110	01.5989	18.05	390199	01.3118	15.40	400024	00.9975	07.79
380023	01.2476	17.43	390028	01.9133	17.78	390111	01.8414	27.88	390200	01.0929	14.88	400026	00.9746	05.66
380025	01.2534	22.55	390029	01.9558	18.83	390112	01.1966	12.26	390201	01.2589	19.26	400027	01.1943	09.06
380026	01.1657	17.54	390030	01.2417	17.37	390113	01.2118	16.25	390203	01.3873	20.96	400028	01.0387	07.89
380027	01.3334	23.09	390031	01.1640	17.15	390114	01.2644	22.27	390204	01.2800	18.56	400029	01.1383	.....

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
400031	01.1913	08.38	420053	01.2774	14.99	430056	00.8741	09.56	440068	01.2254	17.28	440205	01.1096	15.47
400032	01.1933	08.21	420054	01.2603	17.08	430057	00.9229	10.73	440070	01.1011	14.28	440206	01.0829	13.80
400044	01.2118	09.14	420055	01.0222	14.59	430060	00.9262	08.64	440071	01.3979	16.32	440208	01.9916	.....
400048	01.2251	.....	420056	01.1518	13.66	430062	00.8090	10.50	440072	01.4186	14.81	440209	01.7802	.....
400061	01.5945	13.14	420057	01.1676	15.20	430064	01.1664	12.48	440073	01.3463	18.39	440211	00.7914	.....
400079	01.2989	08.37	420059	00.9864	13.80	430065	01.0035	10.34	440078	01.0317	13.14	450002	01.5261	18.75
400087	01.4162	08.10	420061	01.1701	16.99	430066	00.9891	11.87	440081	01.1820	15.86	450004	01.2254	12.21
400094	01.1058	09.07	420062	01.3804	16.51	430073	01.0158	13.25	440082	02.0430	21.47	450005	01.2221	14.82
400098	01.2338	07.55	420064	01.1545	14.32	430076	00.9849	10.30	440083	01.1480	12.16	450007	01.2626	13.51
400102	01.2188	07.59	420065	01.3538	17.37	430077	01.6495	16.77	440084	01.1833	12.89	450008	01.3661	14.74
400103	01.4253	09.13	420066	00.9250	15.38	430079	00.9968	11.63	440090	00.8532	11.62	450010	01.4024	15.12
400104	01.4137	09.01	420067	01.2687	16.48	430081	00.9338	.....	440091	01.6477	16.91	450011	01.5959	17.67
400105	01.3250	09.05	420068	01.3430	17.25	430082	00.9221	.....	440100	01.0678	13.60	450014	01.0411	14.53
400106	01.2027	07.87	420069	01.0606	14.29	430083	00.7736	.....	440102	01.0777	12.64	450015	01.5299	15.25
400109	01.4914	09.67	420070	01.2890	15.76	430084	00.9792	.....	440103	01.2605	16.57	450016	01.6408	17.49
400110	01.1463	08.39	420071	01.3340	17.29	430085	00.9069	.....	440104	01.6987	18.53	450018	01.5929	21.98
400111	01.1311	08.52	420072	01.0354	11.94	430087	00.9333	08.64	440105	01.0989	16.52	450020	01.0246	16.23
400112	01.2492	08.03	420073	01.3185	18.17	430089	00.8346	.....	440109	01.1123	12.71	450021	01.8352	21.68
400113	01.2692	07.41	420074	00.9857	11.49	440001	01.1456	12.99	440110	00.9587	16.41	450023	01.4560	16.45
400114	01.0613	07.55	420075	00.9638	14.51	440002	01.6285	16.75	440111	01.4009	18.75	450024	01.3308	16.74
400115	01.0254	07.86	420078	01.8003	19.92	440003	01.1383	15.46	440114	01.0824	12.28	450025	01.5918	15.72
400117	01.1717	09.01	420079	01.5954	18.15	440006	01.4804	18.40	440115	01.0713	15.34	450028	01.5626	18.19
400118	01.2078	09.52	420080	01.3386	21.29	440007	00.9713	11.94	440120	01.5429	18.26	450029	01.4570	14.12
400120	01.3175	09.23	420081	01.2360	19.59	440008	01.0206	12.34	440125	01.4791	18.20	450031	01.5193	19.54
400121	01.0939	06.53	420082	01.4171	19.00	440009	01.2679	14.38	440130	01.2138	13.33	450032	01.2471	12.89
400122	01.0230	06.66	420083	01.2856	17.31	440010	00.9448	10.15	440131	01.1302	13.71	450033	01.6126	17.70
400123	01.1446	09.36	420085	01.5083	17.52	440011	01.3301	16.51	440132	01.1419	14.75	450034	01.7095	18.08
400124	02.3583	11.31	420086	01.3750	16.96	440012	01.5155	18.04	440133	01.5684	18.67	450035	01.5326	19.16
410001	01.3371	22.95	420087	01.6990	16.86	440014	01.1200	09.84	440135	01.2866	17.25	450037	01.6270	18.03
410004	01.3139	21.15	420088	01.1999	15.27	440015	01.7323	18.12	440137	01.0171	13.14	450039	01.3288	17.37
410005	01.3535	22.61	420089	01.2336	20.60	440016	00.9970	12.59	440141	01.0474	14.12	450040	01.5635	17.73
410006	01.3134	20.75	420091	01.2895	18.32	440017	01.6425	20.72	440142	01.0235	11.05	450042	01.7513	15.78
410007	01.7033	21.60	420093	01.0290	.....	440018	01.4087	17.06	440143	01.1029	16.45	450044	01.6323	19.72
410008	01.2207	21.52	420094	01.0142	.....	440019	01.7245	17.21	440144	01.2377	18.01	450046	01.3332	15.81
410009	01.3152	21.03	430004	01.1098	15.06	440020	01.2198	15.78	440145	00.9917	14.42	450047	01.1063	13.46
410010	01.0663	25.32	430005	01.3635	14.44	440022	01.1220	14.01	440147	01.5380	23.56	450050	01.0051	14.35
410011	01.2322	23.54	430007	01.0876	12.77	440023	01.0845	13.04	440148	01.1478	15.54	450051	01.6238	18.53
410012	01.8243	20.26	430008	01.1139	13.56	440024	01.3163	16.88	440149	01.1533	15.28	450052	01.0402	13.01
410013	01.3321	27.36	430010	01.1619	11.70	440025	01.1310	13.54	440150	01.2975	19.97	450053	01.0950	13.82
420002	01.3781	20.19	430011	01.2805	14.49	440029	01.2898	16.88	440151	01.3044	16.20	450054	01.6713	21.71
420004	01.8270	18.16	430012	01.2848	15.08	440030	01.2286	12.15	440152	01.8133	17.68	450055	01.1386	13.89
420005	01.2076	14.51	430013	01.2924	15.39	440031	01.0158	13.14	440153	01.2942	15.19	450056	01.6924	17.92
420006	01.1694	17.19	430014	01.3101	17.03	440032	01.0561	14.47	440156	01.5826	19.18	450058	01.5836	16.46
420007	01.4966	16.92	430015	01.2209	15.17	440033	01.1140	14.61	440157	01.0397	13.83	450059	01.2884	13.85
420009	01.2382	16.92	430016	01.8665	17.78	440034	01.5576	17.68	440159	01.3156	14.02	450063	00.9369	10.66
420010	01.1211	15.13	430018	00.9509	13.13	440035	01.3309	16.53	440161	01.8754	20.06	450064	01.4910	15.57
420011	01.1251	15.28	430022	00.9348	11.95	440039	01.6969	17.44	440166	01.5786	18.25	450065	01.1163	14.73
420014	01.0959	14.36	430023	00.9495	10.34	440040	01.0122	10.81	440168	01.0442	12.43	450068	01.8865	21.36
420015	01.3676	16.84	430024	00.9521	12.07	440041	01.0586	12.23	440173	01.5485	17.50	450072	01.2275	18.67
420016	01.0741	14.21	430026	01.0086	11.24	440046	01.2850	15.30	440174	01.0180	12.74	450073	01.1003	12.06
420018	01.8145	20.00	430027	01.7854	17.63	440047	00.9397	14.52	440175	01.1775	18.60	450076	01.6678	.....
420019	01.1995	14.70	430028	01.1346	13.29	440048	01.8500	17.82	440176	01.4502	19.17	450078	00.9703	11.75
420020	01.3498	16.94	430029	00.9654	13.84	440049	01.6746	16.37	440178	01.2514	17.07	450079	01.4563	21.93
420023	01.4485	18.50	430031	00.9226	11.58	440050	01.3461	16.28	440180	01.2307	16.96	450080	01.2802	15.99
420026	01.8750	18.16	430033	01.0529	13.10	440051	00.9678	13.82	440181	01.0352	12.37	450081	01.0888	14.50
420027	01.3572	16.82	430034	01.1129	11.59	440052	01.1948	14.76	440182	01.0190	12.53	450082	01.0035	14.70
420030	01.2764	17.28	430036	01.0216	11.83	440053	01.3459	16.28	440183	01.5114	19.69	450083	01.7818	19.58
420031	00.9784	11.88	430037	00.9883	13.15	440054	01.2016	14.55	440184	01.3997	18.96	450085	01.0862	17.24
420033	01.1614	18.91	430038	01.0476	10.83	440056	01.1017	13.57	440185	01.2202	17.48	450087	01.4647	19.68
420036	01.3499	16.42	430040	01.0233	12.64	440057	01.0237	12.15	440186	01.0746	15.77	450090	01.2180	13.26
420037	01.2802	20.66	430041	00.9677	12.47	440058	01.2495	16.30	440187	01.1420	14.58	450092	01.2103	14.59
420038	01.2725	14.80	430043	01.2163	11.82	440059	01.3842	14.85	440189	01.5092	19.13	450094	01.3336	17.87
420039	01.1654	15.64	430044	00.8361	14.07	440060	01.3027	14.20	440192	01.1999	15.37	450096	01.5711	17.19
420042	01.1386	14.05	430047	01.0845	11.92	440061	01.1956	15.89	440193	01.2971	18.60	450097	01.4826	18.51
420043	01.2699	19.12	430048	01.2958	15.48	440063	01.6377	17.90	440194	01.2212	17.13	450098	01.1761	15.10
420048	01.1477	15.56	430049	00.9275	12.70	440064	01.1174	14.56	440197	01.3749	19.23	450099	01.3103	14.66
420049	01.2069	15.89	430051	00.9280	13.84	440065	01.2888	17.78	440200	01.0979	15.64	450101	01.4893	15.44
420051	01.6352	18.06	430054	01.0393	12.79	440067	01.2835	14.99	440203	00.9109	13.09	450102	01.7046	17.87

## PAGE 14 OF 16

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
450104	01.2431	14.23	450219	01.1560	14.78	450379	01.5227	21.62	450591	01.1493	18.92	450713	01.4979	20.85
450107	01.6232	22.05	450221	01.1643	14.40	450381	00.9920	12.86	450596	01.3891	17.15	450715	01.3738	18.59
450108	00.9827	12.48	450222	01.6034	18.35	450388	01.8109	17.12	450597	01.0350	14.53	450716	01.2943	19.56
450109	00.9150	14.72	450224	01.3620	20.66	450389	01.3265	17.71	450603	00.7116	16.81	450717	01.2538	23.86
450110	01.2792	19.30	450229	01.5626	15.41	450393	01.3164	19.70	450604	01.4372	14.00	450718	01.2333	19.03
450111	01.2174	18.93	450231	01.6412	18.25	450395	01.0473	16.49	450605	01.3880	17.67	450723	01.3871	18.22
450112	01.3183	14.31	450234	00.9989	13.07	450399	01.0599	15.59	450609	00.9188	11.77	450724	01.3696	17.44
450113	01.3022	17.93	450235	01.0302	13.46	450400	01.1885	11.76	450610	01.5475	17.21	450725	00.9390	17.49
450118	01.5826	20.36	450236	01.2206	15.28	450403	01.3015	21.22	450614	01.0086	12.53	450727	01.1724	10.80
450119	01.3813	17.13	450237	01.6258	16.83	450411	00.9144	12.20	450615	01.0918	12.80	450728	00.9311	12.62
450121	01.5556	19.99	450239	01.0605	13.70	450417	01.0947	19.31	450617	01.3521	20.12	450730	01.3241	21.46
450123	01.0933	15.98	450241	00.9279	12.67	450418	01.4996	21.43	450620	01.1348	12.16	450733	01.3628	16.88
450124	01.7210	19.68	450243	00.7767	11.59	450419	01.2762	20.34	450623	01.1891	16.71	450735	01.0637	12.02
450126	01.3625	16.01	450246	00.9464	17.09	450422	00.8249	24.65	450626	01.0634	16.57	450742	01.2932	19.47
450128	01.1955	15.37	450249	00.9676	09.95	450423	01.5850	21.56	450628	00.9320	12.34	450743	01.4228	17.79
450130	01.4846	16.93	450250	00.9480	11.36	450424	01.2492	17.77	450630	01.6658	23.25	450746	01.0195	13.81
450131	01.4057	18.24	450253	01.3024	11.92	450429	01.1208	12.87	450631	01.7515	20.15	450747	01.3610	17.04
450132	01.7205	16.46	450258	01.1072	10.85	450431	01.6315	18.76	450632	00.9769	11.39	450749	01.0118	14.63
450133	01.6057	17.90	450259	01.1636	18.29	450438	01.2603	13.51	450633	01.6399	20.20	450750	01.0231	12.20
450135	01.6757	23.54	450264	00.8806	13.08	450446	00.6453	12.67	450634	01.6147	23.56	450751	01.3418	15.58
450137	01.4998	22.19	450269	01.0765	13.96	450447	01.3882	18.07	450638	01.5883	22.00	450754	00.9546	13.49
450140	00.9941	17.44	450270	01.2477	10.42	450451	01.1574	16.96	450639	01.4387	22.12	450755	01.1688	15.54
450142	01.4544	20.28	450271	01.2655	14.84	450457	01.7817	17.61	450641	01.0408	13.24	450757	00.9466	13.62
450143	01.0340	11.10	450272	01.3466	15.38	450460	01.0539	12.46	450643	01.2270	17.43	450758	02.0193	21.92
450144	01.0933	15.29	450276	01.0101	12.63	450462	01.7722	20.49	450644	01.5090	19.07	450760	01.2573	18.35
450145	00.8163	13.36	450278	00.9870	13.64	450464	01.0035	15.14	450646	01.6539	31.36	450761	01.1320	09.57
450146	00.9883	20.32	450280	01.5303	23.09	450465	01.3391	17.10	450647	01.9577	23.27	450763	01.0156	16.60
450147	01.4189	17.72	450283	01.1089	12.43	450467	00.9711	14.01	450648	00.9835	09.48	450766	02.0719	20.76
450148	01.2604	20.21	450286	01.0057	16.36	450469	01.3759	17.25	450649	01.0406	14.06	450769	00.9957	13.40
450149	01.4207	19.76	450288	01.2705	13.67	450473	00.9937	15.03	450651	01.7505	22.80	450770	01.0417	14.57
450150	00.9250	13.75	450289	01.4339	19.14	450475	01.1405	14.96	450652	00.8637	13.96	450771	01.7803	22.32
450151	01.1248	14.16	450292	01.2470	21.03	450484	01.4469	18.14	450653	01.2233	15.20	450774	01.0767	21.24
450152	01.2600	15.74	450293	00.9767	12.41	450488	01.3234	16.08	450654	00.9499	12.28	450775	01.2796	17.09
450153	01.6196	18.44	450296	01.3759	18.76	450489	01.0173	12.72	450656	01.5367	17.19	450776	00.9194	11.18
450154	01.1960	13.12	450299	01.3431	16.01	450497	01.1693	12.88	450658	00.9719	12.32	450777	01.0464	16.60
450155	01.0291	14.19	450303	00.9927	11.50	450498	01.0512	13.15	450659	01.5366	20.23	450779	01.2621	21.36
450157	00.9708	13.25	450306	01.2219	12.82	450508	01.4218	16.12	450661	01.2306	18.51	450780	01.4049	16.91
450160	00.9428	21.47	450307	00.7803	14.25	450514	01.1886	18.47	450662	01.6164	17.38	450781	01.5749	11.01
450162	01.2530	18.76	450309	01.0613	14.17	450517	00.9025	11.11	450665	00.9129	12.95	450785	01.0228	16.39
450163	01.1402	16.82	450315	01.0420	18.63	450518	01.5700	16.38	450666	01.3361	19.17	450788	01.4500	19.31
450164	01.1323	12.83	450320	01.3553	18.45	450523	01.5823	19.45	450668	01.5988	19.60	450794	01.4278	16.20
450165	01.0215	14.19	450321	01.0170	13.51	450530	01.3726	14.27	450669	01.3407	19.26	450795	00.8686	20.22
450166	01.0279	13.06	450322	00.8184	16.61	450534	01.0374	18.02	450670	01.3131	17.24	450797	00.7374	16.67
450169	01.0085	13.79	450324	01.7039	15.66	450535	01.2951	21.25	450672	01.6229	20.69	450798	00.8393	08.88
450170	00.9944	12.46	450325	00.9022	11.47	450537	01.3071	19.69	450673	01.0518	12.14	450801	01.4832	.....
450176	01.2956	15.32	450327	01.0130	12.60	450538	01.2091	20.77	450674	00.9801	19.88	450802	01.2272	.....
450177	01.2760	13.52	450330	01.1514	15.62	450539	01.4094	14.67	450675	01.5223	20.99	450803	00.8612	.....
450178	01.0251	15.84	450334	01.0501	12.11	450544	01.3519	19.25	450677	01.4273	23.91	450804	01.5602	.....
450181	01.0644	14.13	450337	01.1588	14.10	450545	01.2665	20.93	450678	01.5041	20.85	450807	00.9215	.....
450184	01.5239	17.20	450340	01.3279	14.68	450547	01.1549	15.13	450683	01.3412	20.91	450808	01.2870	.....
450185	01.0771	08.69	450341	01.0487	15.87	450550	01.0679	18.37	450684	01.3022	21.41	450809	01.6785	.....
450187	01.2404	16.51	450346	01.4354	16.05	450551	01.2276	13.01	450686	01.6066	14.14	450810	01.1663	.....
450188	01.0902	12.80	450347	01.1515	16.68	450558	01.7260	20.85	450688	01.3635	19.63	450811	02.1655	.....
450190	01.1702	.....	450348	00.9841	11.20	450559	00.9350	12.26	450690	01.4068	21.41	450812	01.5923	.....
450191	01.0843	15.87	450351	01.1952	17.71	450561	01.6864	17.18	450691	00.9630	.....	460001	01.8027	20.73
450192	01.2918	17.51	450352	01.1041	16.53	450563	01.2755	23.92	450694	01.1412	18.16	460003	01.6975	17.86
450193	02.0470	21.80	450353	01.2638	16.98	450565	01.2685	16.10	450696	01.9768	22.02	460004	01.7352	21.45
450194	01.2664	17.65	450355	01.1492	13.03	450570	01.0784	15.39	450697	01.4936	13.82	460005	01.6823	18.56
450196	01.4866	17.04	450358	02.0820	21.20	450571	01.4774	15.53	450698	00.9737	11.65	460006	01.4506	19.40
450200	01.4247	17.40	450362	01.1670	13.83	450573	01.0633	14.35	450700	00.9478	13.15	460007	01.3572	20.40
450201	01.0028	15.45	450369	01.0555	13.10	450574	00.9359	11.73	450702	01.5794	19.02	460008	01.3920	15.91
450203	01.2237	17.46	450370	01.2731	12.87	450575	01.0769	16.62	450703	01.5445	18.46	460009	01.8544	19.39
450209	01.5068	21.78	450371	01.1668	12.16	450578	00.9338	12.99	450704	01.4195	18.02	460010	02.0179	20.86
450210	01.1673	12.30	450372	01.3120	21.02	450580	01.1396	13.29	450705	00.9145	18.50	460011	01.4594	16.34
450211	01.4145	16.70	450373	01.1592	13.38	450583	00.9779	13.04	450706	01.2505	22.63	460013	01.5172	16.74
450213	01.6568	18.26	450374	00.9104	11.66	450584	01.1828	13.02	450709	01.3415	19.78	460014	01.1366	15.12
450214	01.4227	19.51	450376	01.4817	17.78	450586	01.0491	11.16	450711	01.5989	18.18	460015	01.2168	20.40
450217	01.0015	11.56	450378	01.1022	19.87	450587	01.2528	16.14	450712	00.7871	13.25	460016	00.9547	12.50

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
460017	01.5589	16.40	490032	01.7716	19.42	490127	01.0048	14.52	500094	00.9101	15.30	510068	01.1159	14.34
460018	01.0027	15.45	490033	01.2338	16.00	490129	01.1961	19.20	500096	00.9886	19.50	510070	01.3303	15.86
460019	01.1127	14.45	490035	01.1321	13.02	490130	01.3038	15.07	500097	01.2189	17.46	510071	01.3254	15.64
460020	01.0418	16.33	490037	01.2365	14.06	490131	00.9879	14.74	500098	01.0355	15.44	510072	01.0592	14.37
460021	01.3866	19.46	490038	01.2628	13.62	490132	01.0313	.....	500101	01.0064	15.92	510077	01.1916	15.36
460022	00.9383	19.23	490040	01.4798	21.72	500001	01.3669	21.66	500102	01.0209	19.46	510080	01.2132	11.53
460023	01.2243	21.08	490041	01.2703	16.22	500002	01.4343	19.10	500104	01.3276	19.88	510081	01.1592	12.97
460024	01.0133	14.78	490042	01.3532	15.75	500003	01.3891	25.32	500106	00.9016	20.08	510082	01.2166	12.89
460025	00.8149	13.73	490043	01.4482	24.19	500005	01.8255	21.58	500107	01.1533	15.79	510084	00.9560	13.24
460026	00.9812	17.03	490044	01.3527	17.15	500007	01.3881	21.79	500108	01.1763	21.74	510085	01.3533	17.90
460027	00.9409	19.08	490045	01.2333	19.25	500008	01.9493	23.18	500110	01.2349	19.44	510086	01.0754	15.08
460029	01.0389	18.60	490046	01.4948	17.80	500011	01.4304	22.64	500118	01.1761	21.92	520002	01.2174	18.84
460030	01.1784	17.32	490047	01.0934	16.50	500012	01.4822	21.18	500119	01.3376	20.39	520003	01.1191	15.41
460032	01.0291	21.16	490048	01.6100	17.44	500014	01.4987	20.92	500122	01.2814	21.99	520004	01.1859	16.78
460033	00.9787	17.97	490050	01.4629	21.02	500015	01.3772	21.85	500123	00.8526	18.56	520006	01.0231	18.17
460035	00.9265	12.17	490052	01.6086	15.45	500016	01.4764	23.26	500124	01.3158	22.83	520007	01.2287	14.55
460036	01.0267	20.05	490053	01.2701	14.77	500019	01.3370	21.38	500125	01.0071	11.61	520008	01.5786	22.49
460037	00.9886	17.48	490054	01.0984	14.36	500021	01.5616	21.91	500129	01.7389	23.35	520009	01.6559	17.31
460039	01.0874	20.37	490057	01.5488	17.69	500023	01.2117	19.53	500132	00.9561	18.51	520010	01.1793	19.33
460041	01.2644	20.90	490059	01.6184	19.41	500024	01.6823	22.23	500134	00.6989	15.59	520011	01.2164	16.85
460042	01.4809	17.04	490060	01.0834	17.79	500025	01.8739	23.44	500138	04.3602	.....	520013	01.3851	18.80
460043	01.2702	21.71	490063	01.7059	23.01	500026	01.4032	23.85	500139	01.5089	21.71	520014	01.1387	16.08
460044	01.1922	19.83	490066	01.3652	18.00	500027	01.5357	25.23	500141	01.3249	22.22	520015	01.1912	16.72
460046	00.9068	12.27	490067	01.2287	15.82	500028	01.1235	14.69	500143	00.7297	15.20	520016	01.1027	13.21
460047	01.7394	19.82	490069	01.4526	14.96	500029	00.9578	13.71	500146	01.2100	26.11	520017	01.1523	17.45
460049	01.9737	17.85	490071	01.5023	17.40	500030	01.5287	22.55	510001	01.8263	17.35	520018	01.1219	16.17
460050	01.2736	21.99	490073	01.4717	17.55	500031	01.3434	20.58	510002	01.2917	14.18	520019	01.3048	16.63
460051	01.2890	32.89	490074	01.3704	16.77	500033	01.2738	18.41	510004	01.1211	13.65	520021	01.3120	19.90
470001	01.1596	18.73	490075	01.3998	16.37	500036	01.3200	19.95	510005	00.9588	14.19	520024	01.0460	13.11
470003	01.7896	20.83	490077	01.2583	17.87	500037	01.1678	18.70	510006	01.2972	17.42	520025	01.1099	18.58
470004	01.1094	15.85	490079	01.3234	15.15	500039	01.3890	22.10	510007	01.4902	17.98	520026	01.0837	17.49
470005	01.2726	20.26	490083	00.7754	15.02	500041	01.2884	23.23	510008	01.1461	15.55	520027	01.2448	19.27
470006	01.2455	17.83	490084	01.3006	15.43	500042	01.3514	22.37	510012	01.1013	14.37	520028	01.3020	17.76
470008	01.1896	16.76	490085	01.2407	13.39	500043	01.1913	17.16	510013	01.1685	15.80	520029	00.9692	16.94
470010	01.1226	19.03	490088	01.1873	14.44	500044	01.9855	20.99	510015	00.9465	12.51	520030	01.6462	21.19
470011	01.1940	19.82	490089	01.1298	16.18	500045	01.1331	20.81	510016	00.9182	12.66	520031	01.1241	15.24
470012	01.2425	17.88	490090	01.2038	15.17	500048	00.9599	16.46	510018	01.1815	15.26	520032	01.2406	15.25
470015	01.2207	16.67	490091	01.2790	18.78	500049	01.5178	19.24	510020	01.1178	10.56	520033	01.1692	16.22
470018	01.2215	20.53	490092	01.2061	15.13	500050	01.4336	20.96	510022	01.8968	19.16	520034	01.1969	17.64
470020	00.9818	15.18	490093	01.3619	15.83	500051	01.6724	23.18	510023	01.2001	16.62	520035	01.3383	15.87
470023	01.2839	19.08	490094	01.1741	14.52	500052	01.3139	.....	510024	01.4367	18.43	520037	01.6525	19.06
470024	01.1460	18.26	90095	01.4744	16.79	500053	01.3079	20.42	510026	01.0247	12.33	520038	01.3145	16.45
490001	01.2421	19.51	490097	01.1556	14.52	500054	01.8795	21.08	510027	00.9512	14.62	520039	00.9955	16.33
490002	01.0970	14.56	490098	01.2294	11.89	500055	01.1303	20.13	510028	01.0802	18.99	520040	01.4720	19.34
490003	00.5817	17.38	490099	00.9524	16.51	500057	01.3033	17.22	510029	01.2896	16.78	520041	01.1755	14.93
490004	01.2321	16.97	490100	01.4519	17.21	500058	01.5239	20.32	510030	01.0520	14.39	520042	01.0959	16.42
490005	01.5901	16.31	490101	01.2184	23.01	500059	01.1465	20.76	510031	01.4816	15.97	520044	01.4077	16.15
490006	01.1325	13.82	490104	00.8468	16.07	500060	01.4066	23.27	510033	01.3557	15.30	520045	01.7375	18.68
490007	02.0908	17.16	490105	00.6278	18.83	500061	01.0337	18.19	510035	01.3544	16.81	520047	00.9924	15.41
490009	01.8662	18.25	490106	00.8531	16.48	500062	01.1280	18.80	510036	01.0700	11.64	520048	01.4686	18.11
490010	01.1620	17.32	490107	01.3316	22.98	500064	01.5976	22.08	510038	01.1634	13.36	520049	02.0343	18.52
490011	01.4246	17.33	490108	00.9024	15.63	500065	01.2132	18.72	510039	01.3333	15.48	520051	01.7979	20.21
490012	01.2241	15.30	490109	00.9343	17.44	500068	01.0323	18.40	510043	00.9309	11.52	520053	01.1225	15.45
490013	01.2162	16.87	490110	01.4172	15.07	500069	01.2241	19.76	510046	01.2754	15.91	520054	01.0821	17.03
490014	01.4751	22.42	490111	01.2461	15.83	500071	01.2885	19.80	510047	01.2479	18.06	520056	01.7830	18.87
490015	01.4306	18.76	490112	01.6008	18.51	500072	01.2068	22.83	510048	01.0995	18.22	520057	01.1240	16.59
490017	01.3604	16.73	490113	01.3485	21.59	500073	01.0538	16.74	510050	01.5736	16.11	520058	01.1053	18.17
490018	01.2979	17.15	490114	01.1423	15.47	500074	01.1566	15.67	510053	01.0292	14.12	520059	01.4116	18.74
490019	01.1915	16.46	490115	01.2238	15.28	500077	01.3828	21.68	510055	01.2750	19.68	520060	01.4316	15.26
490020	01.2068	15.76	490116	01.3302	15.48	500079	01.3693	21.40	510058	01.1979	17.03	520062	01.3513	16.73
490021	01.2417	17.33	490117	01.1816	12.41	500080	00.8662	11.72	510059	01.4663	14.25	520063	01.1984	17.63
490022	01.4384	19.33	490118	01.7802	21.05	500084	01.1803	20.78	510060	01.1522	15.55	520064	01.7055	20.15
490023	01.2952	18.01	490119	01.3722	16.80	500085	01.0712	19.55	510061	01.0354	13.37	520066	01.5293	18.82
490024	01.8236	16.47	490120	01.3270	17.49	500086	01.3028	20.03	510062	01.1776	15.77	520068	00.9933	16.85
490027	01.1664	13.62	490122	01.4656	21.27	500088	01.3456	23.37	510063	00.9557	16.84	520069	01.1907	17.13
490028	01.3111	20.18	490123	01.1882	15.29	500089	01.0257	15.05	510065	01.0484	11.49	520070	01.6330	17.38
490030	01.1733	10.83	490124	01.2019	17.12	500090	00.9484	13.67	510066	01.1361	11.93	520071	01.1630	17.53
490031	01.1165	13.00	490126	01.4239	14.85	500092	01.0566	17.86	510067	01.2728	17.97	520074	01.0679	15.42

## PAGE 16 OF 16

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
520075	01.4659	18.02	520178	01.0937	15.23									
520076	01.1585	15.11	530002	01.1955	19.16									
520077	00.8551	14.03	530003	01.0202	12.47									
520078	01.6233	18.63	530004	00.9991	14.18									
520082	01.2821	16.43	530005	01.0060	13.47									
520083	01.6785	21.60	530006	01.1364	16.52									
520084	01.0951	16.87	530007	01.0868	12.98									
520087	01.6994	18.12	530008	01.3367	16.82									
520088	01.3078	17.98	530009	01.0070	16.77									
520089	01.5203	19.50	530010	01.4089	16.12									
520090	01.2399	16.18	530011	01.1090	16.94									
520091	01.3644	18.13	530012	01.5439	18.11									
520092	01.1184	15.74	530014	01.4219	15.18									
520094	00.7907	16.12	530015	01.2693	18.00									
520095	01.3677	17.93	530016	01.2968	14.93									
520096	01.4350	18.94	530017	00.8748	16.97									
520097	01.3153	18.65	530018	01.0355	18.67									
520098	01.8227	20.17	530019	01.0131	15.32									
520100	01.2523	16.72	530022	01.0905	16.71									
520101	01.1235	16.09	530023	00.8558	18.57									
520102	01.2023	19.37	530025	01.2400	18.76									
520103	01.3272	17.94	530026	01.0951	15.48									
520107	01.3034	17.50	530027	00.9181	10.62									
520109	01.0055	17.63	530029	01.0278	13.46									
520110	01.1560	17.94	530031	00.8952	11.67									
520111	00.9540	16.01	530032	01.0887	18.13									
520112	01.1157	16.89												
520113	01.2035	19.18												
520114	01.0837	13.27												
520115	01.2596	16.02												
520116	01.2507	18.13												
520117	01.0605	15.78												
520118	00.9421	10.53												
520120	00.8814	12.70												
520121	00.9486	15.67												
520122	00.9718	14.73												
520123	01.0916	16.93												
520124	01.1417	14.93												
520130	01.0461	13.47												
520131	01.0271	16.78												
520132	01.1689	14.48												
520134	01.0798	15.97												
520135	00.9421	17.28												
520136	01.5062	19.05												
520138	01.8573	19.44												
520139	01.2790	19.89												
520140	01.6111	21.15												
520141	01.0486	15.86												
520142	00.8690	13.20												
520144	01.0297	16.42												
520145	00.9171	16.59												
520146	01.0863	13.94												
520148	01.0827	15.34												
520149	00.9713	13.44												
520151	01.0919	15.42												
520152	01.1594	17.07												
520153	00.9221	13.81												
520154	01.0972	17.71												
520156	01.1062	16.69												
520157	01.0427	13.77												
520159	00.9343	16.85												
520160	01.7979	19.07												
520161	01.0019	15.94												
520170	01.2386	19.95												
520171	00.9327	13.23												
520173	01.1538	18.34												
520174	01.3545	21.51												
520177	01.5931	20.16												

Note: Case mix indexes do not include discharges from PPS-exempt units.  
Case mix indexes include cases received in HCFA central office through December 1996.



TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban Area (Constituent Counties)	Wage index	GAF
0040 Abilene, TX .....	0.8287	0.8793
Taylor, TX		
0060 <sup>2</sup> Aguadilla, PR ..	0.4224	0.5542
Aguada, PR		
Aguadilla, PR		
Moca, PR		
0080 Akron, OH .....	0.9728	0.9813
Portage, OH		
Summit, OH		
0120 Albany, GA .....	0.7914	0.8520
Dougherty, GA		
Lee, GA		
0160 Albany-Schenectady-Troy, NY .....	0.8480	0.8932
Albany, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Schoharie, NY		
0200 Albuquerque, NM	0.9329	0.9535
Bernalillo, NM		
Sandoval, NM		
Valencia, NM		
0220 Alexandria, LA ...	0.8269	0.8780
Rapides, LA		
0240 Allentown-Bethlehem-Easton, PA .....	1.0086	1.0059
Carbon, PA		
Lehigh, PA		
Northampton, PA		
0280 Altoona, PA .....	0.9137	0.9401
Blair, PA		
0320 Amarillo, TX Potter, TX	0.9425	0.9603
Randall, TX		
0380 Anchorage, AK ..	1.2998	1.1967
Anchorage, AK		
0440 Ann Arbor, MI ....	1.1785	1.1190
Lenawee, MI		
Livingston, MI		
Washtenaw, MI		
0450 Anniston, AL .....	0.8266	0.8777
Calhoun, AL		
0460 Appleton-Oshkosh-Neenah, WI .....	0.8996	0.9301
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
0470 <sup>2</sup> Arecibo, PR .....	0.4224	0.5542
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
0480 Asheville, NC .....	0.9072	0.9355
Buncombe, NC		
Madison, NC		
0500 Athens, GA .....	0.9087	0.9365
Clarke, GA		
Madison, GA		
Oconee, GA		
0520 <sup>1</sup> Atlanta, GA .....	0.9823	0.9878
Barrow, GA		
Bartow, GA		
Carroll, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		
DeKalb, GA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
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 .....	1.0724	1.0490
Atlantic, NJ		
Cape May, NJ		
0600 Augusta-Aiken, GA—SC .....	0.9333	0.9538
Columbia, GA		
McDuffie, GA		
Richmond, GA		
Aiken, SC		
Edgefield, SC		
0640 <sup>1</sup> Austin-San Marcos, TX .....	0.9133	0.9398
Bastrop, TX		
Caldwell, TX		
Hays, TX		
Travis, TX		
Williamson, TX		
0680 Bakersfield, CA ..	1.0014	1.0010
Kern, CA		
0720 <sup>1</sup> Baltimore, MD	0.9689	0.9786
Anne Arundel, MD		
Baltimore, MD		
Baltimore City, MD		
C Carroll, MD		
Harford, MD		
Howard, MD		
Queen Anne's, MD		
0733 Bangor, ME .....	0.9478	0.9640
Penobscot, ME		
0743 Barnstable-Yarmouth, MA .....	1.4291	1.2770
Barnstable, MA		
0760 Baton Rouge, LA	0.8382	0.8862
Ascension, LA		
East Baton Rouge, LA		
Livingston, LA		
West Baton Rouge, LA		
0840 Beaumont-Port Arthur, TX .....	0.8593	0.9014
Hardin, TX		
Jefferson, TX		
Orange, TX		
0860 Bellingham, WA	1.1221	1.0821
Whatcom, WA		
0870 <sup>2</sup> Benton Harbor, MI .....	0.8923	0.9249
Berrien, MI		
0875 <sup>1</sup> Bergen-Passaic, NJ .....	1.1570	1.1050
Bergen, NJ		
Passaic, NJ		
0880 Billings, MT .....	0.9783	0.9851
Yellowstone, MT		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
0920 Biloxi-Gulfport-Pascagoula, MS .....	0.8415	0.8885
Hancock, MS		
Harrison, MS		
Jackson, MS		
0960 Binghamton, NY	0.8914	0.9243
Broome, NY		
Tioga, NY		
1000 Birmingham, AL	0.9005	0.9307
Blount, AL		
Jefferson, AL		
St. Clair, AL		
Shelby, AL		
1010 Bismarck, ND ....	0.7859	0.8479
Burleigh, ND		
Morton, ND		
1020 Bloomington, IN	0.9128	0.9394
Monroe, IN		
1040 Bloomington-Normal, IL .....	0.8733	0.9114
McLean, IL		
1080 Boise City, ID ....	0.8887	0.9224
Ada, ID		
Canyon, ID		
1123 <sup>1</sup> Boston-Worcester-Lawrence-Lowell-Brockton, MA—NH .....	1.1436	1.0962
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 .....	1.0015	1.0010
Boulder, CO		
1145 Brazoria, TX .....	0.9129	0.9395
Brazoria, TX		
1150 Bremerton, WA ..	1.0999	1.0674
Kitsap, WA		
1240 Brownsville-Harlingen-San Benito, TX	0.8740	0.9119
Cameron, TX		
1260 Bryan-College Station, TX .....	0.8571	0.8998
Brazos, TX		
1280 <sup>1</sup> Buffalo-Niagara Falls, NY .....	0.9272	0.9496
Erie, NY		
Niagara, NY		
1303 Burlington, VT ....	1.0142	1.0097
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
1310 Caguas, PR .....	0.4508	0.5795
Caguas, PR		
Cayey, PR		
Cidra, PR		
Gurabo, PR		
San Lorenzo, PR		
1320 Canton-Massillon, OH .....	0.8961	0.9276

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Carroll, OH Stark, OH		
1350 Casper, WY .....	0.9013	0.9313
Natrona, WY		
1360 Cedar Rapids, IA Linn, IA	0.8529	0.8968
1400 Champaign-Urbana, IL .....	0.8824	0.9179
Champaign, IL		
1440 Charleston-North Charleston, SC .....	0.8807	0.9167
Berkeley, SC Charleston, SC Dorchester, SC		
1480 Charleston, WV Kanawha, WV Putnam, WV	0.9142	0.9404
1520 <sup>1</sup> Charlotte-Gastonia-Rock Hill, NC—SC .....	0.9710	0.9800
Cabarrus, NC Gaston, NC Lincoln, NC Mecklenburg, NC Rowan, NC Stanly, NC Union, NC York, SC		
1540 Charlottesville, VA .....	0.9051	0.9340
Albemarle, VA Charlottesville City, VA Fluvanna, VA Greene, VA		
1560 Chattanooga, TN—GA .....	0.8658	0.9060
Catoosa, GA Dade, GA Walker, GA Hamilton, TN Marion, TN		
1580 <sup>2</sup> Cheyenne, WY Laramie, WY	0.8247	0.8764
1600 <sup>1</sup> Chicago, IL .....	1.0860	1.0581
Cook, IL DeKalb, IL DuPage, IL Grundy, IL Kane, IL Kendall, IL Lake, IL McHenry, IL Will, IL		
1620 Chico-Paradise, CA .....	1.0429	1.0292
Butte, CA		
1640 <sup>1</sup> Cincinnati, OH—KY—IN .....	0.9521	0.9669
Dearborn, IN Ohio, IN Boone, KY Campbell, KY Gallatin, KY Grant, KY Kenton, KY Pendleton, KY		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Brown, OH Clermont, OH Hamilton, OH Warren, OH		
1660 Clarksville-Hopkinsville, TN—KY .....	0.7852	0.8474
Christian, KY Montgomery, TN		
1680 <sup>1</sup> Cleveland-Lorain-Elyria, OH .....	0.9804	0.9865
Ashtabula, OH Cuyahoga, OH Geauga, OH Lake, OH Lorain, OH Medina, OH		
1720 Colorado Springs, CO .....	0.9316	0.9526
El Paso, CO		
1740 Columbia, MO ...	0.9001	0.9305
Boone, MO		
1760 Columbia, SC ...	0.9192	0.9439
Lexington, SC Richland, SC		
1800 Columbus, GA—AL .....	0.8288	0.8793
Russell, AL Chattahoochee, GA Harris, GA Muscogee, GA		
1840 <sup>1</sup> Columbus, OH ...	0.9793	0.9858
Delaware, OH Fairfield, OH Franklin, OH Licking, OH Madison, OH Pickaway, OH		
1880 Corpus Christi, TX .....	0.8945	0.9265
Nueces, TX San Patricio, TX		
1900 Cumberland, MD—WV .....	0.8822	0.9178
Allegany, MD Mineral, WV		
1920 <sup>1</sup> Dallas, TX .....	0.9674	0.9776
Collin, TX Dallas, TX Denton, TX Ellis, TX Henderson, TX Hunt, TX Kaufman, TX Rockwall, TX		
1950 Danville, VA .....	0.8146	0.8690
Danville City, VA Pittsylvania, VA		
1960 Davenport-Moline-Rock Island, IA—IL .....	0.8405	0.8878
Scott, IA Henry, IL Rock Island, IL		
2000 Dayton-Springfield, OH .....	0.9279	0.9500
Clark, OH Greene, OH		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Miami, OH Montgomery, OH		
2020 <sup>2</sup> Daytona Beach, FL .....	0.8838	0.9189
Flagler, FL Volusia, FL		
2030 Decatur, AL .....	0.8286	0.8792
Lawrence, AL Morgan, AL		
2040 Decatur, IL .....	0.7915	0.8520
Macon, IL		
2080 <sup>1</sup> Denver, CO .....	1.0386	1.0263
Adams, CO Arapahoe, CO Denver, CO Douglas, CO Jefferson, CO		
2120 Des Moines, IA ..	0.8837	0.9188
Dallas, IA Polk, IA Warren, IA		
2160 <sup>1</sup> Detroit, MI .....	1.0840	1.0568
Lapeer, MI Macomb, MI Monroe, MI Oakland, MI St. Clair, MI Wayne, MI		
2180 Dothan, AL .....	0.8070	0.8634
Dale, AL Houston, AL		
2190 Dover, DE .....	0.9303	0.9517
Kent, DE		
2200 Dubuque, IA .....	0.8088	0.8647
Dubuque, IA		
2240 Duluth-Superior, MN—WI .....	0.9779	0.9848
St. Louis, MN Douglas, WI		
2281 Dutchess County, NY .....	1.0632	1.0429
Dutchess, NY		
2290 Eau Claire, WI ...	0.8764	0.9136
Chippewa, WI Eau Claire, WI		
2320 El Paso, TX .....	1.0123	1.0084
El Paso, TX		
2330 Elkhart-Goshen, IN .....	0.9081	0.9361
Elkhart, IN		
2335 <sup>2</sup> Elmira, NY .....	0.8401	0.8875
Chemung, NY		
2340 Enid, OK .....	0.7962	0.8555
Garfield, OK		
2360 Erie, PA .....	0.8862	0.9206
Erie, PA		
2400 Eugene-Springfield, OR .....	1.1659	1.1108
Lane, OR		
2440 Evansville-Henderson, IN—KY .....	0.8641	0.9048
Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY		
2520 Fargo-Moorhead, ND—MN .....	0.8837	0.9188

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Clay, MN		
Cass, ND		
2560 Fayetteville, NC	0.8734	0.9115
Cumberland, NC		
2580 Fayetteville-Springdale-Rogers, AR	0.7461	0.8183
Benton, AR		
Washington, AR		
2620 Flagstaff, AZ—UT	0.9115	0.9385
Coconino, AZ		
Kane, UT		
2640 Flint, MI	1.1171	1.0788
Genesee, MI		
2650 Florence, AL	0.7716	0.8373
Colbert, AL		
Lauderdale, AL		
2655 Florence, SC	0.8711	0.9098
Florence, SC		
2670 Fort Collins-Loveland, CO	1.0248	1.0169
Larimer, CO		
2680 <sup>1</sup> Ft. Lauderdale, FL	1.0487	1.0331
Broward, FL		
2700 <sup>2</sup> Fort Myers-Cape Coral, FL	0.8838	0.9189
Lee, FL		
2710 Fort Pierce-Port St. Lucie, FL	1.0257	1.0175
Martin, FL		
St. Lucie, FL		
2720 Fort Smith, AR—OK	0.7769	0.8412
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
2750 <sup>2</sup> Fort Walton Beach, FL	0.8838	0.9189
Okaloosa, FL		
2760 Fort Wayne, IN	0.8901	0.9234
Adams, IN		
Allen, IN		
De Kalb, IN		
Huntington, IN		
Wells, IN		
Whitley, IN		
2800 <sup>1</sup> Forth Worth-Arlington, TX	0.9997	0.9998
Hood, TX		
Johnson, TX		
Parker, TX		
Tarrant, TX		
2840 Fresno, CA	1.0607	1.0412
Fresno, CA		
Madera, CA		
2880 Gadsden, AL	0.8815	0.9173
Etowah, AL		
2900 Gainesville, FL	0.9616	0.9735
Alachua, FL		
2920 Galveston-Texas City, TX	1.0564	1.0383
Galveston, TX		
2960 Gary, IN	0.9270	0.9494
Lake, IN		
Porter, IN		
2975 <sup>2</sup> Glens Falls, NY	0.8401	0.8875

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Warren, NY		
Washington, NY		
2980 Goldsboro, NC	0.8443	0.8906
Wayne, NC		
2985 Grand Forks, ND—MN	0.8815	0.9173
Polk, MN		
Grand Forks, ND		
2995 Grand Junction, CO	0.9491	0.9649
Mesa, CO		
3000 <sup>1</sup> Grand Rapids-Muskegon-Holland, MI	1.0147	1.0100
Allegan, MI		
Kent, MI		
Muskegon, MI		
Ottawa, MI		
3040 Great Falls, MT	0.9306	0.9519
Cascade, MT		
3060 Greeley, CO	1.0097	1.0066
Weld, CO		
3080 Green Bay, WI	0.9585	0.9714
Brown, WI		
3120 <sup>1</sup> Greensboro-Winston-Salem-High Point, NC	0.9351	0.9551
Alamance, NC		
Davidson, NC		
Davie, NC		
Forsyth, NCGuilford, NC		
Randolph, NC		
Stokes, NC		
Yadkin, NC		
3150 Greenville, NC	0.9064	0.9349
Pitt, NC		
3160 Greenville-Spartanburg-Anderson, SC	0.9059	0.9346
Anderson, SC		
Cherokee, SC		
Greenville, SC		
Pickens, SC		
Spartanburg, SC		
3180 Hagerstown, MD	0.9681	0.9780
Washington, MD		
3200 Hamilton-Middletown, OH	0.8767	0.9138
Butler, OH		
3240 Harrisburg-Lebanon-Carlisle, PA	1.0187	1.0128
Cumberland, PA		
Dauphin, PA		
Lebanon, PA		
Perry, PA		
3283 <sup>1,2</sup> Hartford, CT	1.2617	1.1726
Hartford, CT		
Litchfield, CT		
Middlesex, CT		
Tolland, CT		
3285 Hattiesburg, MS	0.7192	0.7979
Forrest, MS		
Lamar, MS		
3290 Hickory-Morganton-Lenoir, NC	0.8285	0.8791
Alexander, NC		
Burke, NC		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Caldwell, NC		
Catawba, NC		
3320 Honolulu, HI	1.1817	1.1211
Honolulu, HI		
3350 Houma, LA	0.7854	0.8475
Lafourche, LA		
Terrebonne, LA		
3360 <sup>1</sup> Houston, TX	0.9855	0.9900
Chambers, TX		
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
3400 Huntington-Ashland, WV—KY—OH	0.9160	0.9417
Boyd, KY		
Carter, KY		
Greenup, KY		
Lawrence, OH		
Cabell, WV		
Wayne, WV		
3440 Huntsville, AL	0.8485	0.8936
Limestone, AL		
Madison, AL		
3480 <sup>1</sup> Indianapolis, IN	0.9848	0.9896
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Madison, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
3500 Iowa City, IA	0.9401	0.9586
Johnson, IA		
3520 Jackson, MI	0.9052	0.9341
Jackson, MI		
3560 Jackson, MS	0.7790	0.8428
Hinds, MS		
Madison, MS		
Rankin, MS		
3580 Jackson, TN	0.8522	0.8963
Madison, TN		
Chester, TN		
3600 <sup>1</sup> Jacksonville, FL	0.8969	0.9282
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
3605 <sup>2</sup> Jacksonville, NC	0.7939	0.8538
Onslow, NC		
3610 <sup>2</sup> Jamestown, NY	0.8401	0.8875
Chautauqua, NY		
3620 Janesville-Beloit, WI	0.8824	0.9179
Rock, WI		
3640 Jersey City, NJ	1.1412	1.0947
Hudson, NJ		
3660 Johnson City-Kingsport-Bristol, TN—VA	0.9114	0.9384
Carter, TN		
Hawkins, TN		
Sullivan, TN		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
3680 <sup>2</sup> Johnstown, PA	0.8421	0.8890
Cambria, PA		
Somerset, PA		
3700 Jonesboro, AR ...	0.7443	0.8169
Craighead, AR		
3710 Joplin, MO .....	0.7541	0.8243
Jasper, MO		
Newton, MO		
3720 Kalamazoo-		
Battlecreek, MI .....	1.0668	1.0453
Calhoun, MI		
Kalamazoo, MI		
Van Buren, MI		
3740 Kankakee, IL .....	0.8653	0.9057
Kankakee, IL		
3760 <sup>1</sup> Kansas City,		
KS—MO .....	0.9564	0.9699
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 .....	0.9196	0.9442
Kenosha, WI		
3810 Killeen-Temple,		
TX .....	1.0252	1.0172
Bell, TX		
Coryell, TX		
3840 Knoxville, TN .....	0.8831	0.9184
Anderson, TN		
Blount, TN		
Knox, TN		
Loudon, TN		
Sevier, TN		
Union, TN		
3850 Kokomo, IN .....	0.8416	0.8886
Howard, IN		
Tipton, IN		
3870 La Crosse, WI—		
MN .....	0.8749	0.9125
Houston, MN		
La Crosse, WI		
3880 Lafayette, LA .....	0.8227	0.8749
Acadia, LA		
Lafayette, LA		
St. Landry, LA		
St. Martin, LA		
3920 Lafayette, IN .....	0.9174	0.9427
Clinton, IN		
Tippecanoe, IN		
3960 Lake Charles, LA	0.7776	0.8418
Calcasieu, LA		
3980 <sup>2</sup> Lakeland-Win-		
ter Haven, FL .....	0.8838	0.9189
Polk, FL		
4000 Lancaster, PA ....	0.9481	0.9642

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Lancaster, PA		
4040 Lansing-East		
Lansing, MI .....	1.0088	1.0060
Clinton, MI		
Eaton, MI		
Ingham, MI		
4080 <sup>2</sup> Laredo, TX .....	0.7404	0.8140
Webb, TX		
4100 Las Cruces, NM	0.8658	0.9060
Dona Ana, NM		
4120 <sup>1</sup> Las Vegas,		
NV—AZ .....	1.0592	1.0402
Mohave, AZ		
Clark, NV		
Nye, NV		
4150 Lawrence, KS ....	0.8608	0.9024
Douglas, KS		
4200 Lawton, OK .....	0.9045	0.9336
Comanche, OK		
4243 Lewiston-Auburn,		
ME .....	0.9536	0.9680
Androscoggin, ME		
4280 Lexington, KY ....	0.8416	0.8886
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Madison, KY		
Scott, KY		
Woodford, KY		
4320 Lima, OH .....	0.9185	0.9434
Allen, OH		
Auglaize, OH		
4360 Lincoln, NE .....	0.9231	0.9467
Lancaster, NE		
4400 Little Rock-North		
Little Rock, AR .....	0.8490	0.8940
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
4420 Longview-Mar-		
shall, TX .....	0.8613	0.9028
Gregg, TX		
Harrison, TX		
Upshur, TX		
4480 <sup>1</sup> Los Angeles-Long		
Beach, CA .....	1.2268	1.1503
Los Angeles, CA		
4520 Louisville, KY—IN	0.9507	0.9660
Clark, IN		
Floyd, IN		
Harrison, IN		
Scott, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
4600 Lubbock, TX .....	0.8400	0.8875
Lubbock, TX		
4640 Lynchburg, VA ...	0.8228	0.8750
Amherst, VA		
Bedford, VA		
Bedford City, VA		
Campbell, VA		
Lynchburg City, VA		
4680 Macon, GA .....	0.9227	0.9464
Bibb, GA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Houston, GA		
Jones, GA		
Peach, GA		
Twiggs, GA		
4720 Madison, WI .....	1.0055	1.0038
Dane, WI		
4800 Mansfield, OH ....	0.8639	0.9047
Crawford, OH		
Richland, OH		
4840 Mayaguez, PR ...	0.4475	0.5766
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
Sabana Grande, PR		
San German, PR		
4880 McAllen-Edin-		
burg-Mission, TX .....	0.8371	0.8854
Hidalgo, TX		
4890 Medford-Ash-		
land, OR .....	1.0354	1.0241
Jackson, OR		
4900 <sup>2</sup> Melbourne-		
Titusville-Palm Bay,		
FL .....	0.8838	0.9189
Brevard, FL		
4920 <sup>1</sup> Memphis, TN—		
AR—MS .....	0.8589	0.9011
Crittenden, AR		
DeSoto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
4940 Merced, CA .....	1.0947	1.0639
Merced, CA		
5000 <sup>1</sup> Miami, FL .....	0.9859	0.9903
Dade, FL		
5015 <sup>1</sup> Middlesex-Som-		
erset-Hunterdon, NJ ..	1.0875	1.0591
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
5080 <sup>1</sup> Milwaukee-		
Waukesha, WI .....	0.9819	0.9876
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
5120 <sup>1</sup> Minneapolis-St.		
Paul, MN—WI .....	1.0733	1.0496
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 .....	0.8455	0.8914
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA .....	1.0377	1.0257

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Stanislaus, CA 5190 <sup>1</sup> Monmouth-Ocean, NJ .....	1.0934	1.0631
Monmouth, NJ Ocean, NJ		
5200 Monroe, LA .....	0.8414	0.8885
Ouachita, LA		
5240 Montgomery, AL	0.7813	0.8445
Autauga, AL Elmore, AL Montgomery, AL		
5280 Muncie, IN .....	0.9173	0.9426
Delaware, IN		
5330 Myrtle Beach, SC .....	0.8072	0.8636
Horry, SC		
5345 Naples, FL .....	1.0109	1.0075
Collier, FL		
5360 <sup>1</sup> Nashville, TN ...	0.9182	0.9432
Cheatham, TN Davidson, TN Dickson, TN Robertson, TN Rutherford, TN Sumner, TN Williamson, TN Wilson, TN		
5380 <sup>1</sup> Nassau-Suffolk, NY .....	1.3807	1.2472
Nassau, NY Suffolk, NY		
5483 <sup>1</sup> New Haven-Bridgeport-Stamford-Waterbury- .....	1.2619	1.1727
Danbury, CT Fairfield, CT New Haven, CT		
5523 <sup>2</sup> New London-Norwich, CT .....	1.2617	1.1726
New London, CT		
5560 <sup>1</sup> New Orleans, LA .....	0.9566	0.9701
Jefferson, LA Orleans, LA Plaquemines, LA St. Bernard, LA St. Charles, LA St. James, LA St. John The Baptist, LA St. Tammany, LA		
5600 <sup>1</sup> New York, NY	1.3982	1.2580
Bronx, NY Kings, NY New York, NY Putnam, NY Queens, NY Richmond, NY Rockland, NY Westchester, NY		
5640 <sup>1</sup> Newark, NJ .....	1.1111	1.0748
Essex, NJ Morris, NJ Sussex, NJ Union, NJ Warren, NJ		
5660 Newburgh, NY—PA .....	1.1283	1.0862

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Orange, NY Pike, PA 5720 <sup>1</sup> Norfolk-Virginia Beach-Newport News, VA—NC .....	0.8316	0.8814
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 <sup>1</sup> Oakland, CA ...	1.5158	1.3295
Alameda, CA Contra Costa, CA		
5790 Ocala, FL .....	0.9032	0.9327
Marion, FL		
5800 Odessa-Midland, TX .....	0.8660	0.9062
Ector, TX Midland, TX		
5880 <sup>1</sup> Oklahoma City, OK .....	0.8481	0.8933
Canadian, OK Cleveland, OK Logan, OK McClain, OK Oklahoma, OK Pottawatomie, OK		
5910 Olympia, WA .....	1.0901	1.0609
Thurston, WA		
5920 Omaha, NE—IA ..	0.9421	0.9600
Pottawattamie, IA Cass, NE Douglas, NE Sarpy, NE Washington, NE		
5945 <sup>1</sup> Orange County, CA .....	1.1532	1.1025
Orange, CA		
5960 <sup>1</sup> Orlando, FL .....	0.9397	0.9583
Lake, FL Orange, FL Osceola, FL Seminole, FL		
5990 <sup>2</sup> Owensboro, KY ...	0.7772	0.8415
Daviess, KY		
6015 <sup>2</sup> Panama City, FL	0.8838	0.9189
Bay, FL		
6020 <sup>2</sup> Parkersburg-Marietta, WV—OH (West Virginia Hospitals) .....	0.8046	0.8617
Washington, OH Wood, WV		
6020 <sup>2</sup> Parkersburg-Marietta, WV—OH (Ohio Hospitals) .....	0.8434	0.8899

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Washington, OH Wood, WV 6080 <sup>2</sup> Pensacola, FL .....	0.8838	0.9189
Escambia, FL Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8586	0.9009
Peoria, IL Tazewell, IL Woodford, IL		
6160 <sup>1</sup> Philadelphia, PA—NJ .....	1.1379	1.0925
Burlington, NJ Camden, NJ Gloucester, NJ Salem, NJ Bucks, PA Chester, PA Delaware, PA Montgomery, PA Philadelphia, PA		
6200 <sup>1</sup> Phoenix-Mesa, AZ .....	0.9606	0.9728
Maricopa, AZ Pinal, AZ		
6240 Pine Bluff, AR ....	0.7826	0.8455
Jefferson, AR		
6280 <sup>1</sup> Pittsburgh, PA .....	0.9725	0.9811
Allegheny, PA Beaver, PA Butler, PA Fayette, PA Washington, PA Westmoreland, PA		
6323 Pittsfield, MA .....	1.0960	1.0648
Berkshire, MA		
6340 Pocatello, ID .....	0.9586	0.9715
Bannock, ID		
6360 Ponce, PR .....	0.4589	0.5866
Guayanilla, PR Juana Diaz, PR Penuelas, PR Ponce, PR Villalba, PR Yauco, PR		
6403 Portland, ME .....	0.9627	0.9743
Cumberland, ME Sagadahoc, ME York, ME		
6440 <sup>1</sup> Portland-Vancouver, OR—WA .....	1.1344	1.0902
Clackamas, OR Columbia, OR Multnomah, OR Washington, OR Yamhill, OR Clark, WA		
6483 <sup>1</sup> Providence-Warwick-Pawtucket, RI ....	1.1049	1.0707
Bristol, RI Kent, RI Newport, RI Providence, RI Washington, RI		
6520 Provo-Orem, UT	1.0073	1.0050
Utah, UT		
6560 Pueblo, CO .....	0.8450	0.8911
Pueblo, CO		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
6580 <sup>2</sup> Punta Gorda, FL Charlotte, FL	0.8838	0.9189
6600 Racine, WI .....	0.8934	0.9257
6640 <sup>1</sup> Raleigh-Durham- Chapel Hill, NC .....	0.9818	0.9875
Chatham, NC Durham, NC Franklin, NC Johnston, NC Orange, NC Wake, NC		
6660 Rapid City, SD ... Pennington, SD	0.8345	0.8835
6680 Reading, PA .....	0.9516	0.9666
Berks, PA		
6690 Redding, CA .....	1.1790	1.1194
Shasta, CA		
6720 Reno, NV .....	1.0768	1.0520
Washoe, NV		
6740 <sup>2</sup> Richland- Kennewick-Pasco, WA .....	1.0221	1.0151
Benton, WA Franklin, WA		
6760 Richmond-Pe- tersburg, VA .....	0.9152	0.9411
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 <sup>1</sup> Riverside-San Bernardino, CA .....	1.1145	1.0771
Riverside, CA San Bernardino, CA		
6800 Roanoke, VA .....	0.8402	0.8876
Botetourt, VA Roanoke, VA Roanoke City, VA Salem City, VA		
6820 Rochester, MN ..	1.0502	1.0341
Olmsted, MN		
6840 <sup>1</sup> Rochester, NY Genesee, NY Livingston, NY Monroe, NY Ontario, NY Orleans, NY Wayne, NY	0.9524	0.9672
6880 Rockford, IL .....	0.9081	0.9361
Boone, IL Ogle, IL Winnebago, IL		
6895 Rocky Mount, NC .....	0.9029	0.9324
Edgecombe, NC		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Nash, NC 6920 <sup>1</sup> Sacramento, CA .....	1.2202	1.1460
El Dorado, CA Placer, CA Sacramento, CA		
6960 Saginaw-Bay City-Midland, MI .....	0.9564	0.9699
Bay, MI Midland, MI Saginaw, MI		
6980 St. Cloud, MN ....	0.9544	0.9685
Benton, MN Stearns, MN		
7000 St. Joseph, MO Andrew, MO Buchanan, MO	0.8366	0.8850
7040 <sup>1</sup> St. Louis, MO— IL .....	0.9130	0.9396
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 <sup>2</sup> Salem, OR .....	0.9976	0.9984
Marion, OR Polk, OR		
7120 Salinas, CA .....	1.4513	1.2905
Monterey, CA		
7160 <sup>1</sup> Salt Lake City- Ogden, UT .....	0.9862	0.9905
Davis, UT Salt Lake, UT Weber, UT		
7200 San Angelo, TX Tom Green, TX	0.7780	0.8421
7240 <sup>1</sup> San Antonio, TX .....	0.8499	0.8946
Bexar, TX Comal, TX Guadalupe, TX Wilson, TX		
7320 <sup>1</sup> San Diego, CA San Diego, CA	1.2225	1.1475
7360 <sup>1</sup> San Francisco, CA .....	1.4091	1.2647
Marin, CA San Francisco, CA San Mateo, CA		
7400 <sup>1</sup> San Jose, CA ..	1.4332	1.2795
Santa Clara, CA		
7440 <sup>1</sup> San Juan-Baya- mon, PR .....	0.4618	0.5891
Aguas Buenas, PR Barceloneta, PR Bayamon, PR Canovanas, PR Carolina, PR Catano, PR Ceiba, PR		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Comerio, PR Corozal, PR Dorado, PR Fajardo, PR Florida, PR Guaynabo, PR Humacao, PR 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 .....	1.1374	1.0922
San Luis Obispo, CA		
7480 Santa Barbara- Santa Maria-Lompoc, CA .....	1.0688	1.0466
Santa Barbara, CA		
7485 Santa Cruz- Watsonville, CA .....	1.4187	1.2706
Santa Cruz, CA		
7490 Santa Fe, NM ....	1.0332	1.0226
Los Alamos, NM Santa Fe, NM		
7500 Santa Rosa, CA Sonoma, CA	1.2267	1.1502
7510 Sarasota-Bra- denton, FL .....	0.9757	0.9833
Manatee, FL Sarasota, FL		
7520 Savannah, GA ...	0.8638	0.9046
Bryan, GA Chatham, GA Effingham, GA		
7560 Scranton— Wilkes-Barre—Hazle- ton, PA .....	0.8539	0.8975
Columbia, PA Lackawanna, PA Luzerne, PA Wyoming, PA		
7600 <sup>1</sup> Seattle-Belle- vue-Everett, WA .....	1.1375	1.0922
Island, WA King, WA Snohomish, WA		
7610 Sharon, PA .....	0.8783	0.9150
Mercer, PA		
7620 <sup>2</sup> Sheboygan, WI Sheboygan, WI	0.8471	0.8926
7640 Sherman- Denison, TX .....	0.8499	0.8946
Grayson, TX		
7680 Shreveport-Bos- sier City, LA .....	0.9381	0.9572

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Bossier, LA		
Caddo, LA		
Webster, LA		
7720 Sioux City, IA—NE .....	0.8031	0.8606
Woodbury, IA		
Dakota, NE		
7760 Sioux Falls, SD ..	0.8712	0.9099
Lincoln, SD		
Minnehaha, SD		
7800 South Bend, IN ..	0.9880	0.9918
St. Joseph, IN		
7840 Spokane, WA ....	1.0486	1.0330
Spokane, WA		
7880 Springfield, IL ....	0.8713	0.9100
Menard, IL		
Sangamon, IL		
7920 Springfield, MO ..	0.8036	0.8609
Christian, MO		
Greene, MO		
Webster, MO		
8003 <sup>2</sup> Springfield, MA	1.0718	1.0486
Hampden, MA		
Hampshire, MA		
8050 State College, PA .....	0.9635	0.9749
Centre, PA		
8080 Steubenville-Weirton, OH—WV .....	0.8645	0.9051
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8120 Stockton-Lodi, CA .....	1.1518	1.1016
San Joaquin, CA		
8140 <sup>2</sup> Sumter, SC .....	0.7921	0.8525
Sumter, SC		
8160 Syracuse, NY ....	0.9480	0.9641
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
8200 Tacoma, WA .....	1.1016	1.0685
Pierce, WA		
8240 <sup>2</sup> Tallahassee, FL	0.8838	0.9189
Gadsden, FL		
Leon, FL		
8280 <sup>1</sup> Tampa-St. Petersburg-Clearwater, FL .....	0.9196	0.9442
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
8320 Terre Haute, IN	0.8614	0.9029
Clay, IN		
Vermillion, IN		
Vigo, IN		
8360 Texarkana, AR—Texarkana, TX .....	0.8699	0.9090
Miller, AR		
Bowie, TX		
8400 Toledo, OH .....	1.0140	1.0096
Fulton, OH		
Lucas, OH		
Wood, OH		
8440 Topeka, KS .....	0.9438	0.9612

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Shawnee, KS		
8480 Trenton, NJ .....	1.0380	1.0259
Mercer, NJ		
8520 Tucson, AZ .....	0.9180	0.9431
Pima, AZ		
8560 Tulsa, OK .....	0.8074	0.8637
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
8600 Tuscaloosa, AL ..	0.8187	0.8720
Tuscaloosa, AL		
8640 Tyler, TX .....	0.9567	0.9701
Smith, TX		
8680 <sup>2</sup> Utica-Rome, NY .....	0.8401	0.8875
Herkimer, NY		
Oneida, NY		
8720 Vallejo-Fairfield-Napa, CA .....	1.3528	1.2299
Napa, CA		
Solano, CA		
8735 Ventura, CA .....	1.0544	1.0369
Ventura, CA		
8750 Victoria, TX .....	0.8474	0.8928
Victoria, TX		
8760 Vineland-Millville-Bridgeton, NJ .....	1.0110	1.0075
Cumberland, NJ		
8780 <sup>2</sup> Visalia-Tulare-Porterville, CA .....	0.9977	0.9984
Tulare, CA		
8800 Waco, TX .....	0.7696	0.8358
McLennan, TX		
8840 <sup>1</sup> Washington, DC—MD—VA—WV .....	1.0780	1.0528
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Clarke, VA		
Culpeper, 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 .....	0.8643	0.9050

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage index	GAF
Black Hawk, IA		
8940 Wausau, WI .....	1.0545	1.0370
Marathon, WI		
8960 West Palm Beach-Boca Raton, FL .....	1.0309	1.0211
Palm Beach, FL		
9000 <sup>2</sup> Wheeling, OH—WV (West Virginia Hospitals) .....	0.7966	0.8558
Belmont, OH		
Marshall, WV		
Ohio, WV		
9000 <sup>2</sup> Wheeling, OH—WV (Ohio Hospitals) ..	0.8434	0.8899
Belmont, OH		
Marshall, WV		
Ohio, WV		
9040 Wichita, KS .....	0.9403	0.9587
Butler, KS		
Harvey, KS		
Sedgwick, KS		
9080 Wichita Falls, TX	0.7646	0.8321
Archer, TX		
Wichita, TX		
9140 Williamsport, PA	0.8548	0.8981
Lycoming, PA		
9160 Wilmington-Newark, DE—MD .....	1.1538	1.1029
New Castle, DE		
Cecil, MD		
9200 Wilmington, NC	0.9322	0.9531
New Hanover, NC		
Brunswick, NC		
9260 <sup>2</sup> Yakima, WA ....	1.0221	1.0151
Yakima, WA		
9270 Yolo, CA .....	1.1431	1.0959
Yolo, CA		
9280 York, PA .....	0.9415	0.9596
York, PA		
9320 Youngstown-Warren, OH .....	0.9937	0.9957
Columbiana, OH		
Mahoning, OH		
Trumbull, OH		
9340 Yuba City, CA ....	1.0324	1.0221
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ .....	0.9732	0.9816
Yuma, AZ		

<sup>1</sup> Large Urban Area  
<sup>2</sup> Hospitals geographically located in the area are assigned the statewide rural wage index for FY 1998.

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama .....	0.7260	0.8031
Alaska .....	1.2302	1.1524
Arizona .....	0.7989	0.8575
Arkansas .....	0.6995	0.7829

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

Nonurban area	Wage index	GAF
California .....	0.9977	0.9984
Colorado .....	0.8129	0.8677
Connecticut .....	1.2617	1.1726
Delaware .....	0.8925	0.9251
Florida .....	0.8838	0.9189
Georgia .....	0.7761	0.8407
Hawaii .....	1.0229	1.0156
Idaho .....	0.8221	0.8745
Illinois .....	0.7644	0.8320
Indiana .....	0.8161	0.8701
Iowa .....	0.7391	0.8130
Kansas .....	0.7203	0.7988
Kentucky .....	0.7772	0.8415
Louisiana .....	0.7383	0.8124
Maine .....	0.8468	0.8924
Maryland .....	0.8617	0.9031
Massachusetts .....	1.0718	1.0486
Michigan .....	0.8923	0.9249
Minnesota .....	0.8180	0.8715
Mississippi .....	0.6911	0.7765
Missouri .....	0.7207	0.7991
Montana .....	0.8302	0.8804
Nebraska .....	0.7401	0.8137
Nevada .....	0.8914	0.9243
New Hampshire .....	0.9724	0.9810
New Jersey <sup>1</sup> .....	.....	.....
New Mexico .....	0.8110	0.8664
New York .....	0.8401	0.8875
North Carolina .....	0.7939	0.8538
North Dakota .....	0.7360	0.8107
Ohio .....	0.8434	0.8899
Oklahoma .....	0.7072	0.7888
Oregon .....	0.9976	0.9984
Pennsylvania .....	0.8421	0.8890
Puerto Rico .....	0.4224	0.5542
Rhode Island <sup>1</sup> .....	.....	.....
South Carolina .....	0.7921	0.8525
South Dakota .....	0.6983	0.7820
Tennessee .....	0.7353	0.8101
Texas .....	0.7404	0.8140
Utah .....	0.8926	0.9251
Vermont .....	0.9314	0.9525
Virginia .....	0.7782	0.8422
Washington .....	1.0221	1.0151
West Virginia .....	0.7966	0.8558
Wisconsin .....	0.8471	0.8926
Wyoming .....	0.8247	0.8764

<sup>1</sup> All counties within the State are classified as urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Urban area	Wage index	GAF
Abilene, TX .....	0.8287	0.8793
Albuquerque, NM .....	0.9329	0.9535
Alexandria, LA .....	0.8269	0.8780
Amarillo, TX .....	0.9277	0.9499
Anchorage, AK .....	1.2998	1.1967
Asheville, NC .....	0.9072	0.9355
Athens, GA .....	0.9087	0.9365
Atlanta, GA .....	0.9823	0.9878

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Urban area	Wage index	GAF
Austin-San Marcos, TX .....	0.9133	0.9398
Bangor, ME .....	0.9478	0.9640
Barnstable-Yarmouth, MA .....	1.3827	1.2484
Baton Rouge, LA .....	0.8382	0.8862
Benton Harbor, MI .....	0.8923	0.9249
Bergen-Passaic, NJ .....	1.1570	1.1050
Billings, MT .....	0.9609	0.9731
Birmingham, AL .....	0.9005	0.9307
Bismarck, ND .....	0.7859	0.8479
Boise City, ID .....	0.8887	0.9224
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH .....	1.1436	1.0962
Caguas, PR .....	0.4508	0.5795
Casper, WY .....	0.9013	0.9313
Champaign-Urbana, IL ..	0.8706	0.9095
Charlotte-Gastonia-Rock Hill, NC-SC .....	0.9710	0.9800
Charlottesville, VA .....	0.8885	0.9222
Chattanooga, TN-GA .....	0.8658	0.9060
Chicago, IL .....	1.0759	1.0514
Cincinnati, OH-KY-IN ..	0.9521	0.9669
Cleveland-Lorain-Elyria, OH .....	0.9804	0.9865
Columbia, MO .....	0.8759	0.9133
Columbus, OH .....	0.9793	0.9858
Dallas, TX .....	0.9674	0.9776
Davenport-Moline-Rock Island, IA-IL .....	0.8405	0.8878
Denver, CO .....	1.0386	1.0263
Des Moines, IA .....	0.8837	0.9188
Detroit, MI .....	1.0840	1.0568
Duluth-Superior, MN-WI ..	0.9779	0.9848
Dutchess County, NY .....	1.0364	1.0248
Eugene-Springfield, OR ..	1.1659	1.1108
Fargo-Moorhead, ND-MN .....	0.8729	0.9111
Fayetteville, NC .....	0.8491	0.8940
Flint, MI .....	1.1171	1.0788
Florence, AL .....	0.7716	0.8373
Florence, SC .....	0.8711	0.9098
Ft. Lauderdale, FL .....	1.0487	1.0331
Fort Pierce-Port St. Lucie, FL .....	1.0008	1.0005
Fort Walton Beach, FL ..	0.8653	0.9057
Forth Worth-Arlington, TX .....	0.9997	0.9998
Gadsden, AL .....	0.8815	0.9173
Gainesville, FL .....	0.9616	0.9735
Gary, IN .....	0.9114	0.9384
Grand Forks, ND-MN .....	0.8815	0.9173
Grand Junction, CO .....	0.9491	0.9649
Great Falls, MT .....	0.9306	0.9519
Greeley, CO .....	0.9791	0.9856
Green Bay, WI .....	0.9585	0.9714
Greensboro-Winston-Salem-High Point, NC ..	0.9351	0.9551
Harrisburg-Lebanon-Carlisle, PA .....	1.0076	1.0052
Honolulu, HI .....	1.1817	1.1211
Houma, LA .....	0.7854	0.8475
Houston, TX .....	0.9855	0.9900
Huntington-Ashland, WV-KY-OH .....	0.9160	0.9417
Huntsville, AL .....	0.8485	0.8936

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Urban area	Wage index	GAF
Indianapolis, IN .....	0.9848	0.9896
Iowa City, IA .....	0.9198	0.9444
Jackson, MS .....	0.7790	0.8428
Johnson City-Kingsport-Bristol, TN-VA .....	0.9114	0.9384
Jonesboro, AR .....	0.7443	0.8169
Joplin, MO .....	0.7541	0.8243
Kalamazoo-Battlecreek, MI .....	1.0668	1.0453
Kansas City, KS-MO .....	0.9564	0.9699
Knoxville, TN .....	0.8831	0.9184
Lafayette, LA .....	0.8227	0.8749
Lafayette, IN .....	0.9174	0.9427
Lansing-East Lansing, MI .....	1.0088	1.0060
Las Cruces, NM .....	0.8658	0.9060
Las Vegas, NV-AZ .....	1.0592	1.0402
Lexington, KY .....	0.8416	0.8886
Lima, OH .....	0.9185	0.9434
Lincoln, NE .....	0.9035	0.9329
Little Rock-North Little Rock, AR .....	0.8490	0.8940
Longview-Marshall, TX ..	0.8509	0.8953
Los Angeles-Long Beach, CA .....	1.2268	1.1503
Louisville, KY-IN .....	0.9507	0.9660
Macon, GA .....	0.9227	0.9464
Madison, WI .....	1.0055	1.0038
Mansfield, OH .....	0.8639	0.9047
Medford-Ashland, OR .....	1.0354	1.0241
Memphis, TN-AR-MS .....	0.8589	0.9011
Milwaukee-Waukesha, WI .....	0.9819	0.9876
Minneapolis-St. Paul, MN-WI .....	1.0733	1.0496
Monroe, LA .....	0.8414	0.8885
Montgomery, AL .....	0.7813	0.8445
Nashville, TN .....	0.9182	0.9432
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT .....	1.2619	1.1727
New London-Norwich, CT .....	1.2258	1.1496
New Orleans, LA .....	0.9566	0.9701
New York, NY .....	1.3982	1.2580
Newark, NJ .....	1.1111	1.0748
Newburgh, NY-PA .....	1.1283	1.0862
Oakland, CA .....	1.5158	1.3295
Odessa-Midland, TX .....	0.8516	0.8958
Oklahoma City, OK .....	0.8481	0.8933
Omaha, NE-IA .....	0.9421	0.9600
Orange County, CA .....	1.1532	1.1025
Peoria-Pekin, IL .....	0.8586	0.9009
Philadelphia, PA-NJ .....	1.1379	1.0925
Pittsburgh, PA .....	0.9583	0.9713
Pocatello, ID .....	0.9000	0.9304
Portland, ME .....	0.9627	0.9743
Portland-Vancouver, OR-WA .....	1.1344	1.0902
Provo-Orem, UT .....	1.0073	1.0050
Raleigh-Durham-Chapel Hill, NC .....	0.9818	0.9875
Rapid City, SD .....	0.8345	0.8835
Rochester, MN .....	1.0502	1.0341
Rockford, IL .....	0.9081	0.9361
Sacramento, CA .....	1.2202	1.1460



TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Urban area	Wage index	GAF
Saginaw-Bay City-Midland, MI	0.9564	0.9699
St. Cloud, MN	0.9544	0.9685
St. Louis, MO-IL	0.9130	0.9396
Salinas, CA	1.4299	1.2775
Salt Lake City-Ogden, UT	0.9862	0.9905
San Diego, CA	1.2225	1.1475
San Francisco, CA	1.4091	1.2647
Santa Fe, NM	1.0007	1.0005
Santa Rosa, CA	1.2146	1.1424
Seattle-Bellevue-Everett, WA	1.1375	1.0922
Sherman-Denison, TX	0.8324	0.8819
Sioux City, IA-NE	0.8031	0.8606
Sioux Falls, SD	0.8607	0.9024
South Bend, IN	0.9880	0.9918
Spokane, WA	1.0311	1.0212
Springfield, IL	0.8610	0.9026
Springfield, MO	0.8036	0.8609
Stockton-Lodi, CA	1.1518	1.1016
Syracuse, NY	0.9480	0.9641
Tampa-St. Petersburg-Clearwater, FL	0.9196	0.9442
Texarkana, AR-Texas, TX	0.8699	0.9090
Topeka, KS	0.9310	0.9522
Tucson, AZ	0.9180	0.9431
Tulsa, OK	0.8074	0.8637
Tyler, TX	0.9421	0.9600
Vallejo-Fairfield-Napa, CA	1.3528	1.2299
Washington, DC-MD-VA-WV	1.0780	1.0528
Waterloo-Cedar Falls, IA	0.8643	0.9050
Wausau, WI	0.9845	0.9894
Wichita, KS	0.9157	0.9415
Wichita Falls, TX	0.7646	0.8321
Rural Florida	0.8838	0.9189
Rural Louisiana	0.7383	0.8124
Rural Minnesota	0.8180	0.8715
Rural Missouri	0.7207	0.7991
Rural New Hampshire	0.9724	0.9810
Rural New Mexico	0.8110	0.8664
Rural North Carolina	0.7939	0.8538
Rural Oregon	0.9976	0.9984
Rural Washington	1.0221	1.0151
Rural West Virginia	0.7966	0.8558
Rural Wyoming	0.8247	0.8764

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Altoona, PA	18.3612
Amarillo, TX	18.9399
Anchorage, AK	25.8065
Ann Arbor, MI	23.6829
Anniston, AL	16.6112
Appleton-Oshkosh-Neenah, WI	18.0782
Arecibo, PR	8.4753
Asheville, NC	18.2293
Athens, GA	18.2596
Atlanta, GA	19.7400
Atlantic-Cape May, NJ	22.4152
Augusta-Aiken, GA-SC	18.7555
Austin-San Marcos, TX	18.3520
Bakersfield, CA	20.1222
Baltimore, MD	19.4693
Bangor, ME	19.0461
Barnstable-Yarmouth, MA	28.7181
Baton Rouge, LA	16.8431
Beaumont-Port Arthur, TX	17.2676
Bellingham, WA	22.5492
Benton Harbor, MI	17.3503
Bergen-Passaic, NJ	24.4277
Billings, MT	19.6586
Biloxi-Gulfport-Pascagoula, MS	16.9110
Binghamton, NY	17.9128
Birmingham, AL	18.0953
Bismarck, ND	15.4640
Bloomington, IN	18.3421
Bloomington-Normal, IL	17.5497
Boise City, ID	17.7955
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	22.9992
Boulder-Longmont, CO	20.1260
Brazoria, TX	18.7704
Bremerton, WA	22.1033
Brownsville-Harlingen-San Benito, TX	17.5624
Bryan-College Station, TX	17.2226
Buffalo-Niagara Falls, NY	18.6331
Burlington, VT	20.3813
Caguas, PR	8.9610
Canton-Massillon, OH	18.0078
Casper, WY	18.1110
Cedar Rapids, IA	17.1383
Champaign-Urbana, IL	17.7326
Charleston-North Charleston, SC	17.6972
Charleston, WV	18.3703
Charlotte-Gastonia-Rock Hill, NC-SC	19.5119
Charlottesville, VA	18.1882
Chattanooga, TN-GA	17.3976
Cheyenne, WY	15.1808
Chicago, IL	21.8239
Chico-Paradise, CA	20.9567
Cincinnati, OH-KY-IN	19.0379
Clarksville-Hopkinsville, TN-KY	15.7785
Cleveland-Lorain-Elyria, OH	19.7003
Colorado Springs, CO	18.7205
Columbia, MO	18.0868
Columbia, SC	18.4707
Columbus, GA-AL	16.6542
Columbus, OH	19.6781
Corpus Christi, TX	17.9745
Cumberland, MD-WV	17.7280
Dallas, TX	19.4990
Danville, VA	16.3692
Davenport-Moline-Rock Island, IA-IL	16.8903
Dayton-Springfield, OH	19.2596

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Daytona Beach, FL	16.8298
Decatur, AL	16.6503
Decatur, IL	15.9047
Denver, CO	20.8698
Des Moines, IA	17.7579
Detroit, MI	21.7532
Dothan, AL	16.2160
Dover, DE	18.6953
Dubuque, IA	16.2530
Duluth-Superior, MN-WI	19.6500
Dutchess County, NY	21.3657
Eau Claire, WI	17.6122
El Paso, TX	20.3430
Elkhart-Goshen, IN	18.2474
Elmira, NY	16.5714
Enid, OK	16.0002
Erie, PA	17.8087
Eugene-Springfield, OR	22.9777
Evansville, Henderson, IN-KY	17.3648
Fargo-Moorhead, ND-MN	17.7585
Fayetteville, NC	17.5510
Fayetteville-Springdale-Rogers, AR	14.9924
Flagstaff, AZ-UT	18.3168
Flint, MI	22.4472
Florence, AL	15.1732
Florence, SC	17.5055
Fort Collins-Loveland, CO	20.5933
Fort Lauderdale, FL	20.9943
Fort Myers-Cape Coral, FL	17.6604
Fort Pierce-Port St. Lucie, FL	20.6112
Fort Smith, AR-OK	15.6127
Fort Walton Beach, FL	17.6128
Fort Wayne, IN	17.8865
Fort Worth-Arlington, TX	20.0524
Fresno, CA	21.3156
Gadsden, AL	17.7134
Gainesville, FL	19.3227
Galveston-Texas City, TX	21.2286
Gary, IN	19.3581
Glens Falls, NY	16.8524
Goldsboro, NC	16.9659
Grand Forks, ND-MN	17.5737
Grand Junction, CO	18.2668
Grand Rapids-Muskegon-Holland, MI	20.3894
Great Falls, MT	17.6888
Greeley, CO	20.2891
Green Bay, WI	18.2802
Greensboro-Winston-Salem-High Point, NC	18.7911
Greenville, NC	18.2150
Greenville-Spartanburg-Anderson, SC	18.2047
Hagerstown, MD	19.4546
Hamilton-Middletown, OH	17.6176
Harrisburg-Lebanon-Carlisle, PA	20.4715
Hartford, CT	25.2442
Hattiesburg, MS	14.4517
Hickory-Morganton-Lenoir, NC	17.4555
Honolulu, HI	23.7434
Houma, LA	15.7820
Houston, TX	19.8028
Huntington-Ashland, WV-KY-OH	18.4061
Huntsville, AL	17.0504
Indianapolis, IN	19.7891
Iowa City, IA	18.8914
Jackson, MI	18.1893
Jackson, MS	15.5941

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS

Urban area	Average hourly wage
Abilene, TX	16.6537
Aguadilla, PR	8.4161
Akron, OH	19.6368
Albany, GA	15.9028
Albany-Schenectady-Troy, NY	17.0398
Albuquerque, NM	18.7069
Alexandria, LA	16.4017
Allentown-Bethlehem-Easton, PA	20.2671

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Jackson, TN	17.1259
Jacksonville, FL	18.0231
Jacksonville, NC	14.0121
Jamestown, NY	15.1763
Janesville-Beloit, WI	17.7327
Jersey City, NJ	22.9317
Johnson City-Kingsport-Bristol, TN—VA	18.3137
Johnstown, PA	16.8349
Jonesboro, AR	14.9575
Joplin, MO	15.0911
Kalamazoo-Battlecreek, MI	21.4383
Kankakee, IL	17.3875
Kansas City, KS—MO	19.2182
Kenosha, WI	18.4799
Killeen-Temple, TX	20.6010
Knoxville, TN	17.7457
Kokomo, IN	16.9123
La Crosse, WI—MN	17.5812
Lafayette, LA	16.4896
Lafayette, IN	18.4349
Lake Charles, LA	15.6250
Lakeland-Winter Haven, FL	17.6957
Lancaster, PA	19.0528
Lansing-East Lansing, MI	20.2720
Laredo, TX	14.7188
Las Cruces, NM	17.3739
Las Vegas, NV—AZ	21.2843
Lawrence, KS	17.2986
Lawton, OK	18.1767
Lewiston-Auburn, ME	19.1630
Lexington, KY	16.8604
Lima, OH	18.4571
Lincoln, NE	18.5501
Little Rock-North Little Rock, AR	17.0606
Longview-Marshall, TX	17.3073
Los Angeles-Long Beach, CA	24.5811
Louisville, KY—IN	19.1041
Lubbock, TX	16.8801
Lynchburg, VA	16.5342
Macon, GA	18.5414
Madison, WI	20.2048
Mansfield, OH	17.3603
Mayaguez, PR	8.9928
McAllen-Edinburg-Mission, TX	16.8206
Medford-Ashland, OR	20.8059
Melbourne-Titusville-Palm Bay, FL	17.7216
Memphis, TN—AR—MS	17.2589
Merced, CA	21.9978
Miami, FL	19.8109
Middlesex-Somerset-Hunterdon, NJ	22.2234
Milwaukee-Waukesha, WI	19.7306
Minneapolis-St. Paul, MN—WI	21.5680
Mobile, AL	16.9905
Modesto, CA	21.6914
Monmouth-Ocean, NJ	21.9716
Monroe, LA	16.9075
Montgomery, AL	15.4155
Muncie, IN	18.4325
Myrtle Beach, SC	16.2206
Naples, FL	20.3132
Nashville, TN	18.4503
Nassau-Suffolk, NY	27.7455
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	25.3561
New London-Norwich, CT	24.1396
New Orleans, LA	19.2230
New York, NY	28.1700

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Newark, NJ	24.0742
Newburgh, NY—PA	22.6737
Norfolk-Virginia Beach-Newport News, VA—NC	16.7115
Oakland, CA	30.2802
Ocala, FL	18.1497
Odessa-Midland, TX	17.4016
Oklahoma City, OK	17.0417
Olympia, WA	21.9051
Omaha, NE—IA	18.9312
Orange County, CA	23.3199
Orlando, FL	18.8833
Owensboro, KY	15.0313
Panama City, FL	16.7539
Parkersburg-Marietta, WV—OH	16.1677
Pensacola, FL	16.4635
Peoria-Pekin, IL	17.2543
Philadelphia, PA—NJ	22.8669
Phoenix-Mesa, AZ	19.3025
Pine Bluff, AR	15.7267
Pittsburgh, PA	19.5430
Pittsfield, MA	22.0237
Pocatello, ID	19.2628
Ponce, PR	9.2209
Portland, ME	19.3456
Portland-Vancouver, OR—WA	22.7959
Providence-Warwick, RI	22.2031
Provo-Orem, UT	20.2420
Pueblo, CO	16.9797
Punta Gorda, FL	17.5323
Racine, WI	17.9536
Raleigh-Durham-Chapel Hill, NC	19.7297
Rapid City, SD	16.7698
Reading, PA	19.1233
Redding, CA	23.6924
Reno, NV	21.6378
Richland-Kennewick-Pasco, WA	19.9294
Richmond-Petersburg, VA	18.3907
Riverside-San Bernardino, CA	22.7212
Roanoke, VA	16.8848
Rochester, MN	21.1030
Rochester, NY	19.1384
Rockford, IL	18.2476
Rocky Mount, NC	18.1440
Sacramento, CA	24.5203
Saginaw-Bay City-Midland, MI	19.2180
St. Cloud, MN	19.1778
St. Joseph, MO	16.8108
St. Louis, MO—IL	18.3475
Salem, OR	19.9649
Salinas, CA	29.1634
Salt Lake City-Ogden, UT	19.8077
San Angelo, TX	15.6340
San Antonio, TX	17.0791
San Diego, CA	24.5018
San Francisco, CA	28.4956
San Jose, CA	28.8011
San Juan-Bayamon, PR	9.2790
San Luis Obispo-Atascadero-Paso Robles, CA	22.8552
Santa Barbara-Santa Maria-Lompoc, CA	21.4774
Santa Cruz-Watsonville, CA	28.5090
Santa Fe, NM	20.7615
Santa Rosa, CA	25.7526
Sarasota-Bradenton, FL	19.6072
Savannah, GA	17.3582
Scranton-Wilkes Barre-Hazleton, PA	17.1601

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Seattle-Bellevue-Everett, WA	22.7858
Sharon, PA	17.6500
Sheboygan, WI	15.7984
Sherman-Denison, TX	17.0784
Shreveport-Bossier City, LA	18.8520
Sioux City, IA—NE	16.1387
Sioux Falls, SD	17.5067
South Bend, IN	19.8290
Spokane, WA	21.0721
Springfield, IL	17.5080
Springfield, MO	16.0540
Springfield, MA	21.4074
State College, PA	19.3613
Steubenville-Weirton, OH—WV	17.3728
Stockton-Lodi, CA	23.1020
Sumter, SC	15.7585
Syracuse, NY	19.0186
Tacoma, WA	22.1357
Tallahassee, FL	16.7434
Tampa-St. Petersburg-Clearwater, FL	18.2926
Terre Haute, IN	17.3093
Texarkana, AR—Texarkana, TX	17.4104
Toledo, OH	20.8792
Topeka, KS	18.9662
Trenton, NJ	20.8592
Tucson, AZ	18.4477
Tulsa, OK	16.2252
Tuscaloosa, AL	16.4520
Tyler, TX	19.2259
Utica-Rome, NY	16.8763
Vallejo-Fairfield-Napa, CA	27.6380
Ventura, CA	21.9959
Victoria, TX	17.0294
Vineland-Millville-Bridgeton, NJ	20.3170
Visalia-Tulare-Porterville, CA	19.9417
Waco, TX	15.4645
Washington, DC—MD—VA—WV	21.6632
Waterloo-Cedar Falls, IA	17.3631
Wausau, WI	21.1907
West Palm Beach-Boca Raton, FL	20.8423
Wheeling, OH—WV	15.4868
Wichita, KS	18.8949
Wichita Falls, TX	15.3642
Williamsport, PA	17.1768
Wilmington-Newark, DE—MD	23.1858
Wilmington, NC	18.7325
Yakima, WA	20.2994
Yolo, CA	22.9704
York, PA	18.9189
Youngstown-Warren, OH	19.9688
Yuba City, CA	20.7466
Yuma, AZ	19.5572

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS

Nonurban area	Average hourly wage
Alabama	14.5882
Alaska	24.7201
Arizona	16.0545
Arkansas	14.0570
California	20.0484
Colorado	16.3349
Connecticut	25.3532

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
Delaware .....	17.9354
Florida .....	17.7600
Georgia .....	15.5949
Hawaii .....	20.5550
Idaho .....	16.5193
Illinois .....	15.3604
Indiana .....	16.3993
Iowa .....	14.8515
Kansas .....	14.4750
Kentucky .....	15.6180
Louisiana .....	14.8369
Maine .....	17.0166
Maryland .....	17.3152
Massachusetts .....	21.5382
Michigan .....	17.9306
Minnesota .....	16.4358

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
Mississippi .....	13.8878
Missouri .....	14.4791
Montana .....	16.6820
Nebraska .....	14.8733
Nevada .....	17.9119
New Hampshire .....	19.5257
New Jersey <sup>1</sup> .....	.....
New Mexico .....	16.2165
New York .....	16.8824
North Carolina .....	15.9493
North Dakota .....	14.7904
Ohio .....	16.9480
Oklahoma .....	14.2120
Oregon .....	20.0438
Pennsylvania .....	16.9213
Puerto Rico .....	8.4891

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
Rhode Island <sup>1</sup> .....	.....
South Carolina .....	15.9167
South Dakota .....	14.0318
Tennessee .....	14.7759
Texas .....	14.8782
Utah .....	17.9362
Vermont .....	18.7155
Virginia .....	15.6378
Washington .....	20.5396
West Virginia .....	15.9511
Wisconsin .....	17.0229
Wyoming .....	16.5729

<sup>1</sup> All counties within the State are classified as urban.

TABLE 4F.—PUERTO RICO WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF)

Area	Wage index	GAF	Wage index—reclass. hospitals	GAF—reclass. hospitals
Aguadilla, PR <sup>1</sup> .....	0.9291	0.9509	.....	.....
Arecibo, PR <sup>1</sup> .....	0.9291	0.9509	.....	.....
Caguas, PR .....	0.9914	0.9941	0.9914	0.9941
Mayaguez, PR .....	0.9843	0.9892	.....	.....
Ponce, PR .....	1.0093	1.0064	.....	.....
San Juan-Bayamon, PR .....	1.0156	1.0107	.....	.....
Rural Puerto Rico .....	0.9291	0.9509	.....	.....

<sup>1</sup> Hospitals geographically located in the area are assigned the statewide rural wage index for FY 1998.

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
1 .....	01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA .....	3.0907	7.2	10.3
2 .....	01	SURG	CRANIOTOMY FOR TRAUMA AGE >17 .....	3.0511	7.9	10.6
3 .....	01	SURG	* CRANIOTOMY AGE 0-17 .....	1.9484	12.7	12.7
4 .....	01	SURG	SPINAL PROCEDURES .....	2.3858	5.5	8.5
5 .....	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES .....	1.5041	2.9	3.9
6 .....	01	SURG	CARPAL TUNNEL RELEASE .....	.7582	2.2	3.3
7 .....	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC .....	2.4717	7.3	11.4
8 .....	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC .....	1.2142	2.2	3.2
9 .....	01	MED	SPINAL DISORDERS & INJURIES .....	1.2646	5.1	7.2
10 .....	01	MED	NERVOUS SYSTEM NEOPLASMS W CC .....	1.2184	5.3	7.4
11 .....	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC .....	.7879	3.2	4.3
12 .....	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS .....	.9370	5.0	6.8
13 .....	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA .....	.7832	4.7	5.8
14 .....	01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA .....	1.1889	5.1	6.8
15 .....	01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS .....	.7241	3.2	4.1
16 .....	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC .....	1.0452	4.6	6.1
17 .....	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC .....	.6161	2.8	3.7
18 .....	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC .....	.9399	4.5	5.9
19 .....	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC .....	.6293	3.2	4.1
20 .....	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS .....	2.5786	8.0	10.8
21 .....	01	MED	VIRAL MENINGITIS .....	1.4866	5.4	7.1
22 .....	01	MED	HYPERTENSIVE ENCEPHALOPATHY .....	.8594	3.7	4.8
23 .....	01	MED	NONTRAUMATIC STUPOR & COMA .....	.7777	3.3	4.6
24 .....	01	MED	SEIZURE & HEADACHE AGE >17 W CC .....	.9578	3.9	5.3
25 .....	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC .....	.5821	2.8	3.6
26 .....	01	MED	SEIZURE & HEADACHE AGE 0-17 .....	.9601	3.6	4.9
27 .....	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR .....	1.2670	3.4	5.5
28 .....	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC .....	1.1707	4.4	6.4
29 .....	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC .....	.6383	2.8	3.7

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
30	01	MED	*TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	.3295	2.0	2.0
31	01	MED	CONCUSSION AGE >17 W CC	.8369	3.4	4.8
32	01	MED	CONCUSSION AGE >17 W/O CC	.5109	2.2	3.1
33	01	MED	*CONCUSSION AGE 0-17	.2071	1.6	1.6
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.0385	4.2	5.8
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5941	3.0	3.9
36	02	SURG	RETINAL PROCEDURES	.6265	1.3	1.5
37	02	SURG	ORBITAL PROCEDURES	.9725	2.6	3.9
38	02	SURG	PRIMARY IRIS PROCEDURES	.4826	1.9	2.7
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5406	1.5	2.0
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.7341	2.2	3.3
41	02	SURG	*EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3354	1.6	1.6
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.5676	1.5	2.0
43	02	MED	HYPHEMA	.4119	2.9	4.0
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6072	4.3	5.3
45	02	MED	NEUROLOGICAL EYE DISORDERS	.6730	2.9	3.6
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.7234	3.7	4.9
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.4623	2.7	3.6
48	02	MED	*OTHER DISORDERS OF THE EYE AGE 0-17	.2955	2.9	2.9
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.8074	3.9	5.3
50	03	SURG	SIALOADENECTOMY	.8143	1.7	2.1
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.8367	1.9	2.9
52	03	SURG	CLEFT LIP & PALATE REPAIR	1.2768	2.2	3.2
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	1.0682	2.3	3.6
54	03	SURG	*SINUS & MASTOID PROCEDURES AGE 0-17	.4790	3.2	3.2
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	.8366	2.0	2.9
56	03	SURG	RHINOPLASTY	.8830	2.1	2.8
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	1.0182	2.7	4.0
58	03	SURG	*T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17.	.2720	1.5	1.5
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.8238	2.3	3.3
60	03	SURG	*TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.2072	1.5	1.5
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.1181	2.8	4.5
62	03	SURG	*MYRINGOTOMY W TUBE INSERTION AGE 0-17	.2933	1.3	1.3
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.2444	3.1	4.6
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.1568	4.4	6.7
65	03	MED	DYSEQUILIBRIUM	.5177	2.5	3.2
66	03	MED	EPISTAXIS	.5605	2.8	3.5
67	03	MED	EPIGLOTTITIS	.7866	3.1	3.8
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	.6831	3.5	4.3
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5160	2.9	3.5
70	03	MED	OTITIS MEDIA & URI AGE 0-17	.3892	2.7	3.3
71	03	MED	LARYNGOTRACHEITIS	.6688	3.0	3.9
72	03	MED	NASAL TRAUMA & DEFORMITY	.6364	2.7	3.5
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7660	3.4	4.7
74	03	MED	*OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	.3332	2.1	2.1
75	04	SURG	MAJOR CHEST PROCEDURES	3.1958	8.3	10.6
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.6427	8.7	11.7
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.1150	3.5	5.1
78	04	MED	PULMONARY EMBOLISM	1.4264	6.6	7.7
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.6258	6.8	8.7
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	.9121	4.9	6.1
81	04	MED	*RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.5091	6.1	6.1
82	04	MED	RESPIRATORY NEOPLASMS	1.3329	5.4	7.4
83	04	MED	MAJOR CHEST TRAUMA W CC	.9716	4.6	5.9
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5260	2.8	3.5
85	04	MED	PLEURAL EFFUSION W CC	1.2212	5.3	6.9
86	04	MED	PLEURAL EFFUSION W/O CC	.6715	3.1	4.1
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3639	4.9	6.5
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.9705	4.6	5.7

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.1006	5.4	6.6
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.6773	4.0	4.7
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.7940	3.7	4.4
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.1947	5.3	6.7
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7423	3.7	4.7
94	04	MED	PNEUMOTHORAX W CC	1.1857	5.1	6.7
95	04	MED	PNEUMOTHORAX W/O CC	.5974	3.2	4.0
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	.8005	4.2	5.1
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.5887	3.3	4.0
98	04	MED	BRONCHITIS & ASTHMA AGE 0-17	.6298	2.3	3.8
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	.6710	2.4	3.2
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5109	1.8	2.2
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	.8518	3.5	4.7
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5295	2.3	2.9
103	05	SURG	HEART TRANSPLANT	16.5746	32.1	48.2
104	05	SURG	CARDIAC VALVE PROCEDURES W CARDIAC CATH	7.3563	10.8	13.3
105	05	SURG	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	5.7109	8.3	10.2
106	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.5843	9.8	11.1
107	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.0812	7.3	8.3
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	6.1282	9.4	12.1
109			NO LONGER VALID	.0000	.0	.0
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.1964	7.7	10.2
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.2409	5.4	6.2
112	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2.0025	3.1	4.2
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	2.6579	9.7	13.2
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.5363	6.4	8.8
115	05	SURG	PERM PACE IMPLNT W AMI, HRT FAIL OR SHOCK OR AICD LEAD OR GEN PROC.	3.5476	6.7	9.2
116	05	SURG	OTH PERM CARDIAC PACEMAKER IMPLANT OR PTCA W CORONARY ART STENT.	2.5321	3.5	4.7
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.1950	2.7	4.0
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5889	2.0	3.0
119	05	SURG	VEIN LIGATION & STRIPPING	1.1997	3.1	5.1
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.9158	5.0	8.5
121	05	MED	CIRCULATORY DISORDERS W AMI & MAJOR COMP DISCH ALIVE	1.6537	6.0	7.3
122	05	MED	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP DISCH ALIVE	1.1446	3.9	4.7
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.4695	2.7	4.5
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.3565	3.6	4.6
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	.9738	2.3	2.9
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.4879	10.0	13.1
127	05	MED	HEART FAILURE & SHOCK	1.0199	4.5	5.8
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7807	5.6	6.4
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.1414	1.9	3.2
130	05	MED	PERIPHERAL VASCULAR DISORDERS W CC	.9410	5.1	6.3
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.6040	4.1	4.9
132	05	MED	ATHEROSCLEROSIS W CC	.6749	2.7	3.3
133	05	MED	ATHEROSCLEROSIS W/O CC	.5360	2.1	2.7
134	05	MED	HYPERTENSION	.5760	2.8	3.6
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	.8336	3.4	4.5
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	.5709	2.4	3.1
137	05	MED	*CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	.8131	3.3	3.3
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	.7962	3.2	4.2
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.4982	2.2	2.7
140	05	MED	ANGINA PECTORIS	.5993	2.6	3.2
141	05	MED	SYNCOPE & COLLAPSE W CC	.7005	3.1	4.1
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5231	2.3	2.9
143	05	MED	CHEST PAIN	.5200	1.9	2.4
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.0904	3.9	5.4
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6401	2.3	3.0
146	06	SURG	RECTAL RESECTION W CC	2.7356	9.3	10.5
147	06	SURG	RECTAL RESECTION W/O CC	1.5885	6.3	6.9
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.3883	10.6	12.6
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5495	6.5	7.1
150	06	SURG	PERITONEAL ADHESIOLYSIS W CC	2.7109	9.1	11.1
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.2645	4.9	6.1
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.9139	7.2	8.5
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.1634	5.2	5.8

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
154 ...	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.	4.1851	10.8	14.1
155 ...	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.3350	3.9	5.0
156 ...	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8374	6.0	6.0
157 ...	06	SURG	ANAL & STOMAL PROCEDURES W CC .....	1.1824	4.0	5.6
158 ...	06	SURG	ANAL & STOMAL PROCEDURES W/O CC .....	.6272	2.2	2.8
159 ...	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.2548	3.8	5.1
160 ...	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	.7177	2.3	2.8
161 ...	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC .....	1.0573	3.0	4.2
162 ...	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC .....	.5856	1.7	2.1
163 ...	06	SURG	HERNIA PROCEDURES AGE 0-17 .....	.8660	3.1	4.7
164 ...	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC .....	2.3412	7.5	8.7
165 ...	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC .....	1.2270	4.7	5.4
166 ...	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC .....	1.4582	4.3	5.4
167 ...	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC .....	.8373	2.5	3.0
168 ...	03	SURG	MOUTH PROCEDURES W CC .....	1.1187	3.2	4.7
169 ...	03	SURG	MOUTH PROCEDURES W/O CC .....	.6903	2.0	2.6
170 ...	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC .....	2.7587	8.1	11.8
171 ...	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC .....	1.1146	3.7	5.1
172 ...	06	MED	DIGESTIVE MALIGNANCY W CC .....	1.2867	5.3	7.4
173 ...	06	MED	DIGESTIVE MALIGNANCY W/O CC .....	.6744	2.9	4.0
174 ...	06	MED	G.I. HEMORRHAGE W CC .....	.9925	4.1	5.2
175 ...	06	MED	G.I. HEMORRHAGE W/O CC .....	.5366	2.7	3.2
176 ...	06	MED	COMPLICATED PEPTIC ULCER .....	1.1011	4.5	5.8
177 ...	06	MED	UNCOMPLICATED PEPTIC ULCER W CC .....	.8556	3.8	4.7
178 ...	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC .....	.6241	2.8	3.3
179 ...	06	MED	INFLAMMATORY BOWEL DISEASE .....	1.1100	5.2	6.7
180 ...	06	MED	G.I. OBSTRUCTION W CC .....	.9153	4.4	5.7
181 ...	06	MED	G.I. OBSTRUCTION W/O CC .....	.5204	3.1	3.7
182 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC.	.7664	3.5	4.6
183 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	.5496	2.6	3.2
184 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	.5930	2.7	3.6
185 ...	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	.8424	3.5	4.8
186 ...	03	MED	*DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17.	.3192	2.9	2.9
187 ...	03	MED	DENTAL EXTRACTIONS & RESTORATIONS .....	.7049	3.0	4.0
188 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC .....	1.0727	4.3	5.8
189 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC .....	.5488	2.5	3.4
190 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17 .....	.8786	3.3	4.9
191 ...	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC .....	4.3490	11.1	14.9
192 ...	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC .....	1.7057	5.6	7.1
193 ...	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	3.2666	10.6	13.0
194 ...	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.6688	5.9	7.5
195 ...	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC .....	2.7112	8.2	9.8
196 ...	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC .....	1.6075	5.5	6.3
197 ...	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC	2.3085	7.2	8.7
198 ...	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.1693	4.1	4.7
199 ...	07	SURG	HEPATOBIILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY .....	2.3523	7.9	10.7
200 ...	07	SURG	HEPATOBIILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	3.0210	7.5	11.3
201 ...	07	SURG	OTHER HEPATOBIILIARY OR PANCREAS O.R. PROCEDURES .....	3.4752	11.1	15.2
202 ...	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS .....	1.3255	5.3	7.2
203 ...	07	MED	MALIGNANCY OF HEPATOBIILIARY SYSTEM OR PANCREAS .....	1.2605	5.2	7.2
204 ...	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY .....	1.2117	4.9	6.4
205 ...	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W CC .....	1.2144	5.0	6.8
206 ...	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC ....	.6543	3.2	4.2
207 ...	07	MED	DISORDERS OF THE BILIARY TRACT W CC .....	1.0507	4.1	5.3
208 ...	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC .....	.6039	2.4	3.0
209 ...	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	2.2337	5.3	5.9
210 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	1.8265	6.5	7.6

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
211 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.2541	5.0	5.6
212 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17 .....	1.1311	3.9	5.2
213 ...	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.6513	6.4	8.8
214 ...	08	SURG	NO LONGER VALID .....	.0000	.0	.0
215 ...	08	SURG	NO LONGER VALID .....	.0000	.0	.0
216 ...	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.1082	7.4	10.3
217 ...	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS.	2.8033	9.2	13.8
218 ...	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC.	1.4576	4.4	5.6
219 ...	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC.	.9631	2.9	3.4
220 ...	08	SURG	*LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0-17.	.5800	5.3	5.3
221 ...	08	SURG	NO LONGER VALID .....	.0000	.0	.0
222 ...	08	SURG	NO LONGER VALID .....	.0000	.0	.0
223 ...	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	.9007	2.1	2.7
224 ...	08	SURG	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC.	.7466	1.8	2.1
225 ...	08	SURG	FOOT PROCEDURES .....	1.0124	3.1	4.6
226 ...	08	SURG	SOFT TISSUE PROCEDURES W CC .....	1.4095	4.1	6.3
227 ...	08	SURG	SOFT TISSUE PROCEDURES W/O CC .....	.7729	2.2	2.9
228 ...	08	SURG	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC.	.9542	2.3	3.5
229 ...	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC .....	.6706	1.8	2.4
230 ...	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.1296	3.3	5.0
231 ...	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR.	1.2727	3.1	4.8
232 ...	08	SURG	ARTHROSCOPY .....	1.0629	2.5	4.2
233 ...	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC .....	2.0329	5.7	8.3
234 ...	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC ....	1.1126	2.9	3.9
235 ...	08	MED	FRACTURES OF FEMUR .....	.7710	4.2	5.9
236 ...	08	MED	FRACTURES OF HIP & PELVIS .....	.7338	4.3	5.7
237 ...	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH .....	.5952	3.2	4.2
238 ...	08	MED	OSTEOMYELITIS .....	1.3250	7.0	9.5
239 ...	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	.9865	5.3	7.0
240 ...	08	MED	CONNECTIVE TISSUE DISORDERS W CC .....	1.2098	5.1	7.0
241 ...	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC .....	.5862	3.3	4.2
242 ...	08	MED	SEPTIC ARTHRITIS .....	1.0501	5.5	7.2
243 ...	08	MED	MEDICAL BACK PROBLEMS .....	.7158	4.0	5.1
244 ...	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC .....	.7199	4.0	5.4
245 ...	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC .....	.5002	3.0	4.0
246 ...	08	MED	NON-SPECIFIC ARTHROPATHIES .....	.5713	3.3	4.2
247 ...	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	.5587	2.8	3.7
248 ...	08	MED	TENDONITIS, MYOSITIS & BURSITIS .....	.7428	3.7	5.0
249 ...	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	.6559	2.7	4.0
250 ...	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	.6995	3.4	4.7
251 ...	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	.4517	2.3	3.0
252 ...	08	MED	*FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17 .....	.2520	1.8	1.8
253 ...	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC.	.7265	3.9	5.3
254 ...	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC.	.4350	2.8	3.5
255 ...	08	MED	*FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0-17	.2934	2.9	2.9
256 ...	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	.7826	4.0	5.7
257 ...	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC .....	.9276	2.6	3.2
258 ...	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC .....	.7162	2.0	2.3
259 ...	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC .....	.8874	2.1	3.2
260 ...	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC .....	.6092	1.4	1.7
261 ...	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	.8961	1.8	2.2

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
262 ...	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY .....	.7820	2.6	4.0
263 ...	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	2.0221	8.9	12.6
264 ...	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC.	1.0773	5.4	7.3
265 ...	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.5166	4.6	7.3
266 ...	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	.7909	2.6	3.6
267 ...	09	SURG	PERIANAL & PILONIDAL PROCEDURES .....	.8424	2.7	4.1
268 ...	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1.0090	2.4	3.5
269 ...	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC .....	1.5733	5.9	8.5
270 ...	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC .....	.7061	2.2	3.2
271 ...	09	MED	SKIN ULCERS .....	1.0259	6.0	7.8
272 ...	09	MED	MAJOR SKIN DISORDERS W CC .....	.9950	5.1	6.7
273 ...	09	MED	MAJOR SKIN DISORDERS W/O CC .....	.6618	4.0	5.4
274 ...	09	MED	MALIGNANT BREAST DISORDERS W CC .....	1.1229	5.0	7.2
275 ...	09	MED	MALIGNANT BREAST DISORDERS W/O CC .....	.5882	2.5	3.9
276 ...	09	MED	NON-MALIGANT BREAST DISORDERS .....	.6122	3.8	4.7
277 ...	09	MED	CELLULITIS AGE >17 W CC .....	.8322	5.1	6.2
278 ...	09	MED	CELLULITIS AGE >17 W/O CC .....	.5574	4.0	4.8
279 ...	09	MED	*CELLULITIS AGE 0-17 .....	.7309	4.2	4.2
280 ...	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC .....	.6757	3.4	4.7
281 ...	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	.4558	2.5	3.4
282 ...	09	MED	*TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17 .....	.2551	2.2	2.2
283 ...	09	MED	MINOR SKIN DISORDERS W CC .....	.6936	3.8	5.0
284 ...	09	MED	MINOR SKIN DISORDERS W/O CC .....	.4371	2.7	3.6
285 ...	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS.	2.1556	8.8	12.1
286 ...	10	SURG	ADRENAL & PITUITARY PROCEDURES .....	2.2671	5.8	7.3
287 ...	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.8727	8.6	12.1
288 ...	10	SURG	O.R. PROCEDURES FOR OBESITY .....	2.0255	4.9	6.2
289 ...	10	SURG	PARATHYROID PROCEDURES .....	.9827	2.4	3.5
290 ...	10	SURG	THYROID PROCEDURES .....	.8970	2.0	2.6
291 ...	10	SURG	THYROGLOSSAL PROCEDURES .....	.7372	1.7	2.2
292 ...	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC .....	2.5483	7.6	11.2
293 ...	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC .....	1.2297	3.8	5.6
294 ...	10	MED	DIABETES AGE >35 .....	.7546	4.0	5.3
295 ...	10	MED	DIABETES AGE 0-35 .....	.7359	3.2	4.1
296 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC .....	.8657	4.3	5.8
297 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC .....	.5188	3.0	3.9
298 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17 .....	.4207	2.0	2.5
299 ...	10	MED	INBORN ERRORS OF METABOLISM .....	.8716	3.9	5.5
300 ...	10	MED	ENDOCRINE DISORDERS W CC .....	1.0810	5.1	6.6
301 ...	10	MED	ENDOCRINE DISORDERS W/O CC .....	.5941	3.1	4.4
302 ...	11	SURG	KIDNEY TRANSPLANT .....	3.7570	9.2	10.9
303 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.6139	7.8	9.5
304 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.	2.3982	6.9	9.6
305 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.1695	3.4	4.3
306 ...	11	SURG	PROSTATECTOMY W CC .....	1.2168	4.0	5.8
307 ...	11	SURG	PROSTATECTOMY W/O CC .....	.6455	2.1	2.5
308 ...	11	SURG	MINOR BLADDER PROCEDURES W CC .....	1.5120	4.3	6.4
309 ...	11	SURG	MINOR BLADDER PROCEDURES W/O CC .....	.8760	2.1	2.6
310 ...	11	SURG	TRANSURETHRAL PROCEDURES W CC .....	1.0248	3.0	4.3
311 ...	11	SURG	TRANSURETHRAL PROCEDURES W/O CC .....	.5866	1.7	2.1
312 ...	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC .....	.9732	3.1	4.7
313 ...	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC .....	.5783	1.8	2.3
314 ...	11	SURG	*URETHRAL PROCEDURES, AGE 0-17 .....	.4916	2.3	2.3
315 ...	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES .....	2.0601	4.9	8.5
316 ...	11	MED	RENAL FAILURE .....	1.3089	5.1	7.1
317 ...	11	MED	ADMIT FOR RENAL DIALYSIS .....	.5489	2.0	2.9
318 ...	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC .....	1.1594	4.7	6.7
319 ...	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC .....	.5808	2.0	2.8
320 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC .....	.8782	4.7	5.9
321 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC .....	.5838	3.6	4.3
322 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17 .....	.5342	3.4	4.3
323 ...	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY .....	.7555	2.5	3.4



TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
324 ...	11	MED	URINARY STONES W/O CC .....	.4298	1.7	2.0
325 ...	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC .....	.6207	3.1	4.2
326 ...	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC .....	.4188	2.3	2.9
327 ...	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17 .....	.3516	2.3	3.5
328 ...	11	MED	URETHRAL STRICTURE AGE >17 W CC .....	.6878	2.9	3.9
329 ...	11	MED	URETHRAL STRICTURE AGE >17 W/O CC .....	.5080	1.9	2.3
330 ...	11	MED	*URETHRAL STRICTURE AGE 0-17 .....	.3167	1.6	1.6
331 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC .....	1.0009	4.4	5.9
332 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC ..	.5964	2.7	3.7
333 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17 .....	.8389	4.0	5.7
334 ...	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC .....	1.6359	4.8	5.4
335 ...	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC .....	1.2190	3.7	4.1
336 ...	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC .....	.8870	2.9	3.8
337 ...	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC .....	.6129	2.1	2.4
338 ...	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY .....	1.0950	3.3	5.1
339 ...	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17 .....	1.0038	3.1	4.6
340 ...	12	SURG	*TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17 .....	.2815	2.4	2.4
341 ...	12	SURG	PENIS PROCEDURES .....	1.1089	2.2	3.1
342 ...	12	SURG	CIRCUMCISION AGE >17 .....	.8511	2.9	3.6
343 ...	12	SURG	*CIRCUMCISION AGE 0-17 .....	.1529	1.7	1.7
344 ...	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.0298	2.1	3.1
345 ...	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	.8552	2.7	3.8
346 ...	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC .....	.9573	4.5	6.3
347 ...	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC .....	.4603	2.2	3.0
348 ...	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC .....	.6958	3.3	4.5
349 ...	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC .....	.4154	2.1	2.7
350 ...	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM .....	.6797	3.8	4.6
351 ...	12	MED	*STERILIZATION, MALE .....	.2347	1.3	1.3
352 ...	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES .....	.6263	2.9	4.0
353 ...	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	2.1179	6.4	8.3
354 ...	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.4963	5.0	6.0
355 ...	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	.9180	3.4	3.6
356 ...	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	.7701	2.5	2.8
357 ...	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	2.4309	7.6	9.3
358 ...	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC .....	1.2021	3.8	4.5
359 ...	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC .....	.8452	2.9	3.1
360 ...	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES .....	.8708	2.7	3.3
361 ...	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION .....	1.1872	2.6	3.7
362 ...	13	SURG	*ENDOSCOPIC TUBAL INTERRUPTION .....	.3000	1.4	1.4
363 ...	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY .....	.7485	2.6	3.5
364 ...	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY .....	.6985	2.5	3.5
365 ...	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES .....	1.7085	4.7	7.2
366 ...	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC .....	1.1857	4.9	7.1
367 ...	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC .....	.5309	2.1	2.9
368 ...	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM .....	.9698	4.9	6.2
369 ...	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	.5367	2.5	3.4
370 ...	14	SURG	CESAREAN SECTION W CC .....	1.0587	4.3	5.5
371 ...	14	SURG	CESAREAN SECTION W/O CC .....	.7054	3.3	3.6
372 ...	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES .....	.5590	2.4	3.1
373 ...	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES .....	.3987	1.7	2.0
374 ...	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C .....	.7625	2.3	2.9
375 ...	14	SURG	*VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C .....	.6809	4.4	4.4
376 ...	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	.4822	2.3	3.2
377 ...	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	1.0517	2.5	4.0
378 ...	14	MED	ECTOPIC PREGNANCY .....	.8126	2.3	2.6
379 ...	14	MED	THREATENED ABORTION .....	.4028	2.1	2.9
380 ...	14	MED	ABORTION W/O D&C .....	.3501	1.5	1.8
381 ...	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY ..	.4809	1.7	2.3
382 ...	14	MED	FALSE LABOR .....	.2086	1.2	1.3
383 ...	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS ...	.4636	2.8	3.8

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
384 ...	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.3539	2.0	2.8
385 ...	15		*NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.3665	1.8	1.8
386 ...	15		*EXTREME IMMATURETY OR RESPIRATORY DISTRESS SYNDROME, NEONATE.	4.5063	17.9	17.9
387 ...	15		*PREMATURITY W MAJOR PROBLEMS .....	3.0777	13.3	13.3
388 ...	15		*PREMATURITY W/O MAJOR PROBLEMS .....	1.8570	8.6	8.6
389 ...	15		FULL TERM NEONATE W MAJOR PROBLEMS .....	1.4862	5.1	6.3
390 ...	15		*NEONATE W OTHER SIGNIFICANT PROBLEMS .....	1.3058	3.4	3.4
391 ...	15		*NORMAL NEWBORN .....	.1515	3.1	3.1
392 ...	16	SURG	SPLENECTOMY AGE >17 .....	3.1695	8.1	10.6
393 ...	16	SURG	*SPLENECTOMY AGE 0-17 .....	1.3386	9.1	9.1
394 ...	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.6479	4.5	7.5
395 ...	16	MED	RED BLOOD CELL DISORDERS AGE >17 .....	.8181	3.6	5.0
396 ...	16	MED	RED BLOOD CELL DISORDERS AGE 0-17 .....	.6284	2.7	4.0
397 ...	16	MED	COAGULATION DISORDERS .....	1.2679	4.2	5.8
398 ...	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC .....	1.2242	4.9	6.3
399 ...	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC .....	.6836	3.2	4.0
400 ...	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE .....	2.6402	6.3	9.7
401 ...	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.5653	8.1	11.7
402 ...	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	1.0145	2.9	4.2
403 ...	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC .....	1.6964	6.0	8.6
404 ...	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC .....	.7917	3.3	4.6
405 ...	17		*ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17 .....	1.8978	4.9	4.9
406 ...	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC.	2.6147	7.3	10.1
407 ...	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W/O CC.	1.1516	3.5	4.4
408 ...	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC.	1.7294	4.7	7.6
409 ...	17	MED	RADIOTHERAPY .....	.9534	4.3	5.9
410 ...	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	.7968	2.6	3.4
411 ...	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY .....	.4214	1.8	2.3
412 ...	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY .....	.5175	2.4	3.4
413 ...	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC ....	1.3777	5.7	8.1
414 ...	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	.7041	3.2	4.6
415 ...	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES .....	3.5166	10.8	14.9
416 ...	18	MED	SEPTICEMIA AGE >17 .....	1.4797	5.8	7.7
417 ...	18	MED	SEPTICEMIA AGE 0-17 .....	.7688	3.3	4.3
418 ...	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS .....	.9679	5.0	6.3
419 ...	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC .....	.8831	4.1	5.2
420 ...	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC .....	.6064	3.2	4.0
421 ...	18	MED	VIRAL ILLNESS AGE >17 .....	.7069	3.3	4.2
422 ...	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17 .....	.5347	2.7	3.8
423 ...	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES .....	1.5690	5.8	8.0
424 ...	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.4581	9.9	16.8
425 ...	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION.	.6857	3.2	4.4
426 ...	19	MED	DEPRESSIVE NEUROSES .....	.5648	3.7	5.2
427 ...	19	MED	NEUROSES EXCEPT DEPRESSIVE .....	.5818	3.6	5.3
428 ...	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL .....	.6975	4.9	7.7
429 ...	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION .....	.8728	5.4	7.9
430 ...	19	MED	PSYCHOSES .....	.8073	6.5	9.1
431 ...	19	MED	CHILDHOOD MENTAL DISORDERS .....	.8371	5.5	8.9
432 ...	19	MED	OTHER MENTAL DISORDER DIAGNOSES .....	.7647	3.7	5.9
433 ...	20		ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA .....	.3053	2.4	3.3
434 ...	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC.	.6865	4.0	5.3
435 ...	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC.	.4015	3.6	4.5
436 ...	20		ALC/DRUG DEPENDENCE W REHABILITATION THERAPY .....	.8110	11.5	14.1
437 ...	20		ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY ..	.7343	8.3	9.9
438 ...			NO LONGER VALID .....	.0000	.0	.0
439 ...	21	SURG	SKIN GRAFTS FOR INJURIES .....	1.6391	5.4	8.5
440 ...	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES .....	1.8456	6.0	9.6
441 ...	21	SURG	HAND PROCEDURES FOR INJURIES .....	.9298	2.2	3.4
442 ...	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC .....	2.1818	5.4	8.3

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
443 ...	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC .....	.9116	2.5	3.4
444 ...	21	MED	TRAUMATIC INJURY AGE >17 W CC .....	.7007	3.7	4.8
445 ...	21	MED	TRAUMATIC INJURY AGE >17 W/O CC .....	.4842	2.6	3.7
446 ...	21	MED	*TRAUMATIC INJURY AGE 0-17 .....	.2942	2.4	2.4
447 ...	21	MED	ALLERGIC REACTIONS AGE >17 .....	.4927	2.0	2.6
448 ...	21	MED	ALLERGIC REACTIONS AGE 0-17 .....	.0968	1.0	1.0
449 ...	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC .....	.7860	2.8	4.1
450 ...	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC .....	.4406	1.7	2.2
451 ...	21	MED	*POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17 .....	.2613	2.1	2.1
452 ...	21	MED	COMPLICATIONS OF TREATMENT W CC .....	.9476	3.7	5.2
453 ...	21	MED	COMPLICATIONS OF TREATMENT W/O CC .....	.4960	2.3	3.1
454 ...	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC .....	.9035	3.3	5.2
455 ...	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC .....	.4453	2.0	2.7
456 ...	22		BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY .....	1.7396	3.7	7.3
457 ...	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE .....	1.5860	2.5	4.9
458 ...	22	SURG	NON-EXTENSIVE BURNS W SKIN GRAFT .....	3.5746	11.1	16.0
459 ...	22	SURG	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC. ....	1.5588	6.5	9.3
460 ...	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE .....	.9421	4.4	6.3
461 ...	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES. ....	1.0123	2.5	4.6
462 ...	23	MED	REHABILITATION .....	1.4041	10.5	13.1
463 ...	23	MED	SIGNS & SYMPTOMS W CC .....	.6907	3.6	4.8
464 ...	23	MED	SIGNS & SYMPTOMS W/O CC .....	.4872	2.7	3.4
465 ...	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS. ....	.5858	2.2	3.8
466 ...	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS. ....	.6336	2.6	4.7
467 ...	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS .....	.4669	2.3	4.2
468 ...	.....		EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS. ....	3.6202	9.9	14.2
469 ...	.....		** PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS .....	.0000	.0	.0
470 ...	.....		** UNGROUPABLE .....	.0000	.0	.0
471 ...	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY. ....	3.4771	5.8	6.7
472 ...	22	SURG	EXTENSIVE BURNS W O.R. PROCEDURE .....	10.2429	11.8	24.2
473 ...	17		ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17 .....	3.4853	7.9	13.6
474 ...	.....		NO LONGER VALID .....	.0000	.0	.0
475 ...	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT .....	3.7291	8.2	11.6
476 ...	.....	SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS. ....	2.2234	9.5	12.7
477 ...	.....	SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS. ....	1.7461	5.5	8.6
478 ...	05	SURG	OTHER VASCULAR PROCEDURES W CC .....	2.2981	5.2	7.7
479 ...	05	SURG	OTHER VASCULAR PROCEDURES W/O CC .....	1.4113	3.2	4.2
480 ...	.....	SURG	LIVER TRANSPLANT .....	11.4672	19.0	25.3
481 ...	.....	SURG	BONE MARROW TRANSPLANT .....	11.2821	26.5	30.2
482 ...	.....	SURG	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES .....	3.5999	10.5	13.5
483 ...	.....	SURG	TRACHEOSTOMY EXCEPT FOR FACE, MOUTH & NECK DIAGNOSES .....	16.0451	33.8	43.5
484 ...	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA .....	5.7762	10.6	15.4
485 ...	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR. ....	3.1562	8.3	10.6
486 ...	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA .....	4.8882	8.8	13.5
487 ...	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA .....	2.0229	5.9	8.3
488 ...	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE .....	4.5078	12.1	18.0
489 ...	25	MED	HIV W MAJOR RELATED CONDITION .....	1.8009	6.7	9.8
490 ...	25	MED	HIV W OR W/O OTHER RELATED CONDITION .....	.9952	4.2	6.1
491 ...	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY. ....	1.6579	3.3	3.9
492 ...	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS. ....	4.6393	11.9	18.0
493 ...	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC .....	1.7561	4.1	5.7
494 ...	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC .....	.9400	1.8	2.4
495 ...	.....	SURG	LUNG TRANSPLANT .....	9.5171	14.8	17.9
496 ...	08	SURG	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION .....	5.5214	9.2	11.6
497 ...	08	SURG	SPINAL FUSION W CC .....	2.7692	5.3	6.8
498 ...	08	SURG	SPINAL FUSION W/O CC .....	1.6171	3.1	3.8
499 ...	08	SURG	BACK & NECK PROCS EXCEPT SPINAL FUSION W CC .....	1.4827	4.1	5.3
500 ...	08	SURG	BACK & NECK PROCS EXCEPT SPINAL FUSION W/O CC .....	.9708	2.6	3.1
501 ...	08	SURG	KNEE PROC W PDX OF INFECTION W CC .....	2.5660	8.7	11.3

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
502 ...	08	SURG	KNEE PROC W PDX OF INFECTION W/O CC .....	1.6004	5.9	7.1
503 ...	08	SURG	KNEE PROCEDURES W/O PDX OF INFECTION .....	1.2380	3.4	4.4

\* 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
007.4	Other protozoal intestinal diseases, cryptosporidiosis .....	N	6	182, 183, 184
031.2	Disease due to disseminated mycobacterium avium-intracellulare complex (DMAC).	N	18	423
			25	489 <sup>1</sup>
038.10	Staphylococcal septicemia, unspecified .....	Y	15	387, 389 <sup>2</sup>
			18	416, 417
			25	489 <sup>1</sup>
038.11	Staphylococcus aureus septicemia .....	Y	15	387, 389 <sup>2</sup>
			18	416, 417
			25	489 <sup>1</sup>
038.19	Other staphylococcal septicemia .....	Y	15	387, 389 <sup>2</sup>
			18	416, 417
			25	489 <sup>1</sup>
275.40	Unspecified disorder of calcium metabolism .....	N	10	296, 297, 298
275.41	Hypocalcemia .....	N	10	296, 297, 298
275.42	Hypercalcemia .....	N	10	296, 297, 298
275.49	Other disorder of calcium metabolism .....	N	10	296, 297, 298
438.0	Late effect of cerebrovascular disease, cognitive deficits .....	N	1	12
438.10	Late effect of cerebrovascular disease, speech and language deficits, unspecified.	N	1	12
438.11	Late effect of cerebrovascular disease, speech and language deficits, aphasia.	N	1	12
438.12	Late effect of cerebrovascular disease, speech and language deficits, dysphasia.	N	1	12
438.19	Late effect of cerebrovascular disease, other speech and language deficits.	N	1	12
438.20	Late effect of cerebrovascular disease, hemiplegia affecting unspecified side.	N	1	12
438.21	Late effect of cerebrovascular disease, hemiplegia affecting dominant side.	N	1	12
438.22	Late effect of cerebrovascular disease, hemiplegia affecting nondominant side.	N	1	12
438.30	Late effect of cerebrovascular disease, monoplegia of upper limb affecting unspecified side.	N	1	12
438.31	Late effect of cerebrovascular disease, monoplegia of upper limb affecting dominant side.	N	1	12
438.32	Late effect of cerebrovascular disease, monoplegia of upper limb affecting nondominant side.	N	1	12
438.40	Late effect of cerebrovascular disease, monoplegia of lower limb affecting unspecified side.	N	1	12
438.41	Late effect of cerebrovascular disease, monoplegia of lower limb affecting dominant side.	N	1	12
438.42	Late effect of cerebrovascular disease, monoplegia of lower limb affecting nondominant side.	N	1	12
438.50	Late effect of cerebrovascular disease, other paralytic syndrome affecting unspecified side.	N	1	12
438.51	Late effect of cerebrovascular disease, other paralytic syndrome affecting dominant side.	N	1	12
438.52	Late effect of cerebrovascular disease, other paralytic syndrome affecting nondominant side.	N	1	12
438.81	Other late effect of cerebrovascular disease, apraxia .....	N	1	12
438.82	Other late effect of cerebrovascular disease, dysphagia .....	N	1	12
438.89	Other late effects of cerebrovascular disease .....	N	1	12
438.9	Unspecified late effects of cerebrovascular disease .....	N	1	12
458.8	Other specified hypotension .....	N	5	144, 145
				121 <sup>3</sup>

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
474.00	Chronic tonsillitis .....	N	pre 3	482 68, 69, 70
474.01	Chronic adenoiditis .....	N	pre 3	482 68, 69, 70
474.02	Chronic tonsillitis and adenoiditis .....	N	pre 3	482 68, 69, 70
482.84	Legionnaires' disease .....	Y	4	79, 80, 81
518.6	Allergic bronchopulmonary aspergillosis .....	Y	4	92, 93
655.70	Decreased fetal movements unspecified as to episode of care or not applicable.	N	14	469
655.71	Decreased fetal movements delivered, with or without mention of antepartum condition.	N	14	370, 371, 372, 373, 374, 375
655.73	Decreased fetal movements antepartum condition or complication .....	N	14	383, 384
686.00	Other local infection of skin and subcutaneous tissue, pyoderma, unspecified.	N	9	277, 278, 279
686.01	Other local infection of skin and subcutaneous tissue, pyoderma gangrenosum.	N	9	277, 278, 279
686.09	Other local infection of skin and subcutaneous tissue, other pyoderma ...	N	9	277, 278, 279
756.70	Congenital anomaly of abdominal wall, unspecified .....	N	6	188, 189, 190
756.71	Congenital anomaly of abdominal wall, prune belly syndrome .....	N	6	188, 189, 190
756.79	Other congenital anomalies of abdominal wall .....	N	6	188, 189, 190
780.31	Febrile convulsions .....	Y	1 15	24, 25, 26 387, 389 <sup>2</sup>
780.39	Other convulsions .....	Y	1 15	24, 25, 26 387, 389 <sup>2</sup>
790.94	Other nonspecific findings on examination of blood, euthyroid sick syndrome.	N	23	463, 464
796.5	Abnormal findings on antenatal screening .....	N	14	383, 384
959.01	Head injury, unspecified .....	N	pre 21 24	482 444, 445, 446 significant trauma list
959.09	Injury of face and neck .....	N	pre 21 24	482 444, 445, 446 significant trauma list
V02.60	Viral hepatitis carrier, unspecified .....	N	7	205, 206
V02.61	Hepatitis B carrier .....	N	7	205, 206
V02.62	Hepatitis C carrier .....	N	7	205, 206
V02.69	Other viral hepatitis carrier .....	N	7	205, 206
V12.40	Personal history of unspecified disorder of nervous system and sense organs.	N	23	467
V12.41	Personal history of benign neoplasm of the brain .....	N	23	467
V12.49	Personal history of other disorder of nervous system and sense organs	N	23	467
V16.40	Family history of malignant neoplasm of genital organ, unspecified .....	N	23	467
V16.41	Family history of malignant neoplasm of ovary .....	N	23	467
V16.42	Family history of malignant neoplasm of prostate .....	N	23	467
V16.43	Family history of malignant neoplasm of testis .....	N	23	467
V16.49	Family history of other malignant neoplasm .....	N	23	467
V28.6	Antenatal screening for streptococcus B .....	N	23	467
V42.81	Organ or tissue replaced by transplant, bone marrow .....	Y	16	398, 399
V42.82	Organ or tissue replaced by transplant, peripheral stem cells .....	Y	16	398, 399
V42.83	Organ or tissue replaced by transplant, pancreas .....	Y	7	204
V42.89	Other organ or tissue replaced by transplant .....	Y	23	467
V45.61	Cataract extraction status .....	N	23	467
V45.69	Other states following surgery of eye and adnexa .....	N	23	467
V45.71	Acquired absence of breast .....	N	23	467
V45.72	Acquired absence of intestine (large) (small) .....	N	23	467
V45.73	Acquired absence of kidney .....	N	23	467
V53.01	Fitting and adjustment of cerebral ventricular (communicating) shunt .....	N	23	467
V53.02	Fitting and adjustment of neuropacemaker (brain) (peripheral nerve) (Spinal cord).	N	23	467
V53.09	Fitting and adjustment of other devices related to nervous system and special senses.	N	23	467
V64.4	Laparoscopic surgical procedure converted to open procedure .....	N	23	467
V76.10	Screening for malignant neoplasm, breast screening, unspecified .....	N	23	467
V76.11	Screening mammogram for high-risk patient, malignant neoplasm of breast.	N	23	467
V76.12	Other screening mammogram for malignant neoplasm of breast .....	N	23	467
V76.19	Other screening breast examination for malignant neoplasm .....	N	23	467

<sup>1</sup> HIV major related condition in this DRG.  
<sup>2</sup> Classified as a "major problem" in these DRGs.  
<sup>3</sup> Classified as a "major complication" in this DRG.

TABLE 6B.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
37.35 .....	Partial ventriculectomy .....	Y	5	108
41.05 .....	Allogeneic hematopoietic stem cell transplant .....	Y	pre	481
41.06 .....	Cord blood stem cell transplant .....	Y	pre	481

TABLE 6C.—INVALID DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
038.1	Staphylococcal septicemia .....	Y	15	387, 389 <sup>1</sup>
			18	416, 417
			25	489 <sup>2</sup>
275.4	Disorders of calcium metabolism .....	N	10	296, 297, 298
438	Late effects of cerebrovascular disease .....	N	1	12
474.0	Chronic tonsillitis and adenoiditis .....	N	pre	482
			3	68, 69, 70
686.0	Other local infections of skin and subcutaneous tissue, pyoderma .....	N	9	277, 278, 279
756.7	Other congenital anomalies of abdominal wall .....	N	6	188, 189, 190
780.3	Convulsions .....	Y	1	24, 25, 26
			15	387, 389 <sup>1</sup>
959.0	Injury, other and unspecified of head, face, and neck .....	N	pre	482
			21	444, 445, 446
			24	significant trauma list
V02.6	Carrier or suspected carrier of viral hepatitis .....	N	7	205, 206
V12.4	Personal history of disorders of nervous system and sense organs .....	N	23	467
V16.4	Family history of malignant neoplasm of genital organs .....	N	23	467
V42.8	Unspecified organ or tissue replaced by transplant .....	Y	7	205, 206
V45.6	Other postsurgical state following surgery of eye and adnexa .....	N	23	467
V53.0	Fitting and adjustment of devices related to nervous system and special senses.	N	23	467
V76.1	Special screening for malignant neoplasm of the breast .....	N	23	467

<sup>1</sup> Classified as a "major problem" in these DRGs.

<sup>2</sup> HIV major related condition in this DRG.

TABLE 6D.—Revised Diagnosis Code Titles

Diagnosis code	Description	CC	MDC	DRG
041.04	Streptococcus infection in conditions classified elsewhere and of unspecified site, Group D (Enterococcus).	N	18	423

TABLE 6E.—ADDITIONS TO THE CC EXCLUSIONS LIST  
PAGE 1 OF 5 PAGES

CCs that are added to the list are in Table 6E—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.

*0031	48284	48284	48284	01176	01354	01643	01771
03810	*01140	*01186	*01795	01180	01355	01644	01772
03811	48284	48284	48284	01181	01356	01645	01773
03819	*01141	*01190	*01796	01182	01360	01646	01774
*0074	48284	48284	48284	01183	01361	01650	01775
00841	*01142	*01191	*0202	01184	01362	01651	01776
00842	48284	48284	03810	01185	01363	01652	01780
00843	*01143	*01192	03811	01186	01364	01653	01781
00844	48284	48284	03819	01190	01365	01654	01782
00845	*01144	*01193	*0212	01191	01366	01655	01783
00846	48284	48284	48284	01192	01380	01656	01784
00847	*01145	*01194	*0310	01193	01381	01660	01785
00849	48284	48284	48284	01194	01382	01661	01786
*01100	*01146	*01195	*0312	01195	01383	01662	01790
48284	48284	48284	01100	01196	01384	01663	01791
*01101	*01150	*01196	01101	01200	01385	01664	01792
48284	48284	48284	01102	01201	01386	01665	01793
*01102	*01151	*01200	*01103	01202	01390	01666	01794
48284	48284	48284	01104	01203	01391	01670	01795
*01103	*01152	*01201	01105	01204	01392	01671	01796
48284	48284	48284	01106	01205	01393	01672	01800
*01104	*01153	*01202	*01110	01206	01394	01673	01801
48284	48284	48284	01111	01210	01395	01674	01802
*01105	*01154	*01203	01112	01211	01396	01675	01803
48284	48284	48284	01113	01212	01400	01676	01804
*01106	*01155	*01204	01114	01213	01401	01690	01805
48284	48284	48284	01115	01214	01402	01691	01806
*01110	*01156	*01205	01116	01215	01403	01692	01880
48284	48284	48284	01120	01216	01404	01693	01881
*01111	*01160	*01206	01121	01300	01405	01694	01882
48284	48284	48284	01122	01301	01406	01695	01883
*01112	*01161	*01210	01123	01302	01480	01696	01884
48284	48284	48284	01124	01303	01482	01720	01885
*01113	*01162	*01211	01125	01304	01483	01721	01886
48284	48284	48284	01126	01305	01484	01722	01890
*01114	*01163	*01212	01130	01306	01485	01723	01891
48284	48284	48284	01131	01310	01486	01724	01892
*01115	*01164	*01213	01132	01311	01600	01725	01893
48284	48284	48284	01133	01312	01601	01726	01894
*01116	*01165	*01214	01134	01313	01602	01730	01895
48284	48284	48284	01135	01314	01603	01731	01896
*01120	*01166	*01215	01136	01315	01604	01732	0310
48284	48284	48284	01140	01316	01605	01733	*0362
*01121	*01170	*01216	01141	01320	01606	01734	03810
48284	48284	48284	01142	01321	01610	01735	03811
*01122	*01171	*01280	01143	01322	01611	01736	03819
48284	48284	48284	01144	01323	01612	01740	*0380
*01123	*01172	*01281	01145	01324	01613	01741	03810
48284	48284	48284	01146	01325	01614	01742	03811
*01124	*01173	*01282	01150	01326	01615	01743	03819
48284	48284	48284	01151	01330	01616	01744	*03810
*01125	*01174	*01283	01152	01331	01620	01745	0362
48284	48284	48284	01153	01332	01621	01746	0380
*01126	*01175	*01284	01154	01333	01622	01750	03810
48284	48284	48284	01155	01334	01623	01751	03811
*01130	*01176	*01285	01156	01335	01624	01752	03819
48284	48284	48284	01160	01336	01625	01753	0382
*01131	*01180	*01286	01161	01340	01626	01754	0383
48284	48284	48284	01162	01341	01630	01755	03840
*01132	*01181	*01790	01163	01342	01631	01756	03841
48284	48284	48284	01164	01343	01632	01760	03842
*01133	*01182	*01791	01165	01344	01633	01761	03843
48284	48284	48284	01170	01345	01634	01762	03844
*01134	*01183	*01792	01171	01346	01635	01763	03849
48284	48284	48284	01172	01350	01636	01764	0388
*01135	*01184	*01793	01173	01351	01640	01765	0389
48284	48284	48284	01174	01352	01641	01766	0545
*01136	*01185	*01794	01175	01353	01642	01770	*03811

## PAGE 2 OF 5 PAGES

0362	*0391	03819	*34550	48284	01196	*4838	48284
0380	48284	*04182	78031	*48283	01200	48284	*5078
03810	*04089	03810	78039	48284	01201	*4841	48284
03811	03810	03811	*34551	*48284	01202	48284	*5080
03819	03811	03819	78031	01100	01203	*4843	48284
0382	03819	*04183	78039	01101	01204	48284	*5081
0383	*04100	03810	*34560	01102	01205	*4845	48284
03840	03810	03811	78031	01103	01206	48284	*5088
03841	03811	03819	78039	01104	01210	*4846	48284
03842	03819	*04184	*34561	01105	01211	48284	*5089
03843	*04101	03810	78031	01106	01212	*4847	48284
03844	03810	03811	78039	01110	01213	48284	*5171
03849	03811	03819	*34570	01111	01214	*4848	48284
0388	03819	*04185	78031	01112	01215	48284	*5178
0389	*04102	03810	78039	01113	01216	*485	48284
0545	03810	03811	*34571	01114	0310	48284	*5186
*03819	03811	03819	78031	01115	11505	*486	5186
0362	03819	*04186	78039	01116	11515	48284	*51889
0380	*04103	03810	*34580	01120	1304	*4870	48284
03810	03810	03811	78031	01121	1363	48284	*5198
03811	03811	03819	78039	01122	481	*4871	48284
03819	03819	*04189	*34581	01123	4820	48284	5186
0382	*04104	03810	78031	01124	4821	*494	*5199
0383	03810	03811	78039	01125	4822	48284	48284
03840	03811	03819	*34590	01126	48230	*4950	5186
03841	03819	*0419	78031	01130	48231	48284	*5990
03842	*04105	03810	78039	01131	48232	*4951	99664
03843	03810	03811	*34591	01132	48239	48284	*65570
03844	03811	03819	78031	01133	4824	*4952	66500
03849	03819	*0545	78039	01134	48281	48284	66501
0388	*04109	03810	*3488	01135	48282	*4953	66503
0389	03810	03811	78031	01136	48283	48284	66510
0545	03811	03819	78039	01140	48284	*4954	66511
*0382	03819	*11505	*3489	01141	48289	48284	*65571
03810	*04110	48284	78031	01142	4829	*4955	66500
03811	03810	*11515	78039	01143	4830	48284	66501
03819	03811	48284	*34989	01144	4831	*4956	66503
*0383	03819	*11595	78031	01145	4838	48284	66510
03810	*04111	48284	78039	01146	4841	*4957	66511
03811	03810	*1221	*3499	01150	4843	48284	*65573
03819	03811	48284	78031	01151	4845	*4958	66500
*03840	03819	*1304	78039	01152	4846	48284	66501
03810	*04119	48284	*4800	01153	4847	*4959	66503
03811	03810	*1363	48284	01154	4848	48284	66510
03819	03811	48284	*4801	01155	485	*496	66511
*03841	03819	*1398	48284	01156	486	48284	*68600
03810	*0412	03810	*4802	01160	4870	*500	6800
03811	03810	03811	48284	01161	4950	48284	6801
03819	03811	03819	*4808	01162	4951	*501	6802
*03842	03819	*34500	48284	01163	4952	48284	6803
03810	*0413	78031	*4809	01164	4953	*502	6804
03811	03810	78039	48284	01165	4954	48284	6805
03819	03811	*34501	*481	01166	4955	*503	6806
*03843	03819	78031	48284	01170	4956	48284	6807
03810	*0414	78039	*4820	01171	4957	*504	6808
03811	03810	*34510	48284	01172	4958	48284	6809
03819	03811	78031	*4821	01173	4959	*505	6820
*03844	03819	78039	48284	01174	5060	48284	6821
03810	*0415	*34511	*4822	01175	5061	*5060	6822
03811	03810	78031	48284	01176	5070	48284	6823
03819	03811	78039	*48230	01180	5071	*5061	6825
*03849	03819	*3452	48284	01181	5078	48284	6826
03810	*0416	78031	*48231	01182	5080	*5062	6827
03811	03810	78039	48284	01183	5081	48284	6828
03819	03811	*3453	*48232	01184	5171	*5063	6829
*0388	03819	78031	48284	01185	*48289	48284	684
03810	*0417	78039	*48239	01186	48284	*5064	*68601
03811	03810	*34540	48284	01190	*4829	48284	6800
03819	03811	78031	*4824	01191	48284	*5069	6801
*0389	03819	78039	48284	01192	*4830	48284	6802
03810	*04181	*34541	*48281	01193	48284	*5070	6803
03811	03810	78031	48284	01194	*4831	48284	6804
03819	03811	78039	*48282	01195	48284	*5071	6805



6806	80019	80110	80220	80359	80450	85132	85223
6807	80020	80111	80221	80360	80451	85133	85224
6808	80021	80112	80222	80361	80452	85134	85225
6809	80022	80113	80223	80362	80453	85135	85226
6820	80023	80114	80224	80363	80454	85136	85229
6821	80024	80115	80225	80364	80455	85139	85230
6822	80025	80116	80226	80365	80456	85140	85231
6823	80026	80119	80227	80366	80459	85141	85232
6825	80029	80120	80228	80369	80460	85142	85233
6826	80030	80121	80229	80370	80461	85143	85234
6827	80031	80122	80230	80371	80462	85144	85235
6828	80032	80123	80231	80372	80463	85145	85236
6829	80033	80124	80232	80373	80464	85146	85239
684	80034	80125	80233	80374	80465	85149	85240
*68609	80035	80126	80234	80375	80466	85150	85241
6800	80036	80129	80235	80376	80469	85151	85242
6801	80039	80130	80236	80379	80470	85152	85243
6802	80040	80131	80237	80380	80471	85153	85244
6803	80041	80132	80238	80381	80472	85154	85245
6804	80042	80133	80239	80382	80473	85155	85246
6805	80043	80134	8024	80383	80474	85156	85249
6806	80044	80135	8025	80384	80475	85159	85250
6807	80045	80136	8026	80385	80476	85160	85251
6808	80046	80139	8027	80386	80479	85161	85252
6809	80049	80140	8028	80389	80480	85162	85253
6820	80050	80141	8029	80390	80481	85163	85254
6821	80051	80142	80300	80391	80482	85164	85255
6822	80052	80143	80301	80392	80483	85165	85256
6823	80053	80144	80302	80393	80484	85166	85259
6825	80054	80145	80303	80394	80485	85169	85300
6826	80055	80146	80304	80395	80486	85170	85301
6827	80056	80149	80305	80396	80489	85171	85302
6828	80059	80150	80306	80399	80490	85172	85303
6829	80060	80151	80309	80400	80491	85173	85304
684	80061	80152	80310	80401	80492	85174	85305
*74861	80062	80153	80311	80402	80493	85175	85306
48284	80063	80154	80312	80403	80494	85176	85309
*7790	80064	80155	80313	80404	80495	85179	85310
78031	80065	80156	80314	80405	80496	85180	85311
78039	80066	80159	80315	80406	80499	85181	85312
*7791	80069	80160	80316	80409	8500	85182	85313
78031	80070	80161	80319	80410	8501	85183	85314
78039	80071	80162	80320	80411	8502	85184	85315
*78031	80072	80163	80321	80412	8503	85185	85316
78031	80073	80164	80322	80413	8504	85186	85319
78039	80074	80165	80323	80414	8505	85189	85400
*78039	80075	80166	80324	80415	8509	85190	85401
78031	80076	80169	80325	80416	85100	85191	85402
78039	80079	80170	80326	80419	85101	85192	85403
*7809	80080	80171	80329	80420	85102	85193	85404
78031	80081	80172	80330	80421	85103	85194	85405
78039	80082	80173	80331	80422	85104	85195	85406
*79094	80083	80174	80332	80423	85105	85196	85409
7907	80084	80175	80333	80424	85106	85199	85410
*7998	80085	80176	80334	80425	85109	85200	85411
78031	80086	80179	80335	80426	85110	85201	85412
78039	80089	80180	80336	80429	85111	85202	85413
*95901	80090	80181	80339	80430	85112	85203	85414
80000	80091	80182	80340	80431	85113	85204	85415
80001	80092	80183	80341	80432	85114	85205	85416
80002	80093	80184	80342	80433	85115	85206	85419
80003	80094	80185	80343	80434	85116	85209	9251
80004	80095	80186	80344	80435	85119	85210	9252
80005	80096	80189	80345	80436	85120	85211	*95909
80006	80099	80190	80346	80439	85121	85212	80000
80009	80100	80191	80349	80440	85122	85213	80001
80010	80101	80192	80350	80441	85123	85214	80002
80011	80102	80193	80351	80442	85124	85215	80003
80012	80103	80194	80352	80443	85125	85216	80004
80013	80104	80195	80353	80444	85126	85219	80005
80014	80105	80196	80354	80445	85129	85220	80006
80015	80106	80199	80355	80446	85130	85221	80009
80016	80109	8021	80356	80449	85131	85222	80010

## PAGE 4 OF 5 PAGES

80011	80102	80193	80351	80442	85124	85215	V4282
80012	80103	80194	80352	80443	85125	85216	V4283
80013	80104	80195	80353	80444	85126	85219	V4289
80014	80105	80196	80354	80445	85129	85220	*99685
80015	80106	80199	80355	80446	85130	85221	V4281
80016	80109	8021	80356	80449	85131	85222	*99686
80019	80110	80220	80359	80450	85132	85223	V4283
80020	80111	80221	80360	80451	85133	85224	*99689
80021	80112	80222	80361	80452	85134	85225	V4289
80022	80113	80223	80362	80453	85135	85226	*V090
80023	80114	80224	80363	80454	85136	85229	03810
80024	80115	80225	80364	80455	85139	85230	03811
80025	80116	80226	80365	80456	85140	85231	03819
80026	80119	80227	80366	80459	85141	85232	*V091
80029	80120	80228	80369	80460	85142	85233	03810
80030	80121	80229	80370	80461	85143	85234	03811
80031	80122	80230	80371	80462	85144	85235	03819
80032	80123	80231	80372	80463	85145	85236	*V092
80033	80124	80232	80373	80464	85146	85239	03810
80034	80125	80233	80374	80465	85149	85240	03811
80035	80126	80234	80375	80466	85150	85241	03819
80036	80129	80235	80376	80469	85151	85242	*V093
80039	80130	80236	80379	80470	85152	85243	03810
80040	80131	80237	80380	80471	85153	85244	03811
80041	80132	80238	80381	80472	85154	85245	03819
80042	80133	80239	80382	80473	85155	85246	*V094
80043	80134	8024	80383	80474	85156	85249	03810
80044	80135	8025	80384	80475	85159	85250	03811
80045	80136	8026	80385	80476	85160	85251	03819
80046	80139	8027	80386	80479	85161	85252	*V0950
80049	80140	8028	80389	80480	85162	85253	03810
80050	80141	8029	80390	80481	85163	85254	03811
80051	80142	80300	80391	80482	85164	85255	03819
80052	80143	80301	80392	80483	85165	85256	*V0951
80053	80144	80302	80393	80484	85166	85259	03810
80054	80145	80303	80394	80485	85169	85300	03811
80055	80146	80304	80395	80486	85170	85301	03819
80056	80149	80305	80396	80489	85171	85302	*V096
80059	80150	80306	80399	80490	85172	85303	03810
80060	80151	80309	80400	80491	85173	85304	03811
80061	80152	80310	80401	80492	85174	85305	03819
80062	80153	80311	80402	80493	85175	85306	*V0970
80063	80154	80312	80403	80494	85176	85309	03810
80064	80155	80313	80404	80495	85179	85310	03811
80065	80156	80314	80405	80496	85180	85311	03819
80066	80159	80315	80406	80499	85181	85312	*V0971
80069	80160	80316	80409	8500	85182	85313	03810
80070	80161	80319	80410	8501	85183	85314	03811
80071	80162	80320	80411	8502	85184	85315	03819
80072	80163	80321	80412	8503	85185	85316	*V0980
80073	80164	80322	80413	8504	85186	85319	03810
80074	80165	80323	80414	8505	85189	85400	03811
80075	80166	80324	80415	8509	85190	85401	03819
80076	80169	80325	80416	85100	85191	85402	*V0981
80079	80170	80326	80419	85101	85192	85403	03810
80080	80171	80329	80420	85102	85193	85404	03811
80081	80172	80330	80421	85103	85194	85405	03819
80082	80173	80331	80422	85104	85195	85406	*V0990
80083	80174	80332	80423	85105	85196	85409	03810
80084	80175	80333	80424	85106	85199	85410	03811
80085	80176	80334	80425	85109	85200	85411	03819
80086	80179	80335	80426	85110	85201	85412	*V0991
80089	80180	80336	80429	85111	85202	85413	03810
80090	80181	80339	80430	85112	85203	85414	03811
80091	80182	80340	80431	85113	85204	85415	03819
80092	80183	80341	80432	85114	85205	85416	*V4283
80093	80184	80342	80433	85115	85206	85419	V4283
80094	80185	80343	80434	85116	85209	9251	*V4289
80095	80186	80344	80435	85119	85210	9252	V420
80096	80189	80345	80436	85120	85211	*99664	V421
80099	80190	80346	80439	85121	85212	5990	V422
80100	80191	80349	80440	85122	85213	*99680	V426
80101	80192	80350	80441	85123	85214	V4281	V427

V4289 *V429 V4281 V4282 V4283 V4289							
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TABLE 6F.—DELETIONS TO THE CC EXCLUSIONS LIST

PAGE 1 OF 2 PAGES

CCs that are deleted from the list are in Table 6F—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.

*0031	0381	7803	80039	80123	80226	80360	80444
0381	*0414	*34989	80040	80124	80227	80361	80445
*0202	0381	7803	80041	80125	80228	80362	80446
0381	*0415	*3499	80042	80126	80229	80363	80449
*0362	0381	7803	80043	80129	80230	80364	80450
0381	*0416	*6860	80044	80130	80231	80365	80451
*0380	0381	6800	80045	80131	80232	80366	80452
0381	*0417	6801	80046	80132	80233	80369	80453
*0381	0381	6802	80049	80133	80234	80370	80454
0362	*04181	6803	80050	80134	80235	80371	80455
0380	0381	6804	80051	80135	80236	80372	80456
0381	*04182	6805	80052	80136	80237	80373	80459
0382	0381	6806	80053	80139	80238	80374	80460
0383	*04183	6807	80054	80140	80239	80375	80461
03840	0381	6808	80055	80141	8024	80376	80462
03841	*04184	6809	80056	80142	8025	80379	80463
03842	0381	6820	80059	80143	8026	80380	80464
03843	*04185	6821	80060	80144	8027	80381	80465
03844	0381	6822	80061	80145	8028	80382	80466
03849	*04186	6823	80062	80146	8029	80383	80469
0388	0381	6825	80063	80149	80300	80384	80470
0389	*04189	6826	80064	80150	80301	80385	80471
0545	0381	6827	80065	80151	80302	80386	80472
*0382	*0419	6828	80066	80152	80303	80389	80473
0381	0381	6829	80069	80153	80304	80390	80474
*0383	*0545	684	80070	80154	80305	80391	80475
0381	0381	*7790	80071	80155	80306	80392	80476
*03840	*1398	7803	80072	80156	80309	80393	80479
0381	0381	*7791	80073	80159	80310	80394	80480
*03841	*34500	7803	80074	80160	80311	80395	80481
0381	7803	*7803	80075	80161	80312	80396	80482
*03842	*34501	7803	80076	80162	80313	80399	80483
0381	7803	*7809	80079	80163	80314	80400	80484
*03843	*34510	7803	80080	80164	80315	80401	80485
0381	7803	*7998	80081	80165	80316	80402	80486
*03844	*34511	7803	80082	80166	80319	80403	80489
0381	7803	*9590	80083	80169	80320	80404	80490
*03849	*3452	80000	80084	80170	80321	80405	80491
0381	7803	80001	80085	80171	80322	80406	80492
*0388	*3453	80002	80086	80172	80323	80409	80493
0381	7803	80003	80089	80173	80324	80410	80494
*0389	*34540	80004	80090	80174	80325	80411	80495
0381	7803	80005	80091	80175	80326	80412	80496
*04089	*34541	80006	80092	80176	80329	80413	80499
0381	7803	80009	80093	80179	80330	80414	8500
*04100	*34550	80010	80094	80180	80331	80415	8501
0381	7803	80011	80095	80181	80332	80416	8502
*04101	*34551	80012	80096	80182	80333	80419	8503
0381	7803	80013	80099	80183	80334	80420	8504
*04102	*34560	80014	80100	80184	80335	80421	8505
0381	7803	80015	80101	80185	80336	80422	8509
*04103	*34561	80016	80102	80186	80339	80423	85100
0381	7803	80019	80103	80189	80340	80424	85101
*04104	*34570	80020	80104	80190	80341	80425	85102
0381	7803	80021	80105	80191	80342	80426	85103
*04105	*34571	80022	80106	80192	80343	80429	85104
0381	7803	80023	80109	80193	80344	80430	85105
*04109	*34580	80024	80110	80194	80345	80431	85106
0381	7803	80025	80111	80195	80346	80432	85109
*04110	*34581	80026	80112	80196	80349	80433	85110
0381	7803	80029	80113	80199	80350	80434	85111
*04111	*34590	80030	80114	8021	80351	80435	85112
0381	7803	80031	80115	80220	80352	80436	85113
*04119	*34591	80032	80116	80221	80353	80439	85114
0381	7803	80033	80119	80222	80354	80440	85115
*0412	*3488	80034	80120	80223	80355	80441	85116
0381	7803	80035	80121	80224	80356	80442	85119
*0413	*3489	80036	80122	80225	80359	80443	85120

85121	85212	V428
85122	85213	*99686
85123	85214	V428
85124	85215	*99689
85125	85216	V428
85126	85219	*V090
85129	85220	0381
85130	85221	*V091
85131	85222	0381
85132	85223	*V092
85133	85224	0381
85134	85225	*V093
85135	85226	0381
85136	85229	*V094
85139	85230	0381
85140	85231	*V0950
85141	85232	0381
85142	85233	*V0951
85143	85234	0381
85144	85235	*V096
85145	85236	0381
85146	85239	*V0970
85149	85240	0381
85150	85241	*V0971
85151	85242	0381
85152	85243	*V0980
85153	85244	0381
85154	85245	*V0981
85155	85246	0381
85156	85249	*V0990
85159	85250	0381
85160	85251	*V0991
85161	85252	0381
85162	85253	*V428
85163	85254	V420
85164	85255	V421
85165	85256	V422
85166	85259	V426
85169	85300	V427
85170	85301	V428
85171	85302	*V429
85172	85303	V428
85173	85304	
85174	85305	
85175	85306	
85176	85309	
85179	85310	
85180	85311	
85181	85312	
85182	85313	
85183	85314	
85184	85315	
85185	85316	
85186	85319	
85189	85400	
85190	85401	
85191	85402	
85192	85403	
85193	85404	
85194	85405	
85195	85406	
85196	85409	
85199	85410	
85200	85411	
85201	85412	
85202	85413	
85203	85414	
85204	85415	
85205	85416	
85206	85419	
85209	9251	
85210	9252	
85211	*99680	

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TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY  
 [FY96 MEDPAR Update 06/97 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	36951	10.0648	2	4	7	13	21
2	6901	10.5740	3	5	8	13	21
3	2	50.5000	1	1	100	100	100
4	6300	8.4741	2	3	6	10	18
5	103092	3.9356	1	2	3	4	8
6	421	3.2470	1	1	2	4	7
7	12078	11.7014	3	5	8	13	22
8	2117	3.8427	1	1	3	5	8
9	1748	7.1070	1	3	5	9	14
10	20265	7.2705	2	3	5	9	15
11	2958	4.2559	1	2	3	6	9
12	26164	6.8367	2	3	5	8	13
13	6421	5.7728	2	3	5	7	10
14	377267	6.7453	2	3	5	8	13
15	145885	4.0663	1	2	3	5	7
16	14071	6.0968	2	3	5	7	11
17	3095	3.6927	1	2	3	5	7
18	24288	5.7924	2	3	4	7	11
19	6604	4.0893	1	2	3	5	8
20	8247	9.3961	2	4	7	12	19
21	1192	7.1032	2	3	5	9	14
22	2904	4.7600	2	2	4	6	9
23	6081	4.5469	1	2	3	6	9
24	58223	5.3289	1	2	4	6	10
25	22286	3.6092	1	2	3	4	7
26	42	5.0952	1	2	4	7	11
27	3845	5.5004	1	1	3	7	13
28	12715	6.3270	1	2	4	8	13
29	4005	3.7231	1	2	3	5	7
30	1	4.0000	4	4	4	4	4
31	3086	4.7664	1	2	3	6	9
32	1434	3.0718	1	1	2	3	6
34	18587	5.8145	1	3	4	7	11
35	3733	3.9207	1	2	3	5	7
36	6765	1.5441	1	1	1	2	2
37	1771	3.9283	1	1	3	5	8
38	197	2.7411	1	1	2	3	5
39	2564	2.0035	1	1	1	2	4
40	2657	3.4159	1	1	2	4	7
42	5414	1.9762	1	1	1	2	4
43	111	3.9910	1	2	3	5	7
44	1477	5.2275	2	3	4	7	9
45	2356	3.6006	1	2	3	5	7
46	3021	4.8431	1	2	4	6	9
47	1182	3.9619	1	1	3	4	7
49	2389	5.2704	1	2	4	6	10
50	3294	2.1072	1	1	2	2	3
51	351	2.8775	1	1	2	3	6
52	91	3.0000	1	1	2	4	7
53	3107	3.6028	1	1	2	4	8
54	2	5.0000	1	1	9	9	9
55	1907	2.9240	1	1	2	3	6
56	749	2.8451	1	1	2	3	6
57	659	3.9484	1	1	2	4	8
58	1	2.0000	2	2	2	2	2
59	106	3.3302	1	1	2	4	6
60	3	1.0000	1	1	1	1	1
61	243	4.5473	1	1	3	5	11
63	3794	4.6009	1	2	3	5	9
64	3378	6.6442	1	2	5	8	14
65	29490	3.1698	1	2	3	4	6
66	6602	3.4727	1	2	3	4	6
67	495	3.8061	1	2	3	5	7
68	10227	4.3213	2	2	4	5	8
69	2963	3.4715	1	2	3	4	6
70	40	3.3000	1	2	3	4	5
71	128	3.9297	1	2	3	5	7
72	725	3.4897	1	2	3	4	7
73	6260	4.6725	1	2	4	6	9
74	4	3.2500	1	1	2	3	7

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued  
 [FY96 MEDPAR Update 06/97 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
75	41372	10.5497	4	5	8	13	20
76	41405	11.7204	3	6	9	14	22
77	2204	5.0912	1	2	4	7	10
78	31193	7.6312	3	5	7	9	13
79	239360	8.6345	3	4	7	11	16
80	8157	6.0829	2	3	5	7	11
81	22	10.2727	1	6	8	11	15
82	71319	7.3214	2	3	6	9	14
83	7516	5.8950	2	3	5	7	11
84	1542	3.4540	1	2	3	4	6
85	20847	6.8707	2	3	5	9	13
86	1389	4.0662	1	2	3	5	8
87	67801	6.4419	1	3	5	8	12
88	361166	5.6526	2	3	5	7	10
89	430920	6.5608	3	4	5	8	12
90	37020	4.6802	2	3	4	6	8
91	77	5.1818	2	3	4	7	9
92	13624	6.6358	2	3	5	8	12
93	1172	4.6860	1	2	4	6	9
94	13846	6.6439	2	3	5	8	13
95	1449	3.9786	1	2	3	5	7
96	59271	5.0562	2	3	4	6	9
97	24153	3.9977	1	2	3	5	7
98	29	2.8621	1	1	2	4	6
99	26718	3.1667	1	1	2	4	6
100	10247	2.2335	1	1	2	3	4
101	20620	4.7299	1	2	4	6	9
102	4570	2.8967	1	1	2	4	5
103	538	47.8662	9	15	32	72	105
104	26488	13.3264	5	8	11	16	24
105	23028	10.2064	5	6	8	12	18
106	107702	11.0480	6	7	9	13	18
107	68747	8.3098	5	6	7	9	13
108	7536	12.0882	4	7	10	15	23
110	63731	10.0931	3	6	8	12	19
111	5575	6.1189	2	4	6	7	9
112	219732	4.2374	1	2	3	6	8
113	48124	13.1573	4	6	9	16	26
114	9126	8.8386	2	4	7	11	17
115	11726	10.2988	4	6	8	13	18
116	88158	5.0220	1	2	4	6	10
117	3828	4.0470	1	1	3	5	9
118	6772	3.0371	1	1	2	4	7
119	1690	5.1065	1	1	3	7	11
120	39847	8.4640	1	2	5	11	19
121	167101	6.9259	2	4	6	9	12
122	91350	4.6310	1	2	4	6	8
123	46249	4.4859	1	1	2	6	11
124	153500	4.5902	1	2	4	6	9
125	61076	2.9372	1	1	2	4	6
126	5166	12.8142	4	6	10	16	26
127	709234	5.7990	2	3	5	7	11
128	18597	6.3449	3	4	6	7	10
129	4489	3.1644	1	1	1	3	7
130	100017	6.2985	2	4	5	8	11
131	25586	4.8476	1	3	5	6	8
132	165201	3.3138	1	2	3	4	6
133	6160	2.7940	1	1	2	3	5
134	29603	3.6026	1	2	3	4	7
135	8086	4.4369	1	2	3	5	8
136	1150	3.0504	1	1	2	4	6
137	5	6.6000	2	2	4	8	16
138	208756	4.1947	1	2	3	5	8
139	65753	2.7449	1	1	2	3	5
140	135211	3.1677	1	2	3	4	6
141	78555	4.0801	1	2	3	5	7
142	35677	2.9447	1	1	2	4	5
143	138162	2.3966	1	1	2	3	4
144	76696	5.3747	1	2	4	7	11
145	6380	2.9914	1	1	2	4	6

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued  
 [FY96 MEDPAR Update 06/97 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
146	9882	10.5266	6	7	9	12	17
147	1674	6.9050	4	5	7	8	10
148	149728	12.6192	6	7	10	15	22
149	14277	7.1339	4	5	7	8	10
150	24560	11.1072	4	6	9	14	20
151	4267	6.1198	2	3	6	8	11
152	4715	8.4846	4	5	7	10	14
153	1651	5.7965	3	4	6	7	9
154	35216	14.0534	4	7	11	17	27
155	4555	5.0119	1	2	4	7	9
156	4	10.7500	3	3	4	5	31
157	9472	5.6010	1	2	4	7	11
158	4361	2.7845	1	1	2	4	6
159	18297	5.0699	1	2	4	6	10
160	9547	2.7709	1	1	2	4	5
161	14988	4.2180	1	2	3	5	9
162	7391	2.0894	1	1	1	3	4
163	11	4.4545	1	1	2	6	10
164	5375	8.7116	4	5	7	10	15
165	1597	5.4264	2	3	5	7	8
166	3365	5.4155	2	3	4	7	10
167	2278	2.9622	1	2	3	4	5
168	1877	4.7475	1	2	3	6	9
169	952	2.5620	1	1	2	3	5
170	13057	11.7430	2	5	9	15	23
171	1059	5.0888	1	2	4	6	10
172	33117	7.3971	2	3	5	9	15
173	2099	3.9700	1	2	3	5	8
174	240184	5.1454	2	3	4	6	9
175	21544	3.2351	1	2	3	4	6
176	17948	5.7574	2	3	4	7	11
177	11802	4.7312	2	3	4	6	8
178	3790	3.3570	1	2	3	4	6
179	12184	6.7228	2	3	5	8	13
180	89240	5.6541	2	3	4	7	11
181	21350	3.7182	1	2	3	5	7
182	239229	4.5646	1	2	4	6	8
183	70013	3.1776	1	2	3	4	6
184	89	3.7191	1	2	3	4	7
185	4134	4.8181	1	2	4	6	10
186	3	3.6667	2	2	4	5	5
187	932	3.9635	1	2	3	5	8
188	70899	5.7808	1	3	4	7	11
189	7941	3.3871	1	1	3	4	7
190	99	4.8990	1	2	3	6	11
191	11157	14.8611	4	7	11	18	30
192	780	7.1346	2	4	6	9	12
193	8380	12.9029	5	7	11	16	23
194	663	7.5053	2	4	6	9	13
195	8780	9.8539	4	6	8	12	17
196	631	6.3376	3	4	6	8	10
197	27389	8.6974	3	5	7	10	15
198	7098	4.7201	2	3	4	6	8
199	2177	10.7184	3	5	8	14	22
200	1549	11.2608	2	4	8	14	23
201	1562	15.0506	4	7	11	19	29
202	28593	7.0940	2	3	5	9	14
203	29628	7.1561	2	3	6	9	14
204	53350	6.3392	2	3	5	8	12
205	23158	6.7829	2	3	5	8	14
206	1672	4.2189	1	2	3	5	8
207	37032	5.2825	1	2	4	7	10
208	9961	3.0344	1	1	2	4	6
209	358501	5.8935	3	4	5	7	9
210	143703	7.6287	4	5	6	9	13
211	26316	5.6097	3	4	5	7	9
212	41	6.1220	3	4	5	7	9
213	7179	8.7551	2	4	7	11	17
214	58431	5.8904	2	3	5	7	11
215	45646	3.2827	1	2	3	4	6



TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued  
 [FY96 MEDPAR Update 06/97 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
216	6407	10.2995	2	4	8	13	21
217	20940	13.7538	3	5	9	17	29
218	24873	5.6276	2	3	4	7	10
219	18972	3.4441	1	2	3	4	6
220	4	4.7500	1	1	4	4	10
221	5180	7.1959	2	3	5	9	14
222	3506	3.8189	1	2	3	5	7
223	19625	2.6998	1	1	2	3	5
224	8139	2.1058	1	1	2	3	4
225	5926	4.6232	1	2	3	6	10
226	5570	6.2548	1	2	4	7	13
227	4376	2.8551	1	1	2	3	5
228	2997	3.4525	1	1	2	4	7
229	1232	2.3612	1	1	2	3	4
230	2492	4.9767	1	2	3	6	10
231	11066	4.7603	1	2	3	6	10
232	556	4.2248	1	1	2	5	9
233	4761	8.2728	2	3	6	10	17
234	2195	3.8893	1	2	3	5	8
235	5557	5.8101	1	3	4	6	11
236	39976	5.5846	2	3	4	7	10
237	1669	4.2151	1	2	3	5	8
238	7672	9.3749	3	4	7	11	17
239	60788	6.9705	2	3	5	8	13
240	13393	6.9364	2	3	5	8	14
241	3016	4.2338	1	2	3	5	8
242	2855	7.1338	2	3	5	9	14
243	80934	5.1228	2	3	4	6	9
244	12524	5.4313	1	3	4	6	10
245	4417	4.0906	1	2	3	5	7
246	1276	4.2226	1	2	3	5	8
247	11504	3.6954	1	2	3	5	7
248	7427	4.9740	1	2	4	6	9
249	10422	3.9731	1	1	3	5	8
250	3591	4.6441	1	2	3	5	9
251	2139	3.0108	1	1	2	4	5
253	19173	5.2500	1	3	4	6	10
254	9369	3.5203	1	2	3	4	6
255	1	6.0000	6	6	6	6	6
256	4438	5.6717	1	2	4	7	11
257	22791	3.2063	1	2	3	4	6
258	17069	2.2799	1	1	2	3	4
259	4037	3.1962	1	1	2	3	7
260	4576	1.6635	1	1	1	2	3
261	2262	2.2396	1	1	2	3	4
262	669	3.9746	1	1	3	5	8
263	29336	12.5322	3	5	9	15	24
264	3380	7.2843	2	3	6	9	14
265	4205	7.2542	1	2	5	8	15
266	2585	3.5528	1	1	2	5	7
267	226	4.1770	1	1	2	5	8
268	1218	3.7373	1	1	2	4	7
269	10131	8.4881	2	3	6	11	17
270	3100	3.2032	1	1	2	4	7
271	23041	7.7309	3	4	6	9	14
272	6022	6.6724	2	3	5	8	13
273	1397	5.3672	1	2	4	6	11
274	2648	7.1650	1	3	5	9	15
275	243	3.8477	1	1	2	5	8
276	953	4.7408	1	3	4	6	8
277	80661	6.2256	2	3	5	7	11
278	24965	4.8286	2	3	4	6	8
279	7	4.4286	2	2	4	6	6
280	14005	4.6941	1	2	3	6	9
281	5939	3.3597	1	1	3	4	6
282	5	12.0000	1	1	3	14	41
283	5325	5.0186	1	2	4	6	10
284	1764	3.5595	1	2	3	5	7
285	5653	12.0637	3	5	9	15	23
286	2085	7.1947	3	4	5	8	13

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued  
[FY96 MEDPAR Update 06/97 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
287	6742	12.2094	3	5	8	14	24
288	1244	5.8457	3	4	5	6	9
289	5512	3.4799	1	1	2	3	7
290	8856	2.5833	1	1	2	3	4
291	93	2.1720	1	1	2	3	4
292	5234	11.2042	2	4	8	14	22
293	276	5.8406	1	2	4	7	11
294	84535	5.2478	2	3	4	6	10
295	3739	4.1038	1	2	3	5	8
296	233162	5.7612	2	3	4	7	11
297	32036	3.8589	1	2	3	5	7
298	122	3.1066	1	1	2	4	6
299	1152	5.4852	1	2	4	7	11
300	15755	6.6292	2	3	5	8	13
301	1988	4.3622	1	2	3	5	8
302	8343	10.9475	5	6	8	13	19
303	19359	9.4651	4	5	8	11	17
304	13173	9.5951	2	4	7	12	19
305	2468	4.3302	1	2	4	5	8
306	11672	5.7598	1	2	4	7	12
307	2489	2.5372	1	1	2	3	4
308	9750	6.3917	1	2	4	8	13
309	3377	2.5579	1	1	2	3	5
310	27613	4.3385	1	2	3	5	9
311	8533	2.0550	1	1	2	2	4
312	1880	4.6824	1	2	3	6	10
313	664	2.2846	1	1	2	3	5
315	28798	8.5390	1	2	5	11	19
316	85489	6.9920	2	3	5	9	14
317	858	2.9231	1	1	2	3	6
318	6203	6.6381	1	3	5	8	13
319	433	2.8730	1	1	2	4	6
320	176972	5.8722	2	3	5	7	10
321	23634	4.2737	2	3	4	5	7
322	102	4.4706	2	2	3	5	9
323	17539	3.3728	1	1	2	4	7
324	8050	2.0060	1	1	2	2	4
325	7041	4.1976	1	2	3	5	8
326	2111	2.9019	1	1	2	4	5
327	15	3.1333	1	1	2	3	12
328	678	3.9189	1	2	3	5	8
329	108	2.4352	1	1	2	3	5
331	44368	5.8405	2	3	4	7	11
332	4485	3.5376	1	1	3	5	7
333	348	5.6063	1	2	4	7	12
334	19424	5.4204	3	4	5	6	8
335	9808	4.0533	2	3	4	5	6
336	59377	3.7626	1	2	3	4	7
337	34315	2.4154	1	2	2	3	4
338	3738	5.0698	1	2	3	6	11
339	2131	4.5861	1	2	3	6	10
340	1	1.0000	1	1	1	1	1
341	5981	3.1155	1	1	2	3	6
342	194	4.1649	1	2	3	6	8
344	3544	3.1168	1	1	2	3	6
345	1364	3.8043	1	1	3	5	8
346	5207	6.2906	1	3	5	8	12
347	382	2.9503	1	1	2	4	6
348	3220	4.4851	1	2	3	5	8
349	744	2.6788	1	1	2	3	5
350	6367	4.6220	2	3	4	6	8
351	2	2.5000	2	2	3	3	3
352	551	3.9800	1	1	3	5	8
353	2722	8.3420	3	4	6	9	16
354	10008	5.9796	3	3	5	7	10
355	5600	3.6289	2	3	3	4	5
356	29930	2.8076	1	2	3	3	4
357	6625	9.3250	4	5	7	11	17
358	28909	4.4699	2	3	4	5	7
359	28338	3.0915	2	2	3	4	4

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued  
 [FY96 MEDPAR Update 06/97 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
360	18232	3.2826	1	2	3	4	5
361	680	3.6721	1	1	2	4	8
362	1	1.0000	1	1	1	1	1
363	3930	3.4725	1	2	2	3	7
364	1869	3.4912	1	1	2	4	7
365	2454	7.1520	1	2	4	9	16
366	4504	6.9896	1	3	5	9	15
367	546	2.9579	1	1	2	4	6
368	2396	6.2371	2	3	5	8	12
369	2388	3.4317	1	1	2	4	7
370	1223	5.5078	2	3	4	5	9
371	1108	3.5903	2	3	3	4	5
372	909	3.1177	1	2	2	3	5
373	4166	2.0290	1	1	2	2	3
374	170	2.8824	1	2	2	3	4
375	7	8.4286	1	2	5	9	15
376	219	3.2055	1	1	2	4	7
377	51	4.0196	1	1	2	4	9
378	195	2.6256	1	2	2	3	4
379	374	2.9278	1	1	2	3	5
380	101	1.8317	1	1	1	2	4
381	184	2.2935	1	1	1	2	5
382	48	1.3333	1	1	1	1	2
383	1616	3.8342	1	2	3	5	8
384	142	2.8380	1	1	2	3	6
385	5	4.6000	1	1	2	4	15
386	1	49.0000	49	49	49	49	49
387	1	62.0000	62	62	62	62	62
389	24	7.1667	3	3	5	10	13
390	12	5.3333	2	3	4	7	7
392	2562	10.5863	4	5	8	13	21
393	2	11.0000	7	7	15	15	15
394	1814	7.5232	1	2	5	9	16
395	68196	4.9807	1	2	4	6	10
396	20	4.1500	1	1	2	7	7
397	16987	5.7650	1	2	4	7	11
398	18423	6.2558	2	3	5	8	12
399	1310	4.0099	1	2	3	5	7
400	7882	9.7265	2	3	7	12	21
401	6799	11.6851	2	5	9	15	24
402	1510	4.2391	1	1	3	6	9
403	39216	8.5824	2	3	6	11	18
404	3829	4.6453	1	2	4	6	9
406	3486	10.0688	3	4	7	13	21
407	700	4.4243	1	2	4	6	8
408	2860	7.6731	1	2	5	9	18
409	5606	5.9144	2	3	4	6	12
410	74662	3.3563	1	2	3	4	5
411	34	2.2941	1	1	1	3	6
412	30	3.3667	1	1	2	5	7
413	8828	8.0319	2	3	6	10	16
414	735	4.5456	1	2	3	6	10
415	44981	14.8907	4	7	11	18	29
416	220088	7.6836	2	4	6	9	14
417	55	4.5818	1	2	4	6	9
418	20660	6.3190	2	3	5	8	12
419	14953	5.2321	2	3	4	6	10
420	2640	3.9807	1	2	3	5	7
421	10782	4.2452	1	2	3	5	8
422	90	3.7889	1	2	3	4	5
423	10952	7.9356	2	3	6	9	16
424	1953	16.5996	2	6	10	19	31
425	15583	4.3857	1	2	3	5	8
426	4758	5.2222	1	2	4	6	11
427	1712	5.2652	1	2	4	7	11
428	944	7.6684	1	3	5	9	16
429	42557	7.8378	2	3	5	9	15
430	56337	9.0138	2	4	7	11	18
431	222	8.8694	2	3	5	9	17
432	412	5.8422	1	2	3	7	12

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued  
[FY96 MEDPAR Update 06/97 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
433	8265	3.2904	1	1	2	4	7
434	22732	5.2870	2	3	4	6	10
435	16634	4.5310	1	2	4	5	8
436	3556	13.7657	4	8	13	20	26
437	15721	9.9200	4	6	9	13	18
439	1050	8.4581	1	3	6	10	18
440	4863	9.5690	2	3	6	11	20
441	617	3.4376	1	1	2	4	7
442	15740	8.2971	1	3	6	10	17
443	3008	3.3597	1	1	2	4	7
444	3385	4.7634	1	2	4	6	9
445	1251	3.6922	1	1	3	4	6
447	4174	2.6416	1	1	2	3	5
448	29	1.0000	1	1	1	1	1
449	28968	4.0303	1	1	3	5	8
450	6370	2.2462	1	1	1	2	4
451	4	3.0000	1	1	1	2	8
452	21590	5.1530	1	2	4	6	10
453	3635	3.0908	1	1	2	4	6
454	3990	5.1709	1	2	3	6	10
455	908	2.7555	1	1	2	3	6
456	215	7.2930	1	1	3	7	16
457	113	4.8938	1	1	2	6	14
458	1680	15.9685	3	6	12	21	33
459	576	9.3247	2	4	7	12	19
460	2331	6.3218	1	3	5	8	13
461	3249	4.5940	1	1	2	5	11
462	10116	12.9741	4	6	11	17	24
463	13488	4.7710	1	2	4	6	9
464	3208	3.4439	1	2	3	4	7
465	214	3.7477	1	1	2	4	7
466	1783	4.6983	1	1	2	5	10
467	1616	4.2092	1	1	2	4	8
468	63517	13.9982	3	6	11	18	28
471	11672	6.7301	3	4	5	8	11
472	203	24.2217	1	5	18	34	57
473	8739	13.3296	2	4	7	19	34
475	101069	11.4529	2	5	9	15	22
476	6630	12.6427	3	7	11	16	23
477	30337	8.0163	1	2	6	10	16
478	127616	7.6905	1	3	6	10	16
479	17990	4.1819	1	2	3	5	8
480	552	28.5435	9	12	20	36	61
481	157	34.0064	19	23	30	41	54
482	7059	13.4577	5	7	10	15	24
483	40160	43.1397	14	22	34	52	79
484	407	15.4496	3	7	11	20	30
485	3514	10.5552	4	5	8	12	20
486	2589	13.2503	1	6	10	17	26
487	4371	8.1078	2	3	6	10	16
488	1774	16.5141	4	7	12	20	32
489	19038	9.5586	2	4	7	12	20
490	5460	6.0205	1	2	4	7	12
491	10763	3.9181	2	2	3	4	7
492	2229	17.9740	4	5	14	28	37
493	56791	5.6668	1	2	4	7	11
494	25112	2.3755	1	1	2	3	5
495	140	16.9714	8	11	15	20	30
	11173210						

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY  
[FY96 MEDPAR Update 06/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	35984	10.2675	2	4	7	13	21
2	6901	10.5740	3	5	8	13	21

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued  
 [FY96 MEDPAR Update 06/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
3	2	50.5000	1	1	100	100	100
4	6301	8.4750	2	3	6	10	18
5	103092	3.9356	1	2	3	4	8
6	421	3.2470	1	1	2	4	7
7	12609	11.3616	2	4	8	13	21
8	2940	3.2000	1	1	2	4	7
9	1754	7.1249	1	3	5	9	14
10	20278	7.2768	2	3	5	9	15
11	2956	4.2534	1	2	3	6	9
12	26180	6.8448	2	3	5	8	13
13	6419	5.7747	2	3	5	7	10
14	377399	6.7458	2	3	5	8	13
15	145920	4.0669	1	2	3	5	7
16	14076	6.0979	2	3	5	7	11
17	3098	3.6927	1	2	3	5	7
18	25872	5.8632	2	3	4	7	11
19	7162	4.1086	1	2	3	5	8
20	6113	10.4880	2	5	8	14	21
21	1193	7.1073	2	3	5	9	14
22	2905	4.7621	2	2	4	6	9
23	6083	4.5463	1	2	3	6	9
24	58312	5.3301	1	2	4	6	10
25	22307	3.6053	1	2	3	4	7
26	47	4.7872	1	2	3	6	10
27	3910	5.4939	1	1	3	7	13
28	12971	6.3277	1	2	4	8	13
29	4104	3.7210	1	2	3	5	7
31	3167	4.8244	1	2	3	6	9
32	1486	3.0606	1	1	2	3	6
34	18601	5.8148	1	3	4	7	11
35	3728	3.9144	1	2	3	5	7
36	6766	1.5443	1	1	1	2	2
37	1771	3.9283	1	1	3	5	8
38	198	2.7374	1	1	2	3	5
39	2565	2.0035	1	1	1	2	4
40	2546	3.3342	1	1	2	4	7
42	5437	1.9847	1	1	1	2	4
43	112	3.9643	1	2	3	5	7
44	1479	5.2427	2	3	4	7	9
45	2358	3.6014	1	2	3	5	7
46	3070	4.8485	1	2	4	6	9
47	1208	3.9305	1	1	3	4	7
49	2389	5.2704	1	2	4	6	10
50	3294	2.1072	1	1	2	2	3
51	351	2.8775	1	1	2	3	6
52	109	3.2202	1	1	2	4	7
53	3177	3.6116	1	1	2	4	8
54	2	5.0000	1	1	9	9	9
55	1907	2.9240	1	1	2	3	6
56	749	2.8451	1	1	2	3	6
57	627	3.9888	1	2	2	5	8
58	1	2.0000	2	2	2	2	2
59	106	3.3302	1	1	2	4	6
60	3	1.0000	1	1	1	1	1
61	243	4.5473	1	1	3	5	11
63	3794	4.6009	1	2	3	5	9
64	3378	6.6442	1	2	5	8	14
65	29508	3.1713	1	2	3	4	6
66	6602	3.4727	1	2	3	4	6
67	495	3.8061	1	2	3	5	7
68	10234	4.3211	2	2	4	5	8
69	2957	3.4711	1	2	3	4	6
70	40	3.3000	1	2	3	4	5
71	128	3.9297	1	2	3	5	7
72	754	3.5000	1	2	3	4	7
73	6264	4.6727	1	2	4	6	9
74	4	3.2500	1	1	2	3	7
75	41373	10.5498	4	5	8	13	20
76	41421	11.7212	3	6	9	14	22
77	2200	5.0882	1	2	4	7	10

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued  
 [FY96 MEDPAR Update 06/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
78	31195	7.6312	3	5	7	9	13
79	239461	8.6355	3	4	7	11	16
80	8097	6.0569	2	3	5	7	11
81	8	6.6250	2	3	6	7	10
82	71327	7.3212	2	3	6	9	14
83	7548	5.8922	2	3	5	7	11
84	1550	3.4510	1	2	3	4	6
85	20846	6.8720	2	3	5	9	13
86	1392	4.0560	1	2	3	5	8
87	67808	6.4421	1	3	5	8	12
88	361207	5.6530	2	3	5	7	10
89	431130	6.5624	3	4	5	8	12
90	36919	4.6667	2	3	4	6	8
91	44	4.3409	2	2	4	5	9
92	13630	6.6374	2	3	5	8	12
93	1171	4.6866	1	2	4	6	9
94	13860	6.6431	2	3	5	8	13
95	1450	3.9807	1	2	3	5	7
96	59294	5.0564	2	3	4	6	9
97	24137	3.9948	1	2	3	5	7
98	23	3.8261	1	1	2	4	10
99	26720	3.1667	1	1	2	4	6
100	10247	2.2335	1	1	2	3	4
101	20640	4.7304	1	2	4	6	9
102	4568	2.8956	1	1	2	4	5
103	532	48.1579	9	15	32	72	105
104	26477	13.3305	5	8	11	16	24
105	23042	10.2029	5	6	8	12	18
106	107689	11.0481	6	7	9	13	18
107	68745	8.3095	5	6	7	9	13
108	7570	12.1110	4	7	10	15	23
110	63724	10.0893	3	6	8	12	19
111	5565	6.1146	2	4	6	7	9
112	143226	4.2143	1	2	3	6	8
113	48124	13.1573	4	6	9	16	26
114	9126	8.8386	2	4	7	11	17
115	13920	9.2104	2	4	8	12	17
116	163845	4.7278	1	2	4	6	9
117	3828	4.0470	1	1	3	5	9
118	6772	3.0371	1	1	2	4	7
119	1690	5.1065	1	1	3	7	11
120	39847	8.4640	1	2	5	11	19
121	171781	6.9297	2	4	6	9	12
122	86714	4.5006	1	2	4	6	8
123	46259	4.4861	1	1	2	6	11
124	153509	4.5906	1	2	4	6	9
125	61083	2.9375	1	1	2	4	6
126	5166	12.8142	4	6	10	16	26
127	709301	5.7991	2	3	5	7	11
128	18599	6.3459	3	4	6	7	10
129	4491	3.1639	1	1	1	3	7
130	100064	6.2988	2	4	5	8	11
131	25546	4.8443	1	3	5	6	8
132	165210	3.3140	1	2	3	4	6
133	6158	2.7943	1	1	2	3	5
134	29610	3.6023	1	2	3	4	7
135	8098	4.4395	1	2	3	5	8
136	1153	3.0590	1	1	2	4	6
137	3	9.0000	3	3	8	16	16
138	208875	4.1968	1	2	3	5	8
139	65773	2.7441	1	1	2	3	5
140	135217	3.1677	1	2	3	4	6
141	78828	4.0833	1	2	3	5	7
142	35793	2.9455	1	1	2	4	5
143	138166	2.3966	1	1	2	3	4
144	76722	5.3753	1	2	4	7	11
145	6376	2.9864	1	1	2	4	6
146	9883	10.5263	6	7	9	12	17
147	1673	6.9050	4	5	7	8	10
148	149749	12.6194	6	7	10	15	22

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued  
 [FY96 MEDPAR Update 06/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
149	14256	7.1282	4	5	7	8	10
150	24565	11.1079	4	6	9	14	20
151	4262	6.1100	2	3	6	8	11
152	4725	8.4855	4	5	7	10	14
153	1641	5.7776	3	4	6	7	9
154	35223	14.0521	4	7	11	17	27
155	4548	5.0079	1	2	4	7	9
156	4	10.7500	3	3	4	5	31
157	9475	5.6004	1	2	4	7	11
158	4358	2.7838	1	1	2	4	6
159	18293	5.0712	1	2	4	6	10
160	9550	2.7693	1	1	2	4	5
161	14988	4.2188	1	2	3	5	9
162	7392	2.0878	1	1	1	3	4
163	10	4.7000	1	1	2	8	10
164	5382	8.7124	4	5	7	10	15
165	1590	5.4094	2	3	5	7	8
166	3367	5.4164	2	3	4	7	10
167	2276	2.9587	1	2	3	4	5
168	1840	4.7288	1	2	3	6	9
169	933	2.5638	1	1	2	3	5
170	13057	11.7430	2	5	9	15	23
171	1059	5.0888	1	2	4	6	10
172	33120	7.3970	2	3	5	9	15
173	2099	3.9700	1	2	3	5	8
174	240349	5.1449	2	3	4	6	9
175	21405	3.2299	1	2	3	4	6
176	17949	5.7572	2	3	4	7	11
177	11857	4.7298	2	3	4	6	8
178	3735	3.3414	1	2	3	4	6
179	12182	6.7201	2	3	5	8	13
180	89279	5.6551	2	3	4	7	11
181	21316	3.7131	1	2	3	5	7
182	239438	4.5657	1	2	4	6	8
183	69818	3.1716	1	2	3	4	6
184	88	3.6364	1	2	3	4	7
185	4173	4.8174	1	2	4	6	10
186	3	3.6667	2	2	4	5	5
187	932	3.9635	1	2	3	5	8
188	70915	5.7802	1	3	4	7	11
189	7922	3.3871	1	1	3	4	7
190	99	4.9192	1	2	3	5	11
191	11183	14.8821	4	7	11	18	30
192	780	7.1308	2	4	6	9	12
193	8399	12.9303	5	7	11	16	23
194	660	7.4924	2	4	6	9	13
195	8782	9.8539	4	6	8	12	17
196	629	6.3259	3	4	6	8	10
197	27404	8.6998	3	5	7	10	15
198	7093	4.7194	2	3	4	6	8
199	2178	10.7140	3	5	8	14	22
200	1551	11.2863	2	4	8	14	23
201	1566	15.0811	4	7	11	19	29
202	28611	7.1039	2	3	5	9	14
203	29634	7.1581	2	3	6	9	14
204	53354	6.3393	2	3	5	8	12
205	23176	6.8016	2	3	5	8	14
206	1669	4.2109	1	2	3	5	8
207	37050	5.2852	1	2	4	7	10
208	9948	3.0293	1	1	2	4	6
209	358501	5.8935	3	4	5	7	9
210	143742	7.6286	4	5	6	9	13
211	26310	5.6081	3	4	5	7	9
212	10	5.2000	2	3	3	5	6
213	7179	8.7551	2	4	7	11	17
216	6407	10.2995	2	4	8	13	21
217	20940	13.7538	3	5	9	17	29
218	24871	5.6287	2	3	4	7	10
219	18974	3.4430	1	2	3	4	6
220	5	4.2000	1	1	4	4	10

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued  
[FY96 MEDPAR Update 06/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
223	19625	2.6998	1	1	2	3	5
224	8139	2.1058	1	1	2	3	4
225	5926	4.6232	1	2	3	6	10
226	5569	6.2550	1	2	4	7	13
227	4377	2.8556	1	1	2	3	5
228	2997	3.4525	1	1	2	4	7
229	1232	2.3612	1	1	2	3	4
230	2492	4.9767	1	2	3	6	10
231	11065	4.7605	1	2	3	6	10
232	556	4.2248	1	1	2	5	9
233	4762	8.2740	2	3	6	10	17
234	2194	3.8847	1	2	3	5	8
235	5563	5.8068	1	3	4	6	11
236	40042	5.5871	2	3	4	7	10
237	1673	4.2110	1	2	3	5	8
238	7672	9.3749	3	4	7	11	17
239	60793	6.9705	2	3	5	8	13
240	13396	6.9369	2	3	5	8	14
241	3013	4.2273	1	2	3	5	8
242	2855	7.1338	2	3	5	9	14
243	80990	5.1239	2	3	4	6	9
244	12531	5.4307	1	3	4	6	10
245	4414	4.0888	1	2	3	5	7
246	1275	4.2235	1	2	3	5	8
247	11507	3.6954	1	2	3	5	7
248	7430	4.9732	1	2	4	6	9
249	10425	3.9777	1	1	3	5	8
250	3638	4.6564	1	2	3	5	9
251	2168	3.0152	1	1	2	4	5
253	19268	5.2492	1	3	4	6	10
254	9406	3.5232	1	2	3	4	6
256	4463	5.6626	1	2	4	7	11
257	22791	3.2065	1	2	3	4	6
258	17067	2.2797	1	1	2	3	4
259	4037	3.1962	1	1	2	3	7
260	4576	1.6635	1	1	1	2	3
261	2263	2.2391	1	1	2	3	4
262	668	3.9790	1	1	3	5	8
263	29345	12.5324	3	5	9	15	24
264	3371	7.2691	2	3	6	9	14
265	4204	7.2552	1	2	5	8	15
266	2586	3.5526	1	1	2	5	7
267	229	4.1441	1	1	2	5	8
268	967	3.5274	1	1	2	4	7
269	10146	8.4862	2	3	6	11	17
270	3100	3.1906	1	1	2	4	7
271	23041	7.7309	3	4	6	9	14
272	6024	6.6718	2	3	5	8	13
273	1395	5.3677	1	2	4	6	11
274	2647	7.1598	1	3	5	9	15
275	243	3.8477	1	1	2	5	8
276	953	4.7408	1	3	4	6	8
277	80718	6.2272	2	3	5	7	11
278	24912	4.8206	2	3	4	6	8
279	4	4.5000	2	2	2	6	8
280	14160	4.6971	1	2	3	6	9
281	6013	3.3597	1	1	3	4	6
282	1	1.0000	1	1	1	1	1
283	5329	5.0197	1	2	4	6	10
284	1761	3.5548	1	2	3	5	7
285	5653	12.0637	3	5	9	15	23
286	2049	7.2674	3	4	5	8	13
287	6697	12.1784	3	5	8	14	24
288	1289	6.2289	2	4	5	6	9
289	5512	3.4799	1	1	2	3	7
290	8856	2.5833	1	1	2	3	4
291	93	2.1720	1	1	2	3	4
292	5255	11.1772	2	4	8	14	22
293	292	5.6301	1	2	4	7	11
294	84523	5.2489	2	3	4	6	10



TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued  
 [FY96 MEDPAR Update 06/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
295	3775	4.0919	1	2	3	5	8
296	233450	5.7617	2	3	4	7	11
297	31861	3.8491	1	2	3	5	7
298	104	2.5192	1	1	2	3	5
299	1152	5.4852	1	2	4	7	11
300	15757	6.6296	2	3	5	8	13
301	1988	4.3622	1	2	3	5	8
302	8343	10.9475	5	6	8	13	19
303	19359	9.4651	4	5	8	11	17
304	13176	9.5956	2	4	7	12	19
305	2465	4.3209	1	2	4	5	8
306	11670	5.7599	1	2	4	7	12
307	2492	2.5385	1	1	2	3	4
308	9657	6.4205	1	2	4	8	13
309	3324	2.5827	1	1	2	3	5
310	27618	4.3383	1	2	3	5	9
311	8538	2.0546	1	1	2	2	4
312	1883	4.6893	1	2	3	6	10
313	670	2.2881	1	1	2	3	5
315	28828	8.5433	1	2	5	11	19
316	85493	6.9922	2	3	5	9	14
317	858	2.9231	1	1	2	3	6
318	6207	6.6441	1	3	5	8	13
319	432	2.7940	1	1	2	4	6
320	177076	5.8728	2	3	5	7	10
321	23569	4.2659	2	3	4	5	7
322	93	4.2796	2	2	3	5	8
323	17541	3.3743	1	1	2	4	7
324	8048	2.0035	1	1	2	2	4
325	7066	4.1930	1	2	3	5	8
326	2130	2.8793	1	1	2	3	5
327	15	3.4667	1	1	2	3	12
328	681	3.9236	1	2	3	5	8
329	107	2.3458	1	1	2	3	5
331	44033	5.8414	2	3	4	7	11
332	4874	3.6574	1	1	3	5	7
333	362	5.7127	1	2	4	7	12
334	19427	5.4203	3	4	5	6	8
335	9804	4.0529	2	3	4	5	6
336	58837	3.7630	1	2	3	4	7
337	34043	2.4114	1	2	2	3	4
338	3738	5.0698	1	2	3	6	11
339	2130	4.5873	1	2	3	6	10
340	2	1.5000	1	1	2	2	2
341	5981	3.1155	1	1	2	3	6
342	1004	3.5926	1	2	3	4	7
344	3544	3.1168	1	1	2	3	6
345	1364	3.8043	1	1	3	5	8
346	5207	6.2906	1	3	5	8	12
347	382	2.9503	1	1	2	4	6
348	3220	4.4969	1	2	3	5	8
349	744	2.6788	1	1	2	3	5
350	6367	4.6220	2	3	4	6	8
351	2	2.5000	2	2	3	3	3
352	551	3.9800	1	1	3	5	8
353	2722	8.3420	3	4	6	9	16
354	10004	5.9826	3	3	5	7	10
355	5604	3.6253	2	3	3	4	5
356	29892	2.8081	1	2	3	3	4
357	6625	9.3250	4	5	7	11	17
358	28910	4.4709	2	3	4	5	7
359	28337	3.0904	2	2	3	4	4
360	18232	3.2826	1	2	3	4	5
361	680	3.6721	1	1	2	4	8
362	1	1.0000	1	1	1	1	1
363	3930	3.4725	1	2	2	3	7
364	1869	3.4912	1	1	2	4	7
365	2454	7.1520	1	2	4	9	16
366	4507	6.9907	1	3	5	9	15
367	543	2.9263	1	1	2	4	6

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued  
[FY96 MEDPAR Update 06/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
368	2396	6.2371	2	3	5	8	12
369	2424	3.4125	1	1	2	4	7
370	1224	5.5074	2	3	4	5	9
371	1107	3.5890	2	3	3	4	5
372	909	3.1177	1	2	2	3	5
373	4166	2.0290	1	1	2	2	3
374	170	2.8824	1	2	2	3	4
375	7	8.4286	1	2	5	9	15
376	219	3.2055	1	1	2	4	7
377	51	4.0196	1	1	2	4	9
378	195	2.6256	1	2	2	3	4
379	374	2.9278	1	1	2	3	5
380	101	1.8317	1	1	1	2	4
381	184	2.2935	1	1	1	2	5
382	48	1.3333	1	1	1	1	2
383	1616	3.8342	1	2	3	5	8
384	142	2.8380	1	1	2	3	6
385	3	6.6667	1	1	4	15	15
386	1	49.0000	49	49	49	49	49
387	1	62.0000	62	62	62	62	62
389	16	6.2500	3	3	5	7	12
390	7	5.1429	2	2	3	4	7
392	2562	10.5863	4	5	8	13	21
393	2	11.0000	7	7	15	15	15
394	1814	7.5232	1	2	5	9	16
395	68205	4.9806	1	2	4	6	10
396	18	4.0000	1	1	2	7	7
397	16988	5.7650	1	2	4	7	11
398	18434	6.2525	2	3	5	8	12
399	1304	4.0107	1	2	3	5	8
400	7870	9.7126	2	3	7	12	21
401	6799	11.6883	2	5	9	15	24
402	1513	4.2412	1	1	3	6	9
403	39143	8.5499	2	3	6	11	17
404	3818	4.6239	1	2	4	6	9
406	3473	10.1005	3	4	7	13	21
407	695	4.4460	1	2	4	6	8
408	2876	7.6203	1	2	5	9	18
409	5607	5.9162	2	3	4	6	12
410	74657	3.3553	1	2	3	4	5
411	34	2.2941	1	1	1	3	6
412	30	3.3667	1	1	2	5	7
413	8827	8.0314	2	3	6	10	16
414	735	4.5456	1	2	3	6	10
415	44947	14.8941	4	7	11	18	29
416	220123	7.6840	2	4	6	9	14
417	42	4.2857	1	2	3	6	8
418	20661	6.3189	2	3	5	8	12
419	14969	5.2323	2	3	4	6	10
420	2624	3.9737	1	2	3	5	7
421	10783	4.2452	1	2	3	5	8
422	90	3.7444	1	2	3	4	5
423	10953	7.9358	2	3	6	9	16
424	1883	16.7642	2	6	10	19	31
425	15587	4.3867	1	2	3	5	8
426	4759	5.2227	1	2	4	6	11
427	1713	5.2668	1	2	4	7	11
428	944	7.6684	1	3	5	9	16
429	42603	7.8417	2	3	5	9	15
430	56355	9.0159	2	4	7	11	18
431	222	8.8694	2	3	5	9	17
432	412	5.8422	1	2	3	7	12
433	8270	3.2895	1	1	2	4	7
434	22762	5.2873	2	3	4	6	10
435	16653	4.5296	1	2	4	5	8
436	3557	13.7641	4	8	13	20	26
437	15724	9.9197	4	6	9	13	18
439	1050	8.4581	1	3	6	10	18
440	4863	9.5690	2	3	6	11	20
441	617	3.4376	1	1	2	4	7

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued  
 [FY96 MEDPAR Update 06/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
442	15702	8.3069	1	3	6	10	17
443	2996	3.3621	1	1	2	4	7
444	3390	4.7661	1	2	4	6	9
445	1251	3.6843	1	1	3	4	6
447	4174	2.6416	1	1	2	3	5
448	29	1.0000	1	1	1	1	1
449	28988	4.0309	1	1	3	5	8
450	6372	2.2461	1	1	1	2	4
451	4	3.0000	1	1	1	2	8
452	21599	5.1541	1	2	4	6	10
453	3633	3.0790	1	1	2	4	6
454	3997	5.1711	1	2	3	6	10
455	916	2.7424	1	1	2	3	6
456	215	7.2930	1	1	3	7	16
457	113	4.8938	1	1	2	6	14
458	1680	15.9685	3	6	12	21	33
459	576	9.3247	2	4	7	12	19
460	2332	6.3203	1	3	5	8	13
461	3239	4.5952	1	1	2	5	11
462	10116	12.9741	4	6	11	17	24
463	13497	4.7743	1	2	4	6	9
464	3208	3.4286	1	2	3	4	7
465	214	3.7477	1	1	2	4	7
466	1784	4.6962	1	1	2	5	10
467	1617	4.2084	1	1	2	4	8
468	60561	14.1162	3	6	11	18	28
471	11672	6.7301	3	4	5	8	11
472	203	24.2217	1	5	18	34	57
473	8739	13.3313	2	4	7	19	34
475	101087	11.4533	2	5	9	15	22
476	6647	12.6556	3	7	11	16	23
477	30187	8.6072	1	3	6	11	18
478	126280	7.6802	1	3	6	10	16
479	17952	4.1791	1	2	3	5	8
480	417	25.2686	8	12	18	30	50
481	257	30.2490	17	21	26	36	50
482	7059	13.4577	5	7	10	15	24
483	40197	43.1598	14	22	34	53	79
484	407	15.4496	3	7	11	20	30
485	3514	10.5552	4	5	8	12	20
486	2518	13.3761	1	6	10	17	27
487	4435	8.1150	2	3	6	10	16
488	920	17.9750	4	7	13	22	37
489	19832	9.7897	2	4	7	12	20
490	5520	6.0612	1	2	4	7	12
491	10763	3.9181	2	2	3	4	7
492	2229	17.9740	4	5	14	28	37
493	56802	5.6674	1	2	4	7	11
494	25101	2.3728	1	1	2	3	5
495	99	17.8081	7	11	15	23	31
496	695	11.5885	4	6	9	13	22
497	20050	6.8113	2	4	5	8	12
498	10596	3.7558	1	2	3	5	7
499	37778	5.2993	2	3	4	6	10
500	34957	3.1295	1	2	3	4	6
501	1652	11.2125	4	6	9	13	20
502	424	7.0825	3	4	6	8	12
503	6610	4.4082	1	2	4	5	8
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TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1997

State	Urban	Rural
ALABAMA	0.400	0.449
ALASKA	0.516	0.780
ARIZONA	0.397	0.562
ARKANSAS	0.542	0.491
CALIFORNIA	0.382	0.489
COLORADO	0.477	0.554
CONNECTICUT	0.551	0.555
DELAWARE	0.505	0.489
DISTRICT OF COLUMBIA	0.520	
FLORIDA	0.398	0.397
GEORGIA	0.508	0.510
HAWAII	0.458	0.531
IDAHO	0.557	0.618
ILLINOIS	0.474	0.587
INDIANA	0.559	0.596
IOWA	0.526	0.663
KANSAS	0.429	0.659
KENTUCKY	0.503	0.529
LOUISIANA	0.464	0.523
MAINE	0.619	0.578
MARYLAND	0.764	0.815
MASSACHUSETTS	0.557	0.597
MICHIGAN	0.484	0.586
MINNESOTA	0.553	0.618
MISSISSIPPI	0.495	0.514
MISSOURI	0.445	0.535
MONTANA	0.485	0.599
NEBRASKA	0.495	0.660
NEVADA	0.329	0.522
NEW HAMPSHIRE	0.574	0.597
NEW JERSEY	0.455	
NEW MEXICO	0.461	0.551
NEW YORK	0.561	0.647
NORTH CAROLINA	0.533	0.478
NORTH DAKOTA	0.619	0.669
OHIO	0.545	0.589
OKLAHOMA	0.475	0.549
OREGON	0.577	0.638

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1997—Continued

State	Urban	Rural
PENNSYLVANIA	0.407	0.540
PUERTO RICO	0.478	0.522
RHODE ISLAND	0.577	
SOUTH CAROLINA	0.474	0.496
SOUTH DAKOTA	0.542	0.639
TENNESSEE	0.508	0.551
TEXAS	0.443	0.546
UTAH	0.598	0.641
VERMONT	0.610	0.564
VIRGINIA	0.493	0.509
WASHINGTON	0.663	0.666
WEST VIRGINIA	0.599	0.544
WISCONSIN	0.595	0.653
WYOMING	0.514	0.751

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) AUGUST 1997

State	Ratio
ALABAMA	0.054
ALASKA	0.073
ARIZONA	0.047
ARKANSAS	0.055
CALIFORNIA	0.039
COLORADO	0.053
CONNECTICUT	0.039
DELAWARE	0.056
DISTRICT OF COLUMBIA	0.040
FLORIDA	0.047
GEORGIA	0.048
HAWAII	0.046
IDAHO	0.054
ILLINOIS	0.044
INDIANA	0.059

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) AUGUST 1997—Continued

State	Ratio
IOWA	0.055
KANSAS	0.054
KENTUCKY	0.054
LOUISIANA	0.067
MAINE	0.040
MARYLAND	0.013
MASSACHUSETTS	0.064
MICHIGAN	0.048
MINNESOTA	0.058
MISSISSIPPI	0.056
MISSOURI	0.051
MONTANA	0.057
NEBRASKA	0.057
NEVADA	0.034
NEW HAMPSHIRE	0.067
NEW JERSEY	0.043
NEW MEXICO	0.049
NEW YORK	0.053
NORTH CAROLINA	0.049
NORTH DAKOTA	0.074
OHIO	0.056
OKLAHOMA	0.055
OREGON	0.054
PENNSYLVANIA	0.042
PUERTO RICO	0.090
RHODE ISLAND	0.038
SOUTH CAROLINA	0.055
SOUTH DAKOTA	0.062
TENNESSEE	0.058
TEXAS	0.053
UTAH	0.058
VERMONT	0.053
VIRGINIA	0.058
WASHINGTON	0.067
WEST VIRGINIA	0.055
WISCONSIN	0.048
WYOMING	0.065

TABLE 10.—PERCENTAGE DIFFERENCE IN WAGE INDEXES FOR AREAS THAT QUALIFY FOR A WAGE INDEX EXCEPTION FOR EXCLUDED HOSPITALS AND UNITS

Area	1982–1994 difference	1984–1994 difference	1988–1984 difference	1990–1994 difference	1991–1994 difference	1992–1994 difference	1993–1994 difference
Connecticut	21.5862	24.0000					
Delaware		8.6774					
Hawaii		15.7127					
Maryland		8.1722					
Massachusetts	23.9560	27.9921	11.2140				
New Hampshire		9.5243					
Oregon				8.6010	8.1066		
South Carolina		10.0774					
Vermont		10.6667					
Washington				9.9002			
Amarillo, TX				8.6330	9.8229		
Anderson, SC			15.1961	24.3721		8.9005	
Arecibo, PR				13.7540	11.0585		
Athens, GA	10.8688	16.5565	9.5058	9.4259			
Atlantic City, NJ		13.2602					
Augusta, GA–SC					8.0453		
Benton Harbor, MI				8.8777			
Bergen-Passaic, NJ	14.0017	15.9481	17.9622				
Billings, MT				8.6879	12.2161	12.3837	
Biloxi-Gulfport, MS				8.0594			
Bloomington, IN						8.2928	
Boston-Lowell-Brockton-Lawrence-Salem, MA		8.1568					

TABLE 10.—PERCENTAGE DIFFERENCE IN WAGE INDEXES FOR AREAS THAT QUALIFY FOR A WAGE INDEX EXCEPTION FOR EXCLUDED HOSPITALS AND UNITS—Continued

Area	1982–1994 difference	1984–1994 difference	1988–1984 difference	1990–1994 difference	1991–1994 difference	1992–1994 difference	1993–1994 difference
Bremerton, WA .....	12.9725	14.8961	15.2452	15.3177	13.7318	.....	.....
Bridgeport-Stamford-Norwalk-Danbury, CT .....	10.3293	14.6913	.....	.....	.....	.....	.....
Burlington, NC .....	11.6113	14.9594	9.7961	.....	.....	.....	.....
Burlington, VT .....	.....	9.3174	9.6092	.....	.....	10.8280	.....
Caguas, PR .....	.....	12.2326	.....	.....	.....	.....	.....
Charlotte-Gastonia-Rock Hill, NC–SC .....	9.2601	16.3979	.....	.....	.....	.....	.....
Clarksville-Hopkinsville, TN–KY .....	.....	8.0204	.....	14.9297	.....	.....	.....
Columbia, SC .....	.....	8.8584	.....	.....	.....	.....	.....
Columbus, GA–AL .....	.....	12.8079	10.6690	9.7894	.....	.....	.....
Cumberland, MD–WVA .....	.....	.....	.....	8.7659	9.2778	.....	.....
Danville, VA .....	.....	.....	8.4254	.....	.....	.....	.....
Decatur, AL .....	.....	12.0335	10.5832	.....	.....	.....	.....
El Paso, TX .....	8.1286	13.8951	16.0628	.....	17.4634	9.2489	.....
Eugene-Springfield, OR .....	.....	12.1188	12.4054	20.4953	8.0302	.....	.....
Florence, SC .....	14.2426	13.0711	.....	.....	.....	.....	.....
Gadsden, AL .....	.....	.....	.....	13.8007	9.0695	.....	.....
Gainesville, FL .....	.....	9.7617	8.7895	.....	8.5675	.....	.....
Galveston-Texas City, TX .....	.....	.....	11.9186	.....	.....	.....	.....
Greeley, CO .....	.....	.....	.....	15.7515	8.6166	10.3980	.....
Greensboro-Winston-Salem-High Point, NC .....	.....	9.9322	.....	.....	.....	.....	.....
Hagerstown, MD .....	.....	11.0716	.....	9.5260	8.2039	.....	.....
Hartford-Middletown-New Britain, CT .....	10.4740	14.2519	.....	.....	.....	.....	.....
Houma-Thibodaux, LA .....	.....	.....	9.3263	.....	.....	.....	.....
Jackson, TN .....	8.5190	12.7249	.....	.....	.....	.....	.....
Jersey City, NJ .....	.....	.....	8.3144	.....	.....	.....	.....
Killeen-Temple, TX .....	16.7787	.....	.....	.....	.....	.....	.....
Lafayette, IN .....	.....	.....	.....	.....	8.7871	10.0572	.....
Laredo, TX .....	.....	.....	.....	11.5765	.....	8.5185	.....
Las Cruces, NM .....	.....	.....	9.2218	.....	.....	.....	.....
Lawton, OK .....	.....	.....	.....	.....	.....	.....	8.1162
Lima, OH .....	.....	.....	13.8166	8.6982	.....	.....	.....
Macon-Warner Robins, GA .....	.....	18.2494	.....	.....	.....	.....	.....
Manchester-Nashua, NH .....	11.5134	12.8915	.....	.....	.....	.....	.....
McAllen-Edinburg-Mission, TX .....	.....	9.0116	8.4046	.....	.....	.....	.....
Medford, OR .....	.....	.....	.....	11.0706	.....	.....	.....
Merced, CA .....	.....	8.8820	.....	9.1317	11.0694	.....	.....
Middlesex-Somerset-Hunterdon, NJ .....	.....	11.3808	.....	.....	.....	.....	.....
Mobile, AL .....	.....	.....	.....	8.2725	9.5491	8.3835	.....
Monmouth-Ocean, NJ .....	11.0502	16.4802	10.3441	.....	.....	.....	.....
Monroe, LA .....	.....	.....	.....	.....	9.9294	.....	.....
Muncie, IN .....	.....	.....	13.5975	.....	.....	.....	.....
Muskegon, MI .....	10.1698	9.3800	13.1266	11.0394	10.3157	.....	.....
Nassau-Suffolk, NY .....	.....	14.0415	.....	.....	.....	.....	.....
New Bedford-Fall River-Attleboro, MA .....	15.8880	18.8100	12.4963	.....	.....	.....	.....
New Haven-West Haven-Waterbury, CT .....	10.3424	14.6360	.....	.....	.....	.....	.....
New London-Norwich, CT .....	9.0604	12.5972	.....	.....	.....	.....	.....
Newark, NJ .....	.....	10.9661	.....	.....	.....	.....	.....
Ocala, FL .....	.....	10.9174	.....	.....	.....	.....	.....
Orange County, NY .....	22.3089	26.7753	16.7892	10.2286	10.6828	.....	.....
Panama City, FL .....	.....	.....	.....	.....	10.5996	.....	.....
Parkersburg-Marietta, WV–OH .....	.....	.....	.....	8.3806	.....	8.4505	.....
Portsmouth-Dover-Rochester, NH .....	10.1946	9.0222	.....	.....	.....	.....	.....
Poughkeepsie, NY .....	.....	9.2928	.....	.....	.....	.....	.....
Providence-Pawtucket-Woonsocket, RI .....	.....	13.4977	.....	.....	.....	.....	.....
Provo-Orem, UT .....	.....	8.6038	.....	.....	.....	.....	.....
Redding, CA .....	.....	19.0789	11.6583	.....	.....	.....	.....
Salinas-Seaside-Monterey, CA .....	16.3647	15.3473	11.1937	.....	.....	.....	.....
San Angelo, TX .....	.....	.....	.....	.....	9.0858	.....	.....
Santa Cruz, CA .....	15.0235	15.1075	10.8706	11.2183	.....	.....	.....
Santa Fe, NM .....	.....	8.8954	12.9551	.....	.....	.....	.....
Tacoma, WA .....	.....	.....	.....	8.4039	.....	.....	.....
Texarkana, TX–Texarkana, AR .....	.....	.....	9.6848	8.7486	9.5184	.....	.....
Vallejo-Fairfield-Napa, CA .....	.....	12.0671	.....	10.2260	.....	.....	.....
Wausau, WI .....	.....	9.6382	8.0763	.....	.....	.....	.....
West Palm Beach-Boca Raton-Delray Beach, FL .....	.....	9.5017	.....	.....	.....	.....	.....
Wilmington, DE–NJ–MD .....	8.3587	10.7306	.....	.....	.....	.....	.....
Wilmington, NC .....	.....	15.7476	8.5665	.....	.....	.....	.....

TABLE 10.—PERCENTAGE DIFFERENCE IN WAGE INDEXES FOR AREAS THAT QUALIFY FOR A WAGE INDEX EXCEPTION FOR EXCLUDED HOSPITALS AND UNITS—Continued

Area	1982–1994 difference	1984–1994 difference	1988–1984 difference	1990–1994 difference	1991–1994 difference	1992–1994 difference	1993–1994 difference
Worcester-Fitchburg-Leomister, MA .....	.....	13.3694	.....	.....	.....	.....	.....
Yuma, AZ .....	.....	.....	9.4344	.....	12.1844	.....	.....

**Appendix A—Regulatory Impact Analysis**

**I. Introduction**

Section 804(2) of Title 5, United States Code (as added by section 251 of Public Law 104–121), specifies that a “major rule” is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

We estimate that the impact of this final rule with comment period will be to decrease payments to hospitals by approximately \$6 billion in FY 1998, compared to the payments that would have been made in FY 1998 if Public Law 105–33 had not been enacted. Therefore, this rule is a major rule as defined in Title 5, United States Code, section 804(2).

We have examined the impacts of this final rule with comment period as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). 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 effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, most hospitals, and most other providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of \$5 million or less annually.

Also, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any final rule with comment period 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 (Pub. L. 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 being made in this document will 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 with comment period, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

In accordance with the provisions of Executive Order 12866, this final rule with comment period was reviewed by the Office of Management and Budget.

**II. Changes in the Final Rule With Comment Period**

After we published the proposed rule, Public Law 105–33 was enacted. (A summary of the provisions related to the prospective payment system for hospitals appears under section I.D. of this preamble.) Several provisions of Public Law 105–33 make significant changes in inpatient hospital payments for the operating and capital prospective payment systems during FY 1998. The provisions that have significant payment impacts for FY 1998 include the following:

- The update factors for the inpatient operating standardized amounts and the hospital-specific rate for FY 1998 are 0 percent. Hospitals that do not receive disproportionate share (DSH) or indirect medical education (IME) payments and are not designated as a Medicare-dependent, small rural hospital (MDH)

(referred to hereafter as “temporary relief” hospitals) will receive a 0.5 percent update to their applicable standardized amounts if—

- The hospital is in a State in which the aggregate operating prospective payments to these types of hospitals are less than the aggregate allowable operating costs for inpatient services for FY 1995 cost reporting periods (eligible States are identified in section V.D of the preamble), and
- The hospital itself has a negative operating prospective payment margin in the payment year.
- The unadjusted standard Federal capital rate and hospital-specific capital rate are reduced by 17.78 percent for FY 1998.
- The additional DSH payments made to eligible hospitals under the operating prospective payment system are reduced by 1 percent.
- The IME formula is revised to reduce the IME adjustment factor from approximately a 7.7 percent increase for every 10 percent increase in a hospital’s resident-to-bed ratio to a 7.0 percent increase.
- IME and DSH payments will be made only on the base DRG payment rates, not on the sum of base DRG payments and outlier payments. Also, in determining outlier payments, the estimated cost of a case will no longer be adjusted for IME and DSH.
- The national share of the Puerto Rico payment rate is increased from 25 to 50 percent. Thus, these hospitals will be paid based on 50 percent of the national standardized amount (a discharge-weighted average of the large urban and other urban national standardized amounts) and 50 percent of the Puerto Rico standardized amount.
- The wage index for an urban hospital may not be lower than the Statewide area rural wage index.
- The special treatment of MDHs is reinstated. If the hospital-specific rate for an eligible MDH is higher than the Federal rate, the hospital receives 50 percent of the difference between the Federal rate and the hospital-specific rate.
- Any hospital classified as a rural referral center (RRC) for FY 1991 must continue to be classified as an RRC for FY 1998 and subsequent fiscal years.

- The update factor for prospective payment system excluded hospitals for FY 1998 is 0 percent.

- The target amounts for psychiatric and rehabilitation hospitals and units, and long-term care hospitals are capped at the 75th percentile of target amounts for within the same class.

- The seven State EACH/RPCH program is being replaced by the Critical Access Hospital (CAH) program, a national program that allows States to designate specified rural hospitals as critical access hospitals. Payment to these hospitals is on the basis of reasonable costs.

### 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 policy changes, as well as statutory changes effective for FY 1998, 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

#### A. Included and Excluded Hospitals

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 database, 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, as of August 1997, we have included 5,088 hospitals in our analysis. (This is 41 fewer hospitals than were included in the impact analysis in the FY 1997 final rule (61 FR 46305).) 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, children's, and cancer hospitals.

#### B. Critical Access Hospitals (CAHs) (established by Pub. L. 105-33)

As explained earlier in this preamble, section 4201 of Public Law 105-33 replaced the EACH program with a CAH program. The CAH program is not limited to seven States, but is available to any State that both submits the necessary assurances and complies with the other statutory requirements for designation of hospitals as CAHs. Facilities that participated in Medicare as RPCHs before the date of enactment of Public Law 105-33 (August 5, 1997), and that are otherwise eligible to be designated by the States as CAHs, are deemed to be CAHs. There are currently approximately 38 facilities participating as RPCHs. In addition, the 13 facilities currently operating under the Medical Assistance Facility (MAF) demonstration in Montana are deemed to have been certified by HCFA as CAHs, if otherwise eligible for designation by the State as CAHs.

Because of the small number of facilities now participating as RPCHs or MAFs, we do not expect the interim final rule to have a significant impact on a substantial number of small rural hospitals. Moreover, in preparing the regulations applicable to CAHs, we have included only those changes that are required to implement the new legislation. Nonetheless, we are informing the public of our projections of the likely effects of the rules, for those hospitals and beneficiaries who may be affected.

For the currently participating facilities, the primary effect will be greater flexibility, since these facilities will be able to maintain up to 15 inpatient beds, rather than 6, and will be able to keep patients for as long as 96 hours, rather than an average of 72 hours. Patients in these facilities should benefit from this, since there should be fewer cases requiring patient transfer to other facilities due to lack of beds or need for longer periods of care. However, with an expected increase in utilization due to an increase in numbers and lengths of stay, costs to the Medicare program for care in these facilities may be expected to rise. Some or all of this increase may be offset by savings from cases in which the changes make transfer to another hospital unnecessary. Changes in the swing-bed

provisions will also increase facility flexibility and patient access to care. These new provisions are less complex than those imposed by prior law, and should simplify program administration.

The changes in payment methodology may also increase Medicare spending for care in these facilities, since payment will now be based on reasonable costs. Fee schedules and blended rates for outpatient care will not apply. However, the elimination of the EACH designation may avoid many unnecessary costs and offset any added spending for CAH care.

While the removal of the seven State limitation will undoubtedly lead to greater participation in the program, we are not able to estimate reliably how many additional States will establish limited-service hospital programs, or how many hospitals in those States will choose to participate in them. To the extent that there is increased participation, beneficiary convenience and access to care in remote rural areas would increase. Medicare spending, however, would also increase, since additional hospitals would be paid on a basis other than the prospective payment system. As noted above, some or all of these increases may be offset by prompt access to treatment in the local community, thus avoiding the need for care in full-service hospitals.

### V. Impact on Excluded Hospitals and Units

As of August 1997, there were 1,102 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. This group included 631 psychiatric hospitals, 192 rehabilitation hospitals, 192 long-term care hospitals, 70 children's hospitals and 17 Christian Science sanatoria. In addition, there were 1,472 psychiatric units and 880 rehabilitation units in hospitals otherwise subject to the prospective payment system. These excluded units are also paid in accordance with § 413.40.

The market basket percentage increase for excluded hospitals and units for FY 1998 is 2.7 percent. However, as a result of section 4411 of Public Law 105-33 the update factor for FY 1998 is 0 percent.

The impact on excluded hospitals and units of the update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital or 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 limits, the major effect will be the amount of excess costs that would not be reimbursed.

In this context, we note that, under § 413.40(d)(3) as revised, an excluded hospital or unit whose costs exceed 110 percent of the ceiling receives its ceiling plus 50 percent of the difference between its costs and 110 percent of the ceiling, not to exceed 110 percent of the ceiling. In addition, under the various provisions set forth in § 413.40, certain excluded hospitals and units can obtain payment adjustments for 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.

Section 4414 of Public Law 105-33 establishes a cap at the 75th percentile on the target amounts for psychiatric, rehabilitation, and long-term care hospitals. Because the cap is based on an estimate of the 75th percentile, we estimate that 25 percent of the providers will have target amounts in excess of the cap. We have broken down the estimated impact of that reduction as follows:

PERCENT OF PROVIDERS ABOVE CAP

Type of hospital/ unit	Free-stand- ing hos- pitals	Hospital- based units
Rehabilitation .....	23.2	76.8
Psychiatric .....	42.5	57.5
Long-term care ..	25.0	( <sup>1</sup> )

<sup>1</sup> Not applicable.

PERCENT OF TOTAL PROVIDERS

Type of hospital/ unit	Large urban	Other urban	Rural
Rehabilitation .....	48.8	38.7	12.5
Psychiatric .....	49.2	32.2	18.6
Long-term care ..	74.3	17.8	7.9

PERCENT OF PROVIDERS ABOVE THE CAP

Type of hospital/ unit	Large urban	Other urban	Rural
Rehabilitation .....	54.4	35.5	10.1
Psychiatric .....	62.6	25.7	11.7

PERCENT OF PROVIDERS ABOVE THE CAP—Continued

Type of hospital/ unit	Large urban	Other urban	Rural
Long-term care ..	95.8	4.2	0.0

These tables show, of those hospitals affected by the cap, the estimated percentage of each type of provider affected, and the proportion of these hospitals that are located in urban or rural areas. Although a higher percentage of hospital-based units may be affected by the cap than freestanding hospitals, there are many more units than hospitals. For instance, there are twice as many hospital-based psychiatric units than freestanding hospitals and five times as many hospital-based rehabilitation units as freestanding hospitals. With regard to the geographic impact of the provision on long-term care hospitals, hospitals in large urban areas are affected in greater proportion than hospitals in other areas. This is not unexpected because the target amount cap is not adjusted for differences in area wage levels. We also observed that long-term care hospitals certified before 1990 were less likely to be affected by the 75th percentile provision than older long-term care hospitals. Psychiatric and rehabilitation facilities appear slightly more likely to be affected by the limit on the target amount if they were certified after 1990 or are located in large urban areas. It is important to note that while these hospitals and units will have their target amounts reduced to the 75th percentile, the impact on a specific provider will depend on the level of its operating costs per discharge in relation to its reduced target amount.

We are extending certain exclusion criteria that currently apply only to long-term care hospitals to all other categories of excluded facilities. These criteria define a minimum level of independence and separate control that a facility must have in order to be excluded as a "hospital within a hospital." We expect that this provision will result in a very small decrease in aggregate payment levels (other things being equal) by, for example, preventing new hospital units from inappropriately qualifying for the exemption from the rate-of-increase ceiling that is available only to new hospitals. To our knowledge, there are fewer than 50 facilities that would be affected by this proposal.

VI. Quantitative Impact Analysis of the Policy Changes Under the Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this final rule with comment period, 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 changes to each system. This section deals with changes to the operating prospective payment system.

The data used in developing the quantitative analyses presented below are taken from the FY 1996 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 1996 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. Estimated payment impacts of the FY 1998 changes to the capital prospective payment system are discussed below in section VII of this Appendix.

The changes discussed separately below are the following:

- The effects of the changes enacted by Public Law 105-33. Although we are not able to precisely simulate the effect of every provision of this legislation that may influence hospital payment, we have simulated the payment effects of



each of the significant provisions noted above.

- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the DRG relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of changes in hospitals' wage index values reflecting the FY 1998 wage index update (using FY 1994 data).
- The effects of implementing the Puerto Rico-specific wage index to be applied to the Puerto Rico standardized amounts.
- The effects of completing the phase-out of 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 effects of geographic reclassifications by the MGCRB that will be effective in FY 1998.
- The total change in payments based on FY 1998 policies relative to payments based on FY 1997 policies.

To illustrate the impacts of the changes resulting from Pub. L. 105-33, our analysis begins with a FY 1998 baseline simulation model using the policies as they existed before enactment of Public Law 105-33 including a 2.7 percent (full market basket) update to the standardized amounts; the FY 1997 GROUPER (version 14.0); the FY 1997 wage index; national wage index values applied to the Puerto Rico standardized amounts; FY 1997 outlier policy (75 percent phase-out of day outlier payments); and no MGCRB reclassifications. Outlier payments are set at 5.1 percent of total DRG payments.

From this baseline, we move to a simulation model reflecting the policies enacted by Public Law 105-33. For operating payments, these are: zero update to the standardized amounts and the hospital-specific rate, except for temporary relief hospitals which receive a 0.5 percent update; an increase in payments to Puerto Rico by changing the portion of their payments based on the higher national standardized amount from 25 percent to 50 percent; reductions in IME and DSH payments; the elimination of IME and DSH payments attributable to outliers and the corresponding change of no longer standardizing charges for IME and DSH when identifying outlier cases; reinstating the MDH provision; and the reinstatement of RRCs that lost their status due to the triennial review or MGCRB reclassification. One change enacted by Public Law 105-33 that is not included in this simulation is the

floor on the area wage index for urban hospitals. This change is required to be budget neutral so we did not introduce it into the simulation model until we calculated the wage index and DRG budget neutrality factor. Therefore, in our impact analysis, this change is introduced when we bring the new (FY 1994) wage data into the model.

Each additional policy change is then added incrementally to this baseline model, finally arriving at an FY 1998 model incorporating all of the changes. This allows us to isolate the effects of each change.

Our final comparison illustrates the percent change in payments per case from FY 1997 to FY 1998. Three factors have significant impacts here. First is the changes enacted by Public Law 105-33, with the exception of the impact of the zero updates for FY 1998 (which results in a zero change from FY 1997).

A second significant factor that has an impact on hospitals' payments per case from FY 1997 to FY 1998 is a change in MGCRB reclassification status from one year to the next. That is, hospitals reclassified for FY 1997 that are no longer reclassified for FY 1998 may have a negative payment impact going from FY 1997 to FY 1998; conversely, hospitals not reclassified for FY 1997 that are reclassified for FY 1998 may have a positive impact. In some cases these impacts can be quite substantial, so 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 actual outlier payments during FY 1997 will be 4.8 percent of actual total DRG payments. When the FY 1997 final rule was published, we projected FY 1997 outlier payments would be 5.1 percent of total DRG payments, and the standardized amounts were reduced correspondingly. The effects of the slightly lower than expected outlier payments during FY 1997 (as discussed in the Addendum to this proposed rule) are reflected in the analyses below comparing our current estimates of FY 1997 payments per case to estimated FY 1998 payments per case.

Table I demonstrates the results of our analysis. The 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 estimated impact on the 5,088 hospitals included in the analysis.

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 2,858 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,630 hospitals located in large urban areas (populations over 1 million), and 1,228 hospitals in other urban areas (populations of 1 million or fewer). The analysis includes 49 hospitals classified as large urban hospitals that were classified as other urban hospitals in the proposed rule. These hospitals are in four MSAs that have become large urban areas since publication of the proposed rule. There are 2,230 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 1998 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 2,948, 1,776, 1,172, and 2,140, respectively.

The next three groupings examine the impacts of the proposed changes on hospitals grouped by whether or not they have residency programs (teaching hospitals that receive an IME adjustment), receive DSH payments, or some combination of these two adjustments. There are 3,993 nonteaching hospitals in our analysis, 856 teaching hospitals with fewer than 100 residents, and 239 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 row separately examines hospitals that available data show may qualify for the provision granting a 0.5 percent update to the standardized amounts for FY 1998 (section 4401(b) of

Pub. L. 105-33). To be eligible, a hospital must not receive either IME or DSH, nor may it be an MDH. It must also experience a negative margin on its operating prospective payments during FY 1998. We estimated eligible hospitals based on whether they had a negative operating margin on their FY 1995 cost report. Finally, to qualify, a hospital must be located in a State where the aggregate FY 1995 operating prospective payments were less than the aggregate associated costs for all of the non-IME, non-DSH, non-MDH hospitals in the State. There are 360 hospitals in this row.

The next five rows examine the impacts of the proposed changes on rural hospitals by special payment groups (SCHs, RRCs, MDHs, and EACHs), as well as rural hospitals not receiving a special payment designation. The RRCs (158), SCH/EACHs (642),

MDHs (368), and SCH/EACH and RRCs (57) shown here were not reclassified for purposes of the standardized amount. Section 4202(b)(1) of Public Law 105-33 allowed for reinstatement of RRCs that lost their status since FY 1991. As a result, there are 63 more hospitals in this row than were included in the proposed rule. Similarly, there are 16 more hospitals in the SCH/RRC row than appeared in that row in the proposed rule. There are three SCHs that will be reclassified for the standardized amount in FY 1998 that, therefore, are not included in these rows. There are seven EACHs included in our analysis and three EACH/RRCs.

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 1995 Medicare cost report files, if available

(otherwise FY 1994 data are used). Data needed to determine ownership status or Medicare utilization percentages were unavailable for 117 hospitals. For the most part, these are either new hospitals or hospitals filing manual cost reports that are not yet entered into the database.

The next series of groupings concern the geographic reclassification status of hospitals. The first three groupings display hospitals that were reclassified by the MGRB for both FY 1997 and FY 1998, or for either of those 2 years, by urban/rural status. The next rows illustrate the overall number of FY 1998 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 1998 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent changes in payments per case]

	Number of hosps. <sup>1</sup>	Balanced Budget Act <sup>2</sup>	DRG re-calibration <sup>3</sup>	New wage data <sup>4</sup>	Com-bined wage & recal. <sup>5</sup>	Puerto Rico specific wage index <sup>6</sup>	Day outlier phase-out <sup>7</sup>	MGRB reclassification <sup>8</sup>	All FY 98 changes <sup>9</sup>
	(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
(BY GEOGRAPHIC LOCATION):									
ALL HOSPITALS .....	5,088	-3.9	0.1	0.1	0.0	0.0	0.0	0.0	0.9
URBAN HOSPITALS .....	2,858	-3.9	0.1	0.1	0.0	0.0	0.0	-0.4	-1.0
LARGE URBAN .....	1,630	-4.0	0.1	0.0	-0.1	0.0	-0.1	-0.4	-1.2
OTHER URBAN .....	1,228	-3.8	0.2	0.2	0.2	0.0	0.1	-0.3	-0.7
RURAL HOSPITALS .....	2,230	-3.4	-0.3	0.4	-0.1	0.0	0.1	2.2	-0.4
BED SIZE (URBAN):									
0-99 BEDS .....	724	-3.6	-0.3	0.1	-0.4	0.0	0.1	-0.5	-0.9
100-199 BEDS .....	954	-3.7	-0.1	0.1	-0.2	0.0	0.1	-0.4	-0.7
200-299 BEDS .....	570	-3.8	0.1	0.1	-0.1	0.0	0.1	-0.3	-0.8
300-499 BEDS .....	457	-4.0	0.2	0.2	0.2	0.0	0.0	-0.4	-1.0
500 OR MORE BEDS .....	153	-4.3	0.4	0.0	0.2	0.0	-0.2	-0.3	-1.3
BED SIZE (RURAL):									
0-49 BEDS .....	1,170	-3.0	-0.6	0.4	-0.4	0.0	0.1	0.1	-0.3
50-99 BEDS .....	657	-3.1	-0.4	0.4	-0.2	0.0	0.1	1.1	-0.3
100-149 BEDS .....	235	-3.4	-0.3	0.4	-0.1	0.0	0.1	3.2	-0.5
150-199 BEDS .....	93	-3.7	-0.2	0.4	0.0	0.0	0.1	2.6	-0.4
200 OR MORE BEDS .....	75	-3.6	0.0	0.3	0.1	0.0	0.2	4.2	-0.8
URBAN BY CENSUS DIVISION:									
NEW ENGLAND .....	159	-4.2	0.1	-0.3	-0.4	0.0	0.1	-0.3	-1.9
MIDDLE ATLANTIC .....	431	-4.4	0.1	0.3	0.1	0.0	-0.7	-0.4	-2.0
SOUTH ATLANTIC .....	420	-3.8	0.2	-0.2	-0.2	0.0	0.2	-0.3	-0.8
EAST NORTH CENTRAL .....	475	-4.0	0.1	0.3	0.2	0.0	0.2	-0.3	-0.7
EAST SOUTH CENTRAL .....	163	-3.8	0.2	1.0	1.0	0.0	0.2	-0.5	0.2
WEST NORTH CENTRAL .....	191	-4.0	0.2	0.2	0.2	0.0	0.2	-0.4	-0.6
WEST SOUTH CENTRAL .....	367	-3.8	0.2	0.2	0.1	0.0	0.2	-0.5	-0.5
MOUNTAIN .....	129	-3.7	0.3	-0.2	-0.1	0.0	0.2	-0.4	-0.6
PACIFIC .....	475	-3.6	0.1	-0.3	-0.4	0.0	0.2	-0.3	-0.9
PUERTO RICO .....	48	3.1	-0.2	0.3	-0.1	3.7	-0.1	-0.4	12.2
RURAL BY CENSUS DIVISION:									
NEW ENGLAND .....	53	-3.9	-0.2	0.6	0.1	0.0	0.2	2.1	-0.6
MIDDLE ATLANTIC .....	85	-3.3	-0.3	-0.4	-0.9	0.0	-0.1	1.1	-0.9
SOUTH ATLANTIC .....	297	-3.6	-0.2	0.4	0.0	0.0	0.1	2.4	-1.0
EAST NORTH CENTRAL .....	302	-3.3	-0.2	0.5	0.0	0.0	0.2	1.4	-0.7
EAST SOUTH CENTRAL .....	275	-3.4	-0.3	0.6	0.1	0.0	0.2	2.5	0.0
WEST NORTH CENTRAL .....	512	-3.2	-0.4	0.2	-0.4	0.0	0.1	2.5	0.0

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1998 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued  
 [Percent changes in payments per case]

	Number of hosps. <sup>1</sup>	Balanced Budget Act <sup>2</sup>	DRG recalibration <sup>3</sup>	New wage data <sup>4</sup>	Combined wage & recal. <sup>5</sup>	Puerto Rico specific wage index <sup>6</sup>	Day outlier phase-out <sup>7</sup>	MGCRB reclassification <sup>8</sup>	All FY 98 changes <sup>9</sup>
	(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
WEST SOUTH CENTRAL	347	-3.2	-0.4	0.3	-0.3	0.0	0.1	3.3	-0.3
MOUNTAIN .....	213	-3.1	-0.2	0.3	-0.2	0.0	0.1	1.6	0.3
PACIFIC .....	141	-3.3	-0.2	1.1	0.6	0.0	0.1	2.1	-0.1
PUERTO RICO .....	5	4.9	-0.6	2.4	1.5	4.4	0.1	1.5	15.3
BY PAYMENT CATEGORIES:									
URBAN HOSPITALS .....	2,948	-3.9	0.1	0.1	0.0	0.0	0.0	-0.3	-1.0
LARGE URBAN .....	1,776	-4.0	0.1	0.0	-0.1	0.0	-0.1	-0.2	-1.1
OTHER URBAN .....	1,172	-3.8	0.2	0.2	0.2	0.0	0.1	-0.4	-0.6
RURAL HOSPITALS .....	2,140	-3.3	-0.3	0.4	-0.1	0.0	0.1	1.9	-0.5
TEACHING STATUS:									
NON-TEACHING .....	3,993	-3.6	-0.1	0.2	-0.1	0.0	0.1	0.3	-0.6
LESS THAN 100 RES .....	856	-3.9	0.2	0.1	0.1	0.0	0.1	-0.3	-0.8
100+ RESIDENTS .....	239	-4.4	0.3	0.0	0.2	0.0	-0.3	-0.2	-1.6
DISPROPORTIONATE SHARE HOSPITALS (DSH):									
NON-DSH .....	3,185	-3.8	0.0	0.2	0.0	0.0	0.1	0.2	-0.8
URBAN DSH:									
100 BEDS OR MORE .....	1,413	-3.9	0.2	0.1	0.0	0.0	-0.1	-0.3	-1.0
FEWER THAN 100 BEDS .....	89	-3.7	-0.4	0.3	-0.4	0.0	0.2	-0.4	-0.8
RURAL DSH:									
SOLE COMMUNITY (SCH) .....	155	-3.1	-0.5	0.3	-0.4	0.0	0.0	0.2	-0.4
REFERRAL CENTERS (RRC) .....	50	-2.8	-0.1	0.5	0.2	0.0	0.1	3.4	0.6
OTHER RURAL DSH HOSP.:									
100 BEDS OR MORE .....	66	-3.6	-0.3	0.7	0.1	0.0	0.2	2.3	-1.4
FEWER THAN 100 BEDS .....	130	-3.4	-0.6	0.7	-0.1	0.0	0.1	0.8	-0.2
URBAN TEACHING AND DSH:									
BOTH TEACHING AND DSH .....	708	-4.1	0.2	0.0	0.1	0.0	-0.2	-0.4	-1.2
TEACHING AND NO DSH .....	330	-4.2	0.3	0.3	0.3	0.0	0.1	-0.2	-1.0
NO TEACHING AND DSH .....	794	-3.6	0.0	0.1	-0.1	0.0	0.1	-0.1	-0.5
NO TEACHING AND NO DSH .....	1,116	-3.7	0.0	0.0	-0.2	0.0	0.2	-0.3	-0.8
SPECIAL UPDATE HOSPITALS (UNDER SEC. 4401(b) OF PUBLIC LAW 105-33) .....	360	-3.8	-0.1	0.6	0.2	0.1	0.2	0.2	-0.6
RURAL HOSPITAL TYPES:									
NONSPECIAL STATUS HOSPITALS .....	915	-3.5	-0.4	0.5	-0.1	0.0	0.1	1.5	-0.8
RRC .....	158	-3.7	-0.1	0.5	0.2	0.0	0.2	4.3	-0.5
SCH/EACH .....	642	-3.0	-0.4	0.2	-0.5	0.0	0.0	0.6	-0.4
MDH .....	368	-2.0	-0.5	0.4	-0.3	0.0	0.1	0.5	0.8
SCH/EACH AND RRC .....	57	-3.2	-0.2	0.2	-0.2	0.0	0.0	0.8	-0.5
TYPE OF OWNERSHIP:									
VOLUNTARY .....	2,924	-3.9	0.1	0.1	0.0	0.0	0.0	-0.1	-1.0
PROPRIETARY .....	701	-3.6	0.0	0.0	-0.2	0.1	0.2	0.3	-0.6
GOVERNMENT .....	1,346	-3.7	0.0	0.4	0.2	0.0	0.1	0.2	-0.4
UNKNOWN .....	117	-4.0	0.0	-0.5	-0.7	0.2	-1.5	-0.5	-2.4
MEDICARE UTILIZATION AS A PERCENT OF INPATIENT DAYS:									
0-25 .....	266	-3.6	0.1	-0.3	-0.5	0.0	-0.1	-0.3	-1.2
25-50 .....	1,307	-4.0	0.2	0.0	0.0	0.0	0.0	-0.2	-1.0
50-65 .....	1,988	-3.8	0.1	0.3	0.1	0.0	0.1	0.2	-0.8
OVER 65 .....	1,410	-3.7	-0.1	0.2	-0.2	0.0	0.1	0.1	-0.9

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1998 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued  
[Percent changes in payments per case]

	Number of hosps. <sup>1</sup>	Balanced Budget Act <sup>2</sup>	DRG recalibration <sup>3</sup>	New wage data <sup>4</sup>	Combined wage & recal. <sup>5</sup>	Puerto Rico specific wage index <sup>6</sup>	Day outlier phase-out <sup>7</sup>	MGCRB reclassification <sup>8</sup>	All FY 98 changes <sup>9</sup>
	(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
UNKNOWN .....	117	-4.0	0.0	-0.5	-0.7	0.2	-1.5	-0.5	-2.4
HOSPITALS RECLASSIFIED BY THE MEDICARE GEOGRAPHIC REVIEW BOARD:									
RECLASSIFICATION STATUS DURING FY97 AND FY98:									
RECLASSIFIED DURING BOTH FY97 AND FY98	333	-3.9	0.0	0.5	0.3	0.0	0.2	6.2	-0.9
URBAN .....	96	-4.2	0.1	0.5	0.4	0.0	0.1	3.6	-1.1
RURAL .....	237	-3.7	-0.1	0.4	0.1	0.0	0.2	9.0	-0.6
RECLASSIFIED DURING FY98 ONLY .....	89	-3.6	0.0	0.5	0.3	0.1	0.2	4.0	5.3
URBAN .....	13	-3.7	0.4	0.7	0.9	0.2	0.2	0.0	2.8
RURAL .....	76	-3.4	-0.3	0.3	-0.2	0.0	0.2	7.3	7.3
RECLASSIFIED DURING FY97 ONLY .....	211	-4.0	0.0	0.6	0.3	0.0	0.0	-0.9	-4.2
URBAN .....	94	-4.2	0.1	0.6	0.5	0.0	-0.1	-1.0	-4.0
RURAL .....	117	-3.6	-0.2	0.5	0.0	0.0	0.2	-0.2	-4.7
FY 98 RECLASSIFICATIONS:									
ALL RECLASSIFIED									
HOSP .....	423	-3.9	0.0	0.5	0.3	0.0	0.2	5.8	-0.1
STAND. AMOUNT ONLY .....	94	-4.1	0.0	0.4	0.2	0.0	0.1	1.3	-0.9
WAGE INDEX ONLY	282	-3.7	0.0	0.5	0.3	0.0	0.2	7.9	0.2
BOTH .....	47	-4.2	0.0	0.3	0.1	0.0	0.3	5.5	0.2
NONRECLASSIFIED	4,638	-3.9	0.1	0.1	0.0	0.0	0.0	-0.5	-1.0
ALL URBAN RECLASS ..	109	-4.1	0.1	0.5	0.4	0.0	0.1	3.2	-0.7
STAND. AMOUNT ONLY .....	45	-4.0	0.1	0.4	0.3	0.0	0.0	0.6	-0.9
WAGE INDEX ONLY	31	-4.2	0.3	0.8	0.8	0.0	0.2	6.0	-0.8
BOTH .....	33	-4.2	0.1	0.4	0.2	0.0	0.2	3.3	-0.1
NONRECLASSIFIED	2,749	-3.9	0.1	0.1	0.0	0.0	0.0	-0.5	-1.0
ALL RURAL RECLASS ...	314	-3.6	-0.1	0.4	0.1	0.0	0.2	8.7	0.6
STAND. AMOUNT ONLY .....	49	-4.2	-0.3	0.3	-0.2	0.0	0.3	4.3	-1.1
WAGE INDEX ONLY	251	-3.5	-0.1	0.4	0.1	0.0	0.2	8.6	0.6
BOTH .....	14	-4.4	-0.1	0.2	-0.1	0.0	0.4	18.0	2.2
NONRECLASSIFIED	1,889	-3.2	-0.3	0.4	-0.2	0.0	0.1	-0.4	-0.9
OTHER RECLASSIFIED HOSPITALS (SECTION 1886(d)(8)(B)) .....	27	-3.6	-0.3	0.7	0.2	0.0	0.1	0.7	0.1

<sup>1</sup> 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 1996, and hospital cost report data are from reporting periods beginning in FY 1994 and FY 1995.

<sup>2</sup> This column displays the impact of the changes enacted by Public Law 105-33. The most significant of those in terms of their impacts here are the zero update, the reduction to the IME adjustment, and no longer paying an IME and DSH adjustment for outliers.

<sup>3</sup> This column displays the payment impact of the recalibration of the DRG weights, based on FY 1996 MedPAR data and the DRG classification changes, in accordance with section 1886(d)(4)(C) of the Act.

<sup>4</sup> This column shows the payment effects of updating the data used to calculate the wage index with data from the FY 1994 cost reports and the Public Law 105-33 provision establishing a floor on the area wage index for urban hospitals.

<sup>5</sup> This column displays the combined impact 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 2 and 3, and the FY 1998 budget neutrality factor of 0.997731.

<sup>6</sup> This column illustrates the payment impact of the Puerto Rico-specific wage index, applied to the Puerto Rico-specific standardized amounts.

<sup>7</sup> This column illustrates the payment impact of completing the phase-out of day outlier payments, and increasing cost outlier payments, in accordance with section 1886(d)(5) of the Act.

<sup>8</sup> Shown here are the combined effects of geographic reclassification by the Medicare Geographic Classification Review Board (MGCRB). The effects shown here demonstrate the FY 1998 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 1998. Reclassification for prior years has no bearing on the payment impact shown here.

<sup>9</sup> This column shows changes in payments from FY 1997 to FY 1998. It incorporates all of the changes displayed in columns 4 through 7 (the changes displayed in columns 2 and 3 are included in column 4). It also displays the impact of the changes shown in column 1, less the 2.7 percent negative impact of the zero update. Finally, it shows the impact of changes in hospitals' reclassification status in FY 1998 compared to FY 1997, and the difference in outlier payments from FY 1997 to FY 1998. The sum of these columns may be different from the percentage changes shown here due to rounding and interactive effects.

*B. Impact of Changes Enacted by Public Law 105-33 (Column 1)*

Public Law 105-33 contained several provisions that significantly impact hospitals' payments under the operating prospective payment system during FY 1998, relative to payments if Public Law 105-33 had not been enacted. Certainly the largest single impact is the zero update for the standardized amounts and the hospital-specific rate. Prior to this change, the law provided that hospitals were to receive the full market basket of 2.7 percent. As indicated above, temporary relief hospitals do receive an update of 0.5 percent. Freezing the standardized amounts and the hospital-specific rates at their FY 1997 levels (prior to any budget neutrality calculations) is the largest impact evident in column 1.

As discussed previously, to illustrate the impacts of the changes resulting from Public Law 105-33, we begin with a FY 1998 baseline payment model using a 2.7 percent update; the FY 1997 GROUPER; the FY 1997 wage index; no MGCRB reclassifications; outlier payments based on 25 percent day outliers and factoring IME and DSH into DRG payments plus outlier payments; no MDHs; and Puerto Rico hospitals receive 25 percent of the national Puerto Rico amount and 75 percent of the Puerto Rico amount. From this baseline we moved to a payment simulation model incorporating all but one of the changes enacted by Public Law 105-33; we did not include the floor on the wage index for urban hospitals because that change was required to be budget neutral. Therefore, this change is included in the new (FY 1994) wage data column.

The overall impact on hospital operating payments per case due to Public Law 105-33 is a 3.9 percent reduction in payments. As pointed out above, 2.7 percent of this decline relates to the freeze in the update. This negative impact is evident across all hospital categories, although it is offset to a small degree among those hospitals that receive the special 0.5 percent update. However, this update provision has an insignificant impact overall. In fact, the 360 temporary relief hospitals that qualify for this special update have only a slightly smaller decrease in payments (3.8 percent) than the national average. This is largely due to the change that eliminated the IME and DSH adjustments attributable to outlier payments. Although these hospitals by definition do not receive IME or DSH payments, they are negatively impacted by the redistribution of outlier payments that result from the change. Because we

no longer standardize the charges of cases by hospitals' IME and DSH factors, the outlier thresholds are higher and there is a substantial redistribution of outlier payments toward hospitals that also receive IME and DSH and away from non-IME, non-DSH hospitals. The negative impact of this change on the latter group of hospitals is approximately 1.8 percent.

The change in outlier policy also affects overall payments. Because IME and DSH are now based only on the base DRG amount, total payments are less than they would be before this change. The net impact of this change is to reduce the overall average payment per case by approximately 0.6 percent. The reduction in the IME adjustment also reduces payments by approximately 0.6 percent overall. The combined impacts of these changes and the other, less significant changes result in an overall decrease in hospitals' average payment per case due to Public Law 105-33 of 3.9 percent.

The only hospital categories demonstrating a net increase in payments in column 1 are urban and rural Puerto Rico hospitals (3.1 percent and 4.9 percent, respectively). This is due to the change in the formula for calculating payments for Puerto Rico hospitals from 25 percent of the national amount and 75 percent of the Puerto Rico amount, to a 50/50 blend of the two amounts. Because the national amount is more than twice the Puerto Rico amount, the change in the blend more than offsets the 2.7 percent decrease in the amounts after Public Law 105-33. The smaller increase among urban Puerto Rico hospitals is explained at least in part by the fact that, because the national Puerto Rico amount is the same for large urban and other area hospitals while the large urban Puerto Rico amount is greater than the other area Puerto Rico amount, large urban Puerto Rico hospitals gain slightly less than other Puerto Rican hospitals from the formula change.

The hospital category with the smallest negative impact in this column is MDHs. Their payments overall drop by only 2.0 percent. Over 30 hospitals in this category have payment increases after being reinstated as an MDH, despite the zero update and the fact that they receive only 50 percent of the difference between their hospital-specific rate and the Federal rate.

The greatest negative impact in this column is a 4.4 percent drop in payments among teaching hospitals with more than 100 residents and urban hospitals in the Middle Atlantic census division (due to the concentration of teaching hospitals in this census

division). This effect is due to the reduction in the IME adjustment, although the decrease in the IME adjustment factor is offset for these hospitals to some extent by the outlier changes which result in higher outlier payments to teaching and disproportionate share hospitals. Without the change to remove the IME and DSH adjustments from the outlier calculation, payments to major teaching hospitals would have fallen by approximately 1.0 percent more.

Finally, the decline in payments shown here among rural hospitals is generally not as great as the decline among urban hospitals. Overall, rural hospitals' payments decline by 3.4 percent, compared to 3.9 percent for urban hospitals. This result is attributable to those rural hospitals paid on the basis of their hospital-specific rate, particularly SCHs. Because hospitals receiving their hospital-specific rate do not receive outliers, IME, or DSH, they are unaffected by the policy changes related to these additional payments. Therefore, their net change in payments after Pub. L. 105-33 is generally limited to the 2.7 percent reduction in the update for FY 1998 (from full market basket percentage increase to 0).

*C. Impact of the Changes to the DRG Classifications and Relative Weights (Column 2)*

In column 2 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 with comment period. 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.

We compared aggregate payments using the FY 1997 DRG relative weights (GROUPER version 14) to aggregate payments using the FY 1998 DRG relative weights (GROUPER version 15). Overall, payments increase by 0.1 percent due to the DRG changes, although this is prior to applying the budget neutrality factor for DRG and wage index changes (see column 4). Consistent with the minor changes we are implementing for the FY 1998 GROUPER, the redistributive impacts of DRG reclassifications and recalibration across hospital groups are small (a 0.1 percent increase for large urban hospitals; a 0.2 percent increase for other urban hospitals; and a 0.3 percent decrease among rural hospitals).

Within hospital categories, the net effects for urban hospitals are small positive changes for larger hospitals (200 or more beds), and slightly negative changes for urban hospitals with fewer than 200 beds. Among rural hospitals, the smallest rural hospitals (fewer than 50 beds) experience a decrease of 0.6 percent. For other rural bed size categories, slight negative impacts prevail. Only the largest rural hospitals (200 or more beds) avoid any negative impact from the changes.

The breakdowns by urban census division show that the increase among urban hospitals is spread across all census categories except Puerto Rico, with the largest increase (0.3 percent) for hospitals in the Mountain census division. For rural hospitals, the largest decrease is 0.4 percent for hospitals in the West North Central and West South Central census divisions and 0.6 percent for the five rural hospitals in Puerto Rico. Rural hospitals in all other census regions experience decreases of 0.2 or 0.3 percent. This pattern of negative impacts upon small and rural hospitals is also apparent when examining the effects of DRG changes on hospitals according to special payment categories, with the largest decreases (0.5 percent) among MDHs, rural DSH SCHs, and rural DSH hospitals with fewer than 100 beds (0.6 percent decrease).

Overall, we attribute the changes associated with DRG recalibration 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, lower relative weights associated with those cases would disproportionately affect these hospitals. In general, small hospitals that serve a disproportionate share of low-income patients fit this definition. In contrast, larger hospitals in both urban and rural areas, which tend to treat the latter group of DRGs, would experience small payment increases. Teaching hospitals, which also treat the more complicated cases, experience similar effects. We note, however, that both the positive and negative impacts are relatively minor, in almost all categories they are 0.5 percent or less.

#### *D. Impact of Updating the Wage Data (Column 3)*

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 1998 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1993 and before October 1, 1994. 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 3 shows the percentage changes in payments when going from a model using the FY 1997 wage index based on FY 1993 wage data before geographic reclassifications to a model using the FY 1998 prereclassification wage index based on FY 1994 wage data. Also included in the model using the FY 1994 wage data are the effects of the provision of Public Law 105-33 that urban hospitals' wage indexes may not be below the wage index of the rural areas in the State in which the urban hospital is located.

The results indicate that the impact of the new wage data is a 0.1 percent increase overall in hospital payments (prior to applying the budget neutrality factor, see column 4). Rural and other urban hospitals generally appear to benefit from the update with payments increasing 0.4 and 0.2 percent, respectively. The increases for rural hospitals are attributable to relatively large increases in the wage index values for the rural areas of particular States (although none increased by more than 5 percent). The increases for other urban hospitals, 0.2 percent compared to 0.1 percent in FY 1997 and in the FY 1998 proposed wage index, appear to be attributable in large part to the requirement that the wage index values for urban hospitals be at least equal to the rural wage index values for the States in which they are located. Hospitals in 32 urban areas experienced increases in their wage index values as a result of that provision. Hospitals in nine of the urban areas experienced increases of more than 5 percent as a result of the provision for a Statewide rural wage index floor for urban hospitals.

Some of the largest changes in payments are found among both urban and rural hospitals grouped by census division, although in almost all cases payments change by less than 1 percent. Our review of the wage data indicates that the changes are attributable to improved reporting, as well as relative changes in labor costs.

Among the urban census divisions, payments change by 0.3 percent or less in all census divisions except one. The East South Central census division experiences an increase of 1.0 percent which stems largely from wage index increases of 5.9 and 5.2 percent in the

Mobile, Alabama and the Tuscaloosa, Alabama MSAs.

Among the rural hospitals, all census divisions experience increases except for the Middle Atlantic census division which experiences a slight decrease of 0.4 percent. The largest increase occurs in the Pacific (and Puerto Rico, discussed separately below) census division which experiences an increase of 1.1 percent. Here, Oregon's rural wage index value rises by 3.2 percent, and Washington's rural wage index value increases by 2.9 percent. The next largest increase (0.6 percent) occurs in the rural New England and the East South Central census divisions. In the New England census division, the rural Vermont wage index value increases by 4.4 percent, and the rural Maine wage index value increases by 1.8 percent. In the East South Central census division, the rural Alabama wage index value increases by 1.9 percent, and the rural Mississippi wage index value increases by 1.7 percent.

In Puerto Rico, payments increase by 0.3 percent for the urban hospitals and by 2.4 percent for the five rural hospitals. Although column 5 shows the isolated effects of introducing the Puerto Rico-specific wage index, it is also included in the payment simulations here showing the impacts of the new wage data. Of the six urban areas in Puerto Rico, two experience increases in their national wage index values, including the San Juan-Bayamon area (2.5 percent), which contains the majority of the urban Puerto Rico hospitals (29 of 48), and the Mayaguez area (6.2 percent). The rural Puerto Rico area experiences an increase in its national wage index value of 4.9 percent. The following chart compares the shifts in wage index values for labor market areas for FY 1998 with those from FY 1997.

The majority of labor market areas (334) experience less than a 5 percent change. A total of 33 labor market areas experience a change between 5 and 10 percent; 24 of those experience increases. Still fewer labor markets experience a change of more than 10 percent; two experience increases, and one experiences a decrease. In two urban labor market areas which include both West Virginia and Ohio hospitals, the Ohio hospitals receive their State's rural wage index value. In one of those labor market areas, the Ohio hospitals experience an increase of more than 10 percent. In the other labor market area, the Ohio hospitals experience an increase between 5 and 10 percent.

We reviewed the data for any area that experienced a wage index change of 5

percent or more to determine the reason for the fluctuation.

Percentage change in area wage index values	No. of labor market areas	
	FY 1998	FY 1997
Increase more than 10 percent .....	2	0
Increase between 5 and 10 percent (inclusive) .....	24	14
Increase or decrease less than 5 percent .....	334	341
Decrease between 5 and 10 percent (inclusive) .....	9	11
Decrease more than 10 percent .....	1	2

Under the FY 1998 wage index, 95.3 percent of urban hospitals and 99.9 percent of rural hospitals will experience a change in their wage index value of less than 5 percent. Among urban hospitals, 128 will experience a change of between 5 and 10 percent (97 increasing and 31 decreasing), while only 3 rural hospitals fall into this category, all decreasing. Eight urban hospitals and no rural hospitals will 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	No. of hospitals	
	Urban	Rural
Increase more than 10 percent .....	4	0
Increase between 5 and 10 percent (inclusive) ....	97	0
Increase or decrease less than 5 percent .....	2763	2236
Decrease between 5 and 10 percent (inclusive) ....	31	3
Decrease more than 10 percent .....	4	0

**E. Combined Impact of DRG and Wage Index Changes— Including Budget Neutrality Adjustment (Column 4)**

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 to be budget neutral. Furthermore, as noted above, section 4410 of Pub. L. 105-33 required the implementation of the wage index floor to be budget neutral. We compared aggregate payments using the FY 1997 DRG relative weights and wage index to aggregate payments using the FY 1998 DRG relative weights and wage index, including the wage index floor. Based on this comparison, we computed a wage and recalibration budget neutrality factor of 0.997731. 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 4. 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 2 and 3, minus the approximately 0.2 percent decrease attributable to the budget neutrality factor. There may be some variation of plus or minus 0.1 percent due to rounding.

**F. Puerto Rico-Specific Wage Index (Column 5)**

As described in section III. of the preamble to this final rule with comment period, we are adopting a Puerto Rico-specific wage index for FY 1998. These wage index values will be applied to the Puerto Rico standardized amounts. Column 5 shows the effect of implementing this change results in no payment impact for all hospitals. In Puerto Rico, payments increase by 3.7 percent among urban hospitals, and 4.4 percent among rural hospitals. As shown in Table 4F of the Addendum, the Puerto Rico-specific wage index values are considerably higher than Puerto Rico's national wage index values (shown in Table 4A of the Addendum). This results in the increases shown in this column.

However, these increases are less than those shown in the proposed rule as a result of the change to the Puerto Rico payment formula. The amount attributable to the Puerto Rico payment amount (and which is adjusted by the Puerto Rico-specific wage index) is now 50 percent instead of 75 percent.

As indicated above, this change is shown in isolation here for ease in reading Table I. To actually calculate the national DRG and wage index budget neutrality factors, the Puerto Rico-specific wage index was included. As described in the Addendum, we also computed a DRG reclassification and recalibration budget neutrality adjustment for the Puerto Rico standardized amounts equal to 0.999117.

**G. Outlier Changes (Column 6)**

Currently, 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). Beginning with FY 1995, section 1886(d)(5)(A) of the Act requires the Secretary to phase-out payments for day outliers. 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. 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. This reduction in day outlier payments will be offset by an increase in cost outlier payments.

As discussed in the Addendum, for FY 1998, a case would receive cost outlier payments if its costs exceed the DRG payment amount plus any IME and DSH payments by at least \$11,050. We are also 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 Middle Atlantic census division (0.7 percent decline); urban hospitals with 500 or more beds (0.2 percent decline); teaching hospitals with 100 or more residents (0.3 percent decline); and hospitals for which data were unavailable to calculate Medicare utilization rates (1.5 percent decline). This last category contains a number of New York City public hospitals that file manual cost reports. Because the changes to the 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.

#### H. Impact of MGCRB Reclassifications (Column 7)

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 7 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 1998. As noted below, these decisions affect hospitals' standardized amount and wage index area assignments. In addition, rural hospitals reclassified for purposes of the standardized amount qualify to be treated as urban for purposes of the 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 approve a hospital's reclassification request for the purpose of using the other area's standardized amount, wage index value, or both.

The FY 1998 wage index values incorporate all of the MGCRB's reclassification decisions for FY 1998 as of the publication of this final rule with comment period. The wage index values also reflect any decisions made by the HCFA Administrator through the appeals and review process for MGCRB decisions for FY 1998. 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 0.994720 to ensure that the effects of reclassification are budget neutral. (See section II.A.4 of the Addendum to this final rule with comment period.)

As a group, rural hospitals benefit from geographic reclassification. Their payments rise 2.2 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 2 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 urban hospitals stemming from the budget neutrality offset to 0.3 percent. Among urban hospital groups generally (that is, bed size, census division, and special payment status), payments fall by between 0.3 and 0.5 percent.

A positive impact is evident among all rural hospital groups. The smallest

effect among the rural census divisions is 1.1 percent for the Middle Atlantic division. The largest impact is for the West South Central division, with an increase of 3.3 percent.

Among rural hospitals designated as RRCs, 65 hospitals are reclassified for purposes of the wage index only, leading to the 4.3 percent increase in payments among RRCs overall. This positive impact on RRCs is also reflected in the category of rural hospitals with 200 or more beds, which has a 4.2 percent increase in payments.

Rural hospitals reclassified for FY 1997 and FY 1998 experience a 9.0 percent increase in payments. 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 1998 only experience a 7.3 percent increase in payments, while rural hospitals reclassified for FY 1997 only experience a 0.2 decrease in payments. Urban hospitals reclassified for FY 1997 but not FY 1998 experience a 1.0 percent decline in payments overall. This appears to be due to the combined impacts of the budget neutrality adjustment, and a number of Bergen-Passaic, New Jersey hospitals in this category that experience a 4.8 percent drop in their wage index after reclassification. Urban hospitals reclassified for FY 1998 but not for FY 1997 experience no overall change in their payments.

The FY 1998 Reclassification rows of Table I show the changes in payments per case for all FY 1998 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 18.0 percent increase in payments. In addition, rural hospitals reclassified just 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 5.8 percent for FY 1998.

Among the 27 rural hospitals deemed to be urban under section 1886(d)(8)(B) of the Act, payments increase 0.7 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 annual like the MGCRB reclassifications), they are eligible for MGCRB reclassification. For FY 1998,

one hospital in this category reclassified to a large urban area.

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 about 0.5 percent, which corresponds closely with the geographic reclassification budget neutrality factor. Rural nonreclassified hospitals decrease slightly less, experiencing 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 indexes.

The foregoing analysis was based on MGCRB and HCFA Administrator decisions made by March 29, 1997. In addition, changes to some MGCRB decisions through the appeals, review, and applicant withdrawal process are also included.

#### I. All Changes (Column 8)

Column 8 compares our estimate of payments per case, incorporating all changes reflected in this final rule with comment period for FY 1998 (including statutory changes), to our estimate of payments per case in FY 1997. It includes the effects of the changes enacted by Public Law 105-33, and reflects the 0.3 percentage point difference between the projected outlier payments in FY 1998 (5.1 percent of total DRG payments) and the current estimate of the percentage of actual outlier payments in FY 1997 (4.8 percent), as described in the introduction to this Appendix and the Addendum.

Column 8 also includes the impacts of FY 1998 MGCRB reclassifications compared to the payment impacts of FY 1997 reclassifications. (Column 7 shows the impact of going from no MGCRB reclassifications to the FY 1998 reclassifications.) When comparing FY 1998 payments to FY 1997 payments, the percent changes due to FY 1998 reclassifications shown in column 7 need to be offset by the effects of reclassification on hospitals' FY 1997 payments (column 4 of Table 1, September 1, 1996 final rule; 61 FR 46306). For example, the impact of MGCRB reclassifications on rural hospitals' FY 1997 payments was approximately a 2.3 percent increase, offsetting the 2.2 percent increase in column 7. Therefore, the net change in FY 1998 payments due to



reclassification for rural hospitals is actually closer to a decrease of 0.1 percent relative to FY 1997. However, last year's analysis contained a somewhat different set of hospitals, so this might affect the numbers slightly.

To factor in the effects of the changes from Public Law 105-33 from column 1 into the overall changes shown in this column, it is first necessary to deduct the impact of the zero update included in column 1. Because column 1 compares a FY 1998 baseline after Public Law 105-33 to a FY 1998

baseline before this law was enacted, it includes the impact of going from a FY 1998 update of 2.7 percent to a zero update. Of course, this 2.7 percent update for FY 1998 does not affect FY 1997 payments, so it does not show up in column 8. The impacts of the other changes, however, such as reducing the IME factor and eliminating the IME and DSH adjustments from outlier payments, are reflected in this column.

Finally, there might 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 8 may not equal the sum of the changes in column 1, minus 2.7, plus the changes in columns 4 through 7 (plus the other impacts that we are able to identify).

The overall payment change from FY 1998 to FY 1997 for all hospitals is a 0.9 percent decrease. This reflects the 0.0 percent net change in total payments due to the proposed changes for FY 1998 shown in columns 4 through 7, the zero update for FY 1998, the 0.3 percent higher outlier payments in FY 1998 compared to FY 1997, as discussed above, and the 1.2 percent decline in payments due to Public Law 105-33 (3.9 percent decrease in column 1 minus 2.7 percent for the FY 1998 update). This 1.2 percent decline is attributable largely to reducing IME and eliminating IME and DSH from outlier payments.

Hospitals in urban areas experience a 1.0 percent drop in payments per case from FY 1997. Similar to all hospitals

nationally, this is primarily due to the factors discussed above. Urban hospitals' 0.4 negative impact in FY 1998 due to reclassification is offset by a similar impact from FY 1997 reclassifications. Hospitals in large and other urban areas experience 1.2 percent and 0.7 percent decreases, respectively. The larger decrease for large urban hospitals is primarily due to the reduction in IME payments. Overall payments per case among this group of hospitals would be approximately 0.8 percent higher without this reduction.

Hospitals in rural areas generally fare better during FY 1998 than do urban hospitals. Overall, rural hospitals experience a decrease of 0.4 percent. This smaller decrease for rural hospitals appears to be primarily attributable to the special category rural hospitals. In particular, the 368 rural hospitals categorized as MDHs experience a 0.8 percent average payment increase. As noted previously, hospitals paid on the basis of the hospital-specific rate generally see less negative impact due to the changes in Public Law 105-33 because they do not receive IME, DSH, or outliers.

Puerto Rico stands out as having large payment increases for FY 1998, with urban Puerto Rico hospitals' payments increasing by 12.2 percent, and rural Puerto Rico hospitals' payments increasing by 15.3 percent. As noted above, this is largely due to the implementation of the Puerto Rico-specific wage index during FY 1998 and the change to the payment formula for Puerto Rico hospitals in Public Law 105-33.

Among census divisions, East South Central displays the only increase among urban hospitals, 0.2 percent. This is related to the 1.0 percent overall increase due to the new wage data. On the other hand, the urban Middle Atlantic and New England hospitals lose 2.0 percent and 1.9 percent per case, respectively. This is largely related to the concentration of teaching hospitals in these census areas. In

addition, the Middle Atlantic hospitals lose 0.7 percent due to the elimination of day outlier payments, and the New England hospitals lose 0.3 percent as a result of the new wage data.

Among rural census divisions, the Mountain division displays an overall increase of 0.3 percent. This positive impact is largely due to hospitals reclassified during FY 1998 that were not reclassified during FY 1997. Hospitals in the South Atlantic are the biggest losers among the rural census divisions, with FY 1998 average payments per case falling by 1.0 percent from FY 1997. Twenty hospitals reclassified here during FY 1997 are no longer reclassified during FY 1998. Rural Middle Atlantic hospitals are negatively impacted by the DRG recalibration, new wage data, and eliminating the day outlier payments, all leading to their 0.9 percent decrease in FY 1998 payments.

As expected, large teaching hospitals as a group experience the largest payment reductions. Those with more than 100 residents see payments per case decrease by 1.6 percent. Urban hospitals receiving both IME and DSH experience 1.2 percent payment reductions. Hospitals for which we were unable to determine ownership designation or Medicare utilization due to a lack of cost report data, lose 2.4 percent in payments. As indicated previously, this category contains a number of public New York City hospitals, many of which have large teaching programs.

The largest negative payment impacts from FY 1997 to FY 1998 are among hospitals that were reclassified for FY 1997 and are not reclassified for FY 1998. Overall, these hospitals lose 4.2 percent. On the other hand, hospitals reclassified for FY 1998 that were not reclassified for FY 1997 would experience the greatest payment increases (aside from Puerto Rico hospitals): 7.3 percent for 76 rural hospitals in this category and 2.8 percent for 13 urban hospitals.

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1998 OPERATING PROSPECTIVE PAYMENT SYSTEM  
[Payments per case]

	No. of hospitals (1)	Average FY 1997 payment per case (2) <sup>1</sup>	Average FY 1998 payment per case (3) <sup>1</sup>	All changes (4)
(BY GEOGRAPHIC LOCATION):				
ALL HOSPITALS .....	5,088	6,771	6,711	-0.9
URBAN HOSPITALS .....	2,858	7,347	7,276	-1.0
LARGE URBAN AREAS .....	1,630	7,899	7,808	-1.2
OTHER URBAN AREAS .....	1,228	6,588	6,545	-0.7

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1998 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued  
[Payments per case]

	No. of hos- pitals	Average FY 1997 pay- ment per case	Average FY 1998 pay- ment per case	All changes
	(1)	(2) <sup>1</sup>	(3) <sup>1</sup>	(4)
RURAL AREAS .....	2,230	4,451	4,432	-0.4
BED SIZE (URBAN):				
0-99 BEDS .....	724	4,921	4,878	-0.9
100-199 BEDS .....	954	6,159	6,115	-0.7
200-299 BEDS .....	570	6,926	6,868	-0.8
300-499 BEDS .....	457	7,874	7,794	-1.0
500 OR MORE BEDS .....	153	9,660	9,535	-1.3
BED SIZE (RURAL):				
0-49 BEDS .....	1,170	3,650	3,639	-0.3
50-99 BEDS .....	657	4,152	4,141	-0.3
100-149 BEDS .....	235	4,615	4,594	-0.5
150-199 BEDS .....	93	4,794	4,775	-0.4
200 OR MORE BEDS .....	75	5,612	5,570	-0.8
URBAN BY CENSUS DIV.:				
NEW ENGLAND .....	159	7,913	7,766	-1.9
MIDDLE ATLANTIC .....	431	8,137	7,971	-2.0
SOUTH ATLANTIC .....	420	7,008	6,953	-0.8
EAST NORTH CENTRAL .....	475	7,057	7,004	-0.7
EAST SOUTH CENTRAL .....	163	6,518	6,530	0.2
WEST NORTH CENTRAL .....	191	6,948	6,905	-0.6
WEST SOUTH CENTRAL .....	367	6,830	6,797	-0.5
MOUNTAIN .....	129	7,084	7,041	-0.6
PACIFIC .....	475	8,422	8,343	-0.9
PUERTO RICO .....	48	2,694	3,022	12.2
RURAL BY CENSUS DIV.:				
NEW ENGLAND .....	53	5,283	5,249	-0.6
MIDDLE ATLANTIC .....	85	4,752	4,708	-0.9
SOUTH ATLANTIC .....	297	4,631	4,582	-1.0
EAST NORTH CENTRAL .....	302	4,502	4,470	-0.7
EAST SOUTH CENTRAL .....	275	4,115	4,116	0.0
WEST NORTH CENTRAL .....	512	4,140	4,138	0.0
WEST SOUTH CENTRAL .....	347	4,005	3,994	-0.3
MOUNTAIN .....	213	4,772	4,787	0.3
PACIFIC .....	141	5,582	5,578	-0.1
PUERTO RICO .....	5	2,072	2,390	15.3
(BY PAYMENT CATEGORIES):				
URBAN HOSPITALS .....	2,948	7,309	7,239	-1.0
LARGE URBAN AREAS .....	1,776	7,763	7,675	-1.1
OTHER URBAN AREAS .....	1,172	6,590	6,548	-0.6
RURAL AREAS .....	2,140	4,429	4,409	-0.5
TEACHING STATUS:				
NON-TEACHING .....	3,993	5,494	5,462	-0.6
FEWER THAN 100 RESIDENTS .....	856	7,216	7,158	-0.8
100 OR MORE RESIDENTS .....	239	11,051	10,869	-1.6
DISPROPORTIONATE SHARE HOSPITALS (DSH):				
NON-DSH .....	3,185	5,801	5,755	-0.8
URBAN DSH—100 BEDS OR MORE .....	1,413	7,997	7,917	-1.0
FEWER THAN 100 BEDS .....	89	5,081	5,041	-0.8
RURAL DSH SOLE COMMUNITY (SCH) .....	155	4,229	4,211	-0.4
REFERRAL CENTERS (RRC) .....	50	5,203	5,232	0.6
OTHER RURAL DSH HOSP.—100 BEDS OR MORE .....	66	4,198	4,138	-1.4
FEWER THAN 100 BEDS .....	130	3,565	3,557	-0.2
URBAN TEACHING AND DSH:				
BOTH TEACHING AND DSH .....	708	8,994	8,884	-1.2
TEACHING AND NO DSH .....	330	7,377	7,301	-1.0
NO TEACHING AND DSH .....	794	6,413	6,381	-0.5
NO TEACHING AND NO DSH .....	1,116	5,664	5,621	-0.8
SPECIAL UPDATE HOSPITALS (UNDER SEC. 4401(b) OF PUBLIC LAW 105-33 ...	360	5,276	5,247	-0.6
RURAL HOSPITAL TYPES:				
NONSPECIAL STATUS HOSPITALS .....	915	3,945	3,915	-0.8
RRC .....	158	5,132	5,107	-0.5
SCH/EACH .....	642	4,533	4,514	-0.4
MDH .....	368	3,511	3,540	0.8
SCH/EACH AND RRC .....	57	5,315	5,291	-0.5
TYPE OF OWNERSHIP:				
VOLUNTARY .....	2,924	6,945	6,876	-1.0

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1998 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued  
[Payments per case]

	No. of hos- pitals	Average FY 1997 pay- ment per case	Average FY 1998 pay- ment per case	All changes
	(1)	(2) <sup>1</sup>	(3) <sup>1</sup>	(4)
PROPRIETARY .....	701	6,154	6,120	-0.6
GOVERNMENT .....	1,346	6,278	6,250	-0.4
UNKNOWN .....	117	8,176	7,979	-2.4
MEDICARE UTILIZATION AS A PERCENT OF INPATIENT DAYS:				
0-25 .....	266	8,955	8,850	-1.2
25-50 .....	1,307	8,229	8,148	-1.0
50-65 .....	1,988	6,180	6,133	-0.8
OVER 65 .....	1,410	5,243	5,196	-0.9
UNKNOWN .....	117	8,176	7,979	-2.4
HOSPITALS RECLASSIFIED BY THE MEDICARE GEOGRAPHIC REVIEW BOARD				
RECLASSIFICATION STATUS DURING FY97 AND FY98:				
RECLASSIFIED DURING BOTH FY97 AND FY98:				
URBAN .....	333	6,137	6,083	-0.9
RURAL .....	96	7,297	7,215	-1.1
RECLASSIFIED DURING FY98 ONLY	237	5,253	5,221	-0.6
URBAN .....	89	5,199	5,475	5.3
RURAL .....	13	6,729	6,920	2.8
RECLASSIFIED DURING FY97 ONLY	76	4,389	4,710	7.3
URBAN .....	211	6,047	5,793	-4.2
RURAL .....	94	6,981	6,704	-4.0
FY 98 RECLASSIFICATIONS:	117	4,726	4,504	-4.7
ALL RECLASSIFIED HOSP.::	423	5,994	5,990	-0.1
STAND. AMT. ONLY .....	94	5,941	5,885	-0.9
WAGE INDEX ONLY .....	282	5,923	5,936	0.2
BOTH .....	47	6,333	6,348	0.2
NONRECLASS. ....	4,638	6,855	6,788	-1.0
ALL URBAN RECLASS.:	109	7,226	7,178	-0.7
STAND. AMT. ONLY .....	45	6,449	6,390	-0.9
WAGE INDEX ONLY .....	31	9,160	9,085	-0.8
BOTH .....	33	6,578	6,568	-0.1
NONRECLASS. ....	2,749	7,353	7,281	-1.0
ALL RURAL RECLASS.:	314	5,104	5,133	0.6
STAND. AMT. ONLY .....	49	4,530	4,480	-1.1
WAGE INDEX ONLY .....	251	5,162	5,195	0.6
BOTH .....	14	5,356	5,472	2.2
NONRECLASS. ....	1,889	4,212	4,175	-0.9
OTHER RECLASSIFIED HOSPITALS (SECTION 1886(d)(8)(B)) .....	27	4,740	4,744	0.1

<sup>1</sup> These payment amounts per case do not reflect any estimates of annual case-mix increase.

Table II presents the projected impact of the changes for FY 1998 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 1998 with the average estimated per case payments for FY 1997, 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 II equal the percentage changes in average payments from column 8 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 fourth year of the capital prospective payment system (cost reports beginning in FY 1995) available through the June 13, 1997 update of the Health Care Provider 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 and its projected old capital costs for each year. The lack of this information affects our impact analysis in the following ways:

- 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 1998 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 1998 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 1998. In addition, we have integrated sufficient hospital-specific information into our actuarial model to project the impact of the FY 1998 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 1998 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 have revised Table III since the publication of the proposed rule to provide some information on the effects of the Balanced Budget Act of 1997. Section 4402 of Public Law 105-33 requires a 17.78 percent reduction to the unadjusted standard Federal rate for discharges occurring on or after October 1, 1997. Specifically, we are presenting separate blocks in Table III to show (1) what the effects on FY 1998 payments would have been in the absence of the 17.78 percent reduction to the standard Federal rate, and (2) the effects of all changes, including the 17.78 percent reduction to the standard rate, on payments in FY 1998. In Table III, we used the same outlier effects that we used in conjunction with setting the final rate for FY 1998 (that is, the rate with the effects of the 17.78 percent reduction to the standard rate). If we had recalibrated outliers for the unreduced Federal rate, the estimated rate might have been slightly different. However, the estimates in Table III of the effects without the reduction to the standard Federal rate are adequate for the purpose of evaluating the relative impact of the Balanced Budget Act of 1997.

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 1998 payment policies. We have also revised Table V to provide information on the effects of the Balanced Budget Act of 1997. Specifically, we have added two additional columns to Table V. The first additional column presents the average FY 1998 payments per case without the effects of the Balanced Budget Act of 1997. The second column presents changes attributable solely to the Balanced Budget Act of 1997.

*B. Projected Impact Based on the FY 1998 Actuarial Model*

1. Assumptions

In this impact analysis, we model dynamically the impact of the capital prospective payment system from FY 1997 to FY 1998 using a capital cost model. The FY 1998 model, described in Appendix B of this final rule with comment period, 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 1995 received through the June 13, 1997 update of 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, 1997 in the provider-specific file. We used these data to determine the FY 1998 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 1995, 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 1995. All Federal rate payment parameters are assigned to the applicable hospital.

Recently available cost report data indicate that old capital costs are declining faster than we previously projected. Consequently, for FY 1998 we are projecting faster declines in old capital. To make up for the larger declines in old capital, we are projecting faster growth in new capital. The combination of these two factors will make the 100-percent Federal rate higher than the hold-harmless rate for some hold-harmless hospitals. Therefore, we are now projecting that more hospitals will move to the 100-percent Federal rate than previously projected.

For purposes of this impact analysis, the FY 1998 actuarial model includes the following assumptions:

- Medicare inpatient capital costs per discharge are projected to change at the following rates during these periods:

Average percentage change in capital costs per discharge	
Fiscal year	Percentage change
1996 .....	-2.84
1997 .....	4.46
1998 .....	4.50

- The Medicare case-mix index will increase by 0.5 percent in FY 1997 and by 1.0 in FY 1998.
- Beginning in FY 1996 (with the expiration of budget neutrality), the Federal capital rate and hospital-specific rate were updated 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 final FY 1998 update for inflation is 0.90 percent (see section III of the Addendum).

2. Results

We have used the actuarial model to estimate the change in payment for capital-related costs from FY 1997 to FY 1998. 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 1998 percent of discharges	FY 1998 percent of capital costs	FY 1998 percent of capital payments
Low Cost Hospital .....	66	62	56	58
High Cost Hospital .....	34	38	44	42

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 1997 to FY 1998 using the above described actuarial model. With the final FY 1998 Federal rate, we estimate aggregate Medicare capital payments will decrease by 6.74 percent in FY 1998. The main reason for this decrease is the impact of the 17.78 percent reduction to the Federal rate and the hospital-specific rate.

TABLE III.—IMPACT OF FINAL CHANGES FOR FY 1998 ON PAYMENTS PER DISCHARGE

	No. of hospitals	Discharges	Adjusted Federal payment	Average Federal percent	Hospital specific payment	Hold harmless payment	Exceptions payment	Total payment	Percent change over FY 1997
FY 1997 Payments per Discharge									
Low Cost Hospitals .....	3,331	6,898,994	464.25	63.57	135.71	3.07	11.79	614.82	.....
Fully Prospective .....	3,078	6,246,888	436.83	60.00	149.88	.....	12.52	599.23	.....
100% Federal Rate .....	235	609,412	752.47	100.00	.....	.....	3.30	755.77	.....
Hold Harmless .....	18	42,693	362.22	48.77	.....	496.62	25.67	884.51	.....
High Cost Hospitals .....	1,684	4,226,709	733.06	97.27	.....	26.00	8.63	767.69	.....
100% Federal Rate .....	1,522	3,963,050	757.10	100.00	.....	.....	6.29	763.39	.....
Hold Harmless .....	162	263,659	371.65	52.95	.....	416.84	43.77	832.26	.....
Total Hospitals .....	5,015	11,125,703	566.37	76.62	84.15	11.78	10.59	672.90	.....
FY 1998 Payments per Discharge Before Effects of the Balanced Budget Act of 1997									
Low Cost Hospitals .....	3,331	7,064,036	568.02	72.69	108.16	2.43	10.80	689.41	12.13
Fully Prospective .....	3,078	6,396,330	545.02	70.00	119.46	.....	11.49	675.96	12.81
100% Federal Rate .....	241	632,394	806.40	100.00	.....	.....	2.75	809.15	7.06
Hold Harmless .....	12	35,312	464.85	54.94	.....	486.07	30.35	981.26	10.94
High Cost Hospitals .....	1,684	4,327,823	808.62	98.86	.....	11.55	10.34	830.51	8.18
100% Federal Rate .....	1,591	4,191,128	819.68	100.00	.....	.....	8.26	827.95	8.46
Hold Harmless .....	93	136,695	469.57	61.33	.....	365.62	73.98	909.17	9.24
Total Hospitals .....	5,015	11,391,859	659.42	82.91	67.07	5.89	10.63	743.02	10.42
FY 1998 Payments per Discharge After Effects of the Balanced Budget Act of 1997									
Low Cost Hospitals .....	3,331	7,064,036	458.51	72.64	87.16	2.73	22.08	570.48	-7.21
Fully Prospective .....	3,078	6,396,330	440.41	70.00	96.25	.....	23.19	559.85	-6.57
100% Federal Rate .....	238	626,061	650.85	100.00	.....	.....	7.55	658.40	-12.88
Hold Harmless .....	15	41,645	348.31	53.30	.....	462.72	69.84	880.87	-0.41
High Cost Hospitals .....	1,684	4,327,823	643.55	97.70	.....	20.40	18.16	682.10	-11.15
100% Federal Rate .....	1,528	4,070,204	662.07	100.00	.....	.....	15.37	677.44	-11.26
Hold Harmless .....	156	257,620	351.00	57.92	.....	342.67	62.11	755.78	-9.19
Total Hospitals .....	5,015	11,391,859	528.81	82.41	54.04	9.44	20.59	612.88	-8.92

We project that low capital cost hospitals paid under the fully prospective payment methodology will experience an average decrease in payments per case of 6.57 percent, and that high capital cost hospitals will experience an average decrease of 11.15 percent.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage will increase from 60 percent to 70 percent and the hospital-specific rate payment percentage will decrease from 40 to 30 percent in FY 1998. 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 high cost hospitals receiving a hold-harmless payment for old capital will increase from 52.95 percent to 57.92 percent. Without the effects of the Balanced Budget Act of 1997, we estimate that this figure would have increased to 61.33 percent. We estimate the percentage of hold-harmless hospitals paid based on 100 percent of the Federal rate will increase

from 90.7 percent to 91.2 percent. Excluding the effects of the Balanced Budget Act of 1997, we estimate that the percentage of hold-harmless hospitals paid based on 100 percent of the Federal rate would have increased to 94.6 percent.

We expect that the average hospital-specific rate payment per discharge will decrease from \$84.15 in FY 1997 to \$54.04 in FY 1998. This is partly due to the decrease in the hospital-specific rate payment percentage from 40 percent in FY 1997 to 30 percent in FY 1998. Excluding the effects of the Balanced Budget Act of 1997, we estimate that the average hospital-specific payment per discharge would have decreased less dramatically to \$67.07 in FY 1998.

For FY 1998, the minimum payment levels are:

- 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 1.57 percent of total

capital payments in FY 1997 to 3.36 percent of payments in FY 1998. These figures are lower than prior estimates due to refinements to our actuarial model. For a further explanation of these refinements, refer to Section B of this Appendix.

The projected distribution of the payments is shown in the table below:

Estimated FY 1998 exceptions payments		
Type of hospital	No. of hospitals	Percent of exceptions payments
Low Capital Cost	314	67
High Capital Cost .....	198	33
Total .....	512	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 .....	5,015	3.4	35.2	61.4
Large urban areas (populations over 1 million) .....	1,590	3.9	42.7	53.4
Other urban areas (populations of 1 million or fewer) .....	1,209	4.2	43.4	52.4
Rural areas .....	2,216	2.6	25.4	72.0
Urban hospitals .....	2,799	4.0	43.0	52.9
0-99 beds .....	674	4.7	36.8	58.5
100-199 beds .....	946	5.6	48.9	45.5
200-299 beds .....	569	3.3	43.8	52.9
300-499 beds .....	457	1.8	40.3	58.0
500 or more beds .....	153	0.7	39.2	60.1
Rural hospitals .....	2,216	2.6	25.4	72.0
0-49 beds .....	1,158	2.2	17.6	80.1
50-99 beds .....	655	3.4	30.1	66.6
100-149 beds .....	235	2.1	40.4	57.4
150-199 beds .....	93	4.3	31.2	64.5
200 or more beds .....	75	1.3	49.3	49.3
By Region:				
Urban by Region .....	2,799	4.0	43.0	52.9
New England .....	158	0.0	27.8	72.2
Middle Atlantic .....	426	1.6	36.9	61.5
South Atlantic .....	414	4.1	55.1	40.8
East North Central .....	471	3.8	33.5	62.6
East South Central .....	159	5.7	52.8	41.5
West North Central .....	188	4.8	38.3	56.9
West South Central .....	344	10.2	58.4	31.4
Mountain .....	124	3.2	51.6	45.2
Pacific .....	467	2.6	39.4	58.0
Puerto Rico .....	48	4.2	25.0	70.8
Rural by Region .....	2,216	2.6	25.4	72.0
New England .....	53	0.0	22.6	77.4

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)	
Middle Atlantic .....	84	2.4	29.8	67.9
South Atlantic .....	293	2.0	33.4	64.5
East North Central .....	301	1.3	20.9	77.7
East South Central .....	273	2.2	34.8	63.0
West North Central .....	511	2.7	17.8	79.5
West South Central .....	345	2.6	28.7	68.7
Mountain .....	211	6.2	19.9	73.9
Pacific .....	140	2.9	25.7	71.4
Large urban areas (populations over 1 million) .....	1,735	3.6	42.6	53.8
Other urban areas (populations of 1 million or fewer) .....	1,153	4.3	42.8	52.9
Rural areas .....	2,127	2.7	25.1	72.2
Teaching Status:				
Non-teaching .....	3,922	3.5	34.9	61.6
Fewer than 100 Residents .....	855	3.9	37.5	58.6
100 or more Residents .....	238	0.4	31.9	67.6
Disproportionate share hospitals (DSH):				
Non-DSH .....	3,129	3.6	31.3	65.2
Urban DSH:				
100 or more beds .....	1,408	3.3	45.7	51.0
Less than 100 beds .....	81	2.5	34.6	63.0
Rural DSH:				
Sole Community (SCH/EACH) .....	154	4.5	20.8	74.7
Referral Center (RRC/EACH) .....	50	2.0	52.0	46.0
Other Rural:				
100 or more beds .....	66	1.5	39.4	59.1
Less than 100 beds .....	127	0.8	26.0	73.2
Urban teaching and DSH:				
Both teaching and DSH .....	707	2.3	38.0	59.7
Teaching and no DSH .....	329	4.6	32.8	62.6
No teaching and DSH .....	782	4.2	51.4	44.4
No teaching and no DSH .....	1,070	4.6	42.3	53.1
Rural Hospital Types:				
Non special status hospitals .....	905	1.3	26.5	72.2
RRC/EACH .....	158	1.3	41.8	57.0
SCH/EACH .....	641	5.8	22.5	71.8
Medicare-dependent hospitals (MDH) .....	366	0.8	17.8	81.4
SCH, RRC and EACH .....	57	7.0	33.3	59.6
Type of Ownership:				
Voluntary .....	2,912	3.1	34.9	62.1
Proprietary .....	684	8.2	60.4	31.4
Government .....	1,344	1.8	22.8	75.4
Medicare Utilization as a Percent of Inpatient Days:				
0-25 .....	254	3.5	33.5	63.0
25-50 .....	1,300	4.4	42.3	53.3
50-65 .....	1,982	3.3	35.3	61.5
Over 65 .....	1,404	2.8	28.5	68.7

As we explain in Appendix B, we were not able to determine a hospital-specific rate for 73 of the 5,088 hospitals in our database. Consequently, the payment methodology distribution is based on 5,015 hospitals. These 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 35.2 percent in FY 1998.

Table IV indicates that 61.4 percent of hospitals will be 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 (72.0 percent and 75.4 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 31.4 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 1998 actuarial model to estimate the potential impact of changes for FY 1998 on total capital payments per case, using a universe of 5,015 hospitals. The individual hospital payment parameters are taken from the best available data, including: The July 1, 1997 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 1997 (column 2). For FY 1998, we present estimates of payments per case both before and after the effects of the 17.78 percent reduction to the standard Federal and hospital-specific rates. Column 5 shows the total percentage change in payments from FY 1997 to FY 1998 (after the effects of the Balanced Budget Act of 1997). Column 6 presents the percentage change that can be attributed to the Balanced Budget Act of 1997 (the 17.78 percent reduction). Column 7 presents the percentage change in payments that can be attributed to Federal rate changes.

Federal rate changes represented in Column 7 include the 15.36 percent decrease in the Federal rate which includes the Balanced Budget Act reduction, a 1.0 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 MGCRB. Column 5 includes the effects of the Federal rate changes represented in column 7. Column 5 also reflects the effects of all other changes, including: the change from 60 percent to 70 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, (2) region, and (3) payment classification.

The simulation results show that, on average, capital payments per case can be expected to decrease 8.9 percent in FY 1998. The results show that the effect of the Balanced Budget Act of 1997 is to decrease payments by 17.5 percent. The results show that the effect of the Federal rate changes is to decrease payments by 11.0 percent. (This figure includes the effects of the Balanced Budget Act of 1997, but also includes the other payment adjustments which offset the magnitude of the 17.78 percent reduction.) In addition to the 11.0 percent decrease attributable to the Federal rate changes, a 2.1 percent increase is attributable to the effects of all other changes.

Our comparison by geographic location shows that capital payments per case to urban and rural hospitals experience similar rates of decrease (8.8 percent and 9.9 percent, respectively). Payments per case for urban hospitals will decrease at about the same rate as payments per case for rural hospitals (11.0 percent and 11.4 percent, respectively) from the Federal rate changes alone. Urban hospitals will gain approximately the same as rural hospitals (2.2 percent and 1.5 percent, respectively) from the effects of all other changes.

By region, there are variations in the change in payments per case. All regions are estimated to receive decreases in total capital payments per case, due to the reduction to the rate and due to the increased share of payments that are based on the Federal rate (from 60 to 70 percent). Changes by region vary from the smallest decrease of 5.1 percent (rural New England region) to the largest decrease of 11.4 percent (urban Puerto Rico hospitals). Overall, Puerto Rico hospitals are affected less by the change to the Federal rate and by the rate reduction due to the Balanced Budget Act of 1997 than other hospitals are nationally. Puerto Rico hospitals are projected to experience a slightly larger decrease in overall payments per case than other regions due to the other factors. We project a reduction in exceptions payments to Puerto Rico hospitals relative to the rest of the nation, which means that Puerto Rico hospitals are receiving a greater share of their capital costs as part of their regular payments. We also project a decrease in hold-harmless payments which is greater than the national average.

By type of ownership, proprietary hospitals are projected to have the largest rate of decrease (11.0 percent, 11.8 percent due to Federal rate changes and a positive increase of 0.8 percent from the effects of all other changes). Payments to voluntary hospitals will decrease 8.8 percent (an 11.0 percent decrease due to Federal rate changes and a 2.2 percent increase from the effects of all other changes) and payments to government hospitals will decrease 7.6 percent (a 10.3 percent decrease due to Federal rate changes and a 2.7 percent increase from the effects of all other changes).

Section 1886(d)(10) of the Act established the 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 1998 compared to the effects of reclassification for FY 1997, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 1998 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 1998 as a whole are projected to experience a 9.2 percent decrease in payments (a 10.9 percent decrease attributable to Federal rate changes and a 1.7 percent increase attributable to the effects of all other changes). Payments to nonreclassified hospitals will decrease slightly less (8.7 percent) than reclassified hospitals (9.2 percent) overall. Payments to nonreclassified hospitals will decrease slightly less than reclassified hospitals from the Federal rate changes (10.8 percent compared to 10.9 percent), but they will gain slightly more from the effects of all other changes (2.1 percent compared to 1.7 percent).



TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE  
[FY 1997 Payments Compared To FY 1998 Payments]

	Number of hospitals	Average FY 1997 payments/case	Average FY 1998 payments/case before Balanced Budget Act of 1997	Average FY 1998 payments/case after Balanced Budget Act of 1997	All changes	Change due to Balanced Budget Act of 1997	Portion attributable to Federal rate change
By Geographic Location:							
All hospitals .....	5,015	673	743	613	-8.9	-17.5	-11.0
Large urban areas (populations over 1 million) .....	1,590	770	851	703	-8.7	-17.4	-10.9
Other urban areas (populations of 1 million or fewer) .....	1,209	664	733	605	-8.9	-17.5	-11.1
Rural areas .....	2,216	461	507	416	-9.9	-18.0	-11.4
Urban hospitals .....	2,799	725	801	661	-8.8	-17.4	-11.0
0-99 beds .....	674	540	588	485	-10.1	-17.5	-11.6
100-199 beds .....	946	649	710	585	-9.8	-17.5	-11.5
200-299 beds .....	569	700	771	633	-9.6	-17.9	-11.4
300-499 beds .....	457	756	840	693	-8.2	-17.4	-10.9
500 or more beds .....	153	883	985	820	-7.2	-16.8	-9.7
Rural hospitals .....	2,216	461	507	416	-9.9	-18.0	-11.4
0-49 beds .....	1,158	367	403	333	-9.3	-17.5	-11.1
50-99 beds .....	655	433	474	390	-9.9	-17.7	-11.3
100-149 beds .....	235	480	531	434	-9.7	-18.4	-11.9
150-199 beds .....	93	499	548	452	-9.5	-17.6	-10.7
200 or more beds .....	75	581	637	518	-10.7	-18.7	-12.0
By Region:							
Urban by Region .....	2,799	725	801	661	-8.8	-17.4	-11.0
New England .....	158	735	815	673	-8.5	-17.4	-11.3
Middle Atlantic .....	426	769	849	698	-9.3	-17.8	-11.1
South Atlantic .....	414	719	791	657	-8.6	-17.0	-11.3
East North Central .....	471	686	760	625	-8.9	-17.8	-10.6
East South Central .....	159	668	746	620	-7.1	-16.9	-10.0
West North Central .....	188	709	785	650	-8.3	-17.3	-10.6
West South Central .....	344	734	806	668	-9.0	-17.1	-10.8
Mountain .....	124	742	811	668	-9.9	-17.6	-11.3
Pacific .....	467	790	877	723	-8.5	-17.5	-11.2
Puerto Rico .....	48	300	319	266	-11.4	-16.7	-10.6
Rural by Region .....	2,216	461	507	416	-9.9	-18.0	-11.4
New England .....	53	531	596	504	-5.1	-15.5	-11.1
Middle Atlantic .....	84	477	518	425	-10.9	-17.9	-12.0
South Atlantic .....	293	496	541	448	-9.7	-17.2	-11.8
East North Central .....	301	458	505	414	-9.8	-18.0	-11.4
East South Central .....	273	425	471	381	-10.4	-19.2	-11.8
West North Central .....	511	439	480	395	-10.0	-17.7	-10.6
West South Central .....	345	425	467	379	-10.9	-18.9	-11.8
Mountain .....	211	486	533	437	-9.9	-17.9	-10.4
Pacific .....	140	523	584	479	-8.4	-17.9	-11.1
By Payment Classification:							
All hospitals .....	5,015	673	743	613	-8.9	-17.5	-11.0
Large urban areas (populations over 1 million) .....	1,735	760	840	693	-8.7	-17.5	-10.9
Other urban areas (populations of 1 million or fewer) .....	1,153	663	732	605	-8.8	-17.4	-11.1
Rural areas .....	2,127	456	500	411	-10.0	-17.9	-11.5
Teaching Status:							
Non-teaching .....	3,922	582	638	523	-10.1	-18.0	-11.7
Fewer than 100 Residents .....	855	711	787	648	-8.8	-17.6	-10.9
100 or more Residents .....	238	961	1,075	902	-6.2	-16.2	-9.4
Urban DSH:							
100 or more beds .....	1,408	764	844	701	-8.2	-16.9	-10.6
Less than 100 beds .....	81	528	583	477	-9.7	-18.2	-11.3
Rural DSH:							
Sole Community (SCH/EACH) .....	154	412	448	381	-7.5	-15.0	-10.6
Referral Center (RRC/EACH) .....	50	534	587	485	-9.2	-17.4	-11.2
Other Rural:							
100 or more beds .....	66	438	478	389	-11.3	-18.6	-12.3
Less than 100 beds .....	127	367	405	327	-11.1	-19.3	-11.6
Urban teaching and DSH:							
Both teaching and DSH .....	707	830	919	767	-7.5	-16.5	-10.1

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued  
[FY 1997 Payments Compared To FY 1998 Payments]

	Number of hospitals	Average FY 1997 payments/case	Average FY 1998 payments/case before Balanced Budget Act of 1997	Average FY 1998 payments/case after Balanced Budget Act of 1997	All changes	Change due to Balanced Budget Act of 1997	Portion attributable to Federal rate change
Teaching and no DSH .....	329	720	805	659	-8.5	-18.2	-10.9
No teaching and DSH .....	782	657	722	594	-9.6	-17.7	-11.5
No teaching and no DSH .....	1,070	628	688	562	-10.5	-18.4	-12.1
Rural Hospital Types:							
Non special status hospitals .....	905	412	452	366	-11.1	-19.0	-12.0
RRC/EACH .....	158	541	596	481	-11.1	-19.3	-11.7
SCH/EACH .....	641	444	484	407	-8.4	-15.9	-11.0
Medicare-dependent hospitals (MDH) .....	366	367	408	337	-8.4	-17.6	-11.3
SCH, RRC and EACH .....	57	537	581	493	-8.1	-15.0	-10.4
Hospitals Reclassified by the Medicare Geographic Classification Review Board:							
Reclassification Status During FY97 and FY98:							
Reclassified During Both FY97 and FY98 .....	333	631	705	569	-9.8	-19.2	-11.6
Reclassified During FY98 Only .....	89	544	629	515	-5.4	-18.2	-6.8
Reclassified During FY97 Only .....	178	615	654	529	-13.9	-19.1	-14.4
FY98 Reclassifications:							
All Reclassified Hospitals ....	422	618	693	561	-9.2	-19.1	-10.9
All Nonreclassified Hospitals .....	4,511	679	750	620	-8.7	-17.3	-10.8
All Urban Reclassified Hospitals .....	109	718	804	648	-9.8	-19.4	-11.3
Urban Nonreclassified Hospitals .....	2,690	725	801	662	-8.7	-17.3	-10.9
All Reclassified Rural Hospitals .....	313	545	613	498	-8.8	-18.8	-10.6
Rural Nonreclassified Hospitals .....	1,876	430	467	385	-10.3	-17.5	-11.8
Other Reclassified Hospitals (Section 1886(D)(8)(B)) .....	27	508	564	449	-11.7	-20.5	-11.6
Type of Ownership:							
Voluntary .....	2,912	688	760	628	-8.8	-17.5	-11.0
Proprietary .....	684	676	738	602	-11.0	-18.5	-11.8
Government .....	1,344	590	656	545	-7.6	-17.0	-10.3
Medicare Utilization as a Percent of Inpatient Days:							
0-25 .....	254	756	845	709	-6.2	-16.1	-10.6
25-50 .....	1,300	792	876	727	-8.3	-17.0	-10.4
50-65 .....	1,982	628	694	570	-9.3	-17.8	-11.3
Over 65 .....	1,404	560	616	503	-10.2	-18.2	-12.0

### Appendix B: Technical Appendix on the New Capital Cost 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 expired 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. To determine these factors, we must continue to project capital costs and payments.

We have used the capital acquisition model since the start of prospective payments for capital costs. We now have 4 years of cost reports under the capital prospective payment system. Consequently, we have developed a new capital cost model to replace the capital

acquisition model. This new model makes use of the data from these cost reports.

The following cost reports are used in the capital cost model for this final rule: the June 13, 1997 update of the cost reports for PPS-IX (cost reporting periods beginning in FY 1992), PPS-X (cost reporting periods beginning in FY 1993), PPS-XI (cost reporting periods beginning in FY 1994), and PPS-XII (cost reporting periods beginning in FY 1995). In addition, to model payments, we use the July 1, 1997 update of the provider-specific file, and the March

1994 update of the intermediary audit file.

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 developed FY 1992 through FY 1997 hospital-specific rates using the provider-specific file and the intermediary audit file. (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 ensured that increases in the hospital-specific rates were at least as large as the published updates (increases) for the hospital-specific rates each year. We were able to match hospitals to the files as shown in the following table:

Source	Number of hospitals
Provider-Specific File Only .....	117
Provider-Specific and Audit File	4971
Total .....	5088

Ninety-seven of the 5,088 hospitals had unusable or missing data or had no cost reports available. We determined from the cost reports that 24 of the 97 hospitals were paid under the hold-harmless methodology. Since the hospital-specific amount is not used to determine payments for these hospitals, we were able to include these 24 hospitals in the analysis. Seventy-three hospitals could not be used in the analysis because of insufficient information. They account for about 0.2 percent of admissions so any effect should be minimal. Therefore, we used data from cost reports from 5,015 hospitals for the analysis.

We analyzed changes in capital-related costs (depreciation, interest, rent, leases, insurance, and taxes) reported in the cost reports. We found a wide variance among hospitals in the growth of these costs. For hospitals with more than 100 beds, the distribution and mean of these cost increases were different for large (greater than  $\pm 20$  percent) changes in bed-size. We also analyzed changes in the growth in old capital and new capital for cost reports that provided this information. For old capital, we limited the analysis only for decreases in old capital. We did this since the opportunity for most hospitals to treat "obligated" capital put into service as old capital has expired. Old capital costs should, therefore, decrease

as assets become fully depreciated, and as interest costs decrease as the loan is amortized.

The new capital cost model separates the hospitals into three mutually exclusive groups. Hold-harmless hospitals with data on old capital were placed in the first group. Of the remaining hospitals, those hospitals with fewer than 100 beds comprise the second group. The third group consists of all hospitals that did not fit into either of the first two groups. Each of these groups displayed unique patterns of growth in capital costs. We found that the gamma distribution is useful in explaining and describing the patterns of increase in capital costs. A gamma distribution is a statistical distribution that can be used to describe patterns of growth rates, with greatest proportion of rates being at the low end. We use the gamma distribution to estimate individual hospital rates of increase.

(1) For hold-harmless hospitals, old capital cost changes were fitted to a truncated gamma distribution, that is, a gamma distribution covering only the distribution of cost decreases. New capital costs changes were fitted to the entire gamma distribution allowing for both decreases and increases.

(2) For hospitals with fewer than 100 beds (small), total capital cost changes were fitted to the gamma distribution allowing for both decreases and increases.

(3) Other (large) hospitals were further separated into three groups:

- Bed-size decreases over 20 percent (decrease)
- Bed-size increases over 20 percent (increase)
- Other (no-change).

Capital cost changes for large hospitals were fitted to gamma distributions for each bed-size change group, allowing for both decreases and increases in capital costs. We analyzed the probability distribution of increases and decreases in bed-size for large hospitals. We found the probability somewhat dependent on the prior year change in bed-size and factored this dependence into the analysis. Probabilities of bed-size change were determined. Separate sets of probability factors were calculated to reflect the dependence on prior year change in bed-size (increase, decrease, and no change).

The gamma distributions were fitted to changes in aggregate capital costs for the entire hospital. We checked the relationship between aggregate costs and Medicare per discharge costs. For large hospitals, there was a small variance, but the variance was larger for small hospitals. Since costs are used

only for the hold-harmless methodology and to determine exceptions, we decided to use the gamma distributions fitted to aggregate cost increases for estimating distributions of cost per discharge increases.

Capital costs per discharge calculated from the cost reports were increased by random numbers drawn from the gamma distribution to project costs in future years. Old and new capital were projected separately for hold-harmless hospitals. Aggregate capital per discharge costs were projected for all other hospitals. Because the distribution of increases in capital costs varies with changes in bed-size for large hospitals, we first projected changes in bed-size for large hospitals before drawing random numbers from the gamma distribution. Bed-size changes were drawn from the uniform distribution with the probabilities dependent on the previous year bed-size change. The gamma distribution has a shape parameter and a scaling parameter. (We used different parameters for each hospital group, and for old and new capital.)

We used discharge counts from the cost reports to calculate capital cost per discharge. To estimate total capital costs for FY 1996 (the MEDPAR data year) and later, we use the number of discharges from the MEDPAR data. Some hospitals have considerably more discharges in FY 1996 than in the years for which we calculated cost per discharge from the cost report data. Consequently, a hospital with few cost report discharges would have a high capital cost per discharge since fixed costs would be allocated over only a few discharges. If discharges increase substantially, the cost per discharge would decrease because fixed costs would be allocated over many discharges. If the projection of capital cost per discharge is not adjusted for increases in discharges, the projection of exceptions would be overstated. We correct this situation by recalculating the cost per discharge with the MEDPAR discharges if the MEDPAR discharges exceed the cost report discharges by more than 20 percent. We do not adjust for increases of less than 20 percent because we have not received every FY 1996 discharge, and because some discharges are removed from the analysis because they are statistical outliers. This adjustment reduces our estimate of exceptions payments, and consequently, the reduction to the Federal Rate for exceptions is smaller. We will continue to monitor our modeling of exceptions payments and make adjustments as needed.

The average national capital cost per discharge generated by this model is the combined average of many randomly generated increases. This average must equal the projected average national capital cost per discharge, which we projected separately (outside this model). We adjusted the shape parameter of the gamma distributions so that the modeled average capital cost per discharge matches our projected capital cost per discharge. The shape parameter for old capital was not adjusted since we are modeling the aging of "existing" assets. This model provides a distribution of capital costs among hospitals that are consistent with our aggregate capital projections.

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 as determined from the provider-specific file and the cost reports. 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 1996 MedPAR file using the FY 1998 DRG relative weights published in section V. of the Addendum of this final rule. The case-mix index is increased each year after FY 1996 based on analysis of past experiences in case-mix increases. Based on analysis of recent case-mix increases, we estimate that case-mix will increase 0.5 percent in FY 1997 and 1.0 percent in FY 1998. (Since we are using FY 1996 cases for our analysis, the FY 1996 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 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 1997, the budget neutrality adjustment factor was 1.00123. To determine the factor for FY 1998, we first determined the portion of the Federal rate that would be paid for each hospital in FY 1998 based on its applicable payment methodology. Using our model, we then compared estimated aggregate Federal rate payments based on the FY 1997 DRG relative weights and the FY 1997 geographic adjustment factor to estimated aggregate Federal rate payments based on the FY 1998 relative weights and the FY 1998 geographic adjustment factor. In making the comparison, we held the FY 1998 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 0.99892 for FY 1998 should be applied to the previous cumulative FY 1997 adjustment of 1.00123, yielding a cumulative adjustment of 1.00015 through FY 1998. The following table summarizes the adjustment factors for each fiscal year:

BUDGET NEUTRALITY ADJUSTMENT FOR DRG RECLASSIFICATIONS AND RE-CALIBRATION AND THE GEOGRAPHIC ADJUSTMENT FACTOR

Fiscal year	Incremental adjustment	Cumulative adjustment
1992 .....	.....	1.00000
1993 .....	0.99800	0.99800
1994 .....	1.00531	1.00330
1995 .....	0.99980	1.00310
1996 .....	0.99940	1.00250
1997 .....	0.99873	1.00123
1998 .....	0.99892	1.00015

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 payments.

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 fiscal years 1992 through 1998, and the estimated factors that would be applicable through FY 2002. We caution that these are estimates for fiscal years 1999 and later, 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 budget neutrality adjustment factor will remain at 1.00015 for FY 1998 and later because we do not have sufficient information to estimate the change that will occur in the factor for years after FY 1998.

The projections are as follows:

Fiscal year	Update factor	Exceptions reduction factor	Budget neutrality factor	DRG/GAF adjustment factor <sup>1</sup>	Outlier adjustment factor	Federal rate adjustment	Federal rate (after outlier) reduction)
1992	N/A	0.9813	0.9602	.....	.9497	.....	415.59
1993	6.07	.9756	.9162	.9980	.9496	.....	417.29
1994	3.04	.9485	.8947	1.0053	.9454	<sup>2</sup> .9260	378.34
1995	3.44	.9734	.8432	.9998	.9414	.....	376.83
1996	1.20	.9849	N/A	.9994	.9536	<sup>3</sup> .9972	461.96
1997	0.70	.9358	N/A	.9987	.9481	.....	438.92
1998	0.90	.9659	N/A	.9989	.9382	<sup>4</sup> .8222	371.51
1999	1.20	.9518	N/A	<sup>5</sup> 1.0000	<sup>5</sup> .9382	.....	370.48
2000	1.20	.9409	N/A	1.0000	.9382	.....	370.63
2001	1.30	.9324	N/A	1.0000	.9382	.....	372.06
2002	1.30	<sup>6</sup> 1.0000	N/A	1.0000	.9382	.....	404.22

<sup>1</sup> Note: The incremental change over the previous year.

<sup>2</sup> Note: OBRA 1993 adjustment.

<sup>3</sup> Note: Adjustment for change in the transfer policy.

<sup>4</sup> Note: Balanced Budget Act of 1997 adjustment.

<sup>5</sup> Note: Future adjustments are, for purposes of this projection, assumed to remain at the same level.

<sup>6</sup> 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: Revised Hospital Market Basket Data Sources**

**I. Introduction: Market Basket Relative Weights and Choice of Price Proxy Variables for the Operating Hospital Input Price Indexes**

In the August 30, 1996 final rule (61 FR 46323), we discussed in detail the current 1992-based hospital market baskets, and noted that we would revise the hospital market baskets when new cost data for 1992 became available. This appendix describes the technical features of the revisions to the 1992-based indexes that we set forth in this final rule with comment period in section IV of the preamble. For both the prospective payment and excluded hospital market baskets, the differences between the revised market basket and the current market basket are noted.

We present this description of the hospital operating market baskets in three steps:

- A synopsis of the differences between the current 1992-based market baskets and the revisions to those market baskets.
- A description of the methodology used to develop the cost category weights in the revised market baskets, making note of the differences from the methodology used to develop the 1992-based current market baskets.
- A description of the data sources used to measure price change for each component of the revised market baskets, making note of the differences from the price proxies used in the 1992-based current hospital market baskets.

**II. Synopsis of Differences**

Two major differences exist between the 1992-based current hospital market baskets and the hospital market baskets.

The first major change is that the revised hospital market baskets are based on additional hospital expenditure data—data not available until after the publication of the August 30, 1996 final rule. The 1992-based current market baskets were derived from hospital cost reports for cost reporting periods beginning on or after October 1, 1991 and before October 1, 1992, augmented by information from the latest available (1987) Input-Output Table for the hospital industry, produced by the Bureau of Economic Analysis, U.S. Department of Commerce. In addition to the data sources cited above, the revised hospital market baskets use data from the 1992 Asset and Expenditure Survey, produced by the U.S. Department of Commerce, Economic and Statistics Administration, Bureau of the Census. These are more recent data made available after the publication of the August 30, 1996 final rule.

The second major difference is that some cost categories have been combined with other cost categories to better reflect the new data sources. Specifically, the Transportation Services category has been combined with All Other Nonlabor-Intensive Services; Business Services and Computer and Data Processing Services with All Other Labor-Intensive Services; and part of Fuel Oil, Coal, etc. was combined with Natural Gas into Fuels, Nonhighway. The remainder of the Fuel Oil, Coal, etc. was combined with Miscellaneous Products. These category mergers reflect the Bureau of the Census categories in the Asset and Expenditure Survey and its information on services.

**III. Methodology for Developing the Revised Cost Category Weights**

Cost category weights for the revised market baskets were developed in three stages. First, base weights for the six main categories (Wages and Salaries, Employee Benefits, Pharmaceuticals, Nonmedical Professional Fees, Professional Liability Insurance, and All Other Expenses) were obtained from the 1992-based hospital market baskets. As the base year is not changing, these weights, developed last year from HCRIS data and the American Hospital Association (AHA) Annual Survey information, will not change. The weight for All Other Expenses was divided into subcategories using cost shares from the 1992 Asset and Expenditure Survey for Hospitals, U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census. These subcategories were further divided 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 (BEA), aged to 1992 using price changes.

A description of the source of the six main category weights is found in the August 30, 1996 final rule (61 FR 46323). The weight for the Utilities category, as well as those for the Electricity, Fuels Nonhighway, and Water and Sewerage Maintenance cost categories, was derived from the 1992 Asset and Expenditure Survey. 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 telephone services, 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 1992 Asset and Expenditure Survey, augmented by data from the 1987 Input-Output Table produced by BEA for the hospital industry, aged forward to 1992 using price changes, and then standardized to be consistent with data from the Asset and Expenditure Survey.

#### **IV. Price Proxies Used to Measure Cost Category Growth**

Descriptions of the price proxies used to measure cost category price growth in the current hospital market baskets are found in the August 30, 1996 final rule (61 FR 46324). The price proxies used for the revised hospital market baskets are the same as those for the current market baskets. Four cost categories in the current hospital market baskets have been combined with other cost categories to better reflect new data sources.

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).

#### **Appendix D: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services**

##### *I. Background*

Several provisions of the Act address the setting of update factors for inpatient services furnished in FY 1998 by hospitals subject to the prospective payment system and those excluded from the prospective payment system. Section 1886(b)(3)(B)(i)(XIII) of the Act, as amended by section 4401(a)(2) of Pub. L. 105-33, sets the percentage change in the operating cost standardized amounts equal to 0 percent for FY 1998. Section 1886(b)(3)(B)(iv) of the Act sets the FY 1998 percentage increase in the hospital-specific rates applicable to sole community and Medicare-dependent, small rural 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 0 percent. (As discussed in section V.D. of this preamble, section 4401(b) of Pub. L. 105-33 provides for an increase in the operating cost standardized amounts of 0.5 percentage points for certain hospitals that do not receive

disproportionate share or indirect medical education payments and are not designated as Medicare-dependent, small rural hospitals.) Section 1886(b)(3)(B)(ii) of the Act, as amended by section 4411(a) of Pub. L. 105-33, sets the FY 1998 percentage increase in the rate-of-increase limits for hospitals excluded from the prospective payment system equal to 0 percent. Therefore, 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 from the prospective payment system by 0 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, 1997 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. In Recommendation 2 of its March 1, 1997 report, ProPAC recommended update factors to the standardized amounts equal to 0 percentage points for hospitals in both large urban and other areas. ProPAC did not make a separate recommendation for the hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals.

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. As required by section 1886(e)(5) of the Act, we published the FY 1998 update factors recommended under section 1886(e)(4) of the Act as Appendix E of the June 2, 1997 proposed rule (62 FR 30034).

##### **II. Secretary's Final Recommendations for Updating the Prospective Payment System Standardized Amounts**

We received several public comments concerning our proposed recommendation. After consideration of the arguments presented, we have decided that our final recommendation will be the same as our proposed recommendation. That is, we are recommending an update of 0 percentage points for hospitals located in large urban and other areas. We are also recommending an update of 0 percentage points to the hospital-

specific rate for sole community and Medicare-dependent, small rural hospitals. We continue to believe these recommended update factors would ensure that Medicare acts as a prudent purchaser and would provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund.

We are also recommending an update of 0 percentage points for hospitals and hospital units excluded from the prospective payment system. This update is consistent with the updates provided to the prospective payment hospitals.

*Comment:* Several commenters opposed the Secretary's recommendation that prospective payment hospitals receive a 0 percent update for FY 1998. The commenters observed that HCFA's update framework analysis supports a recommendation of not less than the market basket percentage increase minus 1.6 percentage points and asked why we had not relied on the results of the update framework in determining the recommended update. The commenters further stated that our recommendation ignores the variation in financial condition among hospitals and that the lack of an increase in the standardized amount will have an adverse impact on a significant number of hospitals.

ProPAC supported our recommendation for an update of 0 percentage points, noting that the average Medicare inpatient operating costs per case and lengths of stay in prospective payment hospitals are both continuing to decrease, while total operating margins for hospitals have increased sharply. ProPAC believes that a 0 update will not harm either the hospital industry or Medicare beneficiaries.

*Response:* In developing our update recommendation, we took into account the results of our update framework analysis in combination with several other factors. As stated in the proposed rule, these factors included the relative decrease in the use of hospital inpatient services and the corresponding increase in the use of hospital outpatient and postacute care services. We also considered the factors cited by ProPAC, particularly the decrease in costs per case. Thus, although we recognize that there is variation in financial condition among hospitals, we believe that a 0 percentage point update will result in payment rates that adequately compensate hospitals for the costs of efficient and effective treatment of Medicare beneficiaries.

*Comment:* Several commenters stated that the Secretary's recommendation of

a 0 percentage point update, notwithstanding the results of HCFA's update framework analysis, could lower the confidence of hospitals in HCFA's objectivity. They indicated that the discrepancy between the results of the update framework and the recommended update casts doubts on HCFA's ability to administer the prospective payment system fairly.

*Response:* We strongly object to the suggestion that the difference between the results of HCFA's update framework analysis and the Secretary's recommended update indicates any lack of objectivity in our analysis process or reflects on our ability to administer the Medicare program impartially. The update framework analysis is a largely empirical process carried out by HCFA that quantifies changes in hospital productivity, scientific and technological advances, practice pattern changes, and hospital case mix. In

recommending an update, the Secretary takes these factors into account, as well as other factors such as the recommendations of ProPAC and the long-term solvency of the Medicare trust fund. Thus, the difference between the results of HCFA's update framework and the update recommended by the Secretary is reflective of the integrity of the update framework analysis process, which has not been compromised to produce an artificial congruence with the Secretary's recommendation. We continue to believe that the recommended update of 0 percentage points appropriately adjusts for overall changes occurring in the health care delivery system.

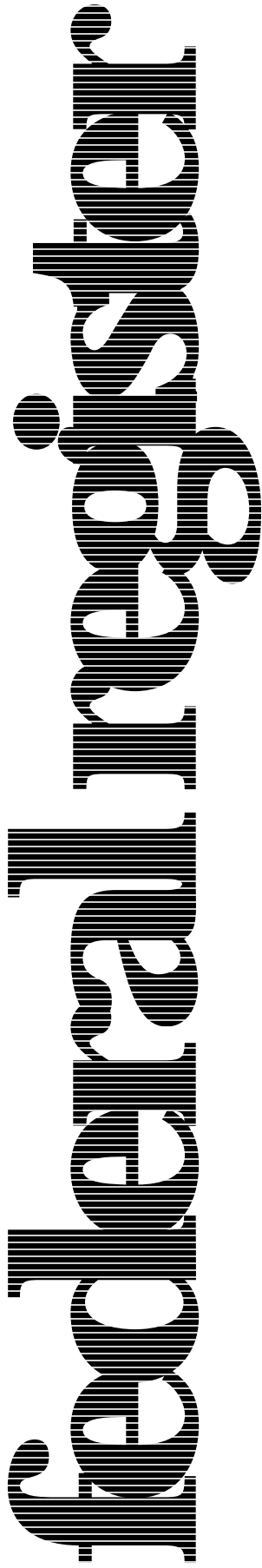
### **III. Secretary's Final Recommendation for Updating the Rate-of-Increase Limits for Excluded Hospitals**

Our final recommendation is that hospitals and hospital units excluded

from the prospective payment system also receive an update of 0 percentage points. This update is consistent with the updates provided to the prospective payment hospitals. We note that we carry out a separate update framework analysis for excluded hospitals and units, but the analysis indicates the same findings regarding changes in productivity, scientific and technological advances, practice patterns, and case mix for FY 1998 for excluded hospitals and for prospective payment system hospitals. We believe these updates will ensure that Medicare acts as a prudent purchaser and will provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund.

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Friday  
August 29, 1997

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**Part V**

**Environmental  
Protection Agency**

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**40 CFR Part 228  
Simultaneous De-designation and  
Termination of the Mud Dump Site and  
Designation of the Historic Area  
Remediation Site; Final Rule**



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 228**

[FRL-5885-1]

**Simultaneous De-designation and Termination of the Mud Dump Site and Designation of the Historic Area Remediation Site**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is de-designating and terminating the New York Bight Dredged Material Disposal Site (also known as the Mud Dump Site) and simultaneously designating the Historic Area Remediation Site. The Mud Dump Site was designated in 1984 for the disposal of 100 million cubic yards of dredged material from navigational dredging and other dredging projects associated with the Port of New York and New Jersey and nearby harbors. The site and surrounding areas that have been used historically as disposal sites for dredged materials are simultaneously being redesignated under 40 CFR part 228 as

the Historic Area Remediation Site. The Historic Area Remediation Site will be managed to reduce impacts of historical disposal activities at the site to acceptable levels (in accordance with 40 CFR 228.11(c)). This action identifies for remediation an area in and around the Mud Dump Site which has exhibited the potential for adverse ecological impacts. As discussed further below, the Historic Area Remediation Site will be remediated with uncontaminated dredged material (i.e., dredged material that meets current Category I standards and will not cause significant undesirable effects including through bioaccumulation) (hereinafter referred to as "the Material for Remediation" or "Remediation Material").

**EFFECTIVE DATE:** This final regulation becomes effective on September 29, 1997.

**ADDRESSES:** The official record of this rulemaking is available for inspection at the EPA Region 2 Library, 16th Floor, 290 Broadway, New York, NY 10007-1866. For access to the docket materials, call Karen Schneider at (212) 637-3189 between 9:00 am and 3:30 pm Monday through Friday, excluding legal holidays, for an appointment. The EPA public information regulations (40 CFR

part 2) provide that a reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Douglas Pabst, Team Leader, Dredged Material Management Team, US EPA Region 2, 290 Broadway, New York, NY 10007-1866; (212) 637-3797 (pabst.douglas@epamail.epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Regulated Entities**

Entities potentially affected by this action include those who might have sought permits to dump dredged material into ocean waters at the Mud Dump Site and those who might seek to place Remediation Material at the Historic Area Remediation Site, under the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* (hereinafter referred to as the MPRSA). The rule would primarily be of relevance to entities in the New York-New Jersey Harbor and surrounding area seeking permits from the U.S. Army Corps of Engineers (USACE) for the ocean dumping of dredged material at the Mud Dump Site or those seeking to place Remediation Material at the Historic Area Remediation Site, as well as the USACE itself. Potentially affected categories and entities include:

Category	Examples of potentially affected entities
Industry .....	Ports in NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material. Marinas in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material. Shipyards in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material. Berth owners in the NY/NJ Harbor and surrounding area seeking MPRSA permits for dredged material.
State/local/tribal governments .....	Local governments owning ports or berths in the NY/NJ Harbor and surrounding area seeking MPRSA permits for dredged material.
Federal .....	US Army Corps of Engineers for its proposed dredging projects in NY/NJ Harbor and surrounding areas. Federal agencies seeking MPRSA permits for dredged material from NY/NJ Harbor and surrounding areas.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether you or your organization may be affected by this action, you should carefully consider whether you or your organization may be subject to the requirement to obtain a MPRSA permit in accordance with the Purpose and Scope provisions of section 220.1 of Title 40 of the Code of Federal Regulations, and you wish to use the sites affected by today's final rule. If you have any questions regarding

applicability of this action to a particular entity, please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Other entities potentially affected by today's final rule would include commercial and recreational fishing interests using New York Bight Apex fishing and shellfish grounds. By providing for remediation of areas adversely impacted by historic disposal activities, today's rule would be expected to have positive effects on fishery and shellfish resources.

**II. Background**

The U.S. Environmental Protection Agency (EPA) proposed a single rulemaking action on May 13, 1997, to

de-designate and terminate the New York Bight Dredged Material Disposal Site (also known as the Mud Dump Site (MDS)), and simultaneously designate the site and surrounding areas that have been used historically as disposal sites for dredged materials as the Historic Area Remediation Site (HARS) under 40 CFR part 228. (62 FR 26267). The proposed rule was accompanied by a Supplemental Environmental Impact Statement (SEIS) prepared pursuant to EPA's voluntary EIS policy (39 FR 16186 (May 7, 1974)), a Biological Assessment as submitted to the National Marine Fisheries Service (NMFS) pursuant to section 7 of the Endangered Species Act (16 U.S.C. 1536), and a draft Site Management and Monitoring Plan,

prepared pursuant to section 102(c)(3) of the MPRSA (33 U.S.C. 1412(c)(3)).

The SEIS provided an analysis of four alternatives: (1) No Action, (2) Closure of the MDS with No Designation of the HARS, (3) Remediation, and (4) Restoration. The proposed rule endorsed implementation of Alternative 3 of the SEIS (the preferred alternative), providing for the simultaneous closure/de-designation of the MDS and designation of the HARS. The HARS would be managed to reduce impacts of historical disposal activities at the site to acceptable levels (in accordance with 40 CFR 228.11(c)). The proposal further provided that the HARS would be remediated with uncontaminated

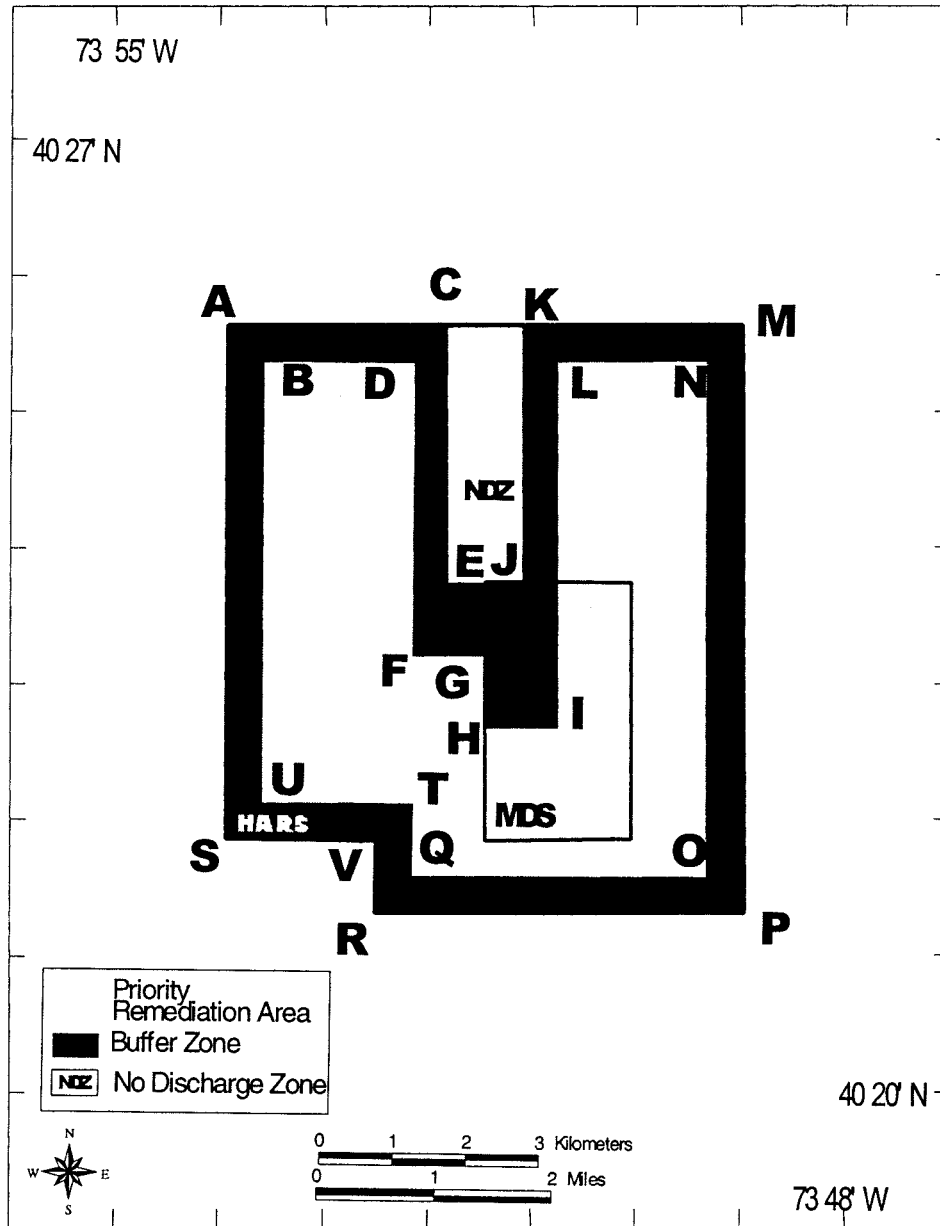
dredged material (i.e., dredged material that meets current Category I standards and will not cause significant undesirable effects including through bioaccumulation), hereinafter referred to as "the Material for Remediation" or "Remediation Material."

The SEIS and the proposed rule's preamble (62 FR 26272-26276) provided an analysis of the proposed action's compliance with the site designation criteria of 40 CFR 228.5 and 228.6(a). The final rule promulgates, without change, the proposal to amend 40 CFR 228.15(d)(6) to de-designate the MDS and simultaneously designate the HARS. This final action provides a site for long-term use of Category I dredged

material resulting from dredging projects in the NY/NJ Harbor area and provides for the remediation of the HARS, an area in the NY Bight that has been found to exhibit the potential for adverse ecological impacts due to existing degraded sediment conditions. A map showing the location of the HARS is provided in Figure 1. For further information, readers should refer to the preamble to the proposed rule and the SEIS. Because today's action promulgates the proposed rule language without change, EPA continues to find that the action being taken satisfies the site designation criteria of 40 CFR part 228.

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**Figure 1**  
**HISTORIC AREA REMEDIATION SITE**  
[see 40 CFR 228.15(d)(6)(ii) for coordinates of the lettered corner points]



### III. Public Comments

In the preamble to the proposed rule, EPA requested public comment by June 30, 1997, and held three public hearings (attended by an estimated total of 120 people) as follows:

June 16, 1997, at 7:00 PM: Monmouth Beach Municipal Auditorium, 22 Beach Road, Monmouth Beach, New Jersey, 07750. (16 individuals presented testimony)

June 17, 1997, at 7:00 PM: Social Services Building Auditorium, County Seat Drive, Mineola, Long Island, NY 11501 (One individual presented testimony)

June 18, 1997, at 2:00 PM: Oval Room, Port Authority of New York and New Jersey, Floor 43, 1 World Trade Center, New York, New York 10048. (6 individuals presented testimony).

In addition to the testimony and comments provided at the hearings, EPA also received 45 sets of written comments on the proposed action.

Dredging and ocean disposal of NY/NJ Harbor sediments has proven to be a controversial and complex issue in recent years, and as would be expected in light of such controversy, the comments received expressed a wide range of divergent opinions. In developing the final rule, EPA reviewed and considered all the written comments as well as those received verbally at the three hearings. Most of the comments received expressed, to varying degrees, support for closure of the MDS and remediation of the HARS, and many requested that the proposed rule be adopted without change from the proposal. Other comments questioned closure of the MDS or the timing for such closure, whereas others supported MDS closure but opposed placement of Remediation Material at the HARS, or offered alternative ideas for remediation. For the convenience of the reader, below is a summary of some of the major issues raised and EPA's responses to those comments. EPA carefully considered and responded to each comment received, and EPA emphasizes that the discussion below is but a brief summary of some of the key points raised and EPA's responses. A complete Response to Comments Document has been prepared which contains all the comments received and EPA's responses to each of these comments. That document is available for viewing at the location under **ADDRESSES** above.

#### *Closure of MDS*

A few commenters questioned a September closure date for the MDS. These commenters asserted that the

proposed closure date for the MDS was arbitrary, primarily based on their belief that bathymetry data from the USACE supported their conclusion that a September termination date will deprive the Port of as much as 8.9 million cubic yards of Category II disposal capacity. The factual basis for this comment is incorrect. A technical report prepared by USACE Waterways Experiment Station (Summer 1997 Capped Category II Mound in the Mud Dump Site-Preliminary Design, 14 January 1997), which was based on the most recent available US Army Corps of Engineers New York District (USACE-NYD) bathymetry survey data for the MDS, concluded that prior to the commencement of the Category II disposal operations in 1997, there was approximately 800,000 cubic yards of Category II capacity. Permits to fully utilize that remaining capacity prior to MDS closure were issued by the USACE-NYD, and dumping operations utilizing Category II capacity were actually completed on August 10, 1997. Because there is no remaining Category II capacity at the MDS, today's rule cannot have the effect these commenters raised. EPA also notes that, simultaneous with closure of the MDS, the HARS also is designated, thereby providing a long term site for the placement of Remediation Material resulting from Category I dredging projects from NY/NJ Harbor and surrounding areas.

These commenters also questioned the September closure date for the MDS on the basis that during winter, there is reduced biological activity by marine organisms at the site, apparently making winter a more favorable disposal season in the views of the commenters. EPA notes that in designating the MDS, seasonal restrictions on its use were not found to be necessary, nor does the MDS Site Management and Monitoring Plan (SMMP) call for such restrictions. Delaying the dredging and disposal operations that utilized the remaining MDS Category II capacity to sometime in the winter thus was not environmentally necessary, and would simply have delayed important dredging projects. With the full utilization of MDS Category II capacity, EPA also believes it is appropriate at the same time to close the MDS so that Category I dredged material which might otherwise simply be dumped at the MDS can be beneficially utilized to remediate areas within the HARS that exhibit the potential for adverse ecological impacts.

These commenters also expressed the view that the September closure date was without a rational basis and that the

proposal was an after-the-fact attempt to justify a political decision expressed in the July 24, 1996, 3-Party Letter (see 62 FR 26269 for description of that letter). EPA does not agree. The fact that the Administration felt the need to develop a coordinated, comprehensive approach to protecting and improving the environmental and economic health of the Port merely reflects the difficulty of this issue and the significance of the Port. Today's final rule was undertaken following notice and comment rulemaking under the Administrative Procedure Act, and is amply supported by the SEIS and its associated environmental studies. Those documents demonstrate the degraded sediment conditions within the HARS and the need for the action being taken, which is intended to remediate those degraded conditions and provide a site for future placement of Remediation Material generated by Harbor dredging projects. Further, as indicated above, MDS Category II capacity has already been utilized, and thus the MDS closure date has no effect on Category II dredged material disposal options.

Other commenters expressed their support for closure of the MDS, pointing out that such action was well justified by the studies and information presented in the SEIS. Some of these commenters further expressed their view that the degraded sediment conditions at the HARS could be primarily attributed to dredged material disposal. Although EPA agrees that the conditions identified in the HARS warrant action to designate the HARS for remediation, EPA cautions that the ability to unequivocally link any particular pollution source directly to specific impacts within a receiving body is generally difficult and complex. This is especially difficult in the marine environment, and particularly complex in the New York Bight Apex, which has received a plethora of pollutants from a wide variety of sources over a long period of time. In addition, historically dumped dredged material was likely to be significantly more contaminated than the material placed at the MDS in more recent years, which has been subject to careful testing and evaluation under the MPRSA. EPA does agree, however, that degraded conditions identified within the HARS plainly warrant remediation of that area. Given that MDS Category II capacity has now been utilized, and degraded conditions have been identified in the broader area of the HARS, today's action to close the MDS and simultaneously designate the HARS will allow for remediation of those degraded conditions.

*Designation of the HARS*

Two commenters expressed the need to assure that designation of the HARS and de-designation of the MDS take place at the same time so that there would be no gap in the availability of an ocean site. EPA notes that the proposed rule (and likewise the final rule) provides that closure of the MDS and designation of the HARS is one single, non-severable action. This was expressly noted in the preamble to the proposed rule, which stated the action consists of a single rulemaking action that amends 40 CFR 228.15(d)(6) by deleting existing language designating the MDS and simultaneously replacing it with language designating the HARS (See, 62 FR 26268 at column 2). The amendatory language thus has been deliberately structured so that it cannot result in the MDS being closed without the HARS simultaneously coming into existence.

Some commenters questioned the need for remediating such a broad area as the HARS or questioned the need for remediation of the HARS at all. Some of these comments also suggested that EPA adopt a "go slow" approach whereby smaller areas would be remediated, with subsequent investigation and analysis to assess the results. As discussed in the SEIS, material placed in the HARS will remediate degraded sediment conditions identified in the HARS. In addition, as provided in section 10.2.2 of the HARS SMMP, to the maximum extent practicable and based on availability, each remediation area will be remediated with material of similar grain size/composition as the sediments currently located within that Remediation Area. Although placement of Remediation Material will cause short-term burial and mortality of some organisms, monitoring data from disposal projects completed in the MDS and other areas of the country have shown that marine life will recolonize the sediments and return to conditions similar to those of comparable sediment type (see page 4-31 through 4-34 of the SEIS and publications cited therein). Moreover, placement of Remediation Material will occur sequentially by remediation area cell (1 square nautical mile (nmi<sup>2</sup>) each), and would not simultaneously impact the entire 9 nmi<sup>2</sup> PRA of the HARS, meaning that the temporary impacts that do occur will be localized. In exchange for such localized temporary impacts, broader long-term benefits will result in that the currently degraded sediment conditions within the HARS will be improved. EPA has also developed a HARS SMMP in order to provide for ongoing monitoring and

assessment of placement operations and identify potential adverse effects. Placement of Remediation Material is subject to the MPRSA and USACE permitting procedures, including the opportunity for public comment.

A number of commenters expressed suggestions on the type of material that should be allowed for use as Remediation Material. These comments included suggestions for a so-called "rapid remediation alternative" involving use of material exhibiting Category II characteristics in addition to using Category I material. Other commenters took the opposite view, urging that Remediation Material should instead be of even higher quality than Category I material and should be free of all contaminants or be limited to so-called "exclusionary material". (Such materials are "excluded" from testing because they are clean. They consist of such things as clean sand from high energy areas (e.g., Ambrose channel) and sediments from below levels where man-made contaminants exist (e.g., excavations from deep layers of sediment which may be produced from deepening projects or construction of deep borrow pits)). Within this range of divergent views, some commenters suggested that coverage of the HARS could occur more quickly if an initial thinner layer of Remediation Material was placed, then followed by placement of another layer to complete the cap to an at-least 1 meter thickness.

EPA does not believe that placement of Category II material at the HARS would be consistent with the goals of remediation at the HARS. Category II material demonstrates a bioaccumulation potential that is inconsistent with the remediation objectives for this site. The commenters' suggestion, in essence, would allow dumping of Category II material without the expeditious capping practices utilized at the MDS. As documented in the SEIS and the proposed rule's preamble, the HARS exhibits signs of degraded sediments which would be unsuitable for ocean disposal by current standards, and EPA does not believe it is appropriate to attempt to "remediate" such a demonstrably stressed environment by using uncapped Category II material that would have been capped if dumped at the existing MDS.

These commenters were also of the view that by using Category II material as Remediation Material, the time for remediating the HARS could be cut in half. EPA cautions that, in general, projection of dates as to when completion of HARS remediation will take place is uncertain and will be

affected by the overall volume of Remediation Material that becomes available. EPA considered the commenters' assertion that use of Category II material would cut the remediation period in half, but based on volume projections contained in the 1996 USACE-NYD Interim Report for the Dredged Material Management Plan (Interim DMMP) for NY/NJ Harbor, concludes that such substantial time savings would not result. EPA also notes that because Remediation Material is not limited to NY/NJ Harbor dredging projects, additional volumes of Remediation Material could come from surrounding areas. EPA also notes that even in the context of NY/NJ Harbor dredging projects, improved pollutant source controls and the potential 50-foot deepening project currently under study by the USACE-NYD could further result in additional Remediation Material. The recently-approved Comprehensive Conservation and Management Plan for New York-New Jersey Harbor provides for a variety of actions to be taken by many parties that would reduce contaminant levels from point and nonpoint sources. These additional sources of Remediation Material could further help reduce the time frame for remediation. As previously explained, EPA does not believe that use of Category II material would be consistent with the remediation objectives of the HARS, and this is especially true given that resulting time savings in capping the HARS would not be substantial.

Other commenters expressed the view that Remediation Material should be free of all contaminants. EPA notes that such an approach is virtually unachievable, and would so reduce the volume of Remediation Material available that it would drastically increase the time period for remediation, as well as interfering with the goal of using Remediation Material that is similar in grain size to the existing sediment. Furthermore, even if additional cap material were to be generated by dredging areas that otherwise would not be dredged, this could have other adverse effects by disruption to the area being dredged and also would have substantial economic costs. SEIS Alternative 4 considered using exclusionary sandy material as the sole source of the cap, and rejected this option based, in part, on the fact that it would have resulted in substantially increased remediation time as well as widely altering existing sediment grain sizes (and hence habitat) in the HARS. A "zero" contaminant approach would impair the ability to remediate the HARS and result in degraded sediments

within the HARS continuing to be exposed to marine organisms for many more years to come. EPA does not believe such a result is environmentally sound.

Moreover, a "zero" contamination level is not necessary to remediate the HARS. The primary purpose of placing Remediation Material at the HARS is to improve conditions over those currently at the site, where sediments in the PRA exhibit Category II and III characteristics. This requires a balance between ensuring that the material placed for remediation will not contribute to further degradation of the area, and ensuring that there is an adequate supply of Remediation Material with appropriate grain size such that remediation can take place in the near future. The definition of Remediation Material used in the SEIS and the preamble to the proposed rule, "uncontaminated dredged material (i.e., dredged material that meets current Category I standards and will not cause significant undesirable effects including through bioaccumulation)," was intended to strike this balance.

EPA also notes that one commenter looked at the issue of what might constitute Remediation Material on a compound-by-compound basis (e.g., PCBs). This commenter expressed the view that use of Category I Material for Remediation would do little to improve the conditions of the Bight. EPA does not agree, because Category I material meets the regulations' criteria for ocean disposal (i.e., placement of such sediments will not cause significant undesirable effects, including the possibility of danger associated with bioaccumulation) and is suitable for unrestricted ocean disposal as it is below Regional matrix values and Regional Category I dioxin values. Covering sediments that have been shown to have high levels of toxicity or bioaccumulative contaminants with this material will result in improved conditions in the HARS. Using a simple compound-by-compound comparison of Category I material to values within or around the HARS and requiring that all such compounds be lower in the Remediation Material than sediments in or around the HARS would virtually assure that no Category I material could be used to remediate the HARS.

Other commenters expressed the view that the definition of Remediation Material should be left unchanged. EPA notes that today's final rule was adopted without change from the proposal, and that 40 CFR 228.15(d)(6)(v)(A) continues to provide that "Use of the site will be restricted to dredged material suitable for use as the Material for Remediation.

This material shall be selected so as to ensure it will not cause significant undesirable effects including through bioaccumulation or unacceptable toxicity, in accordance with 40 CFR 227.6." EPA Region 2 and the USACE-NYD will be utilizing the current dredged material evaluation process for identifying Category I dredged material in determining the suitability of dredged material to be utilized as Remediation Material at the HARS. It also should be noted that in accordance with the NY/NJ Harbor Estuary Program Comprehensive Conservation and Management Plan, EPA Region 2 plans to initiate a public and scientific peer review process of the dredged material testing evaluation framework.

With regard to comments that an initial layer of Remediation Material be placed so as to more quickly cover a broader area with Remediation Material, and then followed-up with placement of additional material to bring the cap up to an at-least 1 meter thickness, EPA agrees that consistent with the availability of appropriate material, this could be a useful approach to placing material at the HARS. The SMMP for the HARS thus has been modified to allow for a procedure for covering each individual remediation area within the HARS with at least a 0.5 meter layer of Remediation Material first, and then placing at least 0.5 meters of additional Remediation Material, to achieve the at-least 1 meter thickness to assure the HARS is adequately capped/remediated.

As can be seen from the above discussions, there were many comments regarding Remediation Material, reflecting very divergent views. In summary, EPA notes that there are a wide variety of factors that need to be considered in determining the appropriate approach to remediation of the HARS. These considerations include not only the quality of material required to eliminate the potential for adverse environmental impacts, but issues such as the rate of remediation, and the likely availability of adequate volumes of environmentally appropriate Remediation Material. In particular, the following factors need to be weighed in selecting the best option:

- (1) The potential for adverse environmental impacts due to degraded sediments currently at the HARS, particularly in light of the facts that:
  - Existing sediments located in the HARS are acutely toxic to standard test organisms (*amphipods*) (SEIS pg 3-74); and
  - Benthic worms collected from within the HARS are accumulating undesirable levels of dioxin (HARS SMMP section 8.2.5).

(2) The environmental appropriateness of particular types of material.

- All Category I material meets the regulations and is suitable for unrestricted ocean disposal (see 40 CFR part 227).
- Category II material demonstrates bioaccumulation such that regional guidance provides for capping to isolate it from the marine environment (see MDS SMMP).
- To the maximum extent practicable, the grain size/composition of Remediation Material needs to match that of the area being remediated, in order to ensure that the biological communities will be able to recolonize on the same or similar type sediments (HARS SMMP section 10.2.2).

(3) The availability of adequate quantities of appropriate Remediation Material.

- There is limited availability of exclusionary material, which would result in significant delays in remediating the HARS if that were the sole source of Remediation Material (see SEIS pg. 4-45).
- There is a need to provide a site for long-term placement of Category I dredged material from NY/NJ Harbor dredging projects (see Interim Report of DMMP pgs. 2-2, 13-8 through 13-9).

Given all of the above considerations, EPA believes that allowing for the use of Category I material strikes the proper balance of improving degraded conditions in the HARS within a reasonable time frame.

#### IV. Compliance With Other Acts and Orders

##### A. Executive Order 12866

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 entitlement, 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."

Today's action, which simultaneously de-designates the MDS and designates the HARS, is not a significant regulatory action under E.O. 12866. The de-designation of the MDS will not affect the disposal of Category II material, because the MDS capacity for Category II materials was utilized by completion of Category II disposal operations on August 10, 1997. Because the use of Category II capacity was completed regardless of today's final action, today's final rule could not have economic effects with regard to Category II material. Moreover, as explained in the response to comment 1-16 included in the record for this rule, even if one assumes *arguendo*, that the final rule somehow would limit Category II capacity, any resultant impacts are far below the effects specified in E.O. 12866, even with the use of highly conservative assumptions. With regard to Category I material, the HARS will continue to provide an EPA-designated site for the placement of "uncontaminated dredged material (i.e., dredged material that meets current Category I standards and will not cause significant undesirable effects including through bioaccumulation)". It has been determined that this rule is not a "significant regulatory action" under the terms of the Executive Order 12866 and is therefore not subject to OMB review.

#### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), federal agencies generally are required to prepare a final regulatory flexibility analysis whenever the agency promulgates a final rule subject to notice and comment requirements under 5 U.S.C. 553 after being required by that section (or any other law) to publish a general notice of proposed rulemaking. Section 605(b) sets forth an exception to this requirement. It provides that no final regulatory flexibility analysis is required if the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Agency did not prepare a final regulatory flexibility analysis.

As previously explained, the Agency is de-designating the MDS and simultaneously designating the HARS, where only Remediation Material (i.e., dredged material that meets current

Category I standards and will not cause significant undesirable effects including through bioaccumulation) may be placed. De-designation of the MDS and designation of the HARS will not have a significant economic impact on a substantial number of small entities because the number of potentially affected small entities is very small. EPA has reviewed 11 years of permit reports prepared by the USACE-NYD for use in submissions by the United States to the International Maritime Organization on ocean dumping activities. On average the USACE-NYD has only issued 5 ocean dumping permits per year to small entities for use of the MDS. Moreover, any arguable costs to small entities associated with today's action would not be significant because EPA assessment indicates that the cost would not be significantly different from current costs.

Therefore, for the reasons explained above, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the rule will not have a significant economic impact on a substantial number of small entities.

#### *C. Paperwork Reduction Act*

The Paperwork Reduction Act, 44 U.S.C. 3501 et seq., is intended to minimize the reporting and record keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget. Since this rule does not establish or modify any information or record-keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

#### *D. The Unfunded Mandates Reform Act and Executive Order 12875*

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA 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 one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable

number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of the UMRA) for State, local, or tribal governments or the private sector. As is explained elsewhere in this preamble, today's rule de-designates the MDS, and designates instead an area in the ocean suitable for the placement of Remediation Material. Accordingly, it imposes no new enforceable duty on any State, local or tribal governments or the private sector. Even if this rule did contain a Federal mandate, it would not result in annual expenditures of \$100 million or more for State, local or tribal governments in the aggregate, or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

For the foregoing reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, the requirements of section 203 of UMRA also do not apply to this rule.

#### *E. The Endangered Species Act*

Under section 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1536(a)(2), federal agencies are required to "insure that any action authorized, funded, or carried on by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species. . . ." Under regulations implementing the Endangered Species Act (ESA), a federal agency is required to consult with either

the U. S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) (depending on the species involved) if the agency's action "may effect" endangered or threatened species or their critical habitat. See, 50 CFR 402.14(a).

**ESA Consultation with FWS:** Pursuant to the ESA, EPA consulted with the FWS during the preparation of its SEIS for the expansion of the MDS. Initially, FWS recommended that a Biological Assessment be prepared to address potential impacts to the piping plover (*Charadrius melodus*) and northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*), from the movement of materials disposed of at the proposed Expanded MDS onto oceanfront beaches, shorelines, and intertidal areas. In response, the EPA submitted for the FWS's consideration information from hydrodynamic surveys conducted in the New York Bight showing that dredged material plumes dissipate rapidly (i.e., on the order of two hours), and that the mean current flows are away from oceanfront beaches, shorelines, and intertidal areas. Additionally, as part of the submittal, the EPA expressed the belief that the proposed expansion of the MDS would not adversely affect the aforementioned species. On July 28, 1995, the FWS concurred with EPA's determination that the proposed expansion of the MDS is not likely to adversely affect federally listed species under its jurisdiction.

Although the EPA revised the scope of its SEIS after July 24, 1996 (i.e., de-

signate the MDS/designate the HARS), it decided that further consultation with the FWS would not be needed because the revised action would not alter the conclusion of the original consultation. The FWS received the SEIS for the simultaneous de-designation of the MDS/designation of the HARS in May 1997, and has not raised any new ESA-related concerns about EPA's proposed action.

**ESA Consultation with NMFS:** EPA initiated threatened and endangered species consultation with the NMFS on April 4, 1996. Based on this coordination, EPA concluded that the preparation of a biological assessment was warranted for the Kemp's ridley and loggerhead sea turtles, and the humpback and fin whales within the MDS and surrounding areas. The NMFS concurred with this approach on May 8, 1996, and EPA sent them a Biological Assessment in May 1997, which concluded that there are unlikely to be any effects on threatened or endangered species or their critical habitat. The NMFS, in a letter of July 30, 1997, concurred with this assessment.

**List of Subjects in 40 CFR Part 228**

Environmental protection, Water pollution control.

Dated: August 25, 1997.

**William J. Muszynski,**  
Acting Regional Administrator, EPA  
Region 2.

In consideration of the foregoing, EPA is amending Part 228 of Title 40 as set forth below.

**PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING**

1. The authority citation for 40 CFR Part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by revising paragraph (d)(6) to read as follows:

**§ 228.15 Dumping sites designated on a final basis.**

\* \* \* \* \*

(d) \* \* \*

(6) Historical Area Remediation Site (HARS) Designation/Mud Dump Site Termination.

(i) Status of Former Mud Dump Site: The Mud Dump Site, designated as an Impact Category I site on May 4, 1984, is terminated.

(ii) Location: (A) The HARS (which includes the 2.2 square nautical mile area of the former Mud Dump Site) is a 15.7 square nautical mile area located approximately 3.5 nautical miles east of Highlands, New Jersey and 7.7 nautical miles south of Rockaway, Long Island. The HARS consists of a Primary Remediation Area (PRA), a Buffer Zone, and a No Discharge Zone. The HARS is bounded by the following coordinates:

Point	Latitude DMS	Longitude DMS	Latitude DDM	Longitude DDM
A .....	40° 25' 39" N .....	73° 53' 55" W .....	40° 25.65' N .....	73° 53.92' W.
M .....	40° 25' 39" N .....	73° 48' 58" W .....	40° 25.65' N .....	73° 48.97' W.
P .....	40° 21' 19" N .....	73° 48' 57" W .....	40° 21.32' N .....	73° 48.95' W.
R .....	40° 21' 19" N .....	73° 52' 30" W .....	40° 21.32' N .....	73° 52.50' W.
S .....	40° 21' 52" N .....	73° 53' 55" W .....	40° 21.87' N .....	73° 53.92' W.
V .....	40° 21' 52" N .....	73° 52' 30" W .....	40° 21.87' N .....	73° 52.50' W.

DMS = Degrees, Minutes, Seconds.  
DDM = Degrees, Decimal Minutes.

(B) The PRA, is a 9.0 square nautical mile area to be remediated with at least a 1 meter cap of the Material for

Remediation. The PRA is bounded by the following coordinates:

Point	Latitude DMS	Longitude DMS	Latitude DDM	Longitude DDM
B .....	40° 25' 23" N .....	73° 53' 34" W .....	40° 25.38' N .....	73° 53.57' W.
D .....	40° 25' 22" N .....	73° 52' 08" W .....	40° 25.37' N .....	73° 52.13' W.
F .....	40° 23' 13" N .....	73° 52' 09" W .....	40° 23.22' N .....	73° 52.15' W.
G .....	40° 23' 13" N .....	73° 51' 28" W .....	40° 23.22' N .....	73° 51.47' W.
H .....	40° 22' 41" N .....	73° 51' 28" W .....	40° 22.68' N .....	73° 51.47' W.
I .....	40° 22' 41" N .....	73° 50' 43" W .....	40° 22.68' N .....	73° 50.72' W.
L .....	40° 25' 22" N .....	73° 50' 44" W .....	40° 25.37' N .....	73° 50.73' W.
N .....	40° 25' 22" N .....	73° 49' 19" W .....	40° 25.37' N .....	73° 49.32' W.
O .....	40° 21' 35" N .....	73° 49' 19" W .....	40° 21.58' N .....	73° 49.32' W.



Point	Latitude DMS	Longitude DMS	Latitude DDM	Longitude DDM
Q .....	40° 21' 36" N .....	73° 52' 08" W .....	40° 21.60' N .....	73° 52.13' W.
T .....	40° 22' 08" N .....	73° 52' 08" W .....	40° 22.13' N .....	73° 52.13' W.
U .....	40° 22' 08" N .....	73° 53' 34" W .....	40° 22.13' N .....	73° 53.57' W.

DMS = Degrees, Minutes, Seconds.  
DDM = Degrees, Decimal Minutes.

- (iii) Size: 15.7 square nautical miles.
- (iv) Depth: Ranges from 12 to 42 meters.
- (v) Restrictions on Use:

(A) The site will be managed so as to reduce impacts within the PRA to acceptable levels in accordance with 40 CFR 228.11(c). Use of the site will be restricted to dredged material suitable for use as the Material for Remediation. This material shall be selected so as to ensure it will not cause significant undesirable effects including through bioaccumulation or unacceptable toxicity, in accordance with 40 CFR 227.6.

(B) Placement of Material for Remediation will be limited to the PRA. Placement of Material for Remediation within the PRA is not allowed in a 0.27 nautical mile radius around the following coordinates due to the presence of shipwrecks: 40°25.30' W, 73°52.80' N; 40°25.27' W, 73°52.13' N; 40°25.07' W, 73°50.05' N; 40°22.46' W, 73°53.27' N.

(C) No placement of material may take place within the Buffer Zone, although this zone may receive material that incidentally spreads out of the PRA. The Buffer Zone is an approximately 5.7 square nautical mile area (0.27 nautical mile wide band around the PRA), which is bounded by the following coordinates:

Point	Latitude DMS	Longitude DMS	Latitude DDM	Longitude DDM
A .....	40°25'39" N .....	73°53'55" W .....	40°25.65' N .....	73°53.92' W.
B .....	40°25'23" N .....	73°53'34" W .....	40°25.38' N .....	73°53.57' W.
C .....	40°25'39" N .....	73°51'48" W .....	40°25.65' N .....	73°51.80' W.
D .....	40°25'22" N .....	73°52'08" W .....	40°25.37' N .....	73°52.13' W.
E .....	40°23'48" N .....	73°51'48" W .....	40°23.80' N .....	73°51.80' W.
F .....	40°23'13" N .....	73°52'09" W .....	40°23.22' N .....	73°52.15' W.
G .....	40°23'13" N .....	73°51'28" W .....	40°23.22' N .....	73°51.47' W.
H .....	40°22'41" N .....	73°51'28" W .....	40°22.68' N .....	73°51.47' W.
I .....	40°22'41" N .....	73°50'43" W .....	40°22.68' N .....	73°50.72' W.
J .....	40°23'48" N .....	73°51'06" W .....	40°23.80' N .....	73°51.10' W.
K .....	40°25'39" N .....	73°51'06" W .....	40°25.65' N .....	73°51.10' W.
L .....	40°25'22" N .....	73°50'44" W .....	40°25.37' N .....	73°50.73' W.
M .....	40°25'39" N .....	73°48'58" W .....	40°25.65' N .....	73°48.97' W.
N .....	40°25'22" N .....	73°49'19" W .....	40°25.37' N .....	73°49.32' W.
O .....	40°21'35" N .....	73°49'19" W .....	40°21.58' N .....	73°49.32' W.
P .....	40°21'19" N .....	73°48'57" W .....	40°21.32' N .....	73°48.95' W.
Q .....	40°21'36" N .....	73°52'08" W .....	40°21.60' N .....	73°52.13' W.
R .....	40°21'19" N .....	73°52'30" W .....	40°21.32' N .....	73°52.50' W.
S .....	40°21'52" N .....	73°53'55" W .....	40°21.87' N .....	73°53.92' W.
T .....	40°22'08" N .....	73°52'08" W .....	40°22.13' N .....	73°52.13' W.
U .....	40°22'08" N .....	73°53'34" W .....	40°22.13' N .....	73°53.57' W.
V .....	40°21'52" N .....	73°52'30" W .....	40°21.87' N .....	73°52.50' W.

DMS = Degrees, Minutes, Seconds.  
DDM = Degrees, Decimal Minutes.

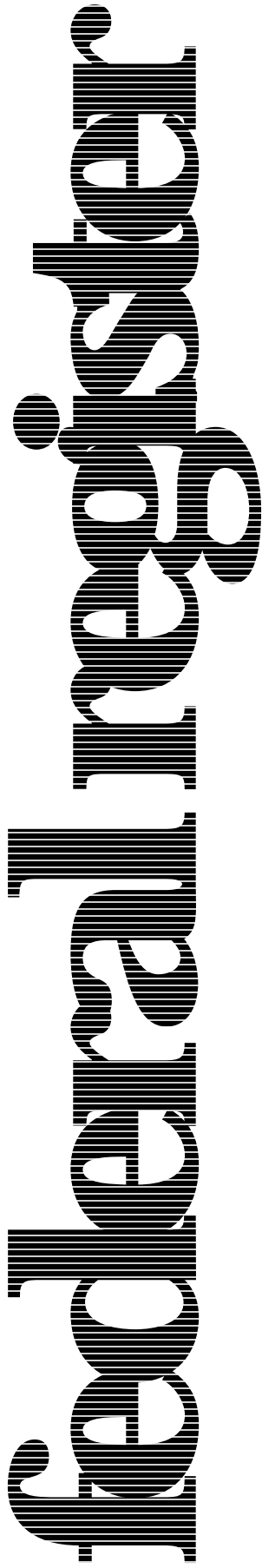
(D) No placement or incidental spread of the material is allowed within the No Discharge Zone, an approximately 1.0 square nautical mile area, bounded by the following coordinates:

Point	Latitude DMS	Longitude DMS	Latitude DDM	Longitude DDM
C .....	40°25'39" N .....	73°51'48" W .....	40°25.65' N .....	73°51.80' W.
E .....	40°23'48" N .....	73°51'48" W .....	40°23.80' N .....	73°51.80' W.
J .....	40°23'48" N .....	73°51'06" W .....	40°23.80' N .....	73°51.10' W.
K .....	40°25'39" N .....	73°51'06" W .....	40°25.65' N .....	73°51.10' W.

DMS = Degrees, Minutes, Seconds.  
DDM = Degrees, Decimal Minutes.

(vi) Period of Use: Continuing use until EPA determines that the PRA has been sufficiently capped with at least 1 meter of the Material for Remediation. At that time, EPA will undertake any necessary rulemaking to de-designate the HARS.

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Friday  
August 29, 1997

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**Part VI**

**Department of the  
Interior**

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**Fish and Wildlife Service**

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**50 CFR Part 20**

**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; Final  
Rule**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 20

RIN 1018-AE14

**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 1997-98 season.

**DATE:** This rule is effective August 29, 1997.

**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 1997**

On March 13, 1997, the Service published in the **Federal Register** (62 FR 39712) 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 §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 6, 1997, the Service published in the **Federal Register** (62 FR 31298) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 1997-98 duck hunting season. The June 6 supplement also provided detailed information on the 1997-98 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

On June 27, 1997, the Service held a public hearing in Washington, DC, as

announced in the March 13 and June 6 **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 23, 1997, the Service published in the **Federal Register** (62 FR 39712) a third document. This document contained the final regulatory alternatives for the 1997-98 duck hunting season and the proposed early-season frameworks for the 1997-98 season.

On August 7, 1997, the Service held a public hearing in Washington, DC, as announced in the March 13, June 6, and July 23 **Federal Registers** to review the status of waterfowl. Proposed hunting regulations were discussed for late seasons. On August 20, 1997, (62 FR 44229), the Service published a fifth document on migratory bird hunting. The document contained 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. On August 25, 1997, the Service published a sixth document (62 FR 45078) on migratory bird hunting. The sixth document dealt specifically with proposed frameworks for the 1997-98 late-season migratory bird hunting regulations. The final rule described here is the seventh 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; youth waterfowl hunting day; 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**.

**Executive Order (E.O.) 12866**

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

**Congressional Review**

In accordance with Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 8), this rule has been submitted to Congress and has been declared major. Because this rule establishes hunting seasons, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

**Regulatory Flexibility Act**

These regulations have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq). In the March 13, 1997, **Federal Register**, the Service reported measures it took to comply with requirements of the Act. 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 in 1996. Copies of the Analysis are available upon request from the MBMO.

### Paperwork Reduction Act

The Department examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Under the Act, information collections must be approved by the Office of Management and Budget (OMB). The Service uses the various information collection requirements contained in this rule to develop future migratory game bird hunting regulations. Specifically, the information collection requirements of the Migratory Bird Harvest Information Program have been approved by OMB and assigned clearance number 1018-0015. This information is used to provide a sampling frame for voluntary national surveys to improve Service harvest estimates for all migratory game birds in order to better manage these populations. OMB approval for the Sandhill Crane Harvest Questionnaire, 1018-0023, has expired and has been submitted to OMB for reinstatement. The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. The Service will not collect this information until OMB approval has been obtained and a **Federal Register** notice published. Additionally, no person may be required to respond to a collection of information unless it displays a currently valid OMB number.

### 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 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 and Territories would have insufficient time to establish and publicize the necessary regulations and procedures to implement their decisions. 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 regulations will, therefore, take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

### Unfunded Mandates Reform Act

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 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 21, 1997.

**William L. Leary,**

*Acting 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 of the Code of Federal Regulations 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-F

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. 6-Nov. 4	10	10
Scaly-naped pigeons	Sept. 6-Nov. 4	5	5
Ducks	Nov. 15-Dec. 22 & Jan. 10-Jan. 26	6	12
Common Moorhens	Nov. 15-Dec. 22 & Jan. 10-Jan. 26	6	12
Common Snipe	Nov. 15-Dec. 22 & Jan. 10-Jan. 26	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 20, 1997, 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 20, 1997, 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

**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 3 tundra swans per hunter. This season is by registration permit only; hunters may be issued up to 3 successive permits, one at a time, upon filing a harvest report. Up to 500 permits may be issued. In Unit 23, there will be an experimental tundra swan season from September 1 through October 31, with a season limit of 3 tundra swans per hunter. This season is by registration permit only; hunters may be issued up to 3 successive permits, 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 20, 1997, **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
<b>EASTERN MANAGEMENT UNIT</b>			
<b>Alabama</b>			
North Zone	Sept. 13 only & Dec. 26-Jan. 10	15 15	15 15
South Zone	Sept. 14-Oct. 26 to sunset	15	15
	1/2 hour before sunrise		
12 noon to sunset			
12 noon to sunset			
12 noon to sunset			
12 noon to sunset			
1/2 hour before sunrise			
to sunset			
<b>Delaware</b>			
12 noon to sunset	Sept. 1-Sept. 27	12	24
1/2 hour before sunrise			
to sunset			
12 noon to sunset	Oct. 20-Nov. 1 & Dec. 12-Jan. 10	12 12	24 24

**Daily Bag and Possession Limits**

Area	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 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 Stellar'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. In Unit 9(d) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

(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.

	Season Dates	Bag	Limits	Possession
<b>Florida (1)</b> 12 noon to sunset 1/2 hour before sunrise to sunset	Oct. 4-Oct. 27	12	24	24
	Nov. 15-Nov. 30 & Dec. 13-Jan. 11	12	24	24
		12	24	24
<b>Georgia</b> Zone 1 12 noon to sunset 1/2 hour before sunrise to sunset	Sept. 6 only	12	24	24
	Sept. 7-Oct. 5 & Nov. 27-Nov. 29 & Dec. 10-Jan. 15	12	24	24
		12	24	24
Zone 2 12 noon to sunset 1/2 hour before sunrise to sunset	Sept. 27 only	12	24	24
	Sept. 28-Oct. 26 & Nov. 27-Nov. 29 & Dec. 10-Jan. 15	12	24	24
		12	24	24
<b>Illinois</b> sunrise to sunset	Sept. 1-Oct. 14 & Nov. 1-Nov. 16	15	30	30
		15	30	30
<b>Indiana</b>	Sept. 1-Oct. 16 & Nov. 7-Nov. 16 & Nov. 27-Nov. 30	15	30	30
		15	30	30
		15	30	30
<b>Kentucky</b> 11 a.m. to sunset sunrise to sunset	Sept. 1-Sept. 30 & Oct. 4-Oct. 27	15	30	30
	Nov. 27-Dec. 2	15	30	30
<b>Louisiana</b> 12 noon to sunset 1/2 hour before sunrise to sunset	Sept. 6-Sept. 7 & Oct. 18-Oct. 19 & Dec. 13-Dec. 14	12	24	24
		12	24	24
		12	24	24
<b>Mainland</b> 12 noon to sunset 1/2 hour before sunrise to sunset	Sept. 1-Oct. 21	12	24	24
	Nov. 17-Nov. 22 & Dec. 22-Jan. 3	12	24	24
		12	24	24
<b>Mississippi</b> North Zone South Zone	Sept. 6-Sept. 27 & Oct. 11-Nov. 9 & Dec. 27-Jan. 3	15	30	30
		15	30	30
	Sept. 20-Oct. 11 & Nov. 15-Nov. 30 & Dec. 20-Jan. 10	15	30	30
<b>North Carolina</b> 12 noon to sunset 1/2 hour before sunrise to sunset	Sept. 1-Sept. 6	12	24	24
	Sept. 7-Oct. 4 & Nov. 24-Nov. 29 & Dec. 17-Jan. 15	12	24	24
		12	24	24
<b>Ohio</b>	Sept. 15-Oct. 14 & Oct. 31-Nov. 29	15	30	30
		15	30	30
<b>Pennsylvania</b> 12 noon to sunset 1/2 hour before sunrise to sunset	Sept. 1-Oct. 11	12	24	24
	Nov. 1-Nov. 29	12	24	24
<b>Rhode Island</b> 12 noon to sunset 1/2 hour before sunrise to sunset	Sept. 13-Oct. 5	12	24	24
	Oct. 18-Dec. 3	12	24	24
<b>South Carolina</b> 12 noon to sunset 1/2 hour before sunrise to sunset	Sept. 1-Sept. 6	12	24	24
	Sept. 7-Oct. 4 & Nov. 22-Nov. 29 & Dec. 19-Jan. 15	12	24	24
		12	24	24
<b>Tennessee</b> 12 noon to sunset 1/2 hour before sunrise to sunset	Sept. 1 only	15	30	30
	Sept. 2-Sept. 27 & Oct. 11-Oct. 25 & Dec. 20-Jan. 6	15	30	30
		15	30	30

	Season Dates	Limits	
		Bag	Possession
<b>Texas (cont)</b>			
South Zone	Sept. 20-Nov. 3 & Dec. 26-Jan. 5	15	30
Special Area		15	30
(Special Season) 12 noon to sunset	Sept. 6-Sept. 7 & Sept. 13-Sept. 14	10	20
Remainder of the South Zone	Sept. 20-Nov. 7 & Dec. 26-Jan. 5	15	30
Wyoming	Sept. 1-Oct. 19	15	30
<b>WESTERN MANAGEMENT UNIT I</b>			
Arizona (5)	Sept. 1-Sept. 14 & Nov. 20-Jan. 4	10	20
California (6)	Sept. 1-Sept. 15 & Nov. 8-Dec. 22	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. 1-Sept. 30	10	20
Washington	Sept. 1-Sept. 15	10	20
<b>OTHER POPULATIONS</b>			
Hawaii (7)	Nov. 1-Nov. 30 & Dec. 6-Dec. 28 & Jan. 1-Jan. 19	10	10
		10	10
		10	10

	Season Dates	Limits	
		Bag	Possession
<b>Virginia</b>			
12 noon to sunset	Sept. 1-Sept. 27	12	24
1/2 hour before sunrise to sunset	Oct. 4-Nov. 1 & Dec. 24-Jan. 6	12	24
<b>West Virginia</b>			
12 noon to sunset	Sept. 1 only	12	24
1/2 hour before sunrise to sunset	Sept. 2-Oct. 4 & Oct. 27-Nov. 8 & Dec. 19-Jan. 10	12	24
		12	24
<b>CENTRAL MANAGEMENT UNIT I</b>			
Arkansas	Sept. 1-Sept. 28 & Oct. 11-Oct. 19 & Dec. 13-Jan. 4	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 & 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. 17	15	30
<b>Texas (4)</b>			
North Zone	Sept. 1-Oct. 30	15	30
Central Zone	Sept. 1-Oct. 19 & Dec. 26-Jan. 5	15	30

(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.



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 20, 1997, 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)	3	8
Possession limit	25 (1)	30 (2)	6	16

**ATLANTIC FLYWAY**

Connecticut (3)	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Oct. 18-Nov. 15	Oct. 18-Nov. 15
Delaware	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 20-Nov. 1 & Nov. 24-Dec. 10	Nov. 24-Jan. 31
Florida	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Dec. 20-Jan. 18	Nov. 1-Feb. 15
Georgia	Sept. 17-Nov. 25	Sept. 17-Nov. 25	Jan. 2-Jan. 31	Nov. 15-Feb. 28
Maine	Sept. 1-Nov. 9	Closed	Oct. 6-Nov. 4	Sept. 1-Dec. 16
Maryland	Sept. 1-Nov. 8	Sept. 1-Nov. 3	Oct. 25-Nov. 14 & Jan. 2-Jan. 10	Sept. 17-Nov. 28 & Dec. 15-Jan. 17
Massachusetts (4)	Sept. 1-Nov. 8	Closed	Deferred	Sept. 1-Dec. 16
New Hampshire	Closed	Closed	Oct. 6-Nov. 4	Sept. 15-Nov. 4
New Jersey (5) North Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Oct. 10-Oct. 18 & Nov. 1-Nov. 15	Sept. 26-Jan. 10
South Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Nov. 8-Nov. 22 & Dec. 19-Dec. 27	Sept. 26-Jan. 10
New York (6)	Sept. 1-Nov. 9	Closed	Oct. 6-Nov. 4	Sept. 1-Dec. 16

(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 14, 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 20 through January 4, 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 face-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 State holidays.

**(b) Band-tailed Pigeons**

	Season Dates	Bag	Limits Possession
Arizona (1)	Oct. 15-Oct. 24	5	10
California North Zone	Sept. 20-Sept. 28	2	2
South Zone	Dec. 20-Dec. 28	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. 1-Sept. 30	5	10

(1) Each band-tailed pigeon hunter must have either a band-tailed pigeon hunting permit or a special bird permit issued by the respective State.

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
North Carolina	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Dec. 19-Jan. 17	Nov. 14-Feb. 28
Pennsylvania	Sept. 1-Nov. 1	Closed	Oct. 25-Nov. 8	Oct. 25-Nov. 29
Rhode Island (7)	Sept. 13-Nov. 21	Sept. 13-Nov. 21	Nov. 6-Dec. 5	Sept. 13-Dec. 5 & Dec. 20-Jan. 11
South Carolina	Sept. 13-Sept. 20 & Oct. 13-Dec. 13	Sept. 13-Sept. 20 & Oct. 13-Dec. 13	Jan. 2-Jan. 31	Nov. 14-Feb. 28
Vermont	Deferred	Deferred	Deferred	Deferred
Virginia	Sept. 15-Sept. 27 & Oct. 8-Dec. 3	Sept. 15-Sept. 27 & Oct. 8-Dec. 3	Nov. 1-Nov. 15 & Dec. 20-Jan. 3	Oct. 8-Oct. 11 & Oct. 21-Jan. 31
West Virginia	Sept. 1-Nov. 8	Closed	Oct. 20-Nov. 18	Sept. 1-Dec. 16
<b>MISSISSIPPI FLYWAY</b>				
Alabama (8)	Sept. 6-Sept. 14 & Nov. 19-Jan. 18	Sept. 6-Sept. 14 & Nov. 19-Jan. 18	Dec. 18-Jan. 31	Nov. 14-Feb. 28
Arkansas	Sept. 1-Nov. 9	Closed	Nov. 15-Dec. 14 & Jan. 3-Jan. 17	Nov. 8-Feb. 22
Illinois (9)	Sept. 6-Nov. 14	Closed	Oct. 1-Nov. 14	Sept. 6-Dec. 21
Indiana (10)	Sept. 1-Nov. 9	Closed	Oct. 10-Nov. 23	Sept. 1-Dec. 16
Iowa (11)	Sept. 6-Nov. 14	Closed	Oct. 4-Nov. 17	Sept. 6-Nov. 30
Kentucky	Sept. 1-Nov. 9	Closed	Oct. 18-Dec. 1	Sept. 17-Nov. 2 & Nov. 27-Jan. 25
Louisiana	Sept. 20-Sept. 28 & Nov. 8-Jan. 7	Sept. 20-Sept. 28 & Nov. 8-Jan. 7	Dec. 18-Jan. 31	Nov. 8-Feb. 22
Michigan (12)	Sept. 15-Nov. 14	Closed	Sept. 20-Nov. 3	Sept. 15-Nov. 14
Minnesota	Sept. 1-Nov. 4	Closed	Sept. 20-Nov. 3	Sept. 1-Nov. 4
Mississippi	Oct. 12-Dec. 20	Oct. 12-Dec. 20	Dec. 18-Jan. 31	Nov. 14-Feb. 28
Missouri	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
Ohio	Sept. 1-Nov. 9	Closed	Oct. 16-Nov. 29	Sept. 1-Nov. 29 & Dec. 8-Dec. 24

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Tennessee	Deferred	Closed	Oct. 11-Nov. 24	Nov. 14-Feb. 28
Wisconsin	Deferred	Closed	Sept. 20-Nov. 3	Deferred
<b>CENTRAL FLYWAY</b>				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Kansas	Sept. 1-Nov. 9	Closed	Oct. 17-Nov. 30	Sept. 1-Dec. 16
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nebraska (13)	Sept. 1-Nov. 9	Closed	Sept. 20-Nov. 3	Sept. 1-Dec. 16
New Mexico	Deferred	Deferred	Deferred	Deferred
North Dakota	Closed	Closed	Sept. 20-Nov. 2	Sept. 20-Dec. 14
Oklahoma	Sept. 1-Nov. 9	Closed	Nov. 15-Dec. 29	Oct. 1-Jan. 15
South Dakota (14)	Closed	Closed	Closed	Sept. 1-Oct. 31
Texas	Sept. 13-Sept. 21 & Nov. 8-Jan. 7	Sept. 13-Sept. 21 & Nov. 8-Jan. 7	Deferred	Deferred
Wyoming	Sept. 13-Nov. 16	Closed	Closed	Sept. 13-Dec. 14
<b>PACIFIC FLYWAY</b>				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Idaho	Closed	Closed	Closed	Oct. 4-Jan. 17
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
New Mexico	Deferred	Deferred	Deferred	Deferred
Wyoming	Sept. 13-Nov. 16	Closed	Closed	Sept. 13-Dec. 14

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.

(e) Common Moorheens and Purple Gallinules

	Season Dates	Bag	Limits	Possession
<b>ATLANTIC FLYWAY</b>				
Delaware	Sept. 1-Nov. 9	15	15	30
Florida (1)	Sept. 1-Nov. 9	15	15	30
Georgia	Deferred	..	..	..
Maine	Sept. 1-Nov. 9	15	15	30
New Jersey	Sept. 1-Nov. 8	15	15	30
New York	Closed	..	..	..
Long Island	Closed	..	..	..
Remainder of State	Sept. 1-Nov. 9	15	15	30
North Carolina	Sept. 1-Nov. 8	15	15	30
Pennsylvania	Sept. 1-Nov. 1	15	15	30
South Carolina	Sept. 13-Sept. 20 & Oct. 13-Dec. 13	15	15	30
Virginia	Deferred	..	..	..
West Virginia	Deferred	..	..	..
<b>MISSISSIPPI FLYWAY</b>				
Alabama	Sept. 6-Sept. 14 & Nov. 19-Jan. 18	15	15	15
Arkansas	Sept. 1-Nov. 9	15	15	30
Indiana	Sept. 1-Nov. 9	10	10	20
Kentucky	Sept. 1-Nov. 9	15	15	30
Louisiana	Sept. 20-Sept. 28 & Nov. 8-Jan. 7	15	15	30
Michigan	Deferred	..	..	..
Minnesota	Deferred	..	..	..

(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 Connecticut, the daily bag and possession limits may not contain more than 1 king rail.

(4) 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.

(5) In New Jersey, the season for king rails is closed by State regulation.

(6) In New York, seasons for sora and Virginia rails and common snipe are closed on Long Island.

(7) 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.

(8) In Alabama, the rail limits are 15 daily and 15 in possession, singly or in the aggregate.

(9) In Illinois, shooting hours are from sunrise to sunset.

(10) In Indiana, the sora and Virginia rail limits are 15 daily and 15 in possession, singly or in the aggregate.

(11) In Iowa, the limits for sora and Virginia rails are 12 daily and 24 in possession.

(12) In Michigan, the season opens concurrently with the duck season in certain areas.

(13) In Nebraska, the rail limits are 10 daily and 20 in possession.

(14) In South Dakota, the snipe limits are 5 daily and 15 in possession.

6. Section 20.105 is amended by revising paragraphs (a) through (l) 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 20, 1997, 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.

	Season Dates	Limits	
		Bag	Possession
Maryland	Deferred	--	--
Massachusetts	Deferred	--	--
New Hampshire	Sept. 15-Dec. 30	7	14
New Jersey	Sept. 20-Jan. 20	7	14
New York	Oct. 6-Jan. 20	7	14
North Carolina	Deferred	--	--
Rhode Island	Oct. 10-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. 20-Sept. 24	4	8
MISSISSIPPI FLYWAY			
Alabama	Sept. 6-Sept. 14	4	8
Arkansas (2)	Sept. 13-Sept. 21	4	8
Illinois (2)	Sept. 6-Sept. 14	4	8

	Season Dates	Limits	
		Bag	Possession
Mississippi	Oct. 12-Dec. 20	15	30
Ohio	Sept. 1-Nov. 9	15	30
Tennessee	Deferred	--	--
Wisconsin	Deferred	--	--
CENTRAL FLYWAY			
New Mexico	Deferred	--	--
Oklahoma	Sept. 1-Nov. 9	15	30
Texas	Sept. 13-Sept. 21 & Nov. 8-Jan. 7	15	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. 18-Jan. 20	7	14
Georgia	Deferred	--	--
Maine	Deferred	--	--

(d) Special Early Canada Goose Seasons:

	Limits		Season Dates	Bag	Possession
	Bag	Possession			
<b>ATLANTIC FLYWAY</b>					
Indiana (2)	4	8	Sept. 1-Sept. 9		
Iowa (3) North Zone	--	--	Sept. 20-Sept. 24		
Iowa (3) South Zone	--	--	Sept. 20-Sept. 24		
Kentucky (4)	4	8	Sept. 17-Sept. 21		
Louisiana	4	8	Sept. 20-Sept. 28		
Mississippi	4	8	Sept. 13-Sept. 21		
Missouri (2)	4	8	Sept. 13-Sept. 21		
Ohio (2)	4	8	Sept. 6-Sept. 14		
Tennessee (4)	4	8	Sept. 13-Sept. 17		
<b>CENTRAL FLYWAY</b>					
Colorado	4	8	Sept. 6-Sept. 14		
Kansas	4	8	Sept. 13-Sept. 21		
New Mexico	4	8	Sept. 13-Sept. 21		
Oklahoma	4	8	Sept. 20-Sept. 28		
Texas	4	8	Sept. 13-Sept. 21		
<p>(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.</p> <p>(2) Shooting hours are from sunrise to sunset.</p> <p>(3) In Iowa, the September season is part of the regular season, and limits will conform to those set for the regular season.</p> <p>(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.</p>					
Connecticut	5	10	Sept. 2-Sept. 25		
Delaware	5	10	Sept. 1-Sept. 15		
Maine	5	10	Sept. 8-Sept. 25		
Mainland Eastern Unit	5	10	Sept. 2-Sept. 15		
Mainland Western Unit	5	10	Sept. 2-Sept. 25		
Massachusetts (1) Central Zone	5	10	Sept. 2-Sept. 25		
Massachusetts (1) Coastal Zone	5	10	Sept. 2-Sept. 25		
Massachusetts (1) Western Zone	3	6	Sept. 2-Sept. 25		
New Hampshire (1) Early-Season Hunt Unit	5	10	Sept. 2-Sept. 25		
New Jersey	5	10	Sept. 2-Sept. 30		
New York Lake Champlain Zone	--	--	Closed		
New York Northeastern Zone	5	10	Sept. 1-Sept. 25		
New York Western Zone	5	10	Sept. 1-Sept. 25		
Montezuma Zone	5	10	Sept. 1-Sept. 15		
Southeastern Zone	5	10	Sept. 1-Sept. 25		
Long Island Zone (2)	5	10	Sept. 2-Sept. 30		
North Carolina (3) Northeast Hunt Unit	3	6	Sept. 2-Sept. 20		
North Carolina (3) Rest of State	3	6	Sept. 2-Sept. 30		
Pennsylvania Southeast Hunt Area	5	10	Sept. 1-Sept. 25		
Pennsylvania Rest of State	3	6	Sept. 1-Sept. 25		
Rhode Island	5	10	Sept. 11-Sept. 25		
South Carolina Early-Season Hunt Unit (1)	4	8	Sept. 13-Sept. 27		

	Season Dates		Limits	
	Bag	Possession	Bag	Possession
<b>PACIFIC FLYWAY</b>				
California Humboldt County	Sept. 6-Sept. 14	2	2	2
Idaho East Canada Goose Zone (1) Nez Perce County	Sept. 1-Sept. 15 Sept. 6-Sept. 12	2 4	2 4	4 8
Oregon Northwest Zone Southwest Zone East Zone	Sept. 6-Sept. 19 Sept. 6-Sept. 12 Sept. 6-Sept. 12	5 3 3	5 3 3	10 6 6
Washington Southwest Zone East Zone Remainder of State	Sept. 6-Sept. 12 Sept. 6-Sept. 12 Sept. 6-Sept. 12	3 3 3	3 3 3	6 6 6
Wyoming (1)(7)	Sept. 1-Sept. 7	2	2	4 per season
(1) State permit required.				
(2) 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) In Mississippi, the season is closed on Roebuck Lake in Leflore County.				
(6) Additional restrictions apply in some areas. See State regulations.				
(7) Shooting hours are sunrise to sunset.				
(e) Regular Goose Seasons:				
Note: Bag and possession limits will conform to those set for the regular season.				Season Dates
<b>MISSISSIPPI FLYWAY</b>				
Virginia	Sept. 2-Sept. 25	5	5	10
West Virginia	Sept. 4-Sept. 13	3	3	6
Alabama	Sept. 6-Sept. 14	5	5	10
Illinois Northeast Zone North Zone Central Zone	Sept. 1-Sept. 14 Sept. 6-Sept. 14 Sept. 6-Sept. 14	5 2 2	5 2 2	10 10 10
Indiana	Sept. 1-Sept. 15	5	5	10
Iowa North Zone	Sept. 13-Sept. 14	2	2	4
Michigan Upper Peninsula Lower Peninsula (4)	Sept. 1-Sept. 10 Sept. 1-Sept. 15	5 5	5 5	10 10
Minnesota Twin Cities Metro Zone Two Goose Zone Five Goose Zone	Sept. 6-Sept. 15 Sept. 6-Sept. 15 Sept. 6-Sept. 15	5 2 5	5 2 5	10 4 10
Mississippi (5)	Sept. 1-Sept. 15	5	5	10
Ohio (6)	Sept. 1-Sept. 15	4	4	8
Tennessee Middle Tennessee Zone Cumberland Plateau Zone East Tennessee Zone	Sept. 6-Sept. 10 Sept. 2-Sept. 15 Sept. 2-Sept. 15	2 5 5	2 5 5	4 10 10
Wisconsin Early-Season Subzone A Early-Season Subzone B	Sept. 2-Sept. 15 Sept. 2-Sept. 15	5 3	5 3	10 6
<b>CENTRAL FLYWAY</b>				
South Dakota (2)	Sept. 6-Sept. 15	2	2	4
Wisconsin Exterior Zone Horicon Zone Collins Zone	Sept. 27-Sept. 30 Sept. 20-Sept. 30 Sept. 20-Sept. 30			

(f) **Youth Waterfowl Hunting Day**

The following seasons are open only to youth hunters. Youth hunters must be accompanied into the field by an adult at least 18 years of age. This adult can not duck hunt but may participate in other open seasons.

**Definitions**

**Youth Hunters:** Includes youths 15 years of age or younger.

**The Atlantic Flyway:** Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

**The Mississippi Flyway:** Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

**The Central Flyway:** Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

**The Pacific Flyway:** Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

**Note:** Bag and possession limits will conform to those set for the regular season.

	Season Dates
<b>Massachusetts</b>	Deferred
<b>New Hampshire</b>	Deferred
<b>New Jersey</b>	Sept. 27
Ducks, mergansers, coots, moorhens and gallinules	
Statewide	
<b>New York</b>	Nov. 30
Ducks, mergansers and coots	Sept. 27
Long Island Zone	Sept. 28
Lake Champlain Zone	Sept. 28
Northeastern Zone	Oct. 12
Southeastern Zone	
Western Zone	
<b>North Carolina</b>	Jan. 24
Ducks, mergansers and coots	
<b>Pennsylvania</b>	Oct. 4
Ducks, mergansers, coots and moorhens	
Statewide	
<b>Rhode Island</b>	Nov. 22
Ducks, mergansers and coots	
<b>South Carolina (3)</b>	Jan. 24
Ducks, mergansers and coots	
<b>Vermont</b>	Sept. 27
Ducks, mergansers and coots	
Statewide	Deferred
<b>Virginia</b>	
<b>MISSISSIPPI FLYWAY</b>	
<b>Alabama</b>	Jan. 24
Ducks, mergansers, coots, moorhens and gallinules	
Statewide	Deferred
<b>Arkansas</b>	
<b>Illinois</b>	Sept. 27
Ducks, mergansers and coots	Oct. 11
North Zone	Nov. 1
Central Zone	
South Zone	

**Season Dates**

**ATLANTIC FLYWAY**

<b>Connecticut</b>	Deferred
<b>Delaware</b>	Oct. 25
Ducks, mergansers, coots, moorhens and gallinules	
<b>Florida</b>	Jan. 24
Ducks, gallinules, and coots	
<b>Georgia</b>	Nov. 15
Ducks, mergansers, coots, moorhens and gallinules	
<b>Maine</b>	Sept. 20
Ducks, mergansers, coots, moorhens and gallinules	
Statewide	
<b>Maryland (1)</b>	Oct. 25
Ducks, mergansers and coots (2)	

	Season Dates	Season Dates
<b>Indiana</b> Ducks, mergansers, coots, moorhens and gallinules North Zone South Zone Ohio River Zone	Oct. 11 Nov. 1 Nov. 8	
<b>Iowa</b> Ducks, mergansers and coots Statewide	Sept. 27	
<b>Kentucky</b> Ducks, mergansers, coots, moorhens and gallinules Statewide	Oct. 11 Deferred	
<b>Louisiana</b> Ducks, mergansers, coots, moorhens and gallinules Statewide	Sept. 20	
<b>Minnesota</b> Ducks, mergansers, coots, moorhens and gallinules	Sept. 20	
<b>Mississippi</b>	Deferred	
<b>Missouri</b>	Deferred	
<b>Ohio</b>	Deferred	
<b>Tennessee</b>	Deferred	
<b>Wisconsin</b> Ducks, mergansers, coots and gallinules Statewide	Sept. 27	
<b>CENTRAL FLYWAY</b>		
<b>Colorado</b> Ducks, mergansers and coots	Sept. 27	
<b>Kansas (4)</b> Ducks, mergansers and coots High Plains Low Plains Early Zone Late Zone	Sept. 27 Sept. 27 Oct. 18	
<b>Montana</b> Ducks, mergansers and coots Statewide	Sept. 27	
<b>Nebraska (5)</b> Ducks, mergansers and coots Statewide	Sept. 20	
<b>North Dakota</b> Ducks, mergansers and coots Statewide	Sept. 27	
<b>Oklahoma</b>	Deferred	
<b>South Dakota</b> Ducks, mergansers and coots Statewide	Sept. 27	
<b>Wyoming</b> Ducks, mergansers and coots Statewide	Sept. 27	
<b>PACIFIC FLYWAY (6)</b>		
<b>Arizona</b>	Deferred	
<b>California</b> Ducks Northeastern Zone Colorado River Zone Southern Zone Southern San Joaquin Valley Zone Balance-of-State Zone	Sept. 27 Deferred Jan. 24 Jan. 24 Jan. 24	
<b>Colorado</b> Ducks and coots	Sept. 27	
<b>Idaho</b> Ducks and coots Statewide	Sept. 27	
<b>Montana</b> Ducks and coots	Sept. 27	
<b>Nevada</b> Ducks, coots and moorhens Clark and Lincoln Counties Rest of State	Jan. 24 Sept. 27	



	Season Dates	Bag	Limits	Possession
<b>CENTRAL FLYWAY</b>				
Colorado (1)	Oct. 4-Nov. 30	3	6	6
Kansas (1)(2)	Deferred	..	..	..
Montana	Oct. 4-Nov. 30	3	3	6
Regular Season Area (1)	Sept. 13-Sept. 21	1	per season	
Special Season Area (3)				
New Mexico	Oct. 31-Jan. 31	3	6	6
Regular Season Area (1)				
Middle Rio Grande	Oct. 25-Oct. 26 &	2	2	2
Valley Area (3)(4)(5)	Dec. 13-Dec. 14 &	2	2	2
	Jan. 3-Jan. 4	2	2	2
Southwest Area (3)(4)(5)	Dec. 20-Dec. 21	2	4	4
North Dakota (1)	Sept. 6-Nov. 2	3	6	6
Oklahoma (1)	Deferred	..	..	..
South Dakota (1)	Sept. 27-Nov. 23	3	6	6
Texas (1)	Deferred	..	..	..
Wyoming	Sept. 13-Nov. 9	3	6	6
Regular Season Area (1)	Sept. 20-Sept. 28	1	per permit	
Riverton-Boysen Unit (3)(5)				
Big Horn and Park	Sept. 20-Sept. 22	1	per permit	
Counties (3)(5)				
<b>PACIFIC FLYWAY</b>				
Arizona (3)	Oct. 30-Nov. 1 &	2	per season	
	Nov. 3-Nov. 5 &	2	per season	
	Nov. 7-Nov. 9 &	2	per season	
	Nov. 11-Nov. 13 &	2	per season	
	Nov. 15-Nov. 17	2	per season	
Idaho	Sept. 1-Sept. 15	1	per season	

	Season Dates
Oregon	
Ducks and coots	Sept. 27
Statewide	
Utah	
Ducks and coots	Sept. 27
Statewide	
Washington	
Ducks and coots	Oct. 4
Statewide	
Wyoming	
Ducks and coots	Sept. 27

(1) In Maryland, the accompanying adult must be at least 21 years of age and possess a valid Maryland hunting license (or be exempt from the license requirement). This accompanying adult may not shoot or possess a firearm.

(2) In Maryland, the special season is closed on canvasbacks.

(3) In South Carolina, the bag limit of 6 may not exceed 1 black duck, mottled duck, or female mallard in the aggregate.

(4) In Kansas, the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.

(5) In Nebraska, see State regulations for additional information on the daily bag limit.

(6) In the Pacific Flyway, the daily bag limit for ducks includes mergansers.

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 20, 1997, 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.

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. 28-Nov. 14 & Dec. 1-Dec. 12 & Jan. 12-Jan. 18  
 Rails Nov. 10-Dec. 16  
 Woodcock Nov. 24-Dec. 19 & Jan. 19-Mar. 10  
 Common moorhens Nov. 10-Dec. 15

Marland Mourning doves Oct. 22-Nov. 16 & Dec. 14-Dec. 21 & Dec. 25-Dec. 27  
 Rails Nov. 9-Dec. 16  
 Woodcock Oct. 1-Oct. 24 & Nov. 15-Nov. 28 & Dec. 14-Jan. 1

Pennsylvania Mourning doves Oct. 13-Oct. 31 & Dec. 1-Dec. 18

	Season Dates	Limits	
		Bag	Possession
Montana Special Season Area (3)	Sept. 13-Sept. 14 & Sept. 20-Sept. 21	1 per season	1 per season
Utah (3)(6)	Sept. 6-Sept. 14	1 per season	
Wyoming Bear River Area (3)(5) Salt River Area (3)(5) Eden-Farson Area (3)(5)	Sept. 1-Sept. 7 Sept. 1-Sept. 7 Sept. 1-Sept. 7	1 per permit 1 per permit 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 2 in the Middle Rio Grande Valley Area and 4 in the Southwest Area.

(5) Shooting hours are sunrise to sunset.

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 20, 1997, Federal Register. For those extended seasons for Ducks, Mergansers, and Coots, area descriptions were published in the September 27, 1996, Federal Register (61 FR 50738) and will be published again in a September 1997 Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Daily bag limit . . . . . 3 migratory birds, singly or in the aggregate.

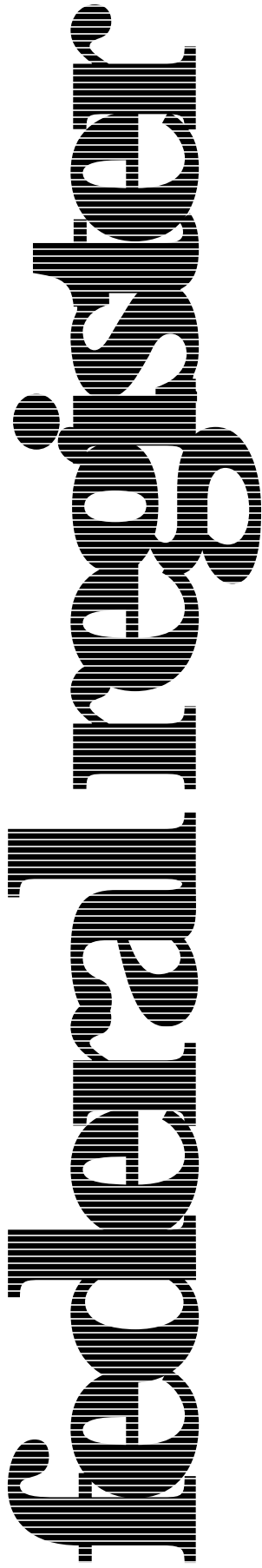
Possession limit . . . . . 6 migratory birds, singly or in the aggregate.

	Extended Falconry Dates	Extended Falconry Dates
<b>Virginia</b>		
Doves	Sept. 28-Oct. 3 & Dec. 9-Dec. 23 & Jan. 7-Jan. 22	Rails, snipe, and woodcock Nov. 5-Dec. 16
Rails	Sept. 28-Oct. 7 & Dec. 22-Jan. 17	Ducks, mergansers, coots, and moorhens (1) Sept. 1-Sept. 30
Woodcock	Nov. 16-Dec. 19 & Jan. 4-Jan. 31	Missouri
		Mourning doves Oct. 31-Dec. 16
		Ducks, mergansers, and coots Sept. 13-Sept. 21
<b>MISSISSIPPIELYWAY</b>		<b>Tennessee</b>
<b>Illinois</b>		Mourning doves Sept. 28-Oct. 10 & Oct. 26-Nov. 25
Mourning doves	Oct. 15-Oct. 31 & Nov. 17-Dec. 16	Ducks (1) Sept. 18-Sept. 30
Rails	Nov. 15-Dec. 21	<b>Wisconsin</b>
Woodcock	Sept. 1-Sept. 30 & Nov. 15-Dec. 16	Rails, snipe, moorhens, and gallinules (1) Sept. 1-Sept. 30
		Woodcock Sept. 1-Sept. 19
<b>Indiana</b>		Ducks, mergansers, and coots (1) Sept. 13-Sept. 30
Mourning doves	Oct. 17-Nov. 6 & Jan. 1-Jan. 26	<b>CENTRAL ELYWAY</b>
Woodcock	Sept. 20-Oct. 9 & Nov. 24-Jan. 4	<b>Montana (2)</b>
Ducks, mergansers, and coots (1) North Zone	Sept. 23-Sept. 30	Ducks, mergansers, and coots (1) Sept. 24-Oct. 3
<b>Michigan</b>		<b>New Mexico (2)</b>
Rails and snipe	Sept. 7-Sept. 14 & Nov. 15-Dec. 12 & Mar. 1-Mar. 10	Doves Oct. 1-Nov. 5 & Nov. 28-Nov. 30 & Dec. 31-Jan. 7
Ducks, mergansers, coots, and moorhens (1)	Sept. 7-Sept. 30	Band-tailed pigeons North Zone Sept. 21-Dec. 16
Woodcock	Sept. 7-Sept. 19 & Nov. 4-Dec. 12 & Mar. 1-Mar. 10	South Zone Oct. 21-Jan. 15
		Sandhill cranes Regular Season Area Oct. 17-Oct. 30

	Extended Falconry Dates
<b>New Mexico</b>	
Doves	Oct. 1-Nov. 5 & Nov. 28-Nov. 30 & Dec. 31-Jan. 7
Band-tailed pigeons North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
<b>Oregon (3)</b>	
Mourning doves	Oct. 1-Dec. 16
Band-tailed pigeons	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
<b>Utah</b>	
Mourning doves and band-tailed pigeons	Oct. 1-Dec. 16
<b>Washington</b>	
Mourning doves	Oct. 1-Dec. 31
<b>Wyoming</b>	
Rails and snipe	Sept. 1-Sept. 12

(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.

	Extended Falconry Dates
<b>North Dakota</b>	
Ducks, mergansers, and coots	Sept. 25-Sept. 26 & Sept. 28-Oct. 3
Snipe	Sept. 1-Sept. 19
<b>South Dakota</b>	
Ducks, mergansers, and coots (1) High Plains	Sept. 4-Sept. 12
Low Plains North & Middle Zones	Sept. 4-Sept. 26 & Sept. 28-Sept. 30
South Zone	Sept. 8-Sept. 26 & Sept. 28-Sept. 30
<b>Texas</b>	
Mourning and white-winged doves	Nov. 8-Dec. 24
Rails and gallinules	Oct. 2-Nov. 7
<b>Wyoming</b>	
Rails and snipe	Sept. 1-Sept. 12
Ducks, mergansers, and coots (1)	Sept. 18-Sept. 26
<b>PACIFIC FLYWAY</b>	
<b>Arizona</b>	
Doves	Sept. 15-Oct. 31
<b>Idaho</b>	
Mourning doves	Nov. 1-Jan. 16



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Friday  
August 29, 1997

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**Part VII**

**Department of  
Transportation**

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Federal Aviation Administration

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14 CFR Parts 27 and 29  
Normal and Transport Category  
Rotorcraft Regulations; Rule

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 27 and 29**

[Docket No. 29008; Amdt. 27-34, 29-41]

**Normal and Transport Category Rotorcraft Regulations**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Technical amendments; request for comments.

**SUMMARY:** This document amends the airworthiness standards for normal and transport category rotorcraft under 14 CFR parts 27 and 29. As published, the final regulations contain some incorrect word usage and omissions, misspellings, and incorrect references that may prove to be misleading and are in need of correction.

**DATES:** Effective November 28, 1997.

Comments for inclusion in the Rules Docket must be received on or before September 29, 1997.

**ADDRESSES:** Submit comments in duplicate to the Federal Aviation Administration, Office of the Chief Counsel (AGC-200), Attention: Rules Docket No. 29008, 800 Independence Ave., SW, Washington, DC 20591.

Comments may also be submitted electronically to the following Internet address: 9-NPRM-CMTS@faa.dot.gov. Comments submitted must be marked: Docket No. 29008.

Comments may be examined in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mary June Bruner, FAA, Fort Worth, Texas 76193-0111, telephone (817) 222-5118, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:** This action makes some nonsubstantive changes to various sections of parts 27 and 29. The affected parts, as published, contain some incorrect word usage and omissions, misspellings, and incorrect references. The FAA has determined that these changes are nonsubstantive and is not aware of any opposition to making these changes.

Further, the European Joint Aviation Authorities (JAA) has notified the FAA that they are issuing a Notice of Proposed Amendment (NPA) to make these same changes to the Joint Aviation Regulations (JAR) 27 and 29. Thus these changes to parts 27 and 29 will be harmonized with the JAA's NPA.

The FAA anticipates that this regulation will not result in adverse or negative comments and therefore is issuing it as technical amendments with

request for comments. Since the document would make only nonsubstantive word changes, the FAA is unaware of any opposition to these changes. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the amendments will be published in the **Federal Register**, and a notice of proposed rulemaking (NPRM) may be published with a new comment period.

**Comments Invited**

Although this action was not preceded by an NPRM, 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. Comments should identify the Rules Docket number and be submitted in duplicate 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this 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 substantive FAA-public contact concerning this action will be filed in the 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. 29008." The postcard will be date stamped and returned to the commenter.

**Availability**

Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703-321-3339) or the **Federal Register's** electronic bulletin board service (telephone: 202-512-1661).

Internet users may reach the FAA's web page at <http://www.faa.gov> or the **Federal Register's** web page at [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs) for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the FAA, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the amendment number or docket number.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no reporting or recordkeeping requirements associated with this document.

**Agency Findings**

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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this 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 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 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**.

**International Trade Impact Statement**

The rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States.

**Unfunded Mandates Reform Act Assessment**

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified as 2 U.S.C. §§ 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation) in any one year.

This rule does not meet the thresholds of the Act. Therefore, the requirements of Title I of the Act do not apply.

**Conclusion**

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and International Trade Impact Analysis, the FAA has determined that this regulation is not significant under Executive Order 12866. In addition, the FAA certifies that this rule 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. This regulation is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations.

**List of Subjects***14 CFR Part 27*

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

*14 CFR Part 29*

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

**PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT**

Accordingly, the Federal Aviation Administration amends 14 CFR parts 27 and 29 as follows:

1. The authority citation for part 27 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

**§ 27.175 [Amended]**

2. In § 27.175(b)(5), remove the symbol “V<sub>NH</sub>” and add, in its place, the symbol “V<sub>NE</sub>”.

**§ 27.351 [Amended]**

3. In § 27.351, paragraphs (b)(1) and (c)(1), add the word “maximum” before the words “pilot force” and remove the reference to “§ 27.395(a)” and add, in its place, “§ 27.397(a)”.

**§ 27.391 [Amended]**

4. In § 27.391, remove the references to “27.401”, “27.403”, and “27.413”.

**§ 27.621 [Amended]**

5. In § 27.621(c)(1)(ii), remove the word “penetrate” and add, in its place, “penetrant”.

**PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT**

6. The authority citation for part 29 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

**§ 29.351 [Amended]**

7. In § 29.351, paragraphs (b)(1) and (c)(1), remove the reference to “§ 29.395(a)” and, in its place, add “§ 29.397(a)”. In paragraph (b)(1), add the word “directional” between “cockpit” and “control”. In paragraph (c)(1), add the word “maximum” before the words “pilot force”.

**§ 29.391 [Amended]**

8. In § 29.391, remove the reference to “29.403” and, in its place, add “29.399”, and remove the reference to “29.413”.

**§ 29.562 [Amended]**

9. In § 29.562(b)(3), remove the word “floor” between the words “sidewall” and “attachment”.

**§ 29.621 [Amended]**

10. In § 29.621(c)(1)(ii), remove the word “penetrate” and, in its place, add the word “penetrant”.

**§ 29.1125 [Amended]**

11. In § 29.1125(a)(4), remove the word “Each” and in its place, add the word “No” and add the word “or” between the words “exchanger” and “muff”.

**§ 29.1521 [Amended]**

12. In § 29.1521(b)(1)(i), remove the word “be” and, in its place, add the word “by”; and remove “determined” and, in its place, add the word “determined”.

Issued in Washington, DC, on August 25, 1997.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

[FR Doc. 97–22973 Filed 8–28–97; 8:45 am]

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## Federal Register

Vol. 62, No. 168

Friday, August 29, 1997

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### FEDERAL REGISTER PAGES AND DATES, AUGUST

41249-41804.....	1
41805-42036.....	4
42037-42208.....	5
42209-42384.....	6
42385-42646.....	7
42647-42896.....	8
42897-43066.....	11
43067-43260.....	12
43269-43452.....	13
43453-43628.....	14
43629-43916.....	15
43917-44066.....	18
44067-44198.....	19
44199-44390.....	20
44391-44534.....	21
44535-44880.....	22
44881-45140.....	25
45141-45292.....	26
45293-45522.....	27
45523-45708.....	28
45709-46174.....	29

### CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

<b>3 CFR</b>	29.....	43430
	31.....	43430
<b>Proclamations:</b>	32.....	43430
7016.....	36.....	43430
7017.....	46.....	43453
<b>Executive Orders:</b>	52.....	43430
August 11, 1913	53.....	43430
(Revoked by PLO	54.....	43430
7278).....	56.....	44881
July 24, 1917	58.....	43430
(Revoked in part by	278.....	42037, 42857
PLO 7278).....	301.....	43269, 43456, 44201,
11246 (See Final Rule		45141
of August 12,	400.....	42857
1997).....	401.....	42647
12613 (Revoked in	457.....	42647
part by EO	723.....	43917
13059).....	911.....	45142
12722 (See Notice July	918.....	43922
31, 1997).....	920.....	45146, 45293
12924 (Continued by	922.....	41805
Notice of August 13,	923.....	41805
1997).....	924.....	41805
12957 (Revoked in	927.....	44201
part by EO	930.....	44881
13059).....	931.....	44884
12959 (Revoked in	944.....	45142
part by EO	947.....	43457
13059).....	981.....	43459
13057.....	985.....	43461
13058.....	993.....	41808
13059.....	1126.....	41810
13060.....	1220.....	41486
<b>Administrative Orders:</b>	1439.....	44391
Notice of July 31,	1464.....	43917
1997.....	1493.....	42651
Notice of August 13,	1767.....	42284, 43201
1997.....	1901.....	42385
Memorandums:	1951.....	41251, 42385
August 20, 1997.....	1955.....	44392
Presidential Determinations:	3016.....	45937
No. 97-30 of August 7,	3019.....	45937
1997.....	3051.....	45937
	3052.....	45937
	4284.....	42385
<b>5 CFR</b>		
Ch. LIV.....	43269	
315.....	44199	
338.....	44535	
362.....	44199	
890.....	41486	
1001.....	42897	
1201.....	43631	
4501.....	42897	
<b>Proposed Rules:</b>		
178.....	45060	
213.....	42943	
551.....	45064	
1650.....	42418	
<b>7 CFR</b>		
Ch. XXX.....	45937	
3015.....	45937	
3.....	42857	
<b>8 CFR</b>		
3.....	45148	



103.....45148  
 212.....43466  
 240.....45148  
**Proposed Rules:**  
 252.....43676  
**9 CFR**  
 1.....43272  
 3.....43272  
 77.....42044  
 94.....42664, 42899, 43924  
 145.....44067, 45289  
 147.....44067  
 304.....42901, 45016  
 308.....42901, 45016  
 310.....42901  
 317.....45016  
 318.....43631, 45016  
 319.....45016  
 320.....42901  
 327.....42901  
 381.....42901, 45016  
 416.....42901  
 417.....42901  
**Proposed Rules:**  
 71.....42703  
 92.....42705  
 303.....45045  
 308.....45045  
 381.....45045  
 416.....45045  
**10 CFR**  
 50.....44071  
 430.....45484  
 600.....45937  
**Proposed Rules:**  
 Ch. I.....44914  
 20.....42948  
 35.....42219, 42707  
 55.....42426  
 430.....44914, 44915  
**12 CFR**  
 205.....43467  
 225.....45295  
 265.....45150  
 543.....45307  
 602.....41253  
 650.....43633  
 960.....41812  
**Proposed Rules:**  
 3.....42006  
 6.....42006  
 204.....42708  
 208.....42006  
 225.....42006  
 250.....45177  
 271.....45178  
 325.....42006  
 565.....42006  
 567.....42006  
 701.....41313  
 722.....41313  
 723.....41313  
**13 CFR**  
 143.....45937  
**Proposed Rules:**  
 121.....43584  
 124.....43584  
 134.....43584  
**14 CFR**  
 25.....45481, 45523

27.....46172  
 29.....46172  
 39.....41254, 41255, 41257  
 41259, 41260, 41262, 41839,  
 42045, 42391, 42949, 42951,  
 42952, 43067, 43925, 43926,  
 44204, 44206, 44207, 44208,  
 44404, 44406, 44535, 44537,  
 44539, 44540, 44886, 44888,  
 45150, 45152, 45309, 45709,  
 45710  
 61.....45481  
 71.....41265, 42901, 43069,  
 43275, 44078, 44079, 44888,  
 44889, 45155, 45156, 45526,  
 45529, 45530, 45937  
 97.....41266, 41268, 41269,  
 44537, 44539, 44540  
 121.....44408  
 125.....44408  
 126.....44408  
 129.....44408  
 135.....42364, 44408, 45014  
 241.....43276  
 1260.....45937  
 1273.....45937  
**Proposed Rules:**  
 25.....45589  
 39.....41320, 41839, 42077,  
 42430, 42432, 42433, 42949,  
 42951, 42952, 43128, 43956,  
 44096, 44244, 44245, 44597,  
 44915, 44917, 45183  
 71.....42954, 42955, 44598,  
 44603, 44604, 44605, 44606,  
 44919, 44921, 44922, 44923,  
 45591  
 107.....41760  
 108.....41730  
 139.....41760  
**15 CFR**  
 24.....45937  
 738.....42047  
 740.....42047  
 774.....42047  
 902.....43469  
**Proposed Rules:**  
 922.....44427  
**16 CFR**  
 305.....42209, 44890  
 1033.....42397  
**Proposed Rules:**  
 245.....44607  
 403.....44099  
**17 CFR**  
 1.....42398  
 12.....43930, 45702  
 228.....43581  
 229.....43581  
 232.....41841, 43581  
 239.....43581  
 240.....42664, 43581, 45289  
 249.....43581  
 270.....42401  
**Proposed Rules:**  
 230.....45359  
**18 CFR**  
**Proposed Rules:**  
 401.....45766  
**19 CFR**  
 10.....42209

24.....45156  
 134.....44211  
**Proposed Rules:**  
 118.....44102  
 134.....43958  
 351.....41322  
**20 CFR**  
 261.....45712  
 335.....44408  
 340.....41270  
 367.....44409  
 416.....42410, 42411  
**Proposed Rules:**  
 200.....43295  
 402.....43489  
 404.....42439  
 422.....42439  
**21 CFR**  
 5.....43471  
 101.....43071  
 120.....45593  
 175.....43075  
 177.....42050  
 178.....41271, 42050  
 201.....45313  
 314.....43639, 44891  
 520.....42902  
 522.....41272, 44409, 45157  
 558.....44892  
 573.....44892  
 600.....44891  
 601.....44891  
 610.....44891  
 640.....44891  
 730.....43071  
 1403.....45937  
**Proposed Rules:**  
 111.....44247  
 201.....43900  
 312.....43900  
 314.....43900  
 336.....45767  
 338.....45767  
 341.....45767  
 348.....45767  
 601.....43900  
**22 CFR**  
 22.....42665  
 135.....45937  
 145.....45937  
 226.....45937  
 518.....45937  
**Proposed Rules:**  
 201.....42712  
**23 CFR**  
 140.....45326  
 646.....45326  
**Proposed Rules:**  
 772.....42903  
**24 CFR**  
 92.....44838  
**Proposed Rules:**  
 1000.....43131  
 1003.....43131  
 1005.....43131  
**25 CFR**  
 46.....44080  
**26 CFR**  
 1.....41272, 42051, 44214,

44542  
**Proposed Rules:**  
 1.....41322, 43295, 44103,  
 44607  
 25.....44103  
**27 CFR**  
**Proposed Rules:**  
 178.....45364  
**28 CFR**  
 16.....44083  
 66.....45937  
 70.....45937  
 548.....44836  
 550.....45292  
**Proposed Rules:**  
 16.....45184  
 50.....45184  
 79.....45774  
**29 CFR**  
 95.....45937  
 97.....45937  
 1470.....45937  
 1904.....44552  
 1910.....42018, 42666, 43581  
 2204.....42957  
 4044.....43639  
**30 CFR**  
 210.....42062  
 218.....42062  
 227.....43076  
 228.....43076  
 229.....43076  
 250.....42667, 42669  
 870.....45922  
 904.....44894  
 914.....44894, 44897  
 917.....45714  
 925.....41842  
 934.....44899  
 944.....41845  
**Proposed Rules:**  
 914.....42713  
 936.....42715  
 946.....44924  
**31 CFR**  
 Ch. V.....41850  
 27.....42212, 44036  
 202.....45520  
 356.....43091  
 357.....43283  
 500.....45098  
 501.....45098  
 505.....45098  
 515.....45098  
 535.....45098  
 536.....45098  
 550.....45098  
 560.....41851, 45098  
 575.....45098  
 585.....45098  
 590.....45098  
 595.....45098  
 596.....45098  
**Proposed Rules:**  
 1.....42443  
 27.....42220  
 103.....45365  
**32 CFR**  
 33.....45937

199.....42904, 42905	41277, 41280, 41853, 41856,	<b>42 CFR</b>	175.....44036
247.....42905	41865, 41867, 42068, 42216,	400.....45966	<b>47 CFR</b>
286.....42916	42412, 42916, 43100, 43103,	409.....45966	0.....42928, 45172
<b>Proposed Rules:</b>	43104, 43109, 43471, 43643,	410.....45966	1.....43474, 45171
199.....45196	43645, 43647, 44083, 44218,	411.....45966	2.....41879, 43116
311.....41323	44219, 44413, 44903, 44907,	412.....43657, 45966	15.....41879, 43116, 45330
<b>33 CFR</b>	44909, 45165, 45166, 45168,	413.....43657, 45966	32.....43122
100.....42067, 42671, 43284,	45531	414.....43657	51.....45579
43641, 44410, 44411, 45158,	55.....41870	418.....42860	53.....43122
45717, 45718	60.....45116, 45124	424.....45966	54.....41294
117.....43096, 43097, 43931,	62.....41872, 45730	431.....43931	61.....42217
45159	63.....42918	440.....45966	63.....45758
162.....45719	68.....45130, 45134	442.....43931	64.....43477, 45587
165.....41275, 42671, 42673,	69.....44415	485.....45966	68.....43481
42674, 42676, 42677, 43098,	70.....45166, 45732	488.....43931, 44221, 45966	69.....41294
43099, 45720, 45721	80.....45531	489.....43931, 45966	73.....42416, 43123, 43293,
<b>Proposed Rules:</b>	81.....41280, 41867, 44083,	498.....43931, 45966	43294, 44416, 44595, 44912,
95.....45197	45168	<b>Proposed Rules</b>	45763
100.....45197, 45198	86.....44582, 44872, 45289	400.....43962	76.....44913
117.....43131	90.....42638	405.....43962	97.....43116
148-150.....45774	91.....42638	410.....43962	<b>Proposed Rules:</b>
165.....41324, 45775	93.....43780	414.....43962	1.....42224
167.....44428	148.....43109	<b>43 CFR</b>	2.....45380
173.....45197	180.....41283, 41286, 41874,	10.....41292	15.....45380
174.....45197	42678, 42684, 42921, 43284,	12.....45937	51.....45611
175.....45197	43650, 43653, 44089, 44552,	3400.....44354	54.....42457
177.....45197	44558, 44565, 44572, 44575,	3470.....44354	63.....42091
179.....45197	44579, 44582, 45735, 45741,	3480.....44354	64.....43493, 43686
181.....45197	45748	<b>Proposed Rules:</b>	69.....42457
183.....45197	185.....45748	4.....45606	73.....43301, 43302, 44434,
187.....43958	186.....44582, 45748	<b>44 CFR</b>	44435, 44436, 44932, 45784,
<b>34 CFR</b>	228.....46142	13.....45937	45785
74.....45937	268.....45568	64.....43291	76.....43963
80.....45937	271.....43111, 45568	65.....45573, 45574	<b>48 CFR</b>
<b>36 CFR</b>	300.....41292, 42414	67.....45575	Ch. 1.....44802, 44831
242.....45723	721.....42690	206.....45328	Ch. V.....44526
1207.....45937	799.....43820	<b>Proposed Rules:</b>	Ch. 7.....42929
1210.....45937	<b>Proposed Rules:</b>	67.....45608	1.....44804, 44805, 44808,
<b>Proposed Rules:</b>	51.....44926	<b>45 CFR</b>	44809, 44813
1190.....43133	52.....41325, 41326, 41905,	74.....41877, 45937	7.....44813
1191.....43133	41906, 42079, 42087, 42088,	92.....45937	8.....44817
<b>37 CFR</b>	42221, 43133, 43134, 43139,	96.....45962	9.....44804, 44819
1.....43100	43140, 43679, 43681, 43684,	602.....45937	10.....44809
2.....43100	43959, 44104, 44247, 44429,	1157.....45937	11.....44808
<b>38 CFR</b>	44928, 44929, 45199	1174.....45937	13.....44809, 44817
43.....45937	55.....45604	1183.....45937	14.....44804
<b>Proposed Rules:</b>	60.....44929, 44931, 45369	1602.....45754	15.....44809
21.....45596	61.....45369	1626.....45755	16.....44813
<b>39 CFR</b>	62.....41906, 45777	2541.....45937	19.....44804, 44819, 44821,
3.....41853, 43642	63.....44608, 44614, 45369	2543.....45937	44822
20.....45160	81.....41326, 41906, 42717,	<b>Proposed Rules:</b>	22.....44804, 44823
3001.....45530, 45727	44104, 45199	1630.....45778	23.....44809
3002.....45530	86.....44754	<b>46 CFR</b>	25.....44827
<b>Proposed Rules:</b>	90.....42645	<b>Proposed Rules</b>	28.....44805
111.....45366	91.....42645	67.....43958	31.....44808, 44828
775.....42958	131.....42160	90.....44036	33.....44804
777.....42958	141.....42221, 43492	98.....44036	36.....44809, 44829
778.....42958	142.....42221	125.....44036	37.....44813
<b>40 CFR</b>	180.....45377	127.....44036	39.....44830
3.....43269	281.....41326, 42222	128.....44036	42.....44809, 44813
9.....44412	300.....43684, 44430, 44619	129.....44036	43.....44830
30.....45937	439.....42720	130.....44036	46.....44813
31.....45937	721.....42090, 42732, 43297	131.....44036	51.....44817
50.....43642	745.....44621	132.....44036	52.....44804, 44805, 44809,
51.....43780, 44900	<b>41 CFR</b>	133.....44036	44813, 44822, 44823, 44830
52.....41275,	60-1.....44174	134.....44036	204.....44221
	60-60.....44174	135.....44036	211.....44223
	101-37.....43472	136.....44036	225.....44224
	101-17.....42070	170.....44036	242.....44223
	105-71.....45937	174.....44036	252.....44223
	105-72.....45937		253.....44221
	301-8.....42928		504.....44518
	<b>Proposed Rules:</b>		507.....44518
	101-16.....42444		510.....44518

511.....44518  
512.....44518  
514.....44518  
515.....44518  
538.....44518  
539.....44518  
701.....45334  
702.....45334  
703.....45334  
704.....45334  
705.....45334  
706.....45334  
708.....45334  
709.....45334  
711.....45334  
715.....45334  
716.....45334  
717.....45334  
719.....45334  
722.....45334  
724.....45334  
725.....45334  
726.....45334  
728.....45334  
731.....45334  
732.....45334  
733.....45334  
734.....45334  
736.....45334  
749.....45334  
750.....45334  
752.....45334  
753.....45334  
904.....42072  
909.....42072  
923.....42072  
926.....42072  
952.....42072  
970.....42072

**Proposed Rules:**  
213.....44247  
214.....44247  
215.....44247  
231.....44248  
242.....44247, 44249  
810.....44932  
811.....44932  
812.....44932  
836.....44932  
852.....44932  
870.....44932  
970.....44350

**49 CFR**  
Chapter X .....42075  
18.....45937  
19.....45937  
171.....44038, 44913  
172.....45702  
173.....45702  
193.....41311  
541.....44416  
544.....41882  
571.....45172  
572.....44225  
1157.....45334

**Proposed Rules:**  
171.....44374  
172.....44374  
173.....44059  
175.....44374  
177.....44059  
178.....44059  
180.....44059  
192.....44436  
195.....44436  
199.....44250  
213.....42733, 43201  
234.....42733  
391.....45200  
393.....45614  
571.....42226, 42469, 45202  
572.....42469  
1155.....42734

**50 CFR**  
Ch. VI.....44421  
17.....42692, 44227, 44228  
20.....43444, 44229, 45706,  
46152  
23.....44627  
36.....45336  
85.....45344  
100.....45723  
217.....43124  
222.....43937  
227.....43124, 43937  
285.....42416, 43126, 44422,  
44423, 45764  
300.....43126  
622.....42417  
648.....43127, 43469, 43674,  
44424  
660.....43294, 43484, 44425,

45350, 45357  
679.....43485, 43486, 43954

**Proposed Rules:**  
14.....42091  
17.....41328, 42092, 42473  
20.....43042, 45078  
23.....42093, 44627  
38.....45381  
216.....42737  
227.....43974  
229.....43302  
285.....45614  
600.....41907, 42093, 42474  
622.....42478  
630.....45614  
644.....45614  
648.....42737, 45384  
678.....45614  
679.....43307, 43689, 43866,  
43977, 45386

**REMINDERS**

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.

**RULES GOING INTO EFFECT AUGUST 29, 1997****ENERGY DEPARTMENT**

Acquisition regulations:  
Organizational conflicts of interest; published 7-30-97

**ENVIRONMENTAL PROTECTION AGENCY**

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:  
Cyromazine; published 8-29-97

Desmedipham; published 8-29-97

Paraquat; published 8-29-97

**FEDERAL COMMUNICATIONS COMMISSION**

Common carrier services:  
Telecommunications Act of 1996; implementation—  
Universal service policy; published 7-30-97

**INTERIOR DEPARTMENT Fish and Wildlife Service**

Migratory bird hunting:  
Seasons, limits, and shooting hours; establishment, etc.; published 8-29-97

**INTERIOR DEPARTMENT Surface Mining Reclamation and Enforcement Office**

Air quality implementation plans;  $\sqrt{A}$  approval and promulgation; various States; air quality planning purposes; designation of areas:  
Kentucky; published 8-29-97

**LEGAL SERVICES CORPORATION**

Freedom of Information Act; implementation:  
Disclosure procedures; published 8-29-97

**POSTAL RATE COMMISSION**

Practice and procedure:  
Market research evidence; foundational requirements clarified; published 8-29-97

**TRANSPORTATION DEPARTMENT****Federal Aviation Administration**

Airworthiness directives:

Industrie Aeronautique E Meccaniche; published 7-8-97

**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Marketing orders; expenses and assessment rates; comments due by 9-3-97; published 8-4-97

Prunes (dried) produced in California; comments due by 9-3-97; published 8-4-97

Tobacco inspection:  
Rework definition; comments due by 9-2-97; published 7-1-97

**DEFENSE DEPARTMENT****Federal Acquisition Regulation (FAR):**

Contract quality requirements; comments due by 9-2-97; published 7-2-97

Transfer of assets following business consolidation; comments due by 9-2-97; published 7-2-97

**ENERGY DEPARTMENT****Energy Efficiency and Renewable Energy Office**

Consumer products; energy conservation program:  
Fluorescent lamp ballasts; potential impact of possible energy efficiency levels; report availability and comment request; comments due by 9-2-97; published 7-17-97

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs; approval and promulgation; State plans for designated facilities and pollutants:  
Iowa et al.; comments due by 9-3-97; published 8-4-97

Air quality implementation plans; approval and promulgation; various States:  
California; comments due by 9-2-97; published 7-31-97

Colorado; comments due by 9-4-97; published 8-5-97

Maine; comments due by 9-2-97; published 8-1-97

Maryland; comments due by 9-3-97; published 8-4-97

North Carolina; comments due by 9-2-97; published 8-1-97

Tennessee; comments due by 9-4-97; published 8-5-97

Washington; comments due by 9-5-97; published 8-6-97

Air quality implementation plans;  $\sqrt{A}$  approval and promulgation; various States; air quality planning purposes; designation of areas:

Vermont; comments due by 9-2-97; published 8-1-97

**Hazardous waste:**

Identification and listing—  
Exclusions; comments due by 9-2-97; published 7-31-97

State underground storage tank program approvals—  
West Virginia; comments due by 9-2-97; published 8-1-97

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Pesticide residues; revoked tolerances for commodities no longer regulated; comments due by 9-2-97; published 7-2-97

**Superfund program:**

Toxic chemical release reporting; community right-to-know—

Dioxin, etc.; comments due by 9-5-97; published 6-23-97

**FEDERAL COMMUNICATIONS COMMISSION****Common carrier services:**

Access charges—  
Local exchange carriers non-rural; federal-state board on universal service and forward-looking mechanism; comments due by 9-2-97; published 8-7-97

**Radio stations; table of assignments:**

Michigan; comments due by 9-2-97; published 7-17-97

Missouri; comments due by 9-2-97; published 7-16-97

South Carolina; comments due by 9-2-97; published 7-16-97

Washington; comments due by 9-2-97; published 7-16-97

**FEDERAL ELECTION COMMISSION****Contribution and expenditure limitations and prohibitions:**

Corporate and labor organizations—  
Association member; definition; comments due by 9-2-97; published 7-31-97

**FEDERAL RESERVE SYSTEM**

Miscellaneous interpretations:  
Direct investment, loans and other transactions between member banks and their subsidiaries; funding restrictions; comments due by 9-3-97; published 7-15-97

**FEDERAL TRADE COMMISSION****Industry guides:**

Watch industry; comments due by 9-2-97; published 6-18-97

**Trade regulation rules:**

Ophthalmic practice rules; comments due by 9-2-97; published 5-29-97

**GENERAL SERVICES ADMINISTRATION****Federal Acquisition Regulation (FAR):**

Contract quality requirements; comments due by 9-2-97; published 7-2-97

Transfer of assets following business consolidation; comments due by 9-2-97; published 7-2-97

**Federal property management:**

Public buildings and space—  
Space utilization and assignment; comments due by 9-4-97; published 8-5-97

**HEALTH AND HUMAN SERVICES DEPARTMENT****Food and Drug Administration**

Food additives:  
Adjuvants, production aids, and sanitizers—  
Disodium 4-isodecyl sulfosuccinate; comments due by 9-4-97; published 8-5-97

Food for human consumption and animal drugs, feeds, and related products:

Food labeling—  
Net quantity of contents; compliance; comments due by 9-2-97; published 5-30-97

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT****Mortgage and loan insurance programs:**

Multifamily housing mortgage insurance; electronic payment; comments due by 9-2-97; published 7-2-97

Title I property improvement and manufactured home

loan insurance programs—  
Sellers, contractors, or suppliers of goods or services prohibited from assisting borrowers with credit applications; comments due by 9-2-97; published 7-3-97

#### INTERIOR DEPARTMENT

##### Fish and Wildlife Service

Importation, exportation, and transportation of wildlife:  
Humane and healthful transport of wild mammals, birds, reptiles, and amphibians to U.S.; comments due by 9-4-97; published 6-6-97  
Migratory bird hunting:

Late-season regulations (1997-1998); proposed frameworks; comments due by 9-4-97; published 8-25-97

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contract quality requirements; comments due by 9-2-97; published 7-2-97

Transfer of assets following business consolidation; comments due by 9-2-97; published 7-2-97

#### PERSONNEL MANAGEMENT OFFICE

Retirement:

Civil Service Retirement System—  
Retirement and insurance benefits when annuitant disappears; comments due by 9-2-97; published 7-2-97

#### SECURITIES AND EXCHANGE COMMISSION

Securities:

Alternative trading systems, national securities exchanges, foreign market activities, and related issues; regulation of exchanges; comments due by 9-2-97; published 6-4-97

#### TRANSPORTATION DEPARTMENT

##### Coast Guard

Drawbridge regulations:

North Carolina; comments due by 9-2-97; published 7-1-97

Ports and waterways safety:

Lower Hudson River, NY; safety zone; comments due by 9-2-97; published 8-1-97

#### TRANSPORTATION DEPARTMENT

##### Federal Aviation Administration

Air carrier certification and operations:

Air taxi and commercial operators—  
Single-engine aircraft under visual into instrument meteorological conditions; comments due by 9-5-97; published 8-6-97

Aircraft products and parts; certification procedures:  
Type certificated products; certification of changes; comments due by 9-2-97; published 5-2-97

Airworthiness directives:

Boeing; comments due by 9-2-97; published 7-3-97  
Cessna Aircraft Co.; comments due by 9-2-97; published 7-2-97

Dornier; comments due by 9-2-97; published 7-2-97

Industrie Aeronautiche e Meccaniche; comments

due by 9-2-97; published 7-2-97

McDonnell Douglas; comments due by 9-5-97; published 7-25-97

Mitsubishi Heavy Industries, Ltd.; comments due by 9-2-97; published 7-2-97

Partenavia Costruzioni Aeronauticas; comments due by 9-2-97; published 7-2-97

Pilatus Aircraft Ltd.; comments due by 9-2-97; published 7-2-97

Pilatus Britten-Norman Ltd.; comments due by 9-5-97; published 7-7-97

Raytheon; comments due by 9-3-97; published 7-24-97

Raytheon Aircraft Co.; comments due by 9-2-97; published 7-2-97

SIAl Marchetti S.r.l.; comments due by 9-2-97; published 7-2-97

Class E airspace; comments due by 9-5-97; published 8-11-97

#### TRANSPORTATION DEPARTMENT

##### National Highway Traffic Safety Administration

Motor vehicle safety standards:

Seat belt assemblies—  
Pelvic restraint requirement deleted; comments due by 9-5-97; published 7-7-97

#### TREASURY DEPARTMENT Fiscal Service

Federal claims collection:

Past-due support; collection by administrative offset; comments due by 9-5-97; published 7-7-97

#### TREASURY DEPARTMENT Internal Revenue Service

Income taxes:

Guidance regarding claims for income tax convention benefits; comments due by 9-3-97; published 7-2-97

#### VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Surviving spouses; minimum income annuity; comments due by 9-2-97; published 7-3-97

Vocational rehabilitation and education:

Veterans education—  
Correspondence program or course approval; comments due by 9-2-97; published 7-1-97

Vietnam veterans' children with spina bifida provisions; comments due by 9-2-97; published 7-1-97

#### LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

**Last List August 19, 1997**

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