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Tuesday
May 12, 1998

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Contents

Federal Register

Vol. 63, No. 91

Tuesday, May 12, 1998

Agriculture Department
See Animal and Plant Health Inspection Service
See Cooperative State Research, Education, and Extension Service
See Food and Nutrition Service
See Rural Business-Cooperative Service
See Rural Utilities Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
African horse sickness; disease status change—Qatar, 26099–26100
NOTICES
Meetings:
National Wildlife Services Advisory Committee, 26139

Army Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26159–26160
Environmental statements; availability, etc.:
Base realignment and closure—
Charles E. Kelly Support Facility, PA; ground-to-air transmission and receiving/surface-to-air guidance and equipment control site, 26160
Inventions, Government-owned; availability for licensing, 26160–26161
Meetings:
Army Education Advisory Committee, 26161–26162

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26153–26156
Submission for OMB review; comment request, 26152–26153

Commodity Futures Trading Commission
PROPOSED RULES
Over-the-counter derivatives; concept release, 26114–26127

Cooperative State Research, Education, and Extension Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Community food projects, 26376–26383

Defense Department
See Army Department
See Navy Department

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26163–26164
Submission for OMB review; comment request, 26164
Grants and cooperative agreements; availability, etc.:
Centers for independent living program, 26164–26165
Even Start family literacy program for federally recognized Indian tribes and tribal organizations, 26394–26411
Meetings:
National Educational Research Policy and Priorities Board, 26165

Employment and Training Administration
NOTICES
Adjustment assistance:
AR Accessories, 26209
Northrop Grumman et al., 26209–26210
Powers Holdings, Inc., 26210
United Technologies Automotive, 26210–26211
Universal-Rundle Corp., 26211

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Synthetic organic chemical manufacturing industry, 26078–26082
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Azoxystrobin, 26082–26089
Imidacloprid; correction, 26097–26098
Myclobutanil, 26089–26097
PROPOSED RULES
Drinking water:
National primary drinking water regulations—
Unregulated contaminant monitoring regulation and list; stakeholders meeting, 26137–26138
NOTICES
Meetings:
Selenium aquatic toxicity and bioaccumulation; peer consultation workshop, 26186–26187

Executive Office of the President
See Presidential Documents

Export-Import Bank
NOTICES
Agency information collection activities:
Submission for OMB review; comment request; withdrawn, 26187

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 26187

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 26063–26066
Noise standards:
Aircraft type and airworthiness certification; CFR correction, 26063
PROPOSED RULES
Airworthiness directives:
Aerospatiale, 26106–26107

Airbus, 26102–26104, 26107–26112
Boeing, 26100–26102, 26104–26106,
Dornier, 26112–26114
NOTICES
Passenger facility charges; applications, etc.:
Monterey Peninsula Airport, CA, 26246

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Telecommunications Act of 1996; implementation—
Customer proprietary network information and other customer information; telecommunications carriers' use, 26138
NOTICES
Meetings:
1999-2000 World Radiocommunication Conference (WRC 99) Advisory Committee, 26187–26188
Meetings; Sunshine Act, 26188
Southern Co.; business and industrial/land transportation channel construction requirements; waiver, 26188–26189

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 26165–26166
Electric rate and corporate regulation filings:
Onondaga Cogeneration L.P. et al., 26174–26179
Origen Power Corp. et al., 26180–26186
Applications, hearings, determinations, etc.:
Algonquin LNG, Inc., 26166
ANR Pipeline Co., 26167
Atlanta Gas Light Co., 26167
Central Nebraska Public Power and Irrigation District et al., 26167
Columbia Gas Transmission Corp., 26167–26168
CSW Energy Services, Inc., 26168
El Paso Natural Gas Co., 26168
Equitrans, L.P., 26169
Great Lakes Gas Transmission L.P., 26169
Hawkeye Power Partners, L.L.C., 26169
Panhandle Eastern Pipe Line Co., 26169–26170
Questar Pipeline Co., 26170
Texas Eastern Transmission Corp., 26170–26171
TransColorado Gas Transmission Co., 26171–26172
Transcontinental Gas Pipe Line Corp., 26172
Trunkline Gas Co., 26172–26173
Viking Gas Transmission Co., 26173
Williams Gas Pipelines Central, Inc., 26173–26174
Williston Basin Interstate Pipeline Co., 26174

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Orange County, FL, 26246–26247

Federal Housing Enterprise Oversight Office
RULES
Privacy Act; implementation, 26063

Federal Maritime Commission
NOTICES
Agreements filed, etc., 26189–26190
Freight forwarder licenses:
SeaMasters et al., 26190

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 26190
Meetings; Sunshine Act, 26190–26191

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Iron County, UT; Utah prairie dog, 26204–26206

Food and Drug Administration
RULES
Communicable diseases control:
Lather brushes; treatment, sterilization, handling, storage, marking, and inspection; revocation, 26077–26078
Human drugs:
Antibiotic drugs certification; CFR parts removed, 26066–26069
Medical devices:
Adverse events reporting by manufacturers, importers, distributors, and health care user facilities, 26069–26077
PROPOSED RULES
Human drugs:
Antibiotic drugs certification; removal of regulations, 26127–26129
Medical devices:
Adverse events reporting by manufacturers, importers, distributors, and health care user facilities, 26129–26137
NOTICES
Animal drugs, feeds, and related products:
New drug applications—
Pfizer, Inc.; approval withdrawn, 26191
Food additive petitions:
Alltech Biotechnology Center, 26193
MacMillian Bloedel, Ltd., 26193–26194
Vanetta S.p.A., 26194
Human drugs:
New drug applications—
Sanofi Pharmaceuticals, Inc., et al.; approval withdrawn, 26191–26193
Meetings:
Food Advisory Committee, 26194–26195

Food and Nutrition Service
PROPOSED RULES
Food stamp program:
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation—
Retailer integrity, fraud reduction, and penalties; correction, 26250

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
RULES
Medicare:
Hospital inpatient prospective payment systems and 1998 FY rates, 26318–26360
Skilled nursing facilities; prospective payment system and consolidated billing, 26252–26316

Health Resources and Services Administration
NOTICES
Meetings:
Childhood Vaccines Advisory Commission, 26195

Housing and Urban Development Department
See Federal Housing Enterprise Oversight Office
RULES
Manufactured home construction and safety standards:
Metal roofing requirements in high wind areas
Interpretative bulletin, 26386–26389
PROPOSED RULES
Manufactured home construction and safety standards:
Metal roofing requirements in high wind areas, 26392
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26195–26197
Mortgagee Review Board; administrative actions, 26197–26204
Reporting and recordkeeping requirements, 26204

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service

International Development Cooperation Agency
See Overseas Private Investment Corporation

International Trade Administration
NOTICES
Antidumping:
Corrosion-resistant carbon steel flat products from—
Japan, 26144–26145
Frozen concentrated orange juice from—
Brazil, 26145–26147
Magnesium, pure, from—
Canada, 26147–26149
Stainless steel round wire from—
Canada et al., 26150–26152
Antidumping and countervailing duties:
Administrative review requests, 26143–26144
Applications, hearings, determinations, etc.:
University of—
Wisconsin-Madison, 26152

International Trade Commission
NOTICES
Import investigations:
Acesulfame potassium and blends and products containing same, 26208

Justice Department
See Justice Programs Office

Justice Programs Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26208–26209

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26206–26207
Closure of public lands:
Nevada, 26207
Realty actions; sales, leases, etc.:
Wyoming; correction, 26207–26208
Survey plat filings:
California; correction, 26250

Minerals Management Service
RULES
Royalty management and Outer Continental Shelf; oil, gas, and sulphur operations:
Gas royalties reporting and payment standards and gas analysis reports; and oil and gas production measurement, surface commingling, and security, 26362–26374

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Bug Motors, Inc., 26247–26248
Orion Bus Industries Inc., 26248–26249

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Magnuson-Stevens Act provisions—
Essential fish habitat; correction, 26250
West Coast States and Western Pacific fisheries—
West Coast salmon; correction, 26250
NOTICES
National Weather Service; modernization and restructuring:
Weather Service offices—
Consolidation, automation, and closure certifications; transmittal to Congress, 26156–26159

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 26212

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 26162
Patent licenses; non-exclusive, exclusive, or partially exclusive:
MedAcoustics, Inc., 26162–26163
Prime Capital Group, Inc., 26163

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 26212–26213
Meetings:
Nuclear Waste Advisory Committee, 26217
Radiation Standards Interagency Steering Committee, 26217–26218
Reactor Safeguards Advisory Committee, 26218–26219
Applications, hearings, determinations, etc.:
Baltimore Gas & Electric Co., 26213
Rochester Gas & Electric Corp., 26213–26216

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26211–26212

Office of Federal Housing Enterprise Oversight
See Federal Housing Enterprise Oversight Office

Overseas Private Investment Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26208

Personnel Management Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26219–26220
Excepted service:
Schedules A, B, and C; positions placed or revoked—Update, 26220–26221

Presidential Documents
PROCLAMATIONS
Special observances:
Mother's Day (Proc. 7093), 26415
ADMINISTRATIVE ORDERS
Ukraine; peaceful uses of nuclear energy; proposed agreement with U.S. (Presi dential Determination No. 98-21 of April 28, 1998), 26419

Public Debt Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26249

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration

Rural Business-Cooperative Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Rural cooperative opportunities and problems research, 26139–26142

Rural Utilities Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26142–26143

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26221–26222
Submission for OMB review; comment request, 26222–26223
Meetings; Sunshine Act, 26231
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 26231–26233
Chicago Stock Exchange, Inc., 26233–26235
Depository Trust Co., 26235–26238
National Association of Securities Dealers, Inc., 26238–26241
Applications, hearings, determinations, etc.:
Intercorp Excelle Inc., 26223
Oppenheimer Series Fund, Inc., et al., 26223–26225
Sage Life Investment Trust et al., 26225–26231
Summit Properties Inc., 26231

Small Business Administration
NOTICES
Meetings:
Regional Fairness Boards—New England States, 26242
Meetings; district and regional advisory councils:
Minnesota, 26242
West Virginia, 26242

State Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26242–26246

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
SAMHSA special emphasis panels, 26195

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration

Treasury Department
See Public Debt Bureau

Separate Parts In This Issue

Part II
Department of Health and Human Services, Health Care Financing Administration, 26252–26316

Part III
Department of Health and Human Services, Health Care Financing Administration, 26318–26360

Part IV
Department of the Interior, Minerals Management Service, 26362–26374

Part V
Department of Agriculture, Cooperative State Research and Extension Service, 26376–26383

Part VI
Department of Housing and Urban Development, 26386–26389

Part VII
Department of Housing and Urban Development, 26392

Part VIII
Department of Education, 26394–26411

Part IX
The President, 26415

Part X
The President, 26419

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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.

3 CFR

Proclamations:

7093 26415

Administrative Orders:

Presidential Determinations:

98–21 of April 28, 1998 26419

7 CFR

Proposed Rules:

271 26250
278 26250
279 25250

9 CFR

Proposed Rules:

93 26099

12 CFR

1720 26063

14 CFR

36 26063
39 26063

Proposed Rules:

39 (8 documents) 26100, 26102, 26104, 26106, 26107, 26109, 26111, 26112

17 CFR

Proposed Rules:

34 26114
35 26114

21 CFR

430 26066
431 26066
432 26066
433 26066
436 26066
440 26066
441 26066
442 26066
443 26066
444 26066
446 26066
448 26066
449 26066
450 26066
452 26066
453 26066
455 26066
460 26066
803 26069
804 26069
1240 26077

Proposed Rules:

430 26127
431 26127
432 26127
433 26127
436 26127
440 26127
441 26127
442 26127
443 26127
444 26127
446 26127
448 26127
449 26127
450 26127
452 26127
453 26127
455 26127
460 26127
803 26129
804 26129

24 CFR

3280 26386

Proposed Rules:

3280 26392

30 CFR

202 26362
216 26362
250 26362

40 CFR

63 26078
180 (3 documents) 26082, 26089, 26097

Proposed Rules:

141 26137

42 CFR

409 26252
410 (2 documents) 26252, 26318
411 26252
412 26318
413 (2 documents) 26252, 26318
415 26318
424 26252
483 26252
485 26318
489 26252

47 CFR

Proposed Rules:

22 26138
64 26138

50 CFR

600 26250
660 26250

Rules and Regulations

Federal Register
Vol. 63, No. 91
Tuesday, May 12, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1720

RIN 2550–AA05

Implementation of the Privacy Act of 1974

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final regulation.

SUMMARY: The Office of Federal Housing Enterprise Oversight is adopting as final without change the interim regulation that was published at 63 FR 8840 on February 23, 1998. This final regulation implements the Privacy Act of 1974 by setting forth the procedures by which an individual may request access to records about him/her that are maintained by OFHEO, amendment of such records, or an accounting of disclosures of such records.

DATES: This final regulation is effective June 11, 1998.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Deputy General Counsel, or Isabella W. Sammons, Associate General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3800 (not a toll-free number). The toll-free telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

The Office of Federal Housing Enterprise Oversight (OFHEO) published an interim regulation at 63 FR 8840 on February 23, 1998, that implemented the Privacy Act of 1974. OFHEO requested comments on the interim regulation, but did not receive any. Accordingly, the interim regulation, which amended Chapter XVII of title 12 of the Code of Federal Regulations by adding part 1720, is adopted as a final regulation without change.

Dated: May 5, 1998.

Mark A. Kinsey,

Acting Director.

[FR Doc. 98–12588 Filed 5–11–98; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

Noise Standards: Aircraft Type and Airworthiness Certification

CFR Correction

In Title 14 of the Code of Federal Regulations, parts 1 to 59, revised as of January 1, 1998, on page 779, in appendix A to part 36, the following text was removed and should be reinstated below each equation.

Appendix A to Part 36 [Corrected]

1. In the first column, in paragraph (d)(1)(i), the omitted text should read as follow:

* * * * *

where SPLi and SPLic are the measured and corrected sound pressure levels, respectively, in the i-th one-third octave band. The first correction term accounts for the effects of change in atmospheric sound absorption where αi and αio are the sound absorption coefficients for the test (determined under section A36.9(d)) and reference atmospheric conditions, respectively, for the i-th one-third octave band and KQ is the measured takeoff sound propagation path. The second correction term accounts for the effects of atmospheric sound absorption on the change in the sound propagation path length where KQc is the corrected takeoff sound propagation path. The third correction term accounts for the effects of the inverse square law on the change in the sound propagation path length.

* * * * *

2. Also, in the first column, in paragraph (d)(2)(i), the omitted text should read as follows:

* * * * *

where NS and NSr are the measured and reference approach sound propagation paths, respectively.

* * * * *

3. In the second column, in paragraph (d)(3), the omitted text should read as follows:

* * * * *

where LX is the measured sideline sound propagation path from station L (Figure A1) to position X of the aircraft for which PNLTM is observed at station L and LXc is the corrected sideline sound propagation path.

* * * * *

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–111–AD; Amendment 39–10522; AD 98–10–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 and 767 series airplanes. This action requires a one-time inspection to confirm the installation of Teflon sleeves over certain electrical wires inside conduits installed in the fuel tanks; and corrective actions, if necessary. This amendment is prompted by a report of missing Teflon sleeves, which protect the wiring insulation from chafing. The actions specified in this AD are intended to prevent such chafing, which could eventually expose the electrical conductor creating the potential for arcing from the wire to the conduit, and consequent fuel tank fire/explosion.

DATES: Effective May 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114,

Attention: Rules Docket No. 98-NM–111-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2681; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On July 17, 1996, shortly after takeoff from John F. Kennedy International Airport in Jamaica, New York, a Boeing Model 747 series airplane was involved in an accident during which the center fuel tank exploded. Ensuing investigations of the cause of the accident have focused on the fuel tank explosion.

A recent inspection of the main fuel tanks on a Model 747 series airplane indicated that the inner and outer Teflon sleeves were missing from wiring within the conduit of the aft boost pump to the number 4 main fuel tank. The reason for the missing sleeves has not been determined. Missing Teflon sleeves could result in chafing of the wire insulation encasing the fuel pump wiring. These conditions, if not corrected, could eventually expose the electrical conductor creating the potential for arcing from the wire to the conduit, and consequent fuel tank fire/explosion.

Similar Airplanes

The vibration environment and the conduit and wiring installations associated with fuel pumps in the wing fuel tanks of Model 747 and 767 series airplanes are similar. Therefore, the FAA has determined that both models may be subject to the unsafe condition identified in this AD.

Related AD's

The FAA has issued a number of AD's to address various fuel-tank related unsafe conditions on Boeing Model 747 series airplanes, including the following:

- AD 79–05–04, amendment 39–3431 (44 FR 12636, March 8, 1979). This AD was prompted by a report indicating that fuel pump wires had chafed through the insulation in an aluminum conduit inside an auxiliary fuel tank on a Model 747 series airplane. Electrical arcing from the chafed wire to the aluminum conduit had burned a hole in the conduit permitting fuel leakage; however, the arcing did not result in a fire or explosion. That AD requires discontinued use of the auxiliary fuel tanks unless Teflon sleeving is installed over the wire bundles in accordance with Boeing Alert Service Bulletin 747–28A2091, Revision 1, dated February 5, 1979.
- AD 79–06–02, amendment 39–3439 (44 FR 16362, March 19, 1979). Because the conduit and wiring installations for the auxiliary fuel tanks are similar to those of the number 1 and number 4 main fuel tanks on Model 747 series airplanes, an inspection of the boost pump wiring of the main fuel tank was conducted on other airplanes of this model. Although none of the wires inspected had worn completely through the insulation, chafing through 80 percent of the total insulation thickness was found on numerous wires. The reported chafing was attributed to vibration of the wires against the conduit wall. Based on these results, AD 79–26–02 was issued to require inspection, repair, and modification of the boost pump wires of the outboard main (number 1 and number 4) fuel tanks on Model 747 series airplanes. Corrective actions involve replacing chafed wires, installing wire ties at equal intervals, and installing double-layer Teflon sleeves over the wires, in accordance with Boeing Alert Service Bulletin 747–28A2092, dated February 12, 1979.
- AD 96–26–06, amendment 39–9870 (62 FR 304, January 1, 1997). Following the 1996 accident, AD 96–26–06 was issued to require a one-time inspection in accordance with Boeing Alert Service Bulletin 747–28A2201, dated December 19, 1996. The purpose of this inspection was to detect damage to the Teflon sleeving and wire bundles to the forward and aft boost pumps for the number 1 and number 4 main fuel tanks and to the auxiliary tank jettison pumps (if installed) on Model 747 series airplanes equipped with aluminum conduits. At the time AD 96–26–06 was issued, the FAA had determined that sleeving inside aluminum conduits was more susceptible to chafing and burn-through in the event of arcing than sleeving inside stainless steel conduits.
- AD 97–26–07, amendment 39–10250 (62 FR 65352, December 12, 1997). Based on damage reports from two operators that had replaced the aluminum conduits with stainless steel conduits and had found significant chafing on 48 percent of the airplanes checked, the FAA concluded that stainless steel conduit installations also should be inspected. Therefore, the FAA issued AD 97–26–07, which supersedes AD 96–26–06 to expand the inspection requirements to include Model 747 series airplanes having stainless steel conduits, and to add repetitive inspections of the Teflon sleeving on all Model 747 series airplanes to determine whether the sleeving would continue to provide a protective barrier after extended time in service.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Message M–7200–98–01080, dated March 18, 1998 (hereinafter refered to as the ''message''). The message describes procedures for a one-time inspection to confirm installation of Teflon sleeving over wiring in conduits in the boost pumps of the numbers 1 and 4 main fuel tanks on Boeing Model 747 series airplanes, and in the main and center wing tanks on Model 767 series airplanes; and corrective actions, if necessary. The corrective actions involve follow-on inspections, installation of Teflon sleeves, and replacement of damaged wiring and conduits. Accomplishment of the actions specified in the message is intended to adequately address the identified unsafe condition.

The message refers to Boeing Alert Service Bulletin 747–28A2204 as an additional source of service information for accomplishment of the requirements of this AD.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent chafing of electrical wiring inside the conduits, which could eventually expose the electrical conductor creating the potential for arcing from the wire to the conduit, and consequent fuel tank fire/explosion. This AD requires accomplishment of the actions specified in the message described previously, except as described below. This AD also requires operators to send any damaged wires and conduits, and to submit a report to the FAA.

Differences Between the Rule and the Message

Operators should note that, whereas the message provides a compliance time of 30 days, the rule requires compliance within 60 days. Although the message recommends a 30-day compliance time,

the manufacturer, through a subsequent review of the number of affected airplanes, has advised the FAA that 30 days will be insufficient to accomplish the actions required by this AD on such a large fleet. The FAA has determined that a 60-day compliance time is appropriate in consideration of the safety implications of this AD, the size of the affected fleet, and the practical aspects of an orderly inspection within the allotted time.

Determination of Rule's Effective Date

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–111–AD.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–10–10 Boeing: Amendment 39–10522. Docket 98–NM–111–AD.

Applicability: Model 747 series airplanes, line positions 0001 through 1145 inclusive, that have not been inspected in accordance with AD 96–26–06, amendment 39–9870 (reference Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996), or AD 97–26–07, amendment 39–10250 (reference Boeing Alert Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997); and Model 767 series airplanes, line positions 001 through 689 inclusive, and 691; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the wire insulation inside conduits installed in the fuel tanks, which could eventually expose the electrical conductor creating the potential for arcing from the wire to the conduit, and consequent fuel tank fire/explosion, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time visual inspection to confirm installation of Teflon sleeves over the electrical wires to the boost pumps installed inside conduits in the numbers 1 and 4 main fuel tanks (for Model 747 series airplanes), or in the main and center wing tanks (for Model 767 series airplanes), as applicable, in accordance with Boeing Message M–7200–98–01080, dated March 18, 1998.

(b) If any Teflon sleeve is found to be missing during the inspection required by paragraph (a) of this AD, prior to further flight, inspect to detect damage to the wires, in accordance with Boeing Message M–7200–98–01080, dated March 18, 1998.

(1) If no damage is found, prior to further flight, install a Teflon sleeve in accordance with the message.

(2) If any damage is found, prior to further flight, inspect to detect damage to the conduits in accordance with the message.

(i) If no damage is found, prior to further flight, replace any damaged wire and install a Teflon sleeve in accordance with the message.

(ii) If any damage is found, prior to further flight, replace any damaged wire and conduit and install a Teflon sleeve, in accordance with the messsage.

Note 2: Boeing Message M–7200–98–01080, dated March 18, 1998, refers to Boeing Alert Service Bulletin 747–28A2204 as an additional source of service information.

(c) Within 10 days after finding any damage during any inspection required by paragraph (b) of this AD, send damaged wiring and conduits and submit a report to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. The report must include the following:

- The airplane model number;
- The airplane line position;
- The total number of hours time-in-service accumulated on the airplane;

- The total number of flight cycles accumulated on the airplane;
- A description of the area of the wiring where the sleeving was missing; and
- A description of the damage found.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

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

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

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

(f) The actions shall be done in accordance with Boeing Message M–7200–98–01080, dated March 18, 1998. 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 27, 1998.

Issued in Renton, Washington, on May 5, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–12512 Filed 5–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 431, 432, 433, 436, 440, 441, 442, 443, 444, 446, 448, 449, 450, 452, 453, 455, and 460

[Docket No. 98N–0211]

Removal of Regulations Regarding Certification of Antibiotic Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is repealing its regulations governing certification of antibiotic drugs. The agency is taking this action in accordance with provisions of the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDAMA repealed the statutory provision in the Federal Food, Drug, and Cosmetic Act (the act) under which the agency certified antibiotic drugs. FDAMA also made conforming amendments to the act.

DATES: The direct final rule is effective September 24, 1998. Submit written comments on or before July 27, 1998. If no timely significant adverse comments are received, the agency will publish a document in the **Federal Register** before August 25, 1998, confirming the effective date of the direct final rule. If timely significant adverse comments are received, the agency will publish a document of significant adverse comment in the **Federal Register** withdrawing this direct final rule before August 25, 1998.

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: Wayne H. Mitchell or Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. FDAMA

On November 21, 1997, the President signed FDAMA (Pub. L. 105–115). Section 125(b) of FDAMA repealed section 507 of the act (21 U.S.C. 357). Section 507 of the act was the section under which the agency certified antibiotic drugs. Section 125(b) of FDAMA also made conforming amendments to the act.

FDA has determined that it will be most efficient to make changes in its regulations to reflect the repeal of section 507 of the act in phases. In this first phase, this direct final rule removes parts 430 through 460 (21 CFR parts 430 through 460). These regulations provide the procedures and standards used to certify antibiotic drugs, including FDA's antibiotic drug monographs. FDA plans to initiate a second phase direct final rulemaking procedure to make various, noncontroversial conforming amendments to the balance of Title 21 of the Code of Federal Regulations (CFR), such as removing citations to section 507 of the act and references to the certification of antibiotics. The agency recognizes that as it implements the transition from regulating the premarket review and approval of antibiotic drugs under section 507 of the act to section 505 of the act (21 U.S.C. 355), other issues may arise that could require additional rulemaking. These issues will be addressed in the third phase of implementation.

II. Direct Final Rulemaking

FDA has determined that the subject of this rulemaking is suitable for a direct final rule. The repeal of section 507 of the act eliminates the statutory provision on which the agency relied to certify antibiotic drugs. FDA will, therefore, remove all provisions of Title 21 of the CFR that were issued primarily to carry out the agency's program for the certification of antibiotic drugs under former section 507 of the act. The actions taken should be noncontroversial and the agency does not anticipate receiving any significant adverse comments on this rule.

If FDA does not receive significant adverse comment on or before July 27, 1998, the agency will publish a document in the **Federal Register** before August 25, 1998, confirming the effective date of the direct final rule. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change. If timely significant adverse comments are received, the agency will publish a notice of significant adverse comment in the **Federal Register** withdrawing this direct final rule before August 25, 1998.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, which is identical to the direct final rule, that provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of significant adverse comment. The comment period for the direct final rule runs concurrently with that of the companion proposed rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered as comments to the companion proposed rule and the agency will consider such comments in developing a final rule. FDA will not

provide additional opportunity for comment on the companion proposed rule.

If a significant adverse comment applies to part of this rule and that part may be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment. A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466).

III. Description of the Rule

This rule eliminates Part 430—Antibiotic Drugs; General, in its entirety. Part 430 provided definitions used in the certification of antibiotic drugs and contains § 430.10, which carried out former section 507(h) of the act and was intended to address the certification or release of antibiotic drugs affected by the Drug Amendments of 1962 (Pub. L. 87–781).

This rule also eliminates Part 431—Certification of Antibiotic Drugs, which provided various administrative and procedural requirements for the antibiotic certification program, established conditions on the effectiveness of a certification issued by the agency, and set the fees needed to maintain the agency's antibiotic certification program (see former section 507(b) of the act). Subpart D of Part 431—Confidentiality of Information, is also being eliminated because it is duplicative of the provisions in 21 CFR 312.130 governing the disclosure of information in or about an investigational new drug application.

Part 433—Exemptions from Antibiotic Certification and Labeling Requirements is removed by this rule. Part 433 set the conditions for exempting antibiotic drugs from the general requirement of certification as well as from other, more specific, regulatory requirements (see former section 507(c) and (d) of the act).

This rule eliminates Part 436—Tests and Methods of Assay of Antibiotic and Antibiotic-Containing Drugs. Part 436 contained sterility test methods, biological test methods, microbiological assay methods, and chemical tests for antibiotic drugs generally and for specific antibiotic drugs and antibiotic drug dosage forms. These tests and methods of assay established the means by which the agency would certify that a given batch of antibiotic drug was in compliance with applicable standards of identity, strength, quality, and purity (see former section 507(a) and (b) of the act).

This rule also repeals the following parts: Part 440—Penicillin Antibiotic Drugs; Part 441—Penem Antibiotic Drugs; Part 442—Cepha Antibiotic Drugs; Part 443—Carbacephem Antibiotic Drugs; Part 444—Oligosaccharide Antibiotic Drugs; Part 446—Tetracycline Antibiotic Drugs; Part 448—Peptide Antibiotic Drugs; Part 449—Antifungal Antibiotic Drugs; Part 450—Antitumor Antibiotic Drugs; Part 452—Macrolide Antibiotic Drugs; Part 453—Lincomycin Antibiotic Drugs; Part 455—Certain Other Antibiotic Drugs; and Part 460—Antibiotic Drugs Intended for Use in Laboratory Diagnosis of Disease. These parts contain the standards of identity, strength, quality, and purity that served as the agency's basis for batch certifying or otherwise authorizing the marketing of drugs that were subject to former section 507 of the act, including the classes of penicillin; penem; cepha; carbacephem; oligosaccharide; tetracycline; peptide; antifungal; antitumor; macrolide; and lincomycin antibiotic drugs; several antibiotic drugs not included in the parts listed above; and antibiotic susceptibility discs, powders, and test panels, respectively (see former section 507(a) and (b) of the act).

With the repeal of part 436 and parts 440 *et seq.*, the test methods and assays contained in the approved marketing application and, when applicable, the United States Pharmacopeia (USP) will be used to determine if antibiotic drugs meet the standards of identity, strength, quality, and purity found in the approved marketing application for the drug and, when applicable, the USP.

Finally, the agency is eliminating Part 432—Packaging and Labeling of Antibiotic Drugs, which sets forth special packaging requirements and additional labeling requirements (in addition to the requirements prescribed by 21 CFR 201.100) for drugs that were subject to batch certification or release under former section 507 of the act. With the repeal of section 507 of the act, there is no need to maintain separate or additional labeling and packaging requirements for antibiotic drug products. As with other drug products, labeling of antibiotic drugs will be governed by the agency's general labeling provisions found in 21 CFR part 201 and by applicable over-the-counter drug monographs and approved marketing applications.

Part 432 also included § 432.9, which conditionally authorized the batch certification of antibiotic drugs intended for export, even if the drug failed to meet certain labeling requirements, and provided additional guidance on the labeling of antibiotic drugs for export. In light of the repeal of the batch certification requirement, § 432.9 may also be eliminated without affecting the export of antibiotic drug products.

It should be noted, however, that differences remain between the application of the export provisions in sections 801 and 802 of the act (21 U.S.C. 381 and 382) to antibiotic drugs and the application of those provisions to other new drugs. Prior to the repeal of section 507 of the act, these differences were based on the fact that antibiotic drugs were not subject to premarket approval under section 505 and, therefore, could be exported under section 801(e)(1) of the act. Antibiotic drugs did not have to meet the export requirements in section 802 that apply to unapproved new drugs. Thus, manufacturers could export antibiotic drugs that had not been certified, released, or exempted from certification, subject only to the provisions of section 801(e)(1) of the act. Section 125(c) of FDAMA preserved the export status of antibiotic drugs (which are now subject to approval under section 505 of the act) by expressly exempting them from section 802. (Section 125(c) of FDAMA included the same exemption for insulin products.) In the second phase of the implementation of section 125 of FDAMA, the agency will consider making appropriate amendments to its regulations to reflect this difference between the application of the export provisions of the act to antibiotic drugs (and insulin products) as opposed to all other new drugs.

The removal of parts 430 *et seq.* is not expected to result in any immediate, significant changes in the manufacturing, packaging, labeling, or marketing of antibiotic drug products. Since 1982, the agency has conditionally exempted all antibiotic drugs from batch certification (47 FR 39155, September 7, 1982). With limited exceptions, such as in the areas of export and generic drug approvals, the agency has imposed much the same regulatory requirements on exempted antibiotic drug products as it has on all other drug products.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) 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.

V. Analysis of Impacts

FDA has examined the impacts of the direct final rule under Executive Order 12866, the Regulatory Flexibility Act (5

U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). 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). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. As discussed below, the agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the direct final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires that if a rule has a significant impact on a substantial number of small entities, the agency must analyze regulatory options to minimize the economic impact on small entities. The agency certifies, for the reasons discussed below, that the direct final rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Reform Act requires an agency to prepare a budgetary impact statement before issuing any rule likely to result in a Federal mandate that may result in expenditures by State, local, and tribal governments or the private sector of $100 million (adjusted annually for inflation) in any 1 year. The elimination of the regulations governing the certification of antibiotic drugs will not result in any increased expenditures by State, local, and tribal governments or the private sector. Because this rule will not result in an expenditure of $100 million or more on any governmental entity or the private sector, no budgetary impact statement is required.

This rule is intended to eliminate regulatory procedures and standards that the agency, as a result of the repeal of section 507 of the act, is no longer required to maintain. The elimination of the above listed parts is expected to streamline the regulation of antibiotic drugs by making these products subject to the same regulatory standards as all other drugs for human use. Many of the provisions that are being eliminated by this rulemaking have not had a material impact on the marketing of antibiotic drugs since 1982, when all antibiotic drugs were conditionally exempted from the batch certification requirement. Other provisions, such as the standards of identity, strength, quality, and purity, have in some instances not been kept up-to-date, are duplicative of USP standards, or have been incorporated into approved marketing applications for specific antibiotic drug products. For these reasons, the agency believes that this rule is necessary and that it is consistent with the principles of Executive Order 12866; that it is not a significant regulatory action under that Order; that it will not have a significant impact on a substantial number of small entities; and that it is not likely to result in an annual expenditure in excess of $100 million.

VI. Paperwork Reduction Act of 1995

This direct final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) is not required.

VII. Request for Comments

Interested persons may, on or before July 27, 1998, submit to the Dockets Management Branch (address above) written comments regarding this rule. Two copies of any 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. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 431

Administrative practice and procedure, Antibiotics, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Part 432

Antibiotics, Labeling, Packaging and containers.

21 CFR Part 433

Antibiotics, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 436, 440, 441, 442, 443, 444, 446, 448, 449, 450, 452, 453, 455, and 460

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Food and Drug Administration Modernization Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is removed.

PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS

2. Part 431 is removed.

PART 432—PACKAGING AND LABELING OF ANTIBIOTIC DRUGS

3. Part 432 is removed.

PART 433—EXEMPTIONS FROM ANTIBIOTIC CERTIFICATION AND LABELING REQUIREMENTS

4. Part 433 is removed.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

5. Part 436 is removed.

PART 440—PENICILLIN ANTIBIOTIC DRUGS

6. Part 440 is removed.

PART 441—PENEM ANTIBIOTIC DRUGS

7. Part 441 is removed.

PART 442—CEPHA ANTIBIOTIC DRUGS

8. Part 442 is removed.

PART 443—CARBACEPHEM ANTIBIOTIC DRUGS

9. Part 443 is removed.

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

10. Part 444 is removed.

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

11. Part 446 is removed.

PART 448—PEPTIDE ANTIBIOTIC DRUGS

12. Part 448 is removed.

PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS

13. Part 449 is removed.

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

14. Part 450 is removed.

PART 452—MACROLIDE ANTIBIOTIC DRUGS

15. Part 452 is removed.

PART 453—LINCOMYCIN ANTIBIOTIC DRUGS

16. Part 453 is removed.

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

17. Part 455 is removed.

PART 460—ANTIBIOTIC DRUGS INTENDED FOR USE IN LABORATORY DIAGNOSIS OF DISEASE

18. Part 460 is removed.

Dated: May 1, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–12543 Filed 5–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803 and 804

[Docket No. 98N–0170]

Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing reporting by manufacturers, importers, distributors, and health care (user) facilities of adverse events related to medical devices. Amendments are being made to implement revisions to the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDA is publishing these amendments in accordance with its direct final rule procedures. Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule under FDA's usual procedures for notice and comment to provide a procedural framework to finalize the rule in the event the agency receives a significant adverse comment and withdraws this direct final rule.

DATES: This rule is effective September 24, 1998. Submit written comments on or before July 27, 1998. Submit written comments on the information collection requirements on or before July 13, 1998.

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: Patricia A. Spitzig, Center for Devices and Radiological Health (HFZ–500), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–2812.

SUPPLEMENTARY INFORMATION:

I. Background

Under the act and the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), FDA issued medical device reporting regulations for manufacturers on September 14, 1984 (49 FR 36326). To correct weaknesses noted in the 1976 amendments, and to better protect the public health by increasing reports of device-related adverse events, Congress enacted the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629) that required medical device user facilities and distributors to report certain device-related adverse events.

Distributor reporting requirements became effective on May 28, 1992, following the November 26, 1991 (56 FR 60024), publication of those provisions in a tentative final rule. In the **Federal Register** of September 1, 1993 (58 FR 46514), FDA published a notice announcing that the proposed distributor reporting regulations had become final by operation of law and were now codified in part 804 (21 CFR part 804).

On June 16, 1992, the President signed into law the Medical Device Amendments of 1992 (the 1992 amendments) (Pub. L. 102–112) amending certain provisions of section 519 of the act (21 U.S.C. 360i) relating to reporting of adverse device events. Prior to the 1992 amendments, distributors and manufacturers reported adverse events by using a ''reasonable probability'' standard. Importers may be manufacturers or distributors, depending on their activities. Among other things, the 1992 amendments amended section 519 of the act to change the reporting standard for manufacturers and importers; however, the reporting standard for distributors who are not importers remained the same.

On November 21, 1997, the President signed FDAMA into law. FDAMA made several changes regarding the reporting of adverse events related to devices, including the elimination of reporting requirements for certain distributors, which became effective on February 19, 1998, that are reflected in this direct final rule. However, section 422 of FDAMA states that FDA's regulatory authority under the act, relating to tobacco products, tobacco ingredients, and tobacco additives shall be exercised under the act as in effect on the day before the date of enactment of FDAMA. Because the authority relating to tobacco products remains the same, the reporting requirements for manufacturers and distributors (including distributors who are importers) of cigarettes or smokeless tobacco remain unchanged.

Under part 897, the regulations pertaining to tobacco products, and parts 803 (21 CFR part 803) and 804, the regulations pertaining to device adverse event reporting, importers may be either manufacturers or distributors, depending on their activities. Under parts 897, 803, and 804, importers who repackage or relabel are manufacturers. Similarly, under those sections, importers whose sole activity is distribution of devices are defined as distributors.

As previously stated, the 1992 amendments created a bifurcated reporting standard for distributors, depending on whether they are domestic distributors or importers. When the agency asserted jurisdiction over tobacco products and issued regulations under part 897, tobacco distributors also became subject to this bifurcated reporting standard. Accordingly, the reporting standard applicable to tobacco products distributors has depended on whether the distributor is domestic or an importer. Consistent with section 422 of FDAMA, the direct final rule states that tobacco distributors will continue to use the appropriate reporting standard as described in § 804.25.

Changes made by FDAMA relating to reporting requirements for all medical devices other than tobacco products are as follows:

1. Section 213(a) of FDAMA revised section 519(a) of the act to eliminate distributors as an entity required to report adverse device events. Importers are still required to report under section 519(a) of the act.

2. Section 213(a) also amended section 519(a) of the act to clarify that existing requirements continue to apply for distributors to keep records concerning adverse device events and make them available to FDA upon request.

3. Section 213(a)(2) revoked section 519(d) of the act, which required manufacturers, importers, and distributors to submit to FDA an annual certification concerning the number of

reports filed under section 519(a) in the preceding year. As a result, certification requirements are eliminated.

4. Section 213(c)(1)(A) of FDAMA revised section 519(b)(1)(C) of the act to require that device user facilities submit an annual rather than a semiannual summary of their reports to FDA.

5. Section 213(c)(1)(B) of FDAMA eliminated section 519(b)(2)(C) of the act. This section had required FDA to disclose, upon request, the identity of a device user facility making a report under section 519(b) of the act if the identity of the device user facility was included in a report required to be submitted by a manufacturer, distributor, or importer. As a result of this change by FDAMA, FDA may now disclose the identity of a device user facility only in connection with an action concerning a failure to report or false or fraudulent reporting, a communication to the manufacturer of the device, or to the employees of the Department of Health and Human Services, the Department of Justice, and duly authorized committees and subcommittees of Congress.

II. Final Rule

A. General Approach

1. To implement these provisions, FDA is amending part 804, Distributor Reporting, to reflect that the distributor reporting requirements under that part remain in effect only for distributors (including distributors who are importers) of cigarettes or smokeless tobacco, as defined in part 897. FDA is revoking the reporting requirements under parts 803 and 804 as they apply to distributors who are not importers of all medical devices other than cigarettes or smokeless tobacco. FDA is transferring the reporting requirements for importers of all devices other than cigarettes or smokeless tobacco from part 804 to part 803, Medical Device Reporting. Importers of medical devices will continue to be subject to the same reporting and recordkeeping requirements as they have been under parts 803 and 804, with the exception that, in accordance with FDAMA, importers of devices other than cigarettes or smokeless tobacco products are no longer required to submit annual certifications. They will continue to submit reports on Form 3500A. FDA will review and revise this form as necessary in the near future.

2. Distributor recordkeeping requirements, which also remain in effect, are being transferred from part 804 to part 803, except for those requirements that apply to distributors of cigarettes or smokeless tobacco. The recordkeeping requirements for distributors of cigarettes or smokeless tobacco remain in part 804. No additional requirements for distributor recordkeeping are being added by these changes.

3. In accordance with FDAMA, FDA is also amending part 803 to reflect the change from semiannual to annual reporting for device user facilities, to eliminate certification requirements for manufacturers of medical devices other than cigarettes or smokeless tobacco, and to limit the disclosability of device user facility identities.

4. FDA is not changing or adding any requirements with respect to manufacturers or distributors of cigarettes or smokeless tobacco, as defined in part 897.

B. Specific Changes to Parts 803 and 804

Reporting and recordkeeping requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco, as defined in part 897, remain in part 804. Reporting and recordkeeping requirements for manufacturers of all medical devices, including manufacturers of cigarettes or smokeless tobacco, and importers of devices other than cigarettes or smokeless tobacco are contained in part 803. Recordkeeping requirements for distributors of products other than cigarettes or smokeless tobacco are also contained in part 803. These parts are amended as follows:

Changes to Part 803

1. Section 803.1 is amended to reflect that the scope of the regulation now includes reporting requirements for importers, as well as manufacturers and device user facilities, and to clarify that distributors continue to be responsible for maintaining incident files.

2. Section 803.3 is amended to reflect that importers continue to be responsible for reporting, by modifying definitions related to reporting so that importers are included.

3. Section 803.9 is amended by removing paragraph (c)(3), which had required FDA to disclose the name of a device user facility making a report if the adverse event was required to be reported by a manufacturer or distributor. The removal of this paragraph corresponds to the elimination by FDAMA of section 519(b)(2)(C) of the act.

4. Section 803.10 is amended to reflect that importers of medical devices remain responsible for reporting adverse device events, by transferring to this section the requirements that were previously codified under part 804. Furthermore, § 803.10(a)(2) is amended to reflect that device user facilities are now responsible for submitting annual, not semiannual reports. Section 803.10(c)(5) is amended to correspond with the revocation of section 519(d) of the act, which had required annual certification of the number of medical devices report (MDR) reports filed during the preceding year. Revised § 803.10(c)(5) reflects that manufacturers of cigarettes or smokeless tobacco continue to be responsible for complying with the annual certification requirements described in § 803.57.

5. Sections 803.11, 803.17, 803.19, 803.20, 803.22, and 803.56 are amended to reflect that importers continue to be subject to the MDR reporting requirements. Section 803.18 is amended to add ''importers'' to reflect that importers continue to be responsible for maintaining MDR event files, and to clarify that distributors of medical devices also continue to be responsible for establishing device complaint files and maintaining device incident records.

6. Section 803.12 is amended to reflect the change from ''semiannual'' to ''annual'' reports, and the continued inclusion of importers as reporting entities. Section 803.33 is amended to reflect that device user facilities are required to submit annual, not semiannual reports.

7. A new subpart D, consisting of §§ 803.40 and 803.43, has been added to reflect that importers of medical devices continue to be subject to the MDR reporting requirements. These sections represent the transfer of relevant provisions of part 804 (which now applies only to distributors, including those who are importers, of cigarettes or smokeless tobacco) into part 803. Importer reporting and recordkeeping requirements are not being changed by this transfer.

8. Section 803.57 is amended to clarify that the section applies only to manufacturers of cigarettes or smokeless tobacco. This amendment reflects the revocation of section 519(d) of the act, which had required annual certification of the number of MDR reports filed during the preceding year, as it applied to manufacturers of all devices other than cigarettes or smokeless tobacco. This change also reflects the rule of construction in section 422 of FDAMA under which FDA's regulatory authority under the act relating to tobacco products shall be exercised under the act as in effect on the day before the date of enactment of FDAMA.

Changes to Part 804

1. Section 804.1, the scope of part 804, Medical Device Distributor Reporting, is amended to reflect that this part now applies only to distributor reports of adverse events relating to contamination of cigarettes or smokeless tobacco products.

2. Section 804.3 is amended to limit the definition of distributors, for the purposes of part 804, to distributors (including distributors who are importers) of cigarettes or smokeless tobacco products, and to clarify that adverse events that are reportable by distributors are only those related to contamination of cigarettes or smokeless tobacco.

3. Section 804.25 is amended to clarify that adverse events that are reportable under this part are only those related to contamination of cigarettes or smokeless tobacco.

III. Rulemaking Action

In the **Federal Register** of November 21, 1997, FDA described its procedures on when and how FDA will employ direct final rulemaking. FDA believes that this rule is appropriate for direct final rulemaking because FDA views this rule as a noncontroversial amendment and anticipates no significant adverse comments. Consistent with FDA's procedures on direct final rulemaking, FDA is publishing elsewhere in this issue of the **Federal Register** a companion proposed rule to amend existing parts 803 and 804. The companion proposed rule and the direct final rule are substantively identical. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of a significant adverse comment. The comment period for the direct final rule runs concurrently with the companion proposed rule. Any comments to the companion proposed rule will be considered as comments regarding the direct final rule.

FDA has provided a comment period on the direct final rule of July 27, 1998. If the agency receives a significant adverse comment, FDA intends to withdraw this final rule by publication in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. For example, a comment recommending an additional change to the rule may be considered a significant adverse comment if the comment demonstrates why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

If FDA withdraws the direct final rule, all comments received will be considered under the proposed rule in developing a final rule in accordance with usual Administrative Procedure Act notice-and-comment procedures.

If FDA receives no significant adverse comment during the specified comment period, FDA intends to publish a confirmation notice within 30 days after the comment period ends confirming that the direct final rule will go into effect on September 24, 1998.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) 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.

V. Analysis of Impacts

FDA has examined the impact of this direct final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this direct final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this direct final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The rule codifies the elimination of reporting by distributors, other than distributors (including distributors who are importers) of cigarettes or smokeless tobacco, continues reporting by importers (including distributors who are importers), increases protection from disclosure of the identity of device user facilities that have submitted reports, reduces summary reporting by device user facilities from semiannual to annual, eliminates annual certification for manufacturers and distributors (including importers) of medical devices other than cigarettes or smokeless tobacco, and makes other nonsubstantive changes. The agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This direct final rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any 1 year.

VI. Paperwork Reduction Act of 1995

This direct final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown as follows with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Reporting and recordkeeping requirements for manufacturers, importers, user facilities, and distributors of medical devices under FDAMA.

Description: FDAMA contained provisions that affect medical device reporting in a variety of ways. Section 213 of FDAMA eliminated the reporting requirements for medical device distributors (but not for importers), as well as the certification requirements for medical device manufacturers and distributors. This section of FDAMA also modified the summary reporting requirements for user facilities to require annual, rather than semiannual, reporting, and increased confidentiality of user facility identities. However, section 422 of FDAMA states that FDA's regulatory authority under the act relating to tobacco products, tobacco ingredients, and tobacco additives shall be exercised under the act as in effect on the day before the date of enactment of FDAMA. Under this rule of construction, the reporting and certification requirements for manufacturers and distributors (including distributors who are importers) of cigarettes or smokeless tobacco remain unchanged.

This rule amends FDA's regulations in parts 803 and 804 to reflect the changes to medical device reporting made by FDAMA.

This direct final rule eliminates reporting by distributors other than distributors of cigarettes or smokeless tobacco, continues reporting by importers, increases the protection from disclosure of the identity of device user facilities that have submitted reports, reduces summary reporting by device user facilities from semiannual to annual, eliminates annual certification for manufacturers and distributors (including importers) of medical devices other than cigarettes or smokeless tobacco, and makes other nonsubstantive changes.

Description of Respondents: Businesses or other for profit organizations.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
803.19	150	1	150	3	450
803.33	1,800	1	1,800	1	1,800
803.40	195	1	195	3	585
803.56	750	20	15,000	1	15,000
803.57	31	1	31	1	31
804.25	10	1	10	1.5	15
804.30	1,365	1	1,365	1	1,365
804.32	5	1	5	1	5
804.33	0	0	0	1	0
TOTAL	.....	.....	.....	.....	19,251

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
803.17	2,000	1	2,000	2	4,000
803.18	39,764	1	39,764	1.5	59,646
804.34	1,365	1	1,365	2	1,365
804.35	1,365	1	1,365	1.5	2,047
TOTAL	.....	.....	.....	.....	67,058

There are no capital costs or operating and maintenance costs associated with this collection of information.

The burdens under this direct final rule are explained as follows:

Reporting Requirements

Prior to the program change reflected in this rule, § 803.19 allowed manufacturers or user facilities to request an exemption or variance from the reporting requirements. The agency had estimated that it would receive approximately 100 such requests annually. Distributors (including importers) were able to request an exemption or variance from the reporting requirements under § 804.33. Under this rule, § 803.19 is modified to transfer the exemption provisions for importers of medical devices other than cigarettes or smokeless tobacco from § 804.33 to § 803.19. Furthermore, distributors (who are not importers) of medical devices other than cigarettes or smokeless tobacco are no longer required to submit MDR reports under this rule. The estimated burden for § 803.19 is further adjusted to reflect the agency's actual experience with this type of submission.

Prior to the program change reflected in this rule, § 803.33 required medical device user facilities to submit summary reports semiannually. Under this rule, user facilities are required to submit summary reports annually, thereby significantly decreasing the reporting burden on user facilities. The estimated burden for this section is also adjusted to reflect the agency's actual experience with this type of submission.

Under this rule the reporting requirement for importers of medical devices other than cigarettes or smokeless tobacco previously codified under § 804.25 is being transferred to § 803.40. The estimated burden for importer reporting is based upon the agency's actual experience with this type of submission. The reporting requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco have been retained in part 804.

Prior to the program change reflected in this rule, § 803.56 required

manufacturers to submit supplemental reports containing information not known or not available at the time the initial report was submitted. The agency had estimated that it would receive approximately 500 such requests annually. Distributors (including importers) were required to submit supplemental information under § 804.32. Under this rule, § 803.56 is modified to transfer the supplemental reporting requirements for importers of medical devices other than cigarettes or smokeless tobacco from § 804.32. Furthermore, distributors (who are not importers) of medical devices other than cigarettes or smokeless tobacco are no longer required to submit MDR reports (and thus supplemental reports as well) under this rule. The estimated burden for § 803.56 is further adjusted to reflect the agency's actual experience with this type of submission. The agency also notes that any additional information requested by the agency in accordance with § 803.15 is considered to be supplemental information for the purpose of this information collection and is included in the burden estimate for § 803.56.

Prior to the program change reflected in this rule, § 803.57 required medical device manufacturers to annually certify as to the number of reports submitted during the previous year, or that no such reports had been submitted. Distributors (including importers) were required to certify under § 804.30. Under this rule, § 803.57 is modified to require annual certification only for manufacturers of cigarettes or smokeless tobacco. The certification requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco have been retained in § 804.30.

Prior to the program change reflected in this rule, § 804.25 required medical device distributors (including importers) to report adverse device events. Under this rule, distributors of medical devices other than cigarettes or smokeless tobacco are no longer required to submit MDR reports, and the reporting requirements for importers of medical devices other than cigarettes or smokeless tobacco have been transferred to part 803. Section 804.25 now requires distributors (including distributors who are importers) of cigarettes or smokeless tobacco to submit MDR reports for adverse events related to contamination of their products. The agency believes that there will be a very small number of MDR reports related to contamination of cigarettes or smokeless tobacco submitted in any given year.

Prior to the program change reflected in this rule, § 804.30 required medical device distributors (including importers) to certify as to the number of MDR reports submitted during the previous year, or that no such reports were submitted. Under this rule, the certification requirement has been removed for distributors (including importers) of medical devices other than cigarettes or smokeless tobacco. Section 804.30 now requires distributors (including distributors who are importers) of cigarettes or smokeless tobacco to submit certifications of the number of MDR reports submitted for adverse events related to contamination of their products. The agency has identified 1,365 distributors of cigarettes or smokeless tobacco, each of which shall submit one certification annually.

Prior to the program change reflected in this rule, § 804.32 required medical device distributors (including importers) to submit supplemental information related to a previously submitted MDR report. Under this rule, distributors of medical devices other than cigarettes or smokeless tobacco are no longer required to submit any MDR reports, and the reporting requirements for importers of medical devices other than cigarettes or smokeless tobacco have been transferred to part 803. Section 804.32 now requires distributors (including distributors who are importers) of cigarettes or smokeless tobacco to submit supplemental information related to a previously submitted MDR report. Because the agency believes that there will be a very small number of MDR reports submitted in any given year, even fewer supplemental submissions are anticipated. The agency also notes that any additional information requested by the agency in accordance with § 804.31 is considered to be supplemental information for the purpose of this information collection and is included in the burden estimate for § 804.32.

Prior to the program change reflected in this rule, § 804.33 allowed medical device distributors (including importers) to request an exemption or variance from the reporting requirements. Under this rule, the exemption provisions for importers of medical devices other than cigarettes or smokeless tobacco are transferred to § 803.19, and distributors (who are not importers) of medical devices other than cigarettes or smokeless tobacco are no longer required to submit any MDR reports under this rule. Section 804.33 now allows distributors (including distributors who are importers) of cigarettes or smokeless tobacco to request an exemption or variance from the reporting requirements. However, because distributors (including distributors who are importers) of cigarettes or smokeless tobacco are required only to submit reports of adverse events related to contamination of their products, the agency does not anticipate any requests for exemptions or variances from the reporting requirements.

Recordkeeping Requirements

Prior to the program change reflected in this rule, § 803.17 required manufacturers and user facilities to establish written procedures for employee education, complaint processing, and documentation of information related to MDR's. Under this rule, the requirements for establishing written MDR procedures for importers of medical devices other than cigarettes or smokeless tobacco have been transferred to § 803.17, and the requirements for distributors (including importers) of cigarettes or smokeless tobacco are retained in § 804.34. The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information related to MDR reporting as part of their internal quality control system. The agency has estimated that no more than 2,000 such entities would be required to establish new procedures, or revise existing procedures, in order to comply with this provision. For those entities, a one-time burden of 10 hours, annualized over a period of 5 years, is estimated for establishing written MDR procedures. The remainder of manufacturers, user facilities, and importers not required to revise their written procedures to comply with this provision are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered ''usual and customary'' under 5 CFR 1320.3(b)(2).

Prior to the program change reflected in this rule, § 803.18 required manufacturers and user facilities to establish and maintain MDR event files. Distributors (including importers) were required to establish and maintain MDR event files under § 804.35. Under this rule, § 803.18 is modified to transfer the recordkeeping requirements for importers and other distributors of medical devices other than cigarettes or smokeless tobacco from § 804.35. Recordkeeping requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco have been retained in § 804.35.

Prior to the program change reflected in this rule, § 804.34 required distributors (including importers) of all medical devices to establish written

procedures for employee education, complaint processing, and documentation of information related to MDR reports. Under this rule, distributors of medical devices other than cigarettes or smokeless tobacco are no longer required to submit MDR reports. Accordingly, they are no longer subject to the requirement to establish and maintain written MDR procedures although distributors are required to establish device complaint files in accordance with 21 CFR 820.198. Under this rule, the requirement for establishing written MDR procedures for importers of medical devices other than cigarettes or smokeless tobacco is transferred to § 803.17, and the requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco are retained in § 804.34. The agency has estimated a one-time burden of 10 hours, annualized over a period of 5 years, for distributors (including distributors who are importers) of cigarettes or smokeless tobacco to establish written MDR procedures under § 804.34.

Prior to the program change reflected in this rule, § 804.35 required distributors (including importers) to establish and maintain MDR event files. Under this rule, the recordkeeping burdens for distributors (including importers) of medical devices other than cigarettes or smokeless tobacco have been transferred to § 803.18. Recordkeeping requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco are retained in § 804.35.

As provided in 5 CFR 1320.5(c)(1), collections of information in a direct final rule are subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection provisions of this direct final rule by July 13, 1998, to the Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of the direct final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

VII. Request for Comments

Interested persons may, on or before July 27, 1998, submit to the Docket Management Branch (address above) written comments regarding this rule. The comment period runs concurrently with the comment period for the companion proposed rule. Two copies of any 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. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered as comments regarding the companion proposed rule and this direct final rule. In the event the direct final rule is withdrawn, all comments received regarding the companion proposed rule and this direct final rule will be considered comments on the proposed rule.

List of Subjects in 21 CFR Parts 803 and 804

Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 803 and 804 are amended as follows:

PART 803—MEDICAL DEVICE REPORTING

1. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

2. Section 803.1 is amended by revising paragraph (a) to read as follows:

§ 803.1 Scope.

(a) This part establishes requirements for medical device reporting. Under this part, device user facilities, importers, and manufacturers, as defined in § 803.3, must report deaths and serious injuries to which a device has or may have caused or contributed, must establish and maintain adverse event files, and must submit to FDA specified followup and summary reports. Medical device distributors, as defined in § 803.3, are also required to maintain incident files. Furthermore, manufacturers and importers are also required to report certain device malfunctions. These reports will assist FDA in protecting the public health by helping to ensure that devices are not adulterated or misbranded and are safe and effective for their intended use.

* * * * *

3. Section 803.3 is amended by redesignating paragraphs (m) through (ee) as paragraphs (n) through (ff), respectively; by revising the last sentence of the introductory text of paragraph (c), paragraph (c)(1), and redesignated paragraphs (p), (p)(1), and (r)(2); and by adding paragraphs (g) and (m) to read as follows:

§ 803.3 Definitions.

* * * * *

(c) * * * Manufacturers and importers are considered to have become aware of an event when:

(1) Any employee becomes aware of a reportable event that is required to be reported by an importer within 10 days, or by a manufacturer within 30 days or within 5 days under a written request from FDA under § 803.53(b); and

* * * * *

(g) *Distributor* means, for the purposes of this part, any person (other than the manufacturer or importer) who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper or labeling of the device or device package. One who repackages or otherwise changes the container, wrapper, or labeling, is a manufacturer under § 803.3(o). For the purposes of this part, distributors do not include distributors of cigarettes or smokeless tobacco.

* * * * *

(m) *Importer* means, for the purposes of this part, any person who imports a device into the United States and who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package. One who repackages or otherwise changes the container, wrapper, or labeling, is a manufacturer under § 803.3(o). For the purposes of this part, importers do not include importers of cigarettes or smokeless tobacco.

* * * * *

(p) *Manufacturer or importer report number* means the number that uniquely identifies each individual adverse event report submitted by a manufacturer or importer. This number consists of three parts as follows:

(1) The FDA registration number for the manufacturing site of the reported device, or for the importer. (If the

manufacturing site or the importer does not have a registration number, FDA will assign a temporary number until the site is officially registered. The manufacturer or importer will be informed of the temporary number.);

* * * * *

(r) * * *

(2) An event about which manufacturers or importers have received or become aware of information that reasonably suggests that one of their marketed devices:

(i) May have caused or contributed to a death or serious injury; or

(ii) Has malfunctioned and that the device or a similar device marketed by the manufacturer or importer would be likely to cause a death or serious injury if the malfunction were to recur.

* * * * *

§ 803.9 [Amended]

4. Section 803.9 *Public availability of reports* is amended by adding ''or'' after the semicolon at the end of paragraph (c)(2), by removing paragraph (c)(3), and by redesignating paragraph (c)(4) as paragraph (c)(3).

5. Section 803.10 is amended by revising the heading and paragraphs (a)(2) and (c)(5), and by adding paragraph (b) to read as follows:

§ 803.10 General description of reports required from user facilities, importers, and manufacturers.

(a) * * *

(2) User facilities must submit annual reports as described in § 803.33.

(b) Importers must submit MDR reports of individual adverse events within 10 working days after the importer becomes aware of an MDR reportable event as described in § 803.3. Importers must submit reports of device-related deaths or serious injuries to FDA and the manufacturer and reports of malfunctions to the manufacturer.

(c) * * *

(5) For manufacturers of cigarettes or smokeless tobacco, annual certification to FDA of the number of MDR reports filed during the preceding year as described in § 803.57.

§ 803.11 [Amended]

6. Section 803.11 *Obtaining the forms* is amended in the first sentence by adding the word ''\, importers,'' after the phrase ''User facilities''.

7. Section 803.12 is amended by revising paragraph (b) to read as follows:

§ 803.12 Where to submit reports.

* * * * *

(b) Each report and its envelope shall be specifically identified, e.g., ''User Facility Report,'' ''Annual Report,'' ''Importer Report,'' ''Manufacturer Report,'' ''5–Day Report,'' ''Baseline Report,'' etc.

§ 803.17 [Amended]

8. Section 803.17 *Written MDR procedures* is amended in the introductory paragraph by adding the word ''\, importers,'' after the phrase ''User facilities''.

9. Section 803.18 is amended by revising the heading, the first sentence of paragraphs (a) and (b)(1) introductory text, paragraphs (b)(1)(ii) and (b)(2), and the second sentence of paragraph (c), and by adding paragraph (d) to read as follows:

§ 803.18 Files and distributor records.

(a) User facilities, importers, and manufacturers shall establish and maintain MDR event files. * * *

(b)(1) For purposes of this part, ''MDR event files'' are written or electronic files maintained by user facilities, importers, and manufacturers. * * *

(ii) Copies of all MDR forms, as required by this part, and other information related to the event that was submitted to FDA and other entities (e.g., an importer, distributor, or manufacturer).

(2) User facilities, importers, and manufacturers shall permit any authorized FDA employee during all reasonable times to access, to copy, and to verify the records required by this part.

(c) * * * Manufacturers and importers shall retain an MDR event file relating to an adverse event for a period of 2 years from the date of the event or a period of time equivalent to the expected life of the device, whichever is greater. * * *

(d)(1) A device distributor shall establish device complaint files in accordance with § 820.198 of this chapter and maintain an incident record containing any information, including any written or oral communication, that alleges deficiencies related to the identity, quality, durability, reliability, safety, effectiveness, or performance of a device. Device incident records shall be prominently identified as such and shall be filed by device.

(2) A device distributor shall retain copies of the records required to be maintained under this section for a period of 2 years from the date of inclusion of the record in the file or for a period of time equivalent to the design and expected life of the device, whichever is greater, even if the distributor has ceased to distribute the device that is the subject of the record.

(3) A device distributor shall maintain the device complaint files established under this section at the distributor's principal business establishment. A distributor that is also a manufacturer may maintain the file at the same location as the manufacturer maintains its complaint file under §§ 820.180 and 820.198 of this chapter. A device distributor shall permit any authorized FDA employee, during all reasonable times, to have access to, and to copy and verify, the records required by this part.

§ 803.19 [Amended]

10. Section 803.19 *Exemptions, variances, and alternative reporting requirements* is amended by adding in paragraphs (b) and (c) the word ''\, importers,'' before the phrase ''or user facility,'' and by adding in paragraph (c) a comma after the word ''variance''.

11. Section 803.20 is amended by revising the last sentence of introductory text of paragraph (a), paragraph (a)(1), and the first sentence of paragraph (a)(2), and by adding paragraph (b)(2) to read as follows:

§ 803.20 How to report.

(a) * * * The form has sections that must be completed by all reporters and other sections that must be completed only by the user facility, importer, or manufacturer.

(1) The front of FDA Form 3500A is to be filled out by all reporters. The front of the form requests information regarding the patient, the event, the device, and the ''initial reporter'' (i.e., the first person or entity that submitted the information to the user facility, manufacturer, or importer).

(2) The back part of the form contains sections to be completed by user facilities, importers, and manufacturers. * * *

(b) * * *

(2) Importers are required to submit MDR reports to FDA and the device manufacturer, except for malfunctions which are reported to the manufacturer only:

(i) Within 10 working days of becoming aware of information that reasonably suggests that a device has or may have caused or contributed to a death or serious injury.

(ii) Within 10 working days of receiving information that a device marketed by the importer has malfunctioned and that such a device or a similar device marketed by the importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

* * * * *

§ 803.22 [Amended]

12. Section 803.22 *When not to file* is amended by adding in paragraphs (a) and (b)(1) the word ‘‘, importer,’’ after the word ‘‘facility’’.

§ 803.33 [Amended]

13. Section 803.33 *Semiannual reports* is amended by revising the heading to read ‘‘Annual reports’’; in introductory text of paragraph (a) by removing the phrase ‘‘(for reports made July through December) and by July 1 (for reports made January through June)’’; in introductory text of paragraph (a) and paragraphs (a)(5), (a)(7) introductory text, and (c) by removing the word ‘‘semiannual’’ wherever it appears and adding in its place the word ‘‘annual’’; in paragraph (a)(2) by removing the phrase ‘‘and period, e.g., January through June or July through December’’; and by adding in paragraph (a)(7)(vi) the word ‘‘importer,’’ after the word ‘‘distributor,’’.

14. Subpart D, consisting of §§ 803.40 and 803.43, is added to read as follows:

Subpart D—Importer Reporting Requirements

Sec.

803.40 Individual adverse event reporting requirements; importers.

803.43 Individual adverse event report data elements.

Subpart D—Importer Reporting Requirements

§ 803.40 Individual adverse event reporting requirements; importers.

(a) An importer shall submit to FDA a report, and a copy of such report to the manufacturer, containing the information required by § 803.43 on FDA form 3500A as soon as practicable, but not later than 10 working days after the importer receives or otherwise becomes aware of information from any source, including user facilities, individuals, or medical or scientific literature, whether published or unpublished, that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury.

(b) An importer shall submit to the manufacturer a report containing information required by § 803.43 on FDA form 3500A, as soon as practicable, but not later than 10 working days after the importer receives or otherwise becomes aware of information from any source, including user facilities, individuals, or through the importer’s own research, testing, evaluation, servicing, or maintenance of one of its devices, that one of the devices marketed by the importer has malfunctioned and that such device or a similar device marketed by the importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

§ 803.43 Individual adverse event report data elements.

(a) Each importer that submits a report on an MDR reportable event shall complete and submit the applicable portions of FDA form 3500A in so far as the information is known or should be known to the importer, and submit it to FDA, and to the manufacturer as required by § 803.40.

(b) Each importer shall submit the information requested on FDA form 3500A, including:

(1) Identification of the source of the report.

(i) Type of source that reported the event to the importer (e.g., lay user owner, lay user lessee, hospital, nursing home, outpatient diagnostic facility, outpatient treatment facility, ambulatory surgical facility);

(ii) Importer report number;

(iii) Name, address, and telephone number of the source that reported the event to the importer (e.g., distributor, user facility, practitioner, etc.); and

(iv) Name of the manufacturer of the device.

(2) Date information.

(i) The date of the occurrence of the event;

(ii) The date the source that reported the event to the importer became aware of the event;

(iii) The date the event was reported to the manufacturer and/or FDA; and

(iv) The date of this report.

(3) The type of MDR reportable event (e.g., death, serious illness, serious injury, or malfunction), and whether an imminent hazard was involved;

(4) Patient information including age, sex, diagnosis, and medical status immediately prior to the event and after the event;

(5) Device information including brand and labeled name, generic name, model number or catalog number or other identifying numbers, serial number or lot number, purchase date, expected shelf life/expiration date (if applicable), whether the device was labeled for single use, and date of implant (if applicable);

(6) Maintenance/service information data including the last date of service performed on the device, where service was performed, whether service documentation is available, and whether service was in accordance with the service schedule;

(7) Whether the device is available for evaluation and, if not, the disposition of the device;

(8) Description of the event, including:

(i) Who was operating or using the device when the event occurred;

(ii) Whether the device was being used as labeled or as otherwise intended;

(iii) The location of the event;

(iv) Whether there was multi-patient involvement, and if so, how many patients were involved;

(v) A list of any other devices whose performance may have contributed to the event and their manufacturers, and the results of any analysis or evaluation with respect to such device (or a statement of why no analysis or evaluation was performed); and

(vi) A complete description of the event including, but not limited to, what happened, how the device was involved, the nature of the problem, patient followup/treatment required, and any environmental conditions that may have influenced the event.

(9) The results of any analysis of the device and the event, including:

(i) The method of the evaluation or an explanation of why no evaluation was necessary or possible;

(ii) The results and conclusions of the evaluation;

(iii) The corrective actions taken; and

(iv) The degree of certainty concerning whether the device caused or contributed to the reported event;

(10) The name, title, address, telephone number, and signature of the person who prepared the report.

§ 803.56 [Amended]

15. Section 803.56 *Supplemental reports* is amended in the introductory paragraph and in paragraphs (a) and (b) by adding the words ‘‘or importer’’ after the word ‘‘manufacturer’’.

§ 803.57 [Amended]

16 Section 803.57 *Annual certification* is amended in paragraphs (a) and (d) by removing the word ‘‘manufacturers’’ wherever it appears and by adding in its place the phrase ‘‘manufacturers of cigarettes or smokeless tobacco’’, and in paragraphs (b), (c)(1), and (d) by removing the word ‘‘manufacturer’’ wherever it appears and adding in its place the phrase ‘‘manufacturer of cigarettes or smokeless tobacco’’.

PART 804—MEDICAL DEVICE REPORTING FOR DISTRIBUTORS OF CIGARETTES OR SMOKELESS TOBACCO

17. The authority citation for 21 CFR part 804 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

18. Part 804 is amended by revising the heading to read as set forth above.

19. Section 804.1 is amended by revising paragraph (a) to read as follows:

§ 804.1 Scope.

(a) FDA is requiring distributors of cigarettes or smokeless tobacco to report deaths, serious illnesses, and serious injuries that are attributed to contamination of a cigarette or smokeless tobacco product. Distributors of cigarettes or smokeless tobacco are also required to submit a report to FDA annually certifying the number of medical device reports filed during the preceding year, or that no reports were filed. These reports enable FDA to protect the public health by helping to ensure that these products are not adulterated or misbranded and are otherwise safe and effective for their intended use. In addition, distributors of cigarettes or smokeless tobacco are required to establish and maintain complaint files or incident files as described in § 804.35, and to permit any authorized FDA employee at all reasonable times to have access to, and to copy and verify, the records contained in this file. This part supplements, and does not supersede, other provisions of this subchapter, including the provisions of part 820 of this chapter.

* * * * *

20. Section 804.3 is amended by revising paragraph (d), and in paragraphs (m)(1) and (m)(2) by adding the phrase ''related to the contamination of cigarettes or smokeless tobacco'' after the word ''event'' to read as follows:

§ 804.3 Definitions.

* * * * *

(d) *Distributor* means, for the purpose of this part, any person who furthers the distribution of cigarettes or smokeless tobacco, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption, but who does not repackage or otherwise change the container, wrapper, or labeling of the product package. Common carriers are not considered distributors for the purposes of this part.

* * * * *

§ 804.25 [Amended]

21. Section 804.25 *Reports by distributors* is amended in paragraph (a)(1) by removing the words ''a device'' and adding in their place the phrase ''contamination of a cigarette or smokeless tobacco product''; in paragraph (a)(2) by removing the phrase ''one of its marketed devices'' and adding in its place the phrase ''contamination of one of its cigarette or smokeless tobacco products''; and by removing paragraph (c).

Dated: May 1, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–12614 Filed 5–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1240

[Docket No. 97P–0418]

Revocation of Lather Brushes Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking its regulation pertaining to the treatment, sterilization, handling, storage, marking, and inspection of lather brushes. FDA is revoking this regulation because the regulation is no longer necessary to protect the public health.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Policy Development and Coordination Staff (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

DATES: This final rule is effective June 11, 1998.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 20, 1997 (62 FR 54398), FDA proposed to revoke a regulation pertaining to the treatment, sterilization, handling, storage, marking, and inspection of lather brushes. The preamble to the proposal explained that the lather brush regulation was originally published in 1949 by the Federal Security Agency and was intended to prevent cases of cutaneous anthrax through lather brushes made from animal hair or bristles. A Government reorganization transferred the Federal Security Agency's functions to the then-Department of Health, Education, and Welfare (now known as the Department of Health and Human Services), and responsibility for the rule was later assigned, in 1975, to FDA. The rule was codified at § 1240.70 (21 CFR 1240.70).

FDA proposed to revoke the regulation because it was unaware of any reliance on the lather brush requirements or of any current concerns associated with lather brushes and because the regulation was no longer necessary to protect the public health. The proposal also noted that the then-Center for Disease Control (now the Centers for Disease Control and Prevention) revoked a similar lather brush regulation in 1985 on the grounds that no case of cutaneous anthrax in the United States had been associated with lather brushes since 1930.

FDA received no comments on the proposal. Consequently, this final rule revokes § 1240.70.

II. Analysis of Impacts

FDA has examined the impacts of the final 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). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule eliminates certain manufacturing requirements for lather brushes, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) 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.

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 1240

Communicable diseases, Public health, Travel restrictions, Water supply.

Therefore, under the Public Health Service Act and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1240 is amended as follows:

PART 1240—CONTROL OF COMMUNICABLE DISEASES

1. The authority citation for part 1240 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 264, 271.

§ 1240.70 [Removed]

2. Section 1240.70 *Lather brushes* is removed.

Dated: May 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–12450 Filed 5–11–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6011–6]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule: Amendments.

SUMMARY: This action promulgates final amendments to the National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) by adding tetrahydrobenzaldehyde (THBA) and crotonaldehyde to, and removing acetaldol from, the list of chemical production processes. The amendment also establishes a separate compliance date of 3 years from final action for subparts F and G of part 63 and 1 year from final action for subpart H of part 63 for the THBA and crotonaldehyde production processes. The EPA is also making a change to clarify compliance demonstration requirements for flexible operation units.

This action implements section 112(d) of the Clean Air Act as amended in 1990 (the Act), which requires the Administrator to regulate emissions of hazardous air pollutants (HAP) listed in section 112(b) of the Act. The intended effect of this rule is to protect the public by requiring new and existing major sources to control emissions of HAP to the level reflecting application of the maximum achievable control technology. This action also amends the initial list of source categories of HAP required by section 112(c) of the Act by removing THBA production from the list of categories of major sources.

EFFECTIVE DATE: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: For information concerning this action contact Mr. John Schaefer at (919) 541–0296, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities and Background Information

A. Regulated Entities

The regulated category and entities affected by this action include:

Category	Regulated entities
Industry ..	Facilities that produce tetrahydrobenzaldehyde; facilities that produce crotonaldehyde. Synthetic organic chemical manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in Table 1 of 40 CFR part 63, subpart F.

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. Entities potentially regulated by the HON are those which produce as primary intended products any of the chemicals listed in table 1 of 40 CFR part 63, subpart F or facilities producing THBA or crotonaldehyde and that are located at facilities that are major sources as defined in section 112 of the Clean Air Act (CAA). To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.100. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

With today's action, EPA is making production of THBA and crotonaldehyde subject to subparts F, G, and H of 40 CFR Part 63. Subparts F, G, and H of 40 CFR Part 63 establish National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) (57 FR 62607). This rule is commonly referred to as the hazardous organic NESHAP or the HON. The HON rule applies to SOCMI facilities located at major sources and affects approximately 310 facilities nationwide. These SOCMI facilities include those that produce one or more of the synthetic organic chemicals listed in Table 1 of Subpart F and that either (1) use an organic HAP as a reactant or (2) produce an organic HAP in the process. Emission points within these facilities affected by the rule are process vents, storage vessels, transfer operations, equipment leaks, and wastewater collection systems. Processes producing THBA were not included on the list of SOCMI processes to be regulated under the HON. Crotonaldehyde production was removed from the list of SOCMI processes to be regulated by the HON when the rule was issued in April 1994. Crotonaldehyde production was deleted because available information indicated that this chemical was no longer produced in the United States. Because EPA has since learned that crotonaldehyde is still produced in the United States, in today's action EPA is adding crotonaldehyde production to the HON.

II. Summary of Changes to Rule

A. Addition of THBA Production

Tetrahydrobenzaldehyde production was included as a source of HAP emissions under the source category of butadiene dimers production on the initial list of source categories selected for regulation under Section 112(c) of the Act published on July 16, 1992 (57 FR 31576) and was scheduled for control by November 1997 on the section 112(e) source category schedule (58 FR 63941). Although the initial source category list clearly identified THBA production as being included in the butadiene dimers production source category, the butadiene dimers name was a misnomer. Consequently, the butadiene dimers production source category was changed to tetrahydrobenzaldehyde production by a source category list maintenance action finalized on June 4, 1996 (61 FR 28197). Today's action will add THBA production to the list of HON-affected chemicals.

THBA is produced by reacting 1,3-butadiene and acrolein together. Both 1,3-butadiene and acrolein are HAPs

and are emitted during the production process. At this time, only one facility in the nation manufactures THBA, and it is not expected that additional facilities will begin producing THBA. The THBA production unit is co-located with other SOCMI production units to which the HON is applicable. In addition, the emissions points and air pollution control measures applied are identical to those encountered in these co-located SOCMI units.

THBA is used in the manufacture of paint additives. The product is similar to other SOCMI products on the list of HON-affected chemicals in that it is an intermediate organic chemical used in the manufacture of other organic chemicals. The production of THBA was not included in the HON initially, because EPA was unaware of THBA's similarities to other SOCMI chemicals. Had EPA been aware of these similarities THBA would have been included in the list of affected HON chemicals in the initial HON rulemaking and subject to the requirements in the HON.

The EPA considers THBA production to be a batch process for purposes of equipment leaks since, the process operates over only a short operating cycle before experiencing significant fouling (plugging) in the reaction system, requiring the system to be shutdown and the equipment cleaned. Due to the frequent shutdown and equipment cleaning cycle, the process is classified as a batch process for purposes of subpart H.

The effect of today's action is twofold. First, it subjects facilities manufacturing THBA to the provisions of 40 CFR part 63, subparts F, G, and H. Although an assessment of the impacts (environmental, cost, economic, or other) associated with this action has not been conducted, the EPA believes that the impact on the THBA production unit will be no more or less severe than those imposed on the other SOCMI production processes already affected. Second, it overrides the need to write a separate regulation for the THBA production source category. Consequently, the THBA production source category is being removed from the list of HAP-emitting source categories published pursuant to Section 112(c) of the Act because it is being subsumed under the HON rule. The EPA does not believe that the development of a separate rule for this source category is justified or would result in a different control level than that required under the HON. Today's action is consistent with the source category schedule, which requires regulation of THBA production (originally listed as butadiene dimers production) by November 1997.

With respect to the issue of whether the addition of the THBA production source category to the population of SOCMI sources regulated by the HON would alter the maximum achievable control technology (MACT) determinations made for the HON rule, it has been concluded that since the emission points and air pollution control measures at the only facility known to manufacture THBA are similar to those at other SOCMI sources, the HON MACT floor determination would be unaffected.

This action establishes compliance dates for THBA production units of 1 year from the date this action is published for subpart H of this part and 3 years from the date this action is published for subparts F and G of this part. The compliance date of three years from the date of this action for compliance with subparts F and G of this part is to allow time for retrofitting of controls and evaluation of control requirements in the one known facility. A facility has one year from today for compliance with subpart H of this part. One year is believed to provide sufficient time to establish the equipment leak monitoring program and recordkeeping system. These time periods are consistent with the compliance times provided for sources originally subject to the HON rule.

B. Addition of Crotonaldehyde Production and Removal of Acetaldol Production

Today's action adds crotonaldehyde production to the chemical production processes subject to the HON and establishes a new compliance date for crotonaldehyde chemical manufacturing process units. In addition, today's action removes acetaldol production processes from the applicability of the HON by removing this chemical from table 1 of subpart F.

In the April 22, 1994 rule, EPA made several changes to the proposed lists of chemical products to correct errors and to remove chemicals no longer commercially produced in the United States. One of the chemical products removed from the list of SOCMI chemicals in the April 1994 notice, based upon the belief that it was no longer commercially produced in the United States, was crotonaldehyde. Since April 1994, EPA has learned that this removal was an error because crotonaldehyde is produced by at least one facility in the United States. The EPA has also learned that acetaldol, which was retained on table 1 of subpart F in the April 1994 rule, is an unstable intermediate which is used to produce either crotonaldehyde or 1,3-butylene glycol, and is therefore not itself a product appropriate for inclusion on table 1 of subpart F. Based on the January 17, 1997 amendments to the HON (62 FR 2721), EPA believes that acetaldol production operations are more appropriately considered unit operations part of crotonaldehyde or 1,3-butylene glycol chemical manufacturing process units. Therefore, the EPA is revising table 1 of subpart F by removing acetaldol. Crotonaldehyde production is being added to subpart F as a regulated process. No action is needed for 1,3-butylene glycol because that chemical is already listed in table 1 of subpart F.

This action creates a new compliance date for crotonaldehyde chemical production process units because of the confusion caused by listing a nonisolated intermediate chemical product instead of the correct final product. The new compliance date is 3 years from today for compliance with subparts F and G of this part to allow time for retrofitting of controls and evaluation of control requirements in the one known facility. A compliance date of 1 year from today is being used for compliance with subpart H of this part. One year is believed to provide sufficient time to establish the equipment leak monitoring program and recordkeeping system. These time periods are consistent with the compliance times provided for sources originally subject to the HON rule.

C. Clarification of Compliance Demonstration Requirements for Flexible Operation Units

In today's action, EPA is adding a new paragraph (b)(6) to § 63.103 of subpart F to clarify the compliance demonstration requirements for flexible operation units. This amendment revises the rule to clarify that performance tests and monitoring parameter ranges are to be based on operating conditions present during production of the primary product. The April 1994 rule was not clear on this point due to a drafting oversight. This change is being added because some owners and operators have expressed concerns that the rule could be interpreted as requiring installation of additional controls for periods when the flexible operation unit is producing a product other than the primary product. It is not the EPA's intent that the rule be interpreted in this manner. Therefore, for the purposes of compliance with this rule, additional controls are not required when producing products other than the primary product. The EPA has also

recently learned that there are questions whether the rule requires owners or operators to develop parameter monitoring ranges appropriate for each product produced by a flexible operation unit or to develop parameter monitoring ranges for operating conditions during production of the primary product of the flexible operation unit. The need for clarification of these aspects of compliance demonstration became apparent as facilities were completing compliance planning and demonstration activities for the April 1997 compliance deadline. This revision will make the rule consistent with the assumptions that EPA used in deriving the cost (including the recordkeeping and reporting burden) estimates used in support of the April 1994 rule. Based on conversations with several industry representatives, EPA believes that today's action is generally consistent with industry's understanding of the rule. Today's clarification is not expected to increase the cost or burden of demonstrating compliance with the HON.

D. Public Comment on the August 22, 1997 Proposal

Three comment letters were received on the August 22, 1997 **Federal Register** document that proposed changes to this rule. All comments received were from industry representatives. While the comments received were supportive of the proposed amendments they expressed concern with the applicability of the rule and clarity of the proposed changes. The EPA has considered these comments and has made one minor change to the final rule, and added additional language to the preamble to clarify the compliance demonstration procedures for flexible operation units. The response to these comments may be obtained over the Internet at http://www.epa.gov/ttn or from the EPA's Technology Transfer Network (TTN). The TTN is a network of electronic bulletin boards operated by the Office of Air Quality Planning and Standards. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bits per second modem. Select TTN Bulletin Board: Clean Air Act Amendments and select menu item Recently Signed Rules. If more information on TTN is needed, contact the systems operator at (919) 541–5384.

III. Administrative

A. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the rule under the Provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0282. An Information Collection Request (ICR) document was prepared by the EPA (ICR No. 1414.03) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington DC 20460 or by calling (202) 260–2740.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Today's action neither adds new respondents nor is it anticipated to increase the number of responses. The increase in the number of effected processing units is less than ½ percent. Since this action does not substantially change the information collection, the ICR has not been revised.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether a 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 lead to 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 in State, local, or tribal governments or communities;

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

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

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

The HON rule promulgated on April 22, 1994 was considered ''significant'' under Executive Order 12866, and a regulatory impact analysis was prepared. The amendments issued today apply to one additional process unit at two facilities. These facilities are already well controlled. It is not certain what additional control will be required as a result of this action. Regardless of the final assessment of additional controls at these two facilities, the EPA believes that application of the HON to these facilities will have a negligible impact. The clarification of the compliance demonstration requirements for flexible operation units is believed to be consistent with industry understanding of the rule, and is not believed to create additional impacts. For these reasons, the regulatory action is considered ''not significant.''

C. Regulatory Flexibility

The EPA has determined it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. See the April 22, 1994 **Federal Register** (59 FR 19449) for the basis for this determination. This amendment to the rule will not have a significant impact on a substantial number of small entities. This rule will apply the requirements of the HON rule to an additional process unit at two facilities and only imposes negligible recordkeeping costs on those facilities. The additional recordkeeping costs are not expected to create a burden for either of the regulated entities. Furthermore, neither of these regulated entities is a small business. The amendment to § 63.103(b)(6) is a clarification of an existing requirement, and this clarification is not expected to increase control requirements or burden of the rule.

D. Submission to Congress and the General Accounting Office

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

E. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), the EPA must prepare a budgetary impact

statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate or to the private sector, of $100 million or more. Under Section 205, the EPA must select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the 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 today's action 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. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 1, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry

2. Section 63.100 is amended as follows:

a. By revising paragraphs (b)(1), (d) introductory text, (d)(3) introductory text, the first sentence of paragraph (g)(2)(iii), the first sentence of paragraph (h)(2)(iv), the first sentence of paragraph (i)(2)(iv), (k) introductory text, (l)(1)(ii), (l)(2)(ii);

b. By adding paragraphs (b)(1)(i), (b)(1)(ii), (d)(4), (g)(2)(iii)(A), (g)(2)(iii)(B), (h)(2)(iv)(A), (h)(2)(iv)(B), (i)(2)(iv)(A), (i)(2)(iv)(B), and (p).

The revisions and additions read as follows:

§ 63.100 Applicability and designation of source.

* * * * *

(b) * * *

(1) Manufacture as a primary product one or more of the chemicals listed in paragraphs (b)(1)(i) or (b)(1)(ii) of this section.

(i) One or more of the chemicals listed in table 1 of this subpart; or

(ii) One or more of the chemicals listed in paragraphs (b)(1)(ii)(A) or (b)(1)(ii)(B) of this section:

(A) Tetrahydrobenzaldehyde (CAS Number 100–50–5); or

(B) Crotonaldehyde (CAS Number 123–73–9).

* * * * *

(d) The primary product of a chemical manufacturing process unit shall be determined according to the procedures specified in paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) of this section.

* * * * *

(3) For chemical manufacturing process units that are designed and operated as flexible operation units producing one or more chemicals listed in table 1 of this subpart, the primary product shall be determined for existing sources based on the expected utilization for the five years following April 22, 1994 and for new sources based on the expected utilization for the first five years after initial start-up.

* * * * *

(4) Notwithstanding the provisions of paragraph (d)(3) of this section, for chemical manufacturing process units that are designed and operated as flexible operation units producing a chemical listed in paragraph (b)(1)(ii) of this section, the primary product shall be determined for existing sources based on the expected utilization for the five years following May 12, 1998 and for new sources based on the expected utilization for the first five years after initial start-up.

(i) The predominant use of the flexible operation unit shall be determined according to paragraphs (d)(3)(i)(A) and (d)(3)(i)(B) of this section. If the predominant use is to produce one of the chemicals listed in paragraph (b)(1)(ii) of this section, then the flexible operation unit shall be subject to the provisions of this subpart and subparts G and H of this part.

(ii) The determination of applicability of this subpart to chemical manufacturing process units that are designed and operated as flexible operation units shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

* * * * *

(g) * * *

(2) * * *

(iii) If the predominant use of a storage vessel varies from year to year, then the applicability of this subpart shall be determined according to the criteria in paragraphs (g)(2)(iii)(A) and (g)(2)(iii)(B) of this section, as applicable. * * *

(A) For chemical manufacturing process units that produce one or more of the chemicals listed in table 1 of this subpart and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the 12-month period preceding April 22, 1994.

(B) For chemical manufacturing process units that produce one or more of the chemicals listed in paragraph (b)(1)(ii) of this section and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the 12-month period preceding May 12, 1998.

* * * * *

(h) * * *

(2) * * *

(iv) If the predominant use of a loading arm or loading hose varies from year to year, then the applicability of this subpart shall be determined according to the criteria in paragraphs (h)(2)(iv)(A) and (h)(2)(iv)(B) of this section, as applicable. * * *

(A) For chemical manufacturing process units that produce one or more of the chemicals listed in table 1 of this subpart and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the 12-month period preceding April 22, 1994.

(B) For chemical manufacturing process units that produce one or more of the chemicals listed in paragraph (b)(1)(ii) of this section and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the year preceding May 12, 1998.

* * * * *

(i) * * *

(2) * * *

(iv) If the predominant use of a distillation unit varies from year to year, then the applicability of this subpart shall be determined according to the criteria in paragraphs (i)(2)(iv)(A) and (i)(2)(iv)(B), as applicable. * * *

(A) For chemical manufacturing process units that produce one or more of the chemicals listed in table 1 of this subpart and meet the criteria in paragraphs (b)(2) and (b)(3) of this

section, the applicability shall be based on the utilization that occurred during the year preceding April 22, 1994.

(B) For chemical manufacturing process units that produce one or more of the chemicals listed in paragraph (b)(1)(ii) of this section and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the year preceding May 12, 1998.

* * * * *

(k) Except as provided in paragraphs (l), (m), and (p) of this section, sources subject to subparts F, G, or H of this part are required to achieve compliance on or before the dates specified in paragraphs (k)(1) through (k)(8) of this section.

* * * * *

(l)(1) * * *

(ii)(A) Such construction commenced after December 31, 1992 for chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in table 1 of this subpart;

(B) Such construction commenced after August 22, 1997 for chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in paragraph (b)(1)(ii) of this section; and

* * * * *

(2) * * *

(ii)(A) Such reconstruction commenced after December 31, 1992 for chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in table 1 of this subpart; and

(B) Such construction commenced after August 22, 1997 for chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in paragraph (b)(1)(ii) of this section.

* * * * *

(p) *Compliance dates for chemical manufacturing process units that produce crotonaldehyde or tetrahydrobenzaldehyde.* Notwithstanding the provisions of paragraph (k) of this section, chemical manufacturing process units that meet the criteria in paragraphs (b)(1)(ii), (b)(2), and (b)(3) of this section shall be in compliance with this subpart and subparts G and H of this part by the dates specified in paragraphs (p)(1) and (p)(2) of this section, as applicable.

(1) If the source consists only of chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in paragraph (b)(1)(ii) of this section, new sources shall comply by the date specified in paragraph (p)(1)(i) of this section and existing sources shall comply by the dates specified in paragraphs (p)(1)(ii) and (p)(1)(iii) of this section.

(i) Upon initial start-up or May 12, 1998, whichever is later.

(ii) This subpart and subpart G of this part by May 14, 2001, unless an extension has been granted by the Administrator as provided in § 63.151(a)(6) or granted by the permitting authority as provided in § 63.6(i) of subpart A of this part. When April 22, 1994 is referred to in this subpart and subpart G of this part, May 12, 1998 shall be used as the applicable date for that provision. When December 31, 1992 is referred to in this subpart and subpart G of this part, August 22, 1997 shall be used as the applicable date for that provision.

(iii) Subpart H of this part by May 12, 1999, unless an extension has been granted by the Administrator as provided in § 63.151(a)(6) or granted by the permitting authority as provided in § 63.6(i) of subpart A of this part. When April 22, 1994 is referred to in subpart H of this part, May 12, 1998 shall be used as the applicable date for that provision. When December 31, 1992 is referred to in subpart H of this part, August 22, 1997 shall be used as the applicable date for that provision.

(2) If the source consists of a combination of chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in paragraphs (b)(1)(i) and (b)(1)(ii) of this section, new chemical manufacturing process units that meet the criteria in paragraph (b)(1)(ii) of this section shall comply by the date specified in paragraph (p)(1)(i) of this section and existing chemical manufacturing process units producing crotonaldehyde and/or tetrahydrobenzaldehyde shall comply by the dates specified in paragraphs (p)(1)(ii) and (p)(1)(iii) of this section.

3. Section 63.103 is amended by adding paragraph (b)(6) to read as follows:

§ 63.103 General compliance, reporting, and recordkeeping provisions.

* * * * *

(b) * * *

(6) The owner or operator of a flexible operation unit shall conduct all required compliance demonstrations during production of the primary product. The owner or operator is not required to conduct compliance demonstrations for operating conditions during production of a product other than the primary product. Except as otherwise provided in this subpart or in subpart G or subpart H of this part, as applicable, the owner or operator shall operate each control device, recovery device, and/or recapture device that is required or used for compliance, and associated monitoring systems, without regard for whether the product that is being produced is the primary product or a different product. Except as otherwise provided in this subpart, subpart G and/or subpart H of this part, as applicable, operation of a control device, recapture device and/or recovery device required or used for compliance such that the daily average of monitored parameter values is outside the parameter range established pursuant to § 63.152(b)(2), or such that the monitoring data show operation inconsistent with the monitoring plan established pursuant to § 63.120(d)(2) or § 63.181(g)(1)(iv), shall constitute a violation of the required operating conditions.

* * * * *

Table 1 of Subpart F [Amended]

4. Table 1 of subpart F is amended by removing the entry for acetaldol and its associated CAS number and group number.

[FR Doc. 98–12579 Filed 5–11–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300648; FRL–5787–8]

RIN 2070–AB78

Azoxystrobin; 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 azoxystrobin or methyl (*E*)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate) and its Z isomer in or on cucurbits and watercress . This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on cucurbits and watercress in several states. This regulation establishes a maximum permissible level for residues of azoxystrobin in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

The tolerance will expire and is revoked on June 30, 1999.

DATES: This regulation is effective May 12, 1998. Objections and requests for hearings must be received by EPA on or before July 13, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300648], 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–300648], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), 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. 119, 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–300648]. 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: Virginia Dietrich, 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) 308–9359, e-mail: dietrich.virginia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for combined residues of the fungicide azoxystrobin and its Z isomer, in or on cucurbits and watercress at 1.0 and 1.0 part per million (ppm). This tolerance will expire and is revoked on June 30, 1999. 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 FQPA (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 *et seq.*, and 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 Azoxystrobin on Cucurbits and Watercress and FFDCA Tolerances

For watercress, copper hydroxide is the only material registered for control of Cercospora leaf spot disease. Several applications of copper hydroxide are required per season for adequate control. Although copper hydroxide is still effective at controlling Cercospora leaf spot disease, due to the many required applications, levels of copper in soil and watercress plants have reached phytotoxic levels. As a consequence, in areas where watercress has been grown for several years, yield has been significantly reduced.

For cucurbits, azoxystrobin has been requested for the control of gummy stem blight and powdery mildew because unusually wet and cloudy weather conditions favor disease development. Similar weather conditions in 1997 resulted in estimated production losses of 68.4 and 36.2% in cantaloupe and honeydews. Registered alternatives are ineffective due to a combination of weather and resistance factors.

EPA has authorized under FIFRA section 18 the use of azoxystrobin on cucurbits and watercress for control of gummy stem blight on cucurbits and Cercospora leaf spot disease in watercress in several States. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of azoxystrobin in or on cucurbits and watercress. 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 June 30, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cucurbits and watercress after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. 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 azoxystrobin meets EPA's registration requirements for use on cucurbits and watercress 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 azoxystrobin 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 the approved States 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 azoxystrobin, 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 enaction 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 (nonursing infants (<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 azoxystrobin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of azoxystrobin and its Z isomer) on cucurbits and watercress at 1.0 and 1.0 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 and The Agency's selection of toxicological endpoints upon which to assess risk caused by azoxystrobin are discussed below.

1. *Acute toxicity*. The Agency evaluated the existing toxicology database for azoxystrobin and did not identify an acute dietary endpoint. Therefore, a risk assessment is not required.

2. *Short - and intermediate - term toxicity*. The Agency evaluated the existing toxicology database for short- and intermediate-term dermal and inhalation exposure and determined that this risk assessment is not required. [Note: From a 21-day dermal toxicity study the NOEL was 1,000 mg/kg/day at the highest dose tested (Acute inhalation toxicity category III).

3. *Chronic toxicity*. EPA has established the RfD for azoxystrobin at 0.18 milligrams/kilogram/day (mg/kg/day). This RfD is based on a chronic toxicity study in rats with a NOEL of 18.2 mg/kg/day. Reduced body weights and bile duct lesions were observed at the lowest-effect-level (LEL) of 34 mg/kg/day. An Uncertainty Factor (UF) of 100 was used to account for both the interspecies extrapolation and the intraspecies variability.

4. *Carcinogenicity*. The HED RfD/Peer Review Committee (November 7, 1996) determined that azoxystrobin should be classified as ''Not Likely'' to be a human carcinogen according to the proposed revised Cancer Guidelines. This classification is based on the lack of evidence of carcinogenicity in long-term rat and mouse feeding studies.

B. Exposures and Risks

1. *From food and feed uses.* Permanent tolerances have been established (40 CFR 180.507(a)) for the combined residues of azoxystrobin and its Z isomer, in or on a variety of raw agricultural commodities at levels ranging from 0.01 ppm in pecans to 1.0 ppm in grapes. In addition, time-limited tolerances have been established (40 CFR 180.507(b) at levels ranging from 0.006 ppm in milk to 20 ppm in rice hulls) in conjunction with previous Section 18 requests. Risk assessments were conducted by EPA to assess dietary exposures and risks from azoxystrobin 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 Agency did not conduct an acute risk assessment because no toxicological endpoint of concern was identified during review of available data.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, HED has made very conservative assumptions -- 100% of cucurbits, watercress and all other commodities having azoxystrobin tolerances will contain azoxystrobin residues and those residues would be at the level of the tolerance -- which result in an overestimation of human dietary exposure. Thus, in making a safety determination for this tolerance, HED is taking into account this conservative exposure assessment.

The existing azoxystrobin tolerances (published, pending, and including the necessary Section 18 tolerance(s)) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD:

Population Sub-Group	TMRC (mg/kg/day)	% RFD
U.S. Population (48 States)	0.002	1%

Population Sub-Group	TMRC (mg/kg/day)	% RFD
Nursing Infants (<1 year old)	0.004	2%
Non-Nursing Infants (<1 year old)	0.009	5%
Children (1-6 years old)	0.005	3%
Children (7-12 years old)	0.003	2%
Hispanics	0.003	2%
Non-Hispanics Others	0.005	3%
U.S. Population (summer season)	0.003	2%
Females (13-19, not preg or nursing)	0.002	1%

The subgroups listed above are: (a) the U.S. population (48 states); (b) those for infants and children; (c) females (13-19 years old, not pregnant or nursing); and, (d) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

2. *From drinking water.* There is no established Maximum Contaminant Level for residues of azoxystrobin in drinking water. No health advisory levels for azoxystrobin in drinking water have been established.

i. *Acute exposure and risk.* An assessment was not appropriate since no toxicological endpoint of concern was identified during review of the available data.

ii. *Chronic exposure and risk.* Based on the chronic dietary (food) exposure estimates, chronic drinking water levels of concern (DWLOC) for azoxystrobin were calculated and are summarized in Table 1. Estimated environmental concentrations (EECs) using GENEEC for azoxystrobin on bananas, grapes, peaches, peanuts, pecans, tomatoes, and wheat are listed in SWAT Team Second Interim Report (6/20/97). The highest EEC for azoxystrobin in surface water is from the application of azoxystrobin on grapes (39 µg/L) and is substantially lower than the DWLOCs calculated. Therefore, chronic exposure to azoxystrobin residues in drinking water do not exceed the Agency's level of concern.

Table 1. Drinking Water Levels of Concern

	RfD (mg/kg/day)	TMRC [Food Exposure] (mg/kg/day)	Max Water Exposure[1] (mg/kg/day)	DWLOC [2,3,4] (µg/L)
U.S. Population (48 States)	0.18	0.00231	0.178	6200
Females (13+ years old, not pregnant or nursing)	0.18	0.00176	0.178	5300
Non-nursing Infants (< 1 year old) ...	0.18	0.00879	0.171	1700

[1] Maximum Water Exposure (mg/kg/day) = RfD (mg/kg/day) - TMRC from DRES (mg/kg/day)
[2] DWLOC(µg/L) = Max water exposure (mg/kg/day) * body wt (kg) /[(10^{-3} mg/µg)*water consumed daily (L/day)]
[3] HED Default body wts for males, females, and children are 70 kg, 60 kg, and 10 kg respectively.
[4] HED Default Daily Drinking Rates are 2 L/Day for Adults and 1 L/Day for children

3. *From non-dietary exposure.* Azoxystrobin is not currently registered for use on residential non-food sites.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Azoxystrobin is related to the naturally occurring strobilurins. There are no other members of this class of fungicides registered with the Agency. 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 azoxystrobin 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, azoxystrobin 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 azoxystrobin 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 conservative TMRC exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, HED has estimated the exposure to azoxystrobin from food will utilize 1% of the RfD for the U.S. population. HED 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 azoxystrobin in drinking water, HED does not expect the aggregate exposure to exceed 100% of the RfD. Under current HED guidelines, the registered non-dietary uses of azoxystrobin do not constitute a chronic exposure scenario. HED concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to azoxystrobin residues. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to azoxystrobin 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. This risk assessment is not applicable since no indoor and outdoor residential exposure uses are currently registered for azoxystrobin.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children— In general.* In assessing the potential for additional sensitivity of infants and children to residues of azoxystrobin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. 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.

2. *Developmental toxicity studies*—i. *Rabbit.* In the developmental toxicity study in rabbits, developmental NOEL was 500 mg/kg/day, at the highest dose tested (HDT). Because there were no treatment-related effects, the developmental LEL was >500 mg/kg/day. The maternal NOEL was 150 mg/kg/day. The maternal LEL of 500 mg/kg/day was based on decreased body weight gain during dosing.

ii. *Rat.* In the developmental toxicity study in rats, the maternal (systemic) NOEL was not established. The maternal LEL of 25 mg/kg/day at the lowest dose tested (LDT) was based on increased salivation. The developmental (fetal) NOEL was 100 mg/kg/day (HDT).

3. *Reproductive toxicity study*— i. *Rat.* In the reproductive toxicity study (MRID #43678144) in rats, the parental (systemic) NOEL was 32.3 mg/kg/day. The parental LEL of 165.4 mg/kg/day was based on decreased body weights in males and females, decreased food consumption and increased adjusted liver weights in females, and cholangitis. The reproductive NOEL was 32.3 mg/kg/day. The reproductive LEL of 165.4 mg/kg/day was based on increased weanling liver weights and decreased body weights for pups of both generations.

ii. *Pre- and post-natal sensitivity.* The pre- and post-natal toxicology data base for azoxystrobin is complete with respect to current toxicological data requirements. The results of these studies indicate that infants and children are not more sensitive to exposure, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproductive toxicity study in rats. The additional 10X safety factor to account for sensitivity of infants and children was removed by an ad hoc FQPA Safety Factor Committee.

iii. *Conclusion.* The results of these studies indicate that infants and children are not more sensitive to exposure, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproductive toxicity study in rats. The additional 10X safety factor to account for sensitivity of infants and children was removed by an ad hoc FQPA Safety Factor Committee.

4. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to azoxystrobin from food will utilize 2 to 5% 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 azoxystrobin 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 azoxystrobin residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in grapes is adequately understood. The residue of concern in grapes is parent azoxystrobin and its Z isomer. The qualitative nature of the residue in wheat is adequately understood. Again, the major residues are azoxystrobin and the Z isomer in wheat metabolism studies. These data are being translated for watercress for this emergency exemption.

The qualitative nature of the residue in animals is adequately understood for the purposes of this Section 18 request. A ruminant metabolism study has been submitted, however the animal metabolism data have not been reviewed by the Office of Pesticide Program's Metabolism Assessment Review Committee. The residues of concern in ruminants appears to be different from that of plants. Unidentified metabolite compounds, designated metabolites 2, 20, and 28, appear to be the major components of the residue in ruminant tissues. For the purposes of these time-limited tolerances for emergency exemptions only, the residues of concern in animal tissues are azoxystrobin and its Z-isomer.

B. Analytical Enforcement Methodology

A method (SOP RAM 243/03, GLC/NPD) to determine residues of azoxystrobin and its Z isomer in banana, peach, peanut, tomato, and wheat commodities has been submitted. This method has been independently validated as per PR Notice 88-5. An Agency validation of this method is pending. The Agency concludes this method is adequate for enforcement of the requested Section 18 tolerances on plant commodities.

GLC/NPD method RAM 255/01 is adequate for collection of residue data for azoxystrobin in animal commodities. Adequate independent method validation and concurrent method recovery data have been submitted. Method SOP RAM 255/01 has been submitted for Agency method validation. The Agency concludes this method is adequate for enforcement of the necessary Section 18 tolerances on livestock commodities.

C. Magnitude of Residues

Residues of azoxystrobin and its Z isomer are not expected to exceed 1.0 ppm in/on cucurbits or watercress as a result of this Section 18 use. Time-limited tolerances should be established at this level.

D. Rotational Crop Restrictions

Rotational crop data were previously submitted. Based on this information, a 45 day plantback interval is appropriate for all crops.

E. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits (MRL) for azoxystrobin on cucurbits or watercress. Thus, harmonization is not an issue for these section 18 requests.

VI. Conclusion

Therefore, the tolerance is established for combined residues of azoxystrobin and its Z isomer in cucurbits and watercress at 1.0 and 1.0 ppm.

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 July 13, 1998, 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 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–300648] (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 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), 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 tolerance 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 under FFDCA section 408 (l)(6), 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 Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule 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: April 27, 1998.

James Jones,

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 180.507 is amended in paragraph (b) by alphabetically adding the following commodities to the table to read as follows:

§ 180.507 Azoxystrobin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * *	* * *	*
Cucurbits	1.0	6/30/99
* * *	* * *	*
Watercress	1.0	6/30/99

* * * * *

[FR Doc. 98–12578 Filed 5–11–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300647; FRL–5787–7]

RIN 2070–AB78

Myclobutanil; Pesticide Tolerance.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound) in or on bananas (post-harvest). Rohm and Haas Company requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170).

DATES: This regulation is effective May 12, 1998. Objections and requests for hearings must be received by EPA on or before July 13, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300647], 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–300647], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), 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. 119, 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 or 6.1 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–300647]. 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: Mary L. Waller, 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, Rm 247, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9354, e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 1, 1997 (62 FR 41379)(FRL–5732–4), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petition (PP) 2E4141 for a tolerance by Rohm and Haas Company, 100 Independence Mall

West, Philadelphia, PA 19106-2399. This notice included a summary of the petition prepared by Rohm and Haas Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.443 be amended by establishing a tolerance for combined residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound) in or on bananas (post-harvest) at 4.0 parts per million (ppm).

I. Risk Assessment and Statutory Findings

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. . . .''

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 enaction 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 was not regionally based.

II. 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 myclobutanil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound) on bananas (post-harvest) at 4.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Data Base

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 myclobutanil are discussed below.

1. *Acute studies.* The primary eye irritation for the technical is classified as toxicity category I. All other acute studies on the technical were classified as either toxicity category III or IV. There was a positive sensitizing reaction.

2. *Subchronic toxicity testing*— i. *Rats.* A subchronic feeding study in rats was conducted for 13 weeks. The NOEL was determined to be 1,000 ppm and the lowest observed effect level (LOEL) was 3,000 ppm based on increased liver and kidney weights, hypertrophy and necrosis in the liver, pigmentation in convoluted kidney tubules and vacuolated adrenal cortex.

ii. *Dogs.* A subchronic feeding study in dogs conducted for 13 weeks resulted in a NOEL of 10 ppm and an LOEL of 200 ppm. Technical myclobutanil was tested at 0, 10, 200, 800, and 1,600 ppm (0, 0.34, 7.26, 29.13, and 56.80 milligrams/kilogram (mg/kg)/day for males and 0, 0.42, 7.88, 32.43 and 57.97 mg/kg/day for females). At 200 ppm, and above, hepatocellular centrilobular or midzonal hypertrophy was observed in males. At 800 ppm and above, the same effect was observed in females. In addition, increases in alkaline phosphatase, in absolute liver weights in both sexes and in relative liver weights in males were observed. At 1,600 ppm, all the previous effects plus increases in relative liver weights in females, a suggestion of mild red cell destruction or mild anemia, and decreases in body weight and food consumption (possibly related to palatability) were observed.

Subchronic dermal studies using a 40% active ingredient (ai) formulation (40WP) and a 24.99% emulsifiable concentrate formulation (2EC) of myclobutanil conducted in rats resulted in a NOEL for systemic effects of ≤100 mg ai/kg/day, a NOEL for skin irritation of 10 mg ai/kg/day and an LEL of 100 mg ai/kg/day. The 2EC was applied at either 1, 10 or 100 mg ai/kg and the 40WP applied at 100 mg ai/kg once per day for a total of 19-20 treatments over a 4 week period. No systemic effects were observed at any dose level for either formulation. Microscopic changes, indicating irritation, were observed in the skin.

3. *Chronic toxicity studies.* A 1-year dog feeding study was conducted using doses of 0, 10, 100, 400 and 1,600 ppm (equivalent to doses of 0, 0.34, 3.09, 14.28 and 54.22 mg/kg body weight (bwt)/day in males and 0, 0.40, 3.83, 15.68 and 58.20 mg/kg bwt/day in females). The NOEL is 100 ppm (3.09 mg/kg/day for males and 3.83 mg/kg/day for females) based upon hepatocellular hypertrophy, increases in liver weights, ''ballooned'' hepatocytes and increases in alkaline phosphatase, SGPT and GGT, and possible slight hematological effects. The LOEL is 400 ppm (14.28 mg/kg/day for males and 15.68 mg/kg/day for females).

4. *Carcinogenicity*— i. *Mice.* A carcinogenicity study in mice was conducted by administering 90.4% ai test material in the diet at 0, 20, 100, or 500 ppm (0, 2.7, 13.7 or 70.2 mg/kg/day for males and 0, 3.2, 16.5, or 85.2 mg/kg/day for females) for 24 months. The NOEL was determined to be 100 ppm (systemic) and the LOEL was 500 ppm (systemic) based on increased MFO (male and female), increased SGPT (male) and increased absolute and relative liver weights (male and female, increased incidences and severity of centrilobular hepatocytic hypertrophy, Kupffer cell pigmentation, periportal punctate vacuolation and individual hepatocellular necrosis (male), and increased incidences of focal hepatocellular alterations and multifocal hepatocellular vacuolation (male and female). In this test, dose levels in females was not high enough. In the following test, higher doses were tested (2,000 ppm; 393.5 mg/kg/day). No carcinogenic effects were observed.

A carcinogenicity study in mice was conducted for 18 months in which myclobutanil technical (92.9% ai) was administered in the diet at 0 and 2,000 ppm (393.5 mg/kg/day). No NOEL was established. The LOEL was 2,000 ppm (393.5 mg/kg/day) based on decreases in body weight and body weight gain, increases in liver weights, hepatocellular vacuolation, necrosis of single hypertrophied hepatocytes, yellow-brown pigment in the Kupffer cells and cytoplasmic eosinophilia and hypertrophy of the cells of the zona fasciculata area of the adrenal cortex. Myclobutanil was not carcinogenic under the conditions of the study.

ii. *Rats.* A carcinogenicity study in rats was conducted by administering technical myclobutanil (92.9% ai) in the diet at doses of 0 and 2,500 ppm (125 mg/kg/day). No NOEL was established (refer to next study). The LOEL was 2,500 ppm based on testicular atrophy and decreases in testes weights, increases in the incidences of centrilobular to midzonal hepatocellular enlargement and vacuolization in the liver of both sexes, increases in bilateral aspermatogenesis in the testes, increases in the incidence of hypospermia and cellular debris in the epididymides, and increased incidence of arteritis/periarteritis in the testes. No carcinogenic effects were observed.

A chronic feeding/carcinogenicity study was conducted in rats. Technical (90.4% and 91.4% pure) myclobutanil was administered in the diet for 24 months at 25/35/50, 100/140/200 and 400/560/800 ppm (2 weeks/2 weeks/to termination; 0, 2.49, 9.84 or 39.21 mg/kg/day for males; 0, 3.23, 12.86, or 52.34 mg/kg/day for females). The NOEL was 2.49 mg/kg/day and the LOEL was 9.84 mg/kg/day based on a decrease in testes weights and increase in testicular atrophy. Dosage rates were not high enough (refer to previous study). No carcinogenic effects were observed.

5. *Developmental toxicity*— i. *Rabbits*. A teratology study was conducted in rabbits at doses of 0, 20, 60 or 200 mg ai/kg/day (technical myclobutanil; 90.4% ai) administered by oral gavage on days 7-19 of gestation which resulted in a maternal NOEL of 60 mg/kg/day and a maternal LOEL of 200 mg/kg/day based on reduced body weight and body weight gain during the dosing period and clinical signs of toxicity and possibly abortions. The developmental NOEL was 60 mg/kg/day and the developmental LOEL was 200 mg/kg/day based on increases in number of resorptions, decreases in litter size and decrease in the viability index.

ii. *Rats*. In a teratology study, rats were treated with dosages of 0, 31.26, 93.77, 312.58 and 468.87 mg/kg/day by oral gavage from gestation days 6-15. The maternal NOEL was 93.8 mg/kg/day and the maternal LOEL was 312.6 mg/kg/day based on observation of rough hair coat and salivation at 312.6 mg/kg/day and salivation, alopecia, desquamation and red exudate around mouth at 468.87 mg/kg/day. The developmental NOEL was 93.8 mg/kg/day. The developmental LOEL was 312.6 mg/kg/day based on increased incidences of 14th rudimentary and 7th cervical ribs.

6. *Reproductive toxicity*. A 2-generation rat reproduction study was conducted with dosage rates of 0, 50, 200 and 1,000 ppm (equivalent to 0, 2.5, 10 and 50 mg/kg/day). The parental (systemic) NOEL was 50 ppm (2.5 mg/kg/day) and the parental (systemic) LOEL was 200 ppm (10 mg/kg/day) based on hepatocellular hypertrophy and increases in liver weights. The reproductive toxicity NOEL was 200 ppm (10 mg/kg/day) and reproductive toxicity LOEL was 1,000 ppm (50 mg/kg/day) based on an increased incidence in the number of stillborns and atrophy of the testes, epididymides and prostate. The developmental NOEL was 200 ppm (10 mg/kg/day) and the developmental LOEL was 1,000 ppm (50 mg/kg/day) based on a decrease in pup body weight gain during lactation.

7. *Mutagenicity*. A reverse mutation assay (Ames), point mutation in CHO/HGPRT cells, in vitro and in vivo (mouse) cytogenetic assays, unscheduled DNA synthesis and a dominant lethal mutation study in rats, were conducted, all of which were negative for mutagenic effects.

8. *Metabolism*— i. *Mice*. A metabolism study in mice demonstrated that myclobutanil was rapidly absorbed and excreted. It was completely eliminated by 96 hours. The chemical was extensively metabolized prior to excretion with metabolic patterns similar for both sexes. Disposition and metabolism after pulse administration is linear over the dose range.

ii. *Rats*. In a metabolism study in rats, myclobutanil was completely and rapidly absorbed. It was extensively metabolized and rapidly and essentially completely excreted. Elimination of label from plasma was biphasic and evenly distributed between urine and feces. There was no tissue accumulation after 96 hours.

In another metabolism study in rats, at least 7 major metabolites of myclobutanil were recovered and identified. The highest amounts of radioactivity were found in the liver, kidneys, and large and small intestines. There was no tissue accumulation.

9. *Neurotoxicity*. There have been no clinical neurotoxic signs or other types of neurotoxicity observed in any of the evaluated toxicology studies. The Hazard ID Assessment Review Committee did not recommend that a developmental neurotoxicity study be required for myclobutanil. The following information was considered in the weight-of-evidence evaluation:

i. Myclobutanil does not appear to be a neurotoxic chemical.

ii. The toxicology profile for this chemical did not indicate that there were any treatment-related effects on the central or peripheral nervous system. No acute or subchronic neurotoxicity studies in rats or delayed neuropathy studies in chickens were available for review so there was no evaluation of the nervous system following perfusion.

iii. No evidence of developmental anomalies of the fetal nervous system were observed in the prenatal developmental toxicity studies in either rats or rabbits at maternally toxic oral doses up to 468.9 and 200 mg/kg/day, respectively.

10. *Other toxicological considerations.* Myclobutanil has a complete data base and no other toxicological concerns have been identified in the evaluated studies.

B. Toxicological Endpoints

1. *Acute toxicity*. EPA has determined that data do not indicate the potential for adverse effects after a single dietary exposure.

2. *Short - and intermediate - term toxicity.* EPA has determined that when short- and intermediate-term risk assessments are appropriate for occupational and residential routes of exposure, the following should be used. OPP recommended that the NOEL of 100 mg/kg/day, taken from the 28-day dermal toxicity study in rats, be used for the short-term dermal MOE calculations. This dose level was the highest tested in the study. For intermediate-term MOE calculations, OPP recommended using the NOEL of 10 mg/kg/day from the 2-generation rat study. Effects seen at the LOEL in this study (50 mg/kg/day) were decreases in pup body weight, an increased incidence in number of stillborns, and atrophy of the prostate and testes.

3. *Chronic toxicity*. EPA has established the RfD for myclobutanil at 0.025 mg/kg/day. This RfD is based on [the chronic feeding study in rats with a NOEL of 2.5 mg/kg/day and an uncertainty factor of 100. There was testicular atrophy at the lowest observed effect level (LOEL) of 9.9 mg/kg/day.

4. *Carcinogenicity*. Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified myclobutanil as a Group E chemical--''no evidence of carcinogenicity for humans''--based on the results of carcinogenicity studies in two species. The doses tested are adequate for identifying a cancer risk.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.443) for myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound) in or on a variety of raw agricultural commodities. Commodities include: almonds, apples, cherries, cotton seed, grapes, stone fruits (except cherries) and tolerances for meat, milk, poultry and eggs. In today's action, a tolerance will be established for combined residues of myclobutanil and its metabolite in or on bananas (post-harvest) at 4.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures and risks from myclobutanil 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 Toxicology Endpoint Selection Committee did not identify an acute dietary toxicological endpoint and stated that an acute dietary risk assessment is not required.

ii. *Chronic exposure and risk*. In conducting the chronic dietary (food only) risk assessment, EPA has made several very conservative assumptions. With the exceptions of bananas for which a level representing residues in pulp rather than the whole banana was used and selected commodities which were corrected for percent crop treated, all commodities having myclobutanil tolerances will contain myclobutanil and metabolite residues and those residues will be at the levels of the established tolerances. For bananas, the level of 0.8 ppm was used in the dietary risk assessment rather than the proposed tolerance of 4.0 ppm since residues in the pulp will not exceed 0.8 ppm. Percent crop-treated estimates were utilized for selected commodities included in the assessment. Thus, in making a safety determination for this tolerance, EPA is taking into account this partially refined exposure assessment.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: (a) that the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (b) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (c) where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of these estimates of percent food treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on percent crop treated.

As indicated above, the Agency is required to determine the reliability of the percent crop-treated data. Percent crop-treated estimates are derived from federal and private market survey data. Typically, a range is assumed for the exposure assessment. By using this upper end estimate, the Agency is reasonably certain that the exposure is not understated for any significant population sub-group. Additionally, the DRES (Dietary Risk Evaluation System) modeling used in estimating chronic dietary risk uses regional consumption groups that are geographically based regions of the United States. None of these subgroups exceeded the Agency's level of concern.

The existing myclobutanil tolerances (published, pending, and including the necessary Section 18 tolerances) for crops other than bananas and the anticipated residues on bananas result in an Anticipated Residue Contribution (ARC) that is equivalent to the following percentages of the RfD.

Population Subgroup	%RfD
U.S. Population (48 states)	17
Nursing Infants (<1 year old)	25
Non-nursing Infants (<1 year old)	75
Children (1-6 years old)	46
Children (7-12 years old)	28
Northeast Region	18
Western Region	19
Hispanics	20
Non-Hispanic Others	18

The subgroups listed above are: (a) the U.S. population (48 states), (b) those for infants and children, and (c) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

2. *From drinking water.* Based on information in the EFED (Environmental Fate and Effects Division) One-Liner Database, myclobutanil is persistent and not considered mobile in soils with the exception of sandy soils. Data are not available for its metabolite. There is no established Maximum Contaminant Level for residues of myclobutanil in drinking water. No Health Advisory Levels for myclobutanil in drinking water have been established. The ''Pesticides in Groundwater Database'' has no information concerning myclobutanil. Estimates of ground and surface water concentrations for myclobutanil were determined based on the label rate of 0.65 lbs. a.i./acre and assuming 15 applications per season. Although the requested tolerance is for bananas, these estimates were based on turf since it would more realistically estimate the concentrations in water. The surface water numbers are based on the results of a Generic Environmental Concentration (GENEEC) model. The ground water numbers are based on a screening tool, SCI-GROW, which tends to overestimate the true concentration in the environment. For acute effects, the surface water EEC was determined to be 0.14596 ppm or mg/L (maximum initial concentration). For chronic effects the surface water EEC was 0.1186 ppm or mg/L (average 56-day concentration). Current policy allows the 90/56-day GENEEC value to be divided by 3 to obtain a value for chronic risk assessment calculations. Therefore, the surface water value for use in the chronic risk assessment would be 0.04 ppm or mg/L.

i. *Acute exposure and risk*. The Toxicology Endpoint Selection Committee did not identify an acute dietary toxicological endpoint and stated than an acute dietary risk assessment is not required.

ii. *Chronic exposure and risk*. Chronic exposure is calculated based on surface water. Chronic exposure from ground water is lower. Chronic exposure (mg/kg/day) is calculated by multiplying the concentration in water in mg/L by the daily consumption (2L/day for male and female adults and 1L/day for children) and dividing this figure by average weight (70 kg for males, 60 kg for females and 10 kg for children). For adult males, exposure is 1.1×10^{-3} mg/kg/day; for adult females, 1.3×10^{-3} mg/kg/day; and for children, 4.0×10^{-3} mg/kg/day. Chronic risk (non-cancer) from surface water was calculated to be 4.4% of the Rfd for males, 5.2% for females and 16% for children.

3. *From non-dietary exposure.* Myclobutanil is currently registered for use on the following non-food sites: outdoor residential and greenhouse use on annuals and perennials, turf, shrubs, trees and flowers.

i. *Acute exposure and risk.* An acute toxicological endpoint was not identified for myclobutanil.

ii. *Chronic exposure and risk.* HED has determined that these uses do not constitute a chronic exposure scenario, but may constitute a short- to intermediate-term exposure scenario.

iii. *Short- and intermediate-term exposure and risk.* The home use of myclobutanil on turf has the greatest potential for exposure and was used in estimating short-term risk. HED concluded that residential intermediate-term exposure is not expected for handlers or persons re-entering treated areas. Fungicide use on home lawns is limited, restricted to certain parts of the country, and considered to be a ''rare, extra treatment'' in homeowner Do-It-Yourself programs. The end-point selected for short-term risk assessment is from a 28-day dermal study in rats; this dosing duration is expected to adequately reflect the typical human exposures for this use. Maximum application rates are calculated from the use directions on the label. Typical lawn size of 13,000 ft^2 is used in place of the high-end lawn default value of 20,000 ft^2. Post-application exposure estimates assume that 10% of the application rate is available as dislodgeable residue since the label states that the product is not washed away by rain or sprinklers.

Currently there is no use/usage information source available to HED for residential end-use products. Therefore, pertinent information is unknown and assumptions are made for parameters such as: amount of product applied, how often treatment is actually required; the number of applications that are typically made; whether applications are generally spot or full lawn treatments, etc. Similarly, a number of assumptions and best estimates are made in assessing post-application exposure, including: the duration and degree of activity in the treated area by children and adults; the amount of product available to dislodge and transfer to the skin during activity; and the amount of product dissipation over time.

HED determined that there is potential for intermittent short-term exposures to homeowners associated with typical end-product use of myclobutanil. Three exposure scenarios with the greatest potential for exposure are considered for application to home lawns: (a) loading and application of granular product by hand held rotary granular spreader; (b) mixing, loading and application of a soluble concentrate product by low pressure handwand sprayer; and (c) mixing, loading, and application of a soluble concentrate product by garden hose-end sprayer. Short-term dermal exposure assessments using the ''Pesticide Handlers Exposure Database'' surrogate data and risk calculations for homeowners resulted in a short-term MOE of 460 for scenario 1, 260 for scenario 2 and 890 for scenario 3.

There is also the potential for post-application homeowner exposure following applications to lawn and garden sites. There are no chemical-specific data to use in assessing these potential exposures. Post-application exposure is estimated and risk assessments performed using typical transfer coefficients (Tc) and surrogate dislodgeable foliar residues (DFR) derived from the application rate. Short-term post-application exposure assessments and risk calculations for adults and toddlers re-entering treated areas on the day of application resulted in a short-term MOE of 350 for adult dermal exposure, 100 for toddler dermal exposure, 1,600 for toddlers for non-dietary ingestion and 100 for combined dermal and non-dietary ingestion for toddlers. Dietary ingestion is addressed in the discussion of aggregate risk.

Using these exposure assumptions for short-term risk assessments, it is concluded that the MOEs that will result from the residential use of myclobutanil do not exceed the 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 myclobutanil 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, myclobutanil 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 myclobutanil 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 dietary risks were identified.

2. *Chronic risk.* Using the partially refined exposure assumptions described above, EPA has concluded that aggregate exposure to myclobutanil from food will utilize 17% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants (<1 year old) which 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 myclobutanil 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 myclobutanil 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. Since short-term residential exposure scenarios are present, short-term aggregate MOEs for adults and children from the turf use were determined. The short-term aggregate MOE for adults was 150 and for children it was 94. Although an MOE of 94 was calculated, this MOE is acceptable based on conservative estimates of exposure. Since worst case estimates were used in the calculations, the MOE would be above 100 under usual conditions of use. It was concluded that short-term aggregate MOEs for both adults and children are acceptable. This is based on the consideration of the conservative nature of the default assumptions for duration and degree of activity in treated areas by children and adults, amount of product available to dislodge and transfer to skin during activity, and amount of product dissipation over time which were used in the derivation of exposure estimates. The estimates were calculated using the maximum application rate and the assumption that 10% of the application rate is available as dislodgeable residue. Both of these factors are likely overestimated. The fact that a LOEL was not identified in the 28-day rat dermal toxicity study used to determine the MOE indicates an overestimate since the level used was the highest dose tested. Additionally there are no indoor residential uses of myclobutanil; thus, indoor residential exposure is not a concern.

D. Aggregate Cancer Risk for U.S. Population

Myclobutanil is classified as Category E: not carcinogenic in two acceptable animal studies.

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

1. *Safety factor for infants and children— In general.* In assessing the potential for additional sensitivity of infants and children to residues of myclobutanil, 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 maternal pesticide exposure gestation. 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 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.

2. *Developmental toxicity studies*— i. *Rats.* In the developmental study in rats, the maternal (systemic) NOEL was 93.8 mg/kg/day, based on rough hair coat and salivation at the LOEL of 312.6 mg/kg/day. The developmental (fetal) NOEL was 93.8 mg/kg/day based on incidences of 14th rudimentary and 7th cervical ribs at the LOEL of 312.6 mg/kg/day.

ii. *Rabbits.* In the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 60 mg/kg/day, based on reduced weight gain, clinical signs of toxicity and abortions at the LOEL of 200 mg/kg/day. The developmental (fetal) NOEL was 60 mg/kg/day, based on increases in number of resorptions, decreases in litter size, and a decrease in the viability index at the LOEL of 200 mg/kg/day.

3. *Reproductive toxicity study— Rats.* In the 2-generation reproductive toxicity study in rats, the parental (systemic) NOEL was 2.5 mg/kg/day, based on increased liver weights and liver cell hypertrophy at the LOEL of 10 mg/kg/day. The developmental (pup) NOEL was 10 mg/kg/day, based on decreased pup body weight during lactation at the LOEL of 50 mg/kg/day. The reproductive NOEL was 10 mg/kg/day, based on the increased incidences of stillborns, and atrophy of the testes, epididymides, and prostate at the LOEL of 50 mg/kg/day.

4. *Pre- and post-natal sensitivity.* The pre- and post-natal toxicology data base for myclobutanil is complete with respect to current toxicological data requirements. Based on the developmental and reproductive toxicity studies discussed above, there does not appear to be an extra sensitivity for pre- or post-natal effects.

5. *Acute risk.* No acute dietary risk has been identified.

6. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that exposure to myclobutanil from food will utilize 25% (nursing infants < 1 year old) and 75% (non-nursing infants < 1 year old) of the RfD. The percent of the RfD that will be used by the food and water exposure for children 1-6 years old is 62% and 21% for the U.S. population. 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 myclobutanil 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 myclobutanil residues.

7. *Short- or intermediate-term risk.* Intermediate-term risk is not expected since there is no expectation of intermediate-term exposure. Short-term exposure scenarios are expected and the MOEs which were determined for aggregate short-term risk does not exceed HED's level of concern. It was concluded that there is a reasonable certainty that no harm will result from aggregate exposure to myclobutanil residues.

8. *Conclusion.* EPA concludes that reliable data support use of the 100-fold uncertainty factor and that an additional 10-fold factor is not needed to ensure the safety of infants and children from dietary exposure.

III. Other Considerations

A. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an

effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect ....'' The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of the FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects. Based on the adverse testicular findings in the chronic toxicity and reproduction studies in rats, myclobutanil should be considered as a candidate for evaluation as an endocrine disrupter.

B. Metabolism In Plants and Animals

1. *Plants*. Based on the three metabolism studies on wheat, apples and grapes (which indicate a similar metabolic route for crops in three different crop groups), the nature of the residue in bananas is adequately understood. The residues of concern in bananas are myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound).

2. *Animals*. The nature of the residue in animals is adequately understood. The residues of concern in animal commodities except milk are myclobutanil and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free). The residues of concern in milk are myclobutanil and its metabolites alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound) and alpha-(4-chlorophenyl)-alpha-(3,4-dihydroxybutyl)-1*H*-1,2,4-triazole-1-propanenitrile.

C. Analytical Enforcement Methodology

An adequate enforcement method, 34S-88-10, is available to enforce the tolerance on bananas. Quantitation is by GLC using a nitrogen/phosphorus detector for parent myclobutanil and an electron capture detector (Ni^{63}) for residues measured as the alcohol metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile. Enforcement methods for the established tolerances on animal commodities are Methods 34S-88-22, 34S-88-15, 31S-87-02, and 34S-88-21. These methods have been submitted for publication in PAM II. The methods are available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 119FF, 1921 Jefferson Davis Hwy., (703) 305–5229.

D. Magnitude of Residues

The combined residues of myclobutanil and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound) resulting from the proposed use will not exceed 4.0 ppm in bananas (post-harvest). The tolerance on bananas is for the raw agricultural commodity as defined in 40 CFR 180.1(j)(1). Both peel and pulp are included. Crown tissue or stalk are excluded. For risk assessment purposes, it was concluded that residues resulting from the proposed use will not exceed 0.8 ppm in banana pulp.

E. Rotational Crop Restrictions.

Rotational crop studies are not required for uses of pesticides on bananas.

F. International Residue Limits

There are no Codex, Canadian or Mexican residue limits established for myclobutanil and its metabolites on bananas. Therefore, no compatibility problems exist for the proposed tolerance on bananas.

IV. Conclusion

Therefore, the tolerance is established for the combined residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound) in or on the raw agricultural commodity bananas (post-harvest) at 4.0 ppm.

V. 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 July 13, 1998, 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 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.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300647] (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 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), 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.

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance 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 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 was published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule 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: April 23, 1998.

Peter Caulkins,

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 180.443, is amended by adding and alphabetically inserting into the table of paragraph (a) the commodity bananas (Post-H) at 4.0 ppm to read as follows:

§ 180.443 Myclobutanil; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * *	* *
Bananas (Post-H)	4.0
* * *	* *

* * * * *

[FR Doc. 98–12577 Filed 5–11–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300628A; FRL–5785–4]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerance Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting the final rule issued in the **Federal Register** of March 25, 1998 (63 FR 14371)(FRL–5778–3), establishing permanent tolerances for residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites in or on sorghum grain at 0.05 parts per million (ppm), sorghum forage at 0.10 ppm, and sorghum stover at 0.10 ppm. Gustafson, Inc. submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170) requesting these tolerances.

DATES: This correction is effective May 12, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Elizabeth T. Haeberer, 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) 308–2891, e-mail: haeberer.elizabeth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Regulatory Assessment Requirements

This final rule does not impose any requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and

Review (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.).

II. 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: April 28, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

In FR Doc. 98–7646, in the issue of Wednesday, March 25, 1998 at page 14378 in the third column, amendatory language item 2 and the amendment to § 180.472 are corrected to read as follows.

2. In § 180.472, the table in paragraph (a) is amended by revising the entries for ''sorghum, forage,'' and ''sorghum, grain,'' and adding alphabetically an entry for ''sorghum, stover,'' to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * * *	* * *	
Sorghum, forage	0.10	None
Sorghum, grain	0.05	None
Sorghum, stover	0.10	None
* * * *	* * *	

* * * * *

[FR Doc. 98–12576 Filed 5–11–98; 8:45 am]

BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 63, No. 91
Tuesday, May 12, 1998

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 97–131–1]

Horses From Qatar; Change in Disease Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of horses to remove Qatar from the list of regions the Animal and Plant Health Inspection Service considers affected with African horse sickness. This proposed action is based on information received from Qatar and is in accordance with standards set by the Office International des Epizooties for recognizing a country as free of African horse sickness. This proposed action would relieve restrictions on the importation of horses into the United States from Qatar.

DATES: Consideration will be given only to comments received on or before July 13, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–131–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–131–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Senior Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 40, Riverdale, MD 20737–1231, (301) 734–3399; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prescribe the conditions for the importation into the United States of specified animals to prevent the introduction of various animal diseases, including African horse sickness (AHS). AHS is a fatal equine viral disease that is not known to exist in the United States.

Section 93.308(a)(2) of the regulations lists regions that the Animal and Plant Health Inspection Service (APHIS) considers affected with AHS and sets forth specific quarantine requirements for horses that are imported from those regions. APHIS requires horses intended for importation from any of the regions listed, including horses that have stopped in or transited those regions, to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days. This precaution is necessary to help ensure that the horses are not affected with AHS.

We are proposing to recognize Qatar as free of AHS. We are proposing this action based on information given to APHIS by Qatar and standards set by the Office International des Epizooties (OIE).

In order for a country to be recognized as free of AHS, the OIE requires the disease to be mandatorily reportable. In addition, the country must not have vaccinated domestic horses or other equines against the disease during the past 12 months. The OIE also requires that the country have no clinical, serological (in non-vaccinated animals), or epidemiological evidence of AHS for the past 2 years. Qatar has not had a recorded case of AHS in over 30 years, and vaccination against AHS has not been permitted during this period.

With its request to be considered free of AHS, Qatar provided APHIS with information about its veterinary infrastructure, animal health monitoring system, trading practices with other regions, and other pertinent information that we require in order to determine whether Qatar should be recognized as free of AHS.

APHIS has reviewed the information provided by Qatar in support of declaring it free of AHS. Based on that information, and in accordance with OIE standards for recognizing a country to be free of AHS, we are proposing to consider Qatar as free of AHS. Therefore, we are proposing to amend § 93.308(a)(2) by removing Qatar from the list of regions declared affected with AHS. This proposed action would allow horses from Qatar to be shipped to and quarantined at ports designated in § 93.303, and would reduce the quarantine period to an average of 3 days to meet the quarantine and testing requirements specified in § 93.308.

On October 28, 1997, we published a final rule and policy statement in the **Federal Register** that established procedures for recognizing regions, rather than only countries, for the purpose of importing animals and animal products into the United States, and that established procedures by which regions may request permission to export animals and animal products to the United States under specified conditions, based on the regions' disease status (see 62 FR 56000–56033, Dockets 94–106–8 and 94–106–9). The final rule was effective on November 28, 1997. The request from Qatar addressed by this proposed rule is not a request to be recognized as a region, rather than a country, nor a request to establish new import conditions based on the disease status of regions. Therefore, we have handled and evaluated this request in the traditional framework of recognizing a country as affected or not affected with a specified disease. If this proposed rule is adopted, the current regulations regarding importation of horses from regions free of AHS will apply.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would recognize Qatar as free of AHS. This action would allow horses from Qatar to be shipped to and quarantined at ports designated in § 93.303 and would reduce the quarantine and testing period to an

average of 3 days to meet quarantine requirements specified in § 93.308.

U.S. importers of competition and breeding horses from Qatar would be affected by this rule if it is adopted. These importers would no longer be required to quarantine horses from Qatar for 60 days at the New York Animal Import Center in Newburgh, NY, at a cost of approximately $5,296 per horse.

In 1996, the U.S. imported 31,633 horses. However, there have been no horses imported into the United States from Qatar since 1992. Removing the requirement for a 60-day quarantine for horses from Qatar would make the importation of these horses less expensive and logistically easier. As a result, we anticipate that U.S. importers might begin importing horses from Qatar. However, since the current horse population in Qatar is approximately 1500 head, we do not expect that the number of horses exported to the United States would be significant. In fact, in 1995, Qatar only exported 10 horses. Furthermore, most horses imported from Qatar would probably be in the United States on a temporary basis for particular events, such as for races or breeding, and then transported back to Qatar. For these reasons, we anticipate the overall economic impact on U.S. entities would be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 93 would be amended as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 93.308 [Amended]

2. In § 93.308, paragraph (a)(2) would be amended by removing ''Qatar,''.

Done in Washington, DC, this 6th day of May 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–12571 Filed 5–11–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–171–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, –400D, and –400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747–400, –400D, and –400F series airplanes, that would have required modification of the P212 and P213 panels of the cabin pressure control system. That proposal was prompted by a report of in-flight loss of cabin pressurization control due to a single failure of the auxiliary power unit (APU) battery. This action revises the proposed rule by adding new requirements, for certain airplanes, to modify the P5, P6, and P7 panels, and the W4701, W4703, and W4908 wire bundles, as applicable. The actions specified by this proposed AD are intended to prevent loss of control of the cabin pressurization system, which could result in rapid depressurization of the airplane. Such rapid depressurization could result in deleterious physiological effects on the passengers and crew; and airplane diversions, which represent an increased risk to the airplane, passengers, and crew.

DATES: Comments must be received by June 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–171–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Clayton R. Morris, Jr., Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2794; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following

statement is made: ''Comments to Docket Number 96–NM–171–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–171–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 747–400, –400D, and –400F series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 1, 1997 (62 FR 15433). That NPRM would have required modification of the P212 and P213 panels of the cabin pressure control system. That NPRM was prompted by a report of in-flight loss of cabin pressurization control due to a single failure of the auxiliary power unit (APU) battery. That condition, if not corrected, could result in rapid depressurization of the airplane. Such rapid depressurization could result in deleterious physiological effects on the passengers and crew; and airplane diversions, which represent an increased risk to the airplane, passengers, and crew.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has given due consideration to the comments received in response to the NPRM. One comment and the information it provides has led the FAA to consider making a significant change to the proposal. The comment and the changes prompted by it are explained below.

Request to Include Actions Specified in Additional Service Bulletin

One commenter (the manufacturer) requests that the FAA revise the proposed AD to additionally require accomplishment of the actions specified in Boeing Service Bulletin 747–24–2193, dated January 25, 1995; as revised by Notices of Status Change (NSC) 747–24–2193 NSC 1, dated April 13, 1995, 747–24–2193 NSC 2, dated October 5, 1995, 747–24–2193 NSC 3, dated November 22, 1995, 747–24–2193 NSC 4, dated December 21, 1995, 747–24–2193 NSC 5, dated May 2, 1996, and 747–24–2193 NSC 6, dated March 13, 1997; or Alert Service Bulletin 747–24A2193, Revision 1, dated June 19, 1997.

The FAA concurs with the commenter's request to add the actions described in the service bulletins to the requirements of the originally proposed AD. Since issuance of the NPRM, the FAA has reviewed and approved these service bulletins, which describe procedures for modification of the wiring of the P5, P6, and P7 panels, and modification of the wiring in the W4701 and W4908 wire bundles; installation of diodes in the P6 panel; and, for certain airplanes, modification of the wiring in the W4703 wire bundles. Accomplishment of the actions described in the service bulletins would provide backup power for the control and indication of the cabin pressurization system in the event of a single-source failure of the main battery bus.

The FAA finds that accomplishment of the actions specified in Service Bulletin 747–24–2193 (including notices of status change), Alert Service Bulletin 747–24A2193, and Alert Service Bulletin 747–21A2381 (the appropriate source of service information for accomplishment of the actions specified in the originally proposed AD) would adequately address the identified unsafe condition by providing an additional power source in the event of loss of the primary power source. Therefore, the FAA has revised the proposed AD to add the actions specified in Boeing Service Bulletin 747–24–2193 or Alert Service Bulletin 747–24A2193.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 351 airplanes of the affected design in the worldwide fleet.

The FAA estimates that 43 airplanes of U.S. registry would be affected by this proposed AD. For all airplanes, it would take approximately 8 work hours per airplane to accomplish the proposed modification of the P212 and P213 panels, at an average labor rate of $60 per work hour. Required parts would cost approximately $389 per airplane. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $37,367, or $869 per airplane.

For certain airplanes, it would take approximately 47 work hours per airplane to accomplish the proposed modification of the P5, P6, and P7 panels, and the W4701, W4703, and W4908 wire bundles, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,529 per airplane. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $4,349 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 96–NM–171–AD.

Applicability: Model 747–400, –400D, and –400F series airplanes; as identified in Boeing Alert Service Bulletin 747–21A2381, dated June 27, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of control of the cabin pressurization system, which could result in rapid depressurization of the airplane and consequent deleterious physiological effects on the passengers and crew; and airplane diversions, which represent an increased risk to the airplane, passengers, and crew; accomplish the following:

(a) Within 180 days after the effective date of this AD: Modify the P212 and P213 panels of the cabin pressure control system as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 747–21A2381, dated June 27, 1996.

(1) For Groups 1 through 7 airplanes, as identified in the alert service bulletin: Change the wiring in the P212 and P213 panels; replace the existing two-pole relays with new four-pole relays; and perform a test of both panels.

(2) For Group 8 airplanes, as identified in the alert service bulletin: Change the wiring in the P212 panel; replace the existing two-pole relays with new four-pole relays; replace the existing P213 panel with a new P213 panel; and perform a test of both panels.

(b) For airplanes having line positions 696 through 1021 inclusive: Within 180 days after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2), as applicable, of this AD; in accordance with Boeing Service Bulletin 747–24–2193, dated January 25, 1995; as revised by Notices of Status Change (NSC) 747–24–2193 NSC 1, dated April 13, 1995, 747–24–2193 NSC 2, dated October 5, 1995, 747–24–2193 NSC 3, dated November 22, 1995, 747–24–2193 NSC 4, dated December 21, 1995, 747–24–2193 NSC 5, dated May 2, 1996, and 747–24–2193 NSC 6, dated March 13, 1997; or Alert Service Bulletin 747–24A2193, Revision 1, dated June 19, 1997.

(1) For all airplanes: Modify the wiring of the P5, P6, and P7 panels; modify the wiring in the W4701 and W4908 wire bundles; and install diodes in the P6 panel.

(2) For Groups 1 and 2 airplanes identified in paragraph I. of the Accomplishment Instructions of the service bulletin or alert service bulletin: Modify the wiring in the W4703 wire bundle.

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

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

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

Issued in Renton, Washington, on May 5, 1998.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–12520 Filed 5–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–156–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require repetitive inspections to detect cracking in the inner flange of door frame 66, and corrective actions, if necessary. This proposal also would provide for an optional terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to correct such fatigue cracking, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by June 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–156–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that, during fatigue testing on a Model A320 test article, between 60,500 and 85,700 flight cycles, three cracks developed on the inner flange of door frame 66 at stringer 18 and stringer 20. The cracks were located around the edges of the gusset plate attachment holes of the inner flange of door frame 66, which, during routine visual inspection, would be hidden by the gusset plates. Such fatigue cracking, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53–1071, dated November 7, 1995, as revised by Change Notice 0A, dated July 5, 1996. This service bulletin describes procedures for repetitive rotating probe eddy current inspections to detect cracking around the edges of the gusset plate attachment holes of the inner flange of door frame 66, left and right, at stringer positions P18, P20, P22, P18′, P20′, and P22′. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–234–087(B), dated October 23, 1996, in order to assure the continued airworthiness of these airplanes in France. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Airbus also has issued Service Bulletin A320–53–1072, dated November 7, 1995, as revised by Change Notice 0A, dated July 5, 1996. This service bulletin describes procedures for modification of the gusset plate attachment holes. The modification involves cold working the attachment holes of the inner flange of door frame 66, left and right, at stringer positions P18, P20, P22, P18′, P20′, and P22.. Accomplishment of the modification would eliminate the need for the repetitive inspections. The DGAC has approved this service bulletin.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Service Bulletin A320–53–1071 described previously, except as described in the following section. This proposed AD also would provide for optional terminating action for the repetitive inspections.

Operators should note that, in consonance with the findings of the DGAC, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplane.

Differences Between the Proposed AD and the Foreign Service Information

The proposed AD would differ from the previously described Airbus service bulletins and French airworthiness directive, which specify that Airbus be contacted for a repair solution for cracking detected during an inspection. In the proposed AD, however, repair of any crack would be required to be accomplished in accordance with a method approved by the FAA.

Also, operators should note that, unlike the procedures described in Airbus Service Bulletin A320–53–1071, this proposed AD would not permit further flight if cracks are detected around the edges of the gusset plate attachment holes of the inner flange of door frame 66. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject attachment hole that is found to have cracking must be repaired or modified prior to further flight.

Cost Impact

The FAA estimates that 132 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 8 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $63,360, or $480 per airplane.

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

Should an operator elect to accomplish the proposed modification, it would take approximately 5 work hours per airplane to accomplish the actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $300 per airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 97–NM–156–AD.

Applicability: Model A320 series airplanes on which Airbus Modification 21778 (reference Airbus Service Bulletin A320–53–1072, dated November 7, 1995, as revised by Change Notice 0A, dated July 5, 1996) has not been accomplished, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To correct fatigue cracking in the inner flange of door frame 66, left and right, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 1 year after the effective date of this AD, whichever occurs later: Perform a rotating probe eddy current inspection to detect cracking around the edges of the gusset plate attachment holes of the inner flange of door frame 66, left and right, at stringer positions P18, P20, P22, P18′, P20′, and P22′, in accordance with Airbus Service Bulletin A320–53–1071, dated November 7, 1995, as revised by Change Notice 0A, dated July 5, 1996. If any crack is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Repeat the inspection thereafter at intervals not to exceed 20,000 flight cycles.

(b) Modification of the gusset plate attachment holes of the inner flange of door frame 66, left and right (Airbus Modification 21778), in accordance with Airbus Service Bulletin A320–53–1072, dated November 7, 1995, as revised by Change Notice 0A, dated July 5, 1996, constitutes terminating action for the repetitive inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in French airworthiness directive 96–234–087(B), dated October 23, 1996.

Issued in Renton, Washington, on May 5, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–12518 Filed 5–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–37–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes. This proposal would require modifications to the attachment installation of the forward lavatory. This proposal is prompted by a stress analysis report indicating that the forward lavatory could break free from the upper and/or lower attachments during an emergency landing. The actions specified by the proposed AD are intended to prevent failure of the attachment installation of the forward lavatory during an emergency landing, which could result in injury to the crew and passengers.

DATES: Comments must be received by June 26, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–37–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–37–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate,

ANM–114, Attention: Rules Docket No. 98–NM–37–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

While reviewing a stress analysis for the attachment installation of the forward lavatory on the Boeing Model 757–200 series airplane to add airline-requested variations, Boeing discovered a discrepancy with the analysis. The stress analysis, when corrected, indicated that the current design was not strong enough to withstand a 9g forward emergency landing. As a result, the upper attachment installation of the forward lavatory of passenger airplanes and the lower attachment installation of the forward lavatory of freighter airplanes do not meet the certification requirements for the ultimate load specifications of the forward lavatory. Furthermore, the stress analysis report indicated that the forward lavatory could break free at the upper and/or lower attachments during an emergency landing. Failure of the attachment installation of the forward lavatory during an emergency landing could result in injury to the crew and passengers.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 757–25–0181, dated June 26, 1997, which describes procedures for installation of a doubler to the upper attachment installation of the forward lavatory on passenger airplanes. The FAA also has reviewed and approved Boeing Alert Service Bulletin 757–25A0187, dated September 18, 1997, which describes procedures for installation of floor panel inserts, a retention fitting assembly, and a doubler assembly to the lower attachment installation of the forward lavatory on freighter airplanes. Accomplishment of the modifications specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the modifications specified in the service bulletins described previously.

Cost Impact

There are approximately 333 airplanes of the affected design in the worldwide fleet. The FAA estimates that 225 airplanes of U.S. registry would be affected by this proposed AD: 164 passenger airplanes and 61 freighter airplanes.

It would take approximately 10 work hours per passenger airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $100 per airplane. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $114,800, or $700 per passenger airplane.

It would take approximately 42 work hours per freighter airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would be provided by the airplane manufacturer at no cost to the operators. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $153,720, or $2,520 per freighter airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98–NM–37–AD.

Applicability: Model 757–200 series airplanes; as listed in Boeing Service Bulletin 757–25–0181, dated June 26, 1997, and Boeing Alert Service Bulletin 757–25A0187, dated September 18, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the attachment installation of the forward lavatory during an emergency landing, which could result in injury to the crew and passengers, accomplish the following:

(a) For passenger airplanes identified in Boeing Service Bulletin 757–25–0181, dated June 26, 1997: Within 18 months after the effective date of this AD, install a doubler to the upper attachment installation of the forward lavatory in accordance with Boeing Service Bulletin 757–25–0181, dated June 26, 1997.

(b) For freighter airplanes identified in Boeing Alert Service Bulletin 757–25A0187, dated September 18, 1997: Within 18 months after the effective date of this AD, install floor panel inserts, a retention fitting assembly, and a doubler assembly to the lower attachment installation of the forward lavatory, in accordance with Boeing Alert Service Bulletin 757–25A0187, dated September 18, 1997.

(c) As of the effective date of this AD, no person shall install a floor panel, part number 141N5410–12 or 141N5410–28, on any airplane.

(d) An alternative method of compliance or adjustment of the compliance time that

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

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

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

Issued in Renton, Washington, on May 5, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–12517 Filed 5–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–44–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42 series airplanes. This proposal would require modification of the electrical power supply for the standby horizon indicator. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent loss of the standby horizon indicator in the event of failure of emergency direct current (DC) power, which could result in reduced controllability of the airplane during instrument flight rules conditions.

DATES: Comments must be received by June 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–44–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–44–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–44–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42 series airplanes. The DGAC advises that an operator experienced an aborted takeoff that was attributed to loss of power at the direct current (DC) emergency (EMER) bus, which disabled the standby horizon indicator. The present configuration does not supply electrical power for the standby horizon indicator from two independent sources, which could result in the loss of the standby horizon indicator in the event of failure of emergency DC power. This condition, if not corrected, could result in reduced controllability of the airplane during instrument flight rules conditions.

Explanation of Relevant Service Information

The manufacturer has issued Avions de Transport Regional Service Bulletin ATR42–34–0090, Revision 1, dated April 22, 1997, which describes procedures for modifying the electrical power supply for the standby horizon indicator. This modification would involve installation of relays in certain electrical panels and modification of wiring, so that power to the standby horizon indicator can be supplied from two independent sources. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–230–066(B), dated October 23, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 88 airplanes of U.S. registry would be affected by this proposed AD, that it would take between approximately 10 to 55 work hours per airplane to accomplish the proposed modification (depending on how many kits are needed for each airplane), and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators ranges from $52,800 to $290,400, or $600 to 3,300 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospatiale: Docket 98–NM–44–AD.

Applicability: Model ATR42–200, –300, and –320 series airplanes on which Aerospatiale Modification 4647 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the standby horizon indicator in the event of failure of emergency direct current (DC) power, which could result in reduced controllability of the airplane during instrument flight rules conditions, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the electrical power supply for the standby horizon indicator in accordance with Avions de Transport Regional Service Bulletin ATR42–34–0090, Revision 1, dated April 22, 1997.

(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, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–230–066(B), dated October 23, 1996.

Issued in Renton, Washington, on May 5, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–12516 Filed 5–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–61–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require relocation of the engine/master 1 relay from relay box 103VU to shelf 95VU in the avionics bay. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent a simultaneous cutoff of the fuel supply to both engines, which could result in a loss of engine power and consequent reduced controllability of the airplane.

DATES: Comments must be received by June 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–61–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–61–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–61–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that, during investigation into a bowl overflow problem, maintenance personnel determined that water contamination in the avionics bay could cause the left- and right-side engine relays to simultaneously fail. Further investigation has revealed that the engine/master 1 relay (11QG) should be relocated from relay box 103VU to shelf 95VU in the avionics bay to improve system separation between the left- and right-side engine/master relays by increasing the distance between them. The relays control the low-pressure shutoff valves that supply fuel to the engines. Thus, simultaneous failure of the relays could result in a cutoff of the fuel supply to both engines. This condition, if not corrected, could lead to a loss of engine power and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–24–1092, dated March 26, 1997, and Revision 01, dated December 24, 1997, which describe procedures for relocation of the engine/master 1 relay from relay box 103VU to shelf 95VU in the avionics bay. Relocation of the engine/master 1 relay involves modification of the equipment and wiring in the affected areas. Accomplishment of the action specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 97–360–111(B), dated November 19, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 120 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 16 work hours per airplane to accomplish the proposed action, at an average labor rate of $60 per work hour. Required parts would cost approximately $209 or $961 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be as low as $1,169 per airplane, or as high as $1,921 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 98–NM–61–AD.

Applicability: Model A319, A320, and A321 series airplanes; on which Airbus Modification 26065 (reference Airbus Service Bulletin A320–24–1092, Revision 01, dated December 24, 1997) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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.

Compliance: Required as indicated, unless accomplished previously.

To prevent a simultaneous cutoff of the fuel supply to both engines, which could result in a loss of engine power and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, relocate the engine/master 1 relay (11QG) from relay box 103VU to shelf 95VU in the avionics bay, in accordance with Airbus Service Bulletin A320–24–1092, dated March 26, 1997, or Revision 01, dated December 24, 1997.

(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, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–360–111(B), dated November 19, 1997.

Issued in Renton, Washington, on May 5, 1998.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–12515 Filed 5–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–82–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300–600 series airplanes. This proposal would require repetitive inspections to detect fatigue cracking of the wing top skin at the front spar joint; and a follow-on eddy current inspection and repair, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the wing top skin at the front spar joint, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by June 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–82–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–82–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–82–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300–600 series airplanes. The DGAC advises that, during full-scale testing on a Model A300–600 test article, fatigue cracks were found between 38,000 and 49,000 simulated flights on the wing top skin at the front spar joint between ribs 1 and 7. Further investigation has revealed that the fatigue cracks originated in the holes of the clearance fit fasteners on the wing top skin. Such fatigue cracking, if not detected and corrected in a timely manner, could

result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–57–6045, Revision 1, dated August 3, 1994 (including Appendix 1, Revision 1, dated August 3, 1994), which describes procedures for repetitive detailed visual inspections to detect fatigue cracking of the wing top skin at the front spar joint; a follow-on eddy current inspection to confirm the findings of the visual inspection if cracking is suspected or detected; and repair of certain cracking. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 97–374–238(B), dated December 3, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, unlike the procedures described in the service bulletin, this proposed AD would not permit further flight if cracks are detected in the wing top skin. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject wing top skin that is found to be cracked must be repaired or modified prior to further flight.

Operators also should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 54 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 2 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $6,480, or $120 per airplane, per inspection cycle.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 98–NM–82–AD.

Applicability: All Model A300–600 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 modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the wing top skin at the front spar joint, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 22,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect fatigue cracking of the wing top skin at the front spar joint, in accordance with Airbus Service Bulletin A300–57–6045, Revision 1, dated August 3, 1994 (including Appendix 1, Revision 1, dated August 3, 1994). Repeat the detailed visual inspection thereafter at intervals not to exceed 8,000 flight cycles.

(b) If any cracking is suspected or detected during any inspection required by paragraph (a) of this AD, prior to further flight, perform an eddy current inspection to confirm the findings of the visual inspection, in accordance with Airbus Service Bulletin A300–57–6045, Revision 1, dated August 3,

1994 (including Appendix 1, Revision 1, dated August 3, 1994). If any cracking is detected during any eddy current inspection, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile or (its delegated agent).

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in French airworthiness directive 97–374–238(B), dated December 3, 1997.

Issued in Renton, Washington, on May 5, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–12514 Filed 5–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–93–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A319, A320, and A321 series airplanes. This proposal would require repetitive inspections for discrepancies of the lock bolt for the pintle pin on the main landing gear (MLG), and follow-on corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct a rotated, damaged, or missing lock bolt, which could result in disengagement of the pintle pin from the bearing, and consequent collapse of the MLG during landing.

DATES: Comments must be received by June 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–93–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–93–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–93–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that it has received two reports indicating that the forward pintle pin of the main landing gear (MLG) had migrated forward toward the wing rear spar. In both instances, the lock bolt and associated MLG barrel bushings securing the pintle pin were missing, which allowed the pintle pin to migrate forward, although further movement was prevented by the incrementally tapered diameter of the pintle pin. Initial investigations have indicated that the probable cause of migration of the pintle pin was due to ineffective lubrication of the bearing of the forward pintle pin, which caused excess load on the lock bolt. The DGAC further advises that backward migration of the pintle pin also could occur, which would allow the pintle pin to become disengaged and separate from the pintle pin bearing. Such discrepancies of the pintle pin, if not corrected, could result in collapse of the MLG during landing.

Explanation of Relevant Service Information

The manufacturer has issued Airbus All Operator Telex (AOT) 32–17, Revision 01, dated November 6, 1997, which describes procedures for repetitive detailed visual inspections for discrepancies (rotation, wear, missing or broken parts) of the lock bolt for the pintle pin of the MLG, and follow-on corrective actions, if necessary. The corrective actions include replacement of a discrepant lock bolt with a new or serviceable part, followed by relubrication of the pintle spherical bearing. The DGAC classified this AOT as mandatory and issued French airworthiness directive 97–385–112(B), dated December 17, 1997, in order to assure the airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the AOT described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 120 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $7,200, or $60 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 98–NM–93–AD.

Applicability: All Model A319, A320, and A321 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 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.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct a rotated, damaged, or missing lock bolt, which could result in disengagement of the pintle pin from the bearing, and consequent collapse of the main landing gear (MLG) during landing, accomplish the following:

(a) Perform a detailed visual inspection to detect discrepancies (rotation, damage, and absence) of the lock bolt for the pintle pin on the MLG, in accordance with Airbus All Operator Telex (AOT) 32–17, Revision 01, dated November 6, 1997, at the latest of the times specified in paragraphs (a)(1), (a)(2), and (a)(3), of this AD. If any discrepancy is detected, prior to further flight, perform corrective actions, as applicable, in accordance with the AOT. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles or 15 months, whichever occurs first.

(1) Within 30 months since the airplane's date of manufacture or prior to the accumulation of 2,000 total flight cycles, whichever occurs first.

(2) Within 15 months or 1,000 flight cycles after the last gear replacement or accomplishment of Airbus Industrie Service Bulletin A320–32–1119, dated June 13, 1994, whichever occurs first.

(3) Within 500 flight cycles after the effective date of this AD.

(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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–385–112(B), dated December 17, 1997.

Issued in Renton, Washington, on May 5, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–12511 Filed 5–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–123–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require a one-time visual inspection to detect cracking in the axle adapter of the shock absorber of the nose landing gear (NLG), and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to correct cracking in the axle adapter of the shock absorber of the NLG, which could result in failure of the NLG and consequent damage to the airplane structure.

DATES: Comments must be received by June 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–123–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–123–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–123–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that an operator reported finding a crack in the axle adapter of the shock absorber in the nose landing gear (NLG) during a maintenance check. Investigation revealed that, in certain areas of the crack, there was a presence of dichromate, an orange-red chemical used in material processing for the purposes of resisting corrosion. This presence of dichromate indicates that at least part of the crack was present during the manufacturing cycle of the component. This condition, if not corrected, could result in cracks in the axle adapter of the shock absorber of the NLG, which could cause failure of the NLG and consequent damage to the airplane structure.

Explanation of Relevant Service Information

The manufacturer has issued Dornier Service Bulletin SB–328–32–213, dated April 16, 1997, which describes procedures for a one-time visual inspection to detect cracking in the axle adapter of the shock absorber of the NLG, and corrective actions, if necessary. The corrective actions involve removal and replacement of the NLG shock absorber with a new or serviceable shock absorber if any cracking is detected in the axle adapter. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 97–142, dated May 22, 1997, in order to assure the continued airworthiness of these airplanes in Germany.

The Dornier service bulletin references Messier-Dowty Service Bulletin 800–32–027, dated May 7, 1997, as an additional source of service information to accomplish the inspection.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of actions specified in the Dornier service bulletin described previously.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined

that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dornier Luftfahrt GMBH: Docket 98–NM–123–AD.

Applicability: Model 328–100 series airplanes, equipped with nose landing gear (NLG) having serial below IL113; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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.

Compliance: Required as indicated, unless accomplished previously.

To correct cracking in the axle adapter of the shock absorber of the NLG, which could cause failure of the NLG and consequent damage to the airplane structure, accomplish the following:

(a) Within 300 flight hours after the effective date of this AD, perform a one-time visual inspection to detect cracking in the axle adapter of the NLG shock absorber, in accordance with Dornier Service Bulletin SB–328–32–213, dated April 16, 1997.

(1) If no cracking is detected, no further action is required by this AD.

(2) If any cracking is detected, prior to further flight, remove the NLG shock absorber and replace with a new or serviceable part, in accordance with the service bulletin.

Note 2: Dornier Service Bulletin SB–328–32–213, dated April 16, 1997, references Messier-Dowty Service Bulletin 800–32–027, dated May 7, 1997, as an additional source of service information to accomplish the inspection, removal, and repair.

(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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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.

Note 4: The subject of this AD is addressed in German airworthiness directive 97–142, dated May 22, 1997.

Issued in Renton, Washington, on May 5, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–12510 Filed 5–11–98; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 34 and 35

Over-the-Counter Derivatives

AGENCY: Commodity Futures Trading Commission.

ACTION: Concept Release.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') has been engaged in a comprehensive regulatory reform effort designed to update the agency's oversight of both exchange and off-exchange markets. As part of this reform effort, the Commission is reexamining its approach to the over-the-counter (''OTC'') derivatives market.

OTC derivatives are contracts executed outside of the regulated exchange environment whose value depends on (or derives from) the value of an underlying asset, reference rate, or index. They are used by market participants to perform a wide variety of important risk management functions. The CFTC's last major regulatory actions involving OTC derivatives were regulatory exemptions for certain swaps and hybrid instruments adopted in January 1993. Since that time, the OTC derivatives market has grown dramatically in both volume and variety of products offered and has attracted many new end-users of varying degrees of sophistication. The market has also changed, with new products being developed, with some products becoming more standardized, and with systems for central execution or clearing being studied or proposed.

The Commission hopes that the public comments filed in response to this release will constitute an important source of relevant data and analysis that will assist it in determining whether its current regulatory approach continues to be appropriate or requires modification. The Commission wishes to maintain adequate safeguards without impairing the ability of the OTC derivatives market to continue to grow and the ability of U.S. entities to remain competitive in the global financial marketplace. The Commission has identified a broad range of issues and potential approaches in order to generate detailed analysis from commenters. The Commission urges commenters to analyze the benefits and burdens of any potential regulatory modifications in light of current market realities. The Commission has no preconceived result in mind. The Commission is open both to evidence in support of easing current restrictions and evidence indicating a need for additional safeguards. The Commission also welcomes comment on the extent to which certain matters are being or can be adequately addressed through self-regulation, either alone or in conjunction with some level of government oversight, or through the regulatory efforts of other government agencies.

New regulatory restrictions ultimately adopted, if any, will be adopted only after publication for additional public comment and will be applied prospectively only. This release in no

way alters the current status of any instrument or transaction under the Commodity Exchange Act. All currently applicable exemptions, interpretations, and policy statements issued by the Commission regarding OTC derivatives products remain in effect, and market participants may continue to rely upon them.

DATES: Comments must be received on or before July 13, 1998.

ADDRESSES: Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; transmitted by facsimile to (202) 418–5521; or transmitted electronically to {secretary@cftc.gov}. Reference should be made to ''Over-the-Counter Derivatives Concept Release.''

FOR FURTHER INFORMATION CONTACT: I. Michael Greenberger, Director, David M. Battan, Special Counsel, or John C. Lawton, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street N.W., Washington, D.C. 20581 (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Introduction
A. Description of Over-the-Counter Products and Markets
B. Purpose of This Release
II. Current Exemptions
A. Swaps
1. Policy Statement
2. Part 35
B. Hybrid Instruments
1. Background
2. Part 34
III. Issues for Comment
A. Background
B. Potential Changes to Current Exemptions
1. Eligible Transactions
2. Eligible Participants
3. Clearing
4. Transaction Execution Facilities
5. Registration
6. Capital
7. Internal Controls
8. Sales Practices
9. Recordkeeping
10. Reporting
C. Self-Regulation
IV. Summary of Request for Comment

I. Introduction

A. Description of Over-the-Counter Products and Markets

Over-the-counter (OTC) derivatives are contracts executed outside of the regulated exchange environment whose value depends on (or derives from) the value of an underlying asset, reference rate or index.[1] The classes of underlying assets from which a derivative instrument may derive its value include physical commodities (*e.g.*, agricultural products, metals, or petroleum), financial instruments (*e.g.*, debt and interest rate instruments or equity securities), indexes (*e.g.*, based on interest rates or securities prices), foreign currencies, or spreads between the value of such assets.

Like exchange-traded futures and option contracts, OTC derivatives are used to perform a wide variety of important risk management functions. End-users employ OTC derivatives to address risks from volatility in interest rates, foreign exchange rates, commodity prices, and equity prices, among other things. OTC derivative instruments also can be used to assume price risk in order to increase investment yields or to speculate on price changes. Participants in the OTC derivatives market include banks, other financial service providers, commercial corporations, insurance companies, pension funds, colleges and universities, and governmental entities.

Use of OTC derivatives has grown at very substantial rates over the past few years. According to the most recent market survey by the International Swaps and Derivatives Association (''ISDA''), the notional value of new transactions reported by ISDA members in interest rate swaps, currency swaps, and interest rate options during the first half of 1997 increased 46% over the previous six-month period.[2] The notional value of outstanding contracts in these instruments was $28.733 trillion, up 12.9% from year-end 1996, 62.2% from year-end 1995, and 154.2% from year-end 1994.[3] ISDA's 1996 market survey noted that there were 633,316 outstanding contracts in these instruments as of year-end 1996, up 47% from year-end 1995, which in turn represented a 40.7% increase over year-end 1994.[4] An October 1997 report by the General Accounting Office (''GAO'') suggests that the market value of those OTC derivatives represents ''about 3 percent'' of the notional amount.[5] Applying the 3% figure to the most recent ISDA number for contracts outstanding for the first half of 1997 indicates that the world-end market value of these OTC derivatives transactions is over $860 billion.

While OTC derivatives serve important economic functions, these products, like any complex financial instrument, can present significant risks if misused or misunderstood by market participants. A number of large, well publicized, financial losses over the last few years have focused the attention of the financial services industry, its regulators, derivatives end-users, and the general public on potential problems and abuses in the OTC derivatives market.[6] Many of these losses have come to light since the last major regulatory actions by the CFTC involving OTC derivatives, the swaps and hybrid instruments exemptions issued in January 1993.[7]

B. Purpose of This Release

The Commission has been engaged in a comprehensive regulatory reform effort designed to update the agency's oversight of both exchange and off-exchange markets.[8] As part of this process, the Commission believes that it is appropriate to reexamine its regulatory approach to the OTC derivatives market taking into account developments since 1993. The purpose

[1] See Group of Thirty, *Derivatives: Practices and Principles* 2 (1993).

[2] International Swaps and Derivatives Association, Summary of Recent Market Survey Results, ISDA Market Survey, available at (http://www.isda.org).

[3] Id.

[4] Id.

[5] General Accounting Office, GAO/GGD–98–5, OTC Derivatives: Additional Oversight Could Reduce Costly Sales Practice Disputes 3 n.6 (1997) [hereinafter ''1997 GAO Report'']. The notional amount represents the amount upon which payments to the parties to a derivatives transaction are based and is the most commonly used measure of outstanding derivatives transactions. Notional amounts generally overstate the amount at risk and the market value of such transactions.

[6] See, e.g., Jerry A. Markham, Commodities Regulation: Fraud, Manipulation & Other Claims, Section 27.05 nn. 2–22.1 (1997) (listing 22 examples of significant losses in financial derivatives transactions); 1997 GAO Report at 4 (stating that the GAO identified 360 substantial end-user losses). Some of these transactions involved instruments that are not subject to the CEA.

[7] Each of these exemptions is discussed in Part II, below.

[8] See, e.g., Proposed Rulemaking Permitting Future-Style Margining of Commodity Options, 62 FR 66569 (Dec. 19, 1997); Concept Release on the Denomination of Customer Funds and the Location of Depositories, 62 FR 67841 (Dec. 30, 1997); Account Identification for Eligible Bunched Orders, 63 FR 695 (Jan. 7, 1998); Maintenance of Minimum Financial Requirements by Futures Commission Merchants and Introducing Brokers, 63 FR 2188 (Jan. 14, 1998); Requests for Exemptive, No-Action and Interpretative Letters, 63 FR 3285 (Jan. 22, 1998); Regulation of Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market, 63 FR 3708 (Jan. 26, 1998); Distribution of Risk Disclosure Statements by Futures Commission Merchants and Introducing Brokers, 63 FR 8566 (Feb. 20, 1998); Amendments to Minimum Financial Requirements for Futures Commission Merchants, 63 FR 12713 (March 16, 1998); Two-Part Documents for Commodity Pools, 63 FR 15112 (March 30, 1998); and Trade Options on the Enumerated Agricultural Commodities, 63 FR 18821 (April 16, 1998). See also Application of FutureCom, Ltd. as a Contract Market in Live Cattle Futures and Options, 62 FR 62566 (Nov. 24, 1997) (Internet-based trading system); Application of Cantor Financial Futures Exchange as a Contract Market in US Treasury Bond, Ten-Year Note, Five-Year Note and Two-Year Note Futures Contracts, 63 FR 5505 (Feb. 3, 1998) (electronic trading system).

of this release is to solicit comments on whether the regulatory structure applicable to OTC derivatives under the Commission's regulations should be modified in any way in light of recent developments in the marketplace and to generate information and data to assist the Commission in assessing this issue.

The market has continued to grow and to evolve in the past five years. As indicated above, volume has increased dramatically. New end-users of varying levels of sophistication have begun to participate in this market. Products have proliferated, with some products becoming increasingly standardized. Systems for centralized execution and clearing are being proposed.

The Commission hopes that the public comments filed in response to this release will constitute an important source of relevant data and analysis that will assist it in determining how best to maintain adequate regulatory safeguards without impairing the ability of the OTC derivatives market to continue to grow and the ability of U.S. entities to remain competitive in the global financial marketplace. The Commission has no preconceived result in mind. The Commission wishes to draw on the knowledge and expertise of a broad spectrum of interested parties including OTC derivatives dealers, end-users of derivatives, other regulatory authorities, and academicians. The Commission urges commenters to provide detail on current custom and practice in the OTC derivatives marketplace in order to assist the Commission in gauging the practical effect of current exemptions and potential modifications.

The Commission is open both to evidence in support or broadening its exemptions and to evidence indicating a need for additional safeguards. Serious consideration will be given to the views of all interested parties before regulatory changes, if any, are proposed. In evaluating the comments and ultimately deciding on its course of action, the Commission will, of course, also engage in its own research and analysis. Any proposed changes will be carefully designed to avoid unduly burdensome or duplicative regulation that might adversely affect the continued vitality of the market and will be published for public comment. Moreover, any changes which impose new regulatory obligations or restrictions will be applied prospectively only.

As this process goes forward, the Commission is mindful of the industry's need to retain flexibility in designing new products as well as the need for legal certainty concerning the enforceability of agreements. Therefore, the Commission wishes to emphasize that, as was the case with other recent concept releases, this release identifies a broad range of issues in order to stimulate public discussion and to elicit informed analysis. This release does not in any way alter the current status of any instrument or transaction under the CEA. All currently applicable exemptions, interpretations, and policy statements issued by the Commission regarding OTC derivatives products remain in effect, and market participants may continue to rely upon them.

II. Current Exemptions [9]

A. Swaps

1. Policy Statement

The Policy Statement was adopted by the Commission on July 21, 1989.[10] It provides a safe harbor from regulation by the Commission under the CEA for qualifying agreements. It addresses only swaps settled in cash, with foreign currencies considered to be cash.[11]

To qualify for a safe harbor from regulation under the Policy Statement, a swap agreement must have all of the following characteristics: (1) individually tailored terms; (2) an absence of exchange-style offset; (3) an absence of a clearing organization or margin system; (4) undertaken in conjunction with a line of business; and (5) not marketed to the general public.

These conditions limit the applicability of the Policy Statement primarily to agreements entered into by institutional and commercial entities such as corporations, commercial and investment banks, thrift institutions, insurance companies, governments and government-sponsored or -chartered entities. The Commission indicated however, that the restrictions did not ''preclude dealer transactions in swaps undertaken in conjunction with a line of business, including financial intermediation services.'' [12] Moreover, the restrictions reflect the Commission's understanding that qualifying transactions will be entered into with the expectation of performance by the counterparties, will be bilaterally negotiated as to material economic terms based upon individualized credit determinations, and will be documented by the parties in an agreement (or series of agreements) that is not standardized.[13] The restrictions are not intended to prevent the use of master agreements between two counterparties, provided that the material terms of the master agreement and the transaction specifications are individually tailored by the parties.[14]

2. Part 35

The Futures Trading Practices Act of 1992 (''1992 Act'') [15] added subsections (c) and (d) to section 4 of the Act. Section 4(c)(1) [16] authorizes the Commission, by rule, regulation or order, to exempt any agreement, contract or transaction, or class thereof from the exchange-trading requirements of Section 4(a) or any other requirement of the Act other than Section 2(a)(1)(B). Section 4(c)(2) [17] provides that the Commission may not grant any exemption unless the Commission determines that the transaction will be entered into solely between ''appropriate persons.'' [18] that the exchange trading requirements of Section 4(a) should not be applied, that the agreement, contract or transaction in question will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act, and that the exemption would be consistent with the public interest and the purposes of the Act.

The Commission may grant exemptions ''either unconditionally or on stated terms or conditions.'' [19] Thus,

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[9] In addition to the exemptions discussed in the text, the CEA excludes certain transactions. Forward contracts are excluded in section 1a(11) of the CEA, 7 U.S.C. 1A(11). The Treasury Amendment of the CEA excludes ''transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgage and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board or trade.'' Section 2(a)(1)(A)(ii), 7 U.S.C. 2(ii). Furthermore, options on securities or securities indexes are excluded from the Act. Section 2(a)(1)(B)(i), 7 U.S.C. 2a(i). The Commission by order has also exempted certain transactions in energy products from the provisions of the CEA. Exemption for Certain Contracts Involving Energy Products, 58 FR 21286 (April 20, 1993). In addition, the Commission has exempted certain trade options. 17 C.F.R. 32.4; Trade Options on Enumerated Agricultural Commodities, 63 FR 18821 (April 16, 1998). The Commission has also exempted certain transactions in which U.S. customers establish or offset foreign currency options on the Honk Kong Futures Exchange. Petition of the Philadelphia Stock Exchange, Inc. for Exemptive Relief To Permit United States Customers To Establish or Offset Positions in Certain Foreign Currency Options on the Hong Kong Futures Exchange, Ltd. Through Registered Broker-Dealers, 62 FR 15659 (April 2, 1997).

[10] 54 FR 30694 (July 21, 1989).

[11] Id. at 30696.

[12] Id. at 30697.

[13] Id at 30696–97.

[14] See id. at 30696 n. 17.

[15] Pub. L. No. 102–546 (1992), 106 Stat 3590, 3629.

[16] 7 U.S.C. 6(c)(1).

[17] 7 U.S.C. 6(c)(2).

[18] 7 U.S.C. 6(c)(3).

[19] 7 U.S.C. 6(c)(1). Section 4(d), 7 U.S.C. 6(d), provides that

[t]he granting of an exemption under this section shall not affect the authority of the Commission under any other provision of the Act to conduct investigations in order to determine compliance with the requirements or conditions of such exemption or to take enforcement action for any violation of any provision of this Act or any rule, regulation or order thereunder caused by failure to comply with or satisfy such conditions or requirements.

Section 4(c) gives the Commission the authority to tailor its regulatory program to fit the realities of the marketplace and the needs of market participants.

Part 35 of the Commission's regulations exempts swap agreements meeting specified criteria from the provisions of the CEA and the Commission's regulations promulgated thereunder except for the following: Section 2(a)(1)(B) of the CEA; [20] the antifraud provisions set forth in Sections 4b and 4o of the CEA [21] and Commission Rule 32.9; [22] and the antimanipulation provisions set forth in Sections 6(c) and 9(a)(2) of the CEA.[23] The Part 35 swap exemption is retroactive and effective as of October 23, 1974, the date of enactment of the Commodity Futures Trading Commission at of 1974.[24] Part 35 was promulgated under authority granted to the Commission by Section 4(c) of the Act.[25]

To be eligible for exemptive treatment under Part 35, an agreement: (1) must be a swap agreement as defined in Regulation 35.1(b)(1); (2) must be entered into solely between eligible swap participants; (3) must not be a part of a fungible class of agreements that are standardized as to their material economic terms; (4) must include as a material consideration the creditworthiness of a party with an obligation under the agreement; and (5) must not be entered into and traded on or through a multilateral transaction execution facility. These criteria were designed to assure that the exempted swaps agreements met the requirements set forth by Congress in Section 4(c) of the CEA and ''to promote domestic and international market stability, reduce market and liquidity risks in financial markets, including those markets (such as futures exchanges) linked to swap markets and eliminate a potential source of systemic risk.'' [26]

The definition of ''swap agreement'' provided in Regulation 35.1(b)(1) is as follows:

Swap agreement means: (i) An agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing); (ii) Any combination of the foregoing; or (iii) A master agreement for any of the foregoing together with all supplements thereto.

This definition is the same as the definition of swap agreement set forth in Section 4(c)(5)(B) of the CEA.[27]

Regulation 35.1(b)(2) defines ''eligible swap participant'' as follows:

(i) A bank or trust company (acting on its own behalf or on behalf of another eligible swap participant);

(ii) A savings association or credit union;

(iii) An insurance company;

(iv) An investment company subject to regulation under the Investment Company Act of 1940 . . . or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such investment company or foreign person is not formed solely for the specific purpose of constituting an eligible swap participant;

(v) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such commodity pool or foreign person is not formed solely for the specific purpose of constituting an eligible swap participant and has total assets exceeding $5,000,000;

(vi) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an eligible swap participant (A) which has total assets exceeding $10,000,000; or (B) the obligations of which under the swap agreement are guaranteed or otherwise supported by a letter of credit * * * or other agreement by any such entity referenced in this subsection (vi)(A) * * * or * * * in paragraph (i), (ii), (iii), (iv), (v), (vi) or (viii) of this section; or (C) which has a net worth of $1,000,000 and enters into the swap agreement in connection with * * * its business; or which has a net worth of $1,000,000 and enters into the swap agreement to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in * * * its business;

(vii) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 * * * or a commodity trading advisor subject to regulation under the Act;

(viii) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(ix) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 * * * or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on the behalf of another eligible swap participant: Provided, however, that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of either subsection (vi) or (xi) of this section;

(x) A futures commission merchant, floor broker, or floor trader subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible swap participant: Provided, however, that if such futures commission merchant, floor broker or floor trader is a natural person or proprietorship, the futures commission merchant, floor broker or floor trader must also meet the requirements of subsection (vi) or (xi) of this section; or

(xi) Any natural person with total assets exceeding at least $10,000,000.

The definition of ''eligible swap participant'' in Regulation 35.1(b)(2) is based on the list of appropriate persons set forth in Section 4(c)(3)(A)–(J) of the CEA. However, the Commission, relying on authority provided in Section 4(c)(3)(K) of the CEA, adjusted those definitions when it adopted Part 35. These adjustments reflected the international character of the swaps market by assuring that both foreign and United States entities could quality for treatment as eligible swap participants. In addition, the Commission raised the threshold for the net worth or total asset test that must be met by certain eligible swap participants. It applied this test as an indication of a swap participant's financial sophistication and background.[28] The Commission indicated its belief that the definition of ''eligible swap participant,'' as adopted, would not adversely affect the swap market as it then existed.[29]

The remaining conditions that must be satisfied by swap agreements in order

[20] 7 U.S.C. 2a. Section 2(a)(1)(B) of the Act establishes the respective jurisdiction of the CFTC and of the SEC over different instruments and restricts or prohibits certain types of securities futures.

[21] 7 U.S.C. 6b and 6o.

[22] Regulation 32.9, 17 CFR 32.9, prohibits fraud in connection with commodity options transactions.

[23] 7 U.S.C. 9 and 13(a)(2).

[24] Pub. L. No. 93–463 (1974), 88 Stat. 1389. See Commission Regulation 35.1(a) and Exemption for Certain Swap Agreements, 58 FR 5587 at 5588 (January 22, 1993) (adopting Part 35 Rules).

[25] In issuing the swap exemption, the Commission also acted pursuant to its authority to regulate options under Section 4c(b) of the CEA, 7 U.S.C. 6c(b). See Exemption for Certain Swap Agreements, 58 FR 5587 at 5589 (Jan. 22, 1993).

[26] Id. at 5588.

[27] See id. at 5589.

[28] See id. at 5589–90.

[29] See id. at 5590.

to qualify for the Part 35 exemption are meant, among other goals, to assure that the exemption does not permit the establishment of an unregulated exchange-like market in swaps.[30] These conditions require that the creditworthiness of any party having an obligation under the swap agreement must be a material consideration in entering into the agreement and prohibit a swap that is part of a fungible class of agreements, standardized as to their material economic terms, or that is entered into and traded on or through a multilateral transaction execution facility from qualifying for the Part 35 exemption. The Commission has made clear that the Part 35 exemption does not extend to transactions that are subject to a clearing system where the credit risk of individual counterparties to each other is effectively eliminated.[31]

These conditions do not prevent parties who wish to rely on the Part 35 exemption from undertaking bilateral collateral or margining arrangements nor from applying bilateral or multiparty netting arrangements to their transactions, provided however that, in the case of multilateral netting arrangements, the underlying gross obligations among the parties are not extinguished until all netted obligations are fully performed.[32] Nor is the Part 35 restriction on multilateral transaction execution facilities meant to preclude parties who engage in negotiated, bilateral transactions from using computer or other electronic facilities to communicate simultaneously with other participants, so long as they do not use such facilities to enter orders or execute transactions.[33]

Similarly, standardization of terms that are not material economic terms does not necessarily prevent an agreement from qualifying for an exemption under Part 35, provided that the material economic terms of the swap agreement remain subject to individual negotiation by the parties.[34] In this respect, the Commission has explained that:

[T]he phrase ''material economic terms'' is intended to encompass terms that define the rights and obligations of the parties under the swap agreement, and that as a result, may affect the value of the swap at origination or thereafter. Examples of such terms may include notional amount, amortization, maturity, payment dates, fixed and floating rates or prices (including method by which such rates or prices may be determined), payment computation methodologies, and any rights to adjust any of the foregoing.[35]

B. Hybrid Instruments

1. Background

In 1989, the Commission recognized that certain instruments combined characteristics of securities or bank deposits with characteristics of futures or options and wished to exclude from CEA regulation those hybrid instruments whose commodity-dependent value was less than their commodity-independent value. The Commission issued a Statutory Interpretation Concerning Certain Hybrid Instruments (''Interpretation'')[36] which excluded from regulation under the CEA and CFTC regulations debt securities within the meaning of Section 2(1) of the Securities Act of 1933 and time deposits within the meaning of 12 CFR Section 204.2(c)(1) that had the following characteristics: (1) indexation to a commodity on no more than a one-to-one basis; (2) a limited maximum loss; (3) inclusion of a significant commodity component; (4) lack of a severable commodity component; (5) no required delivery of a commodity by means of an instrument specified in the rules of a designated contract market; and (6) no marketing of the instruments as futures contracts or commodity options.[37]

Later in 1989, the Commission adopted Part 34, which exempted certain hybrid instruments with commodity option components from the CEA and from the Commission's regulations.[38] While Part 34 expanded the category of hybrid instruments that were considered to be outside of the CEA and the Commission's regulations, the Commission explicitly stated that it intended not ''to address the entire universe of hybrid instruments in the proposed rules, but rather to establish an exemptive framework'' that would apply to certain instruments in which issuers had expressed an interest to that point.[39] In 1990, the Commission issued a revised Interpretation designed to conform the Interpretation's treatment of hybrids with the treatment of hybrids in Part 34.[40] The revised Interpretation expanded the class of securities and depository accounts eligible as hybrid instruments and expanded the class of institutions eligible to transact in hybrids.

Congress included a provision in the 1992 Act permitting the Commission to exempt any transaction from all provisions of the CEA except Section 2(a)(1)(B). Using this new authority contained in Section 4(c) of the CEA, the CFTC substantially modified the Part 34 regulations to exempt certain hybrids (including, for the first time, hybrid instruments with futures-like components) from most provisions of the CEA and from the Commission's regulations.

2. Part 34

A hybrid instrument is defined in Part 34 of the Commission's regulations as an equity security, a debt security, or a depository instrument with at least one commodity-dependent component that has a payment feature similar to that of a commodity futures contract, a commodity option contract or a combination thereof.[41] Part 34 exempts such hybrids, and those transacting in and/or providing advice or other services with respect to such hybrids, from all provisions of the CEA except Section 2(a)(1)(B) of the CEA, provided that a number of conditions are met.[42] The conditions include: (1) a requirement that the issuer must receive full payment of the hybrid's purchase price;[43] (2) a prohibition on requiring additional out-of-pocket payments to the issuer during the hybrid's life or at its maturity;[44] (3) a prohibition on marketing the instrument as a futures contract or commodity option;[45] (4) a prohibition on settlement by delivery of an instrument specified as a delivery instrument in the rules of a designated contract market;[46] (5) a requirement that the hybrid be initially sold or issued subject to federal or state securities or banking laws to persons permitted thereunder to purchase the instrument;[47] and (6) a requirement that the sum of the values of the commodity-dependent components of a hybrid instrument be less than the value of the commodity-independent components.[48]

In imposing the first two conditions of Part 34's exemptions—the requirement that the issuer of a hybrid instrument receive full payment of the hybrid's purchase price and the ban on out-of-pocket payments from a hybrid purchaser or holder to the instrument's issuer—the Commission sought to limit the possible losses due to the

[30] See id. at 5590–91.
[31] See id. at 5591.
[32] See id.
[33] See id.
[34] See id. at 5590.
[35] Id. at 5590 n. 24.
[36] 54 FR 1139 (January 11, 1989).
[37] Id.
[38] 54 FR 30684 (July 21, 1989).
[39] Id.
[40] 55 FR 13582 (April 11, 1990).
[41] 17 CFR 34.2(a) (1997).
[42] 17 CFR 34.3(a) (1997).
[43] 17 CFR 34.3(a)(3)(i) (1997).
[44] Id.
[45] 17 CFR 34.3(a)(3)(ii) (1997).
[46] 17 CFR 34.3(a)(3)(iii) (1997).
[47] 17 CFR 34.3(a)(4) (1997).
[48] 17 CFR 34.3(a)(2) (1997).

commodity-dependent components of a hybrid instrument, reasoning that an instrument permitting the accrual of losses in excess of the face value of such instrument is more akin to a position in a commodity derivative than to a debt, equity, or depository instrument.[49] The third condition outlined above, a limitation on marketing the instrument as a futures contract or a commodity option, was intended to prevent purveyors of hybrid instruments from misleading investors as to the nature, legal status and form of regulatory supervision to which such instruments are subject.[50] The Commission did not want potential buyers to believe that hybrids were subject to the full protections of the CEA.

The fourth condition noted above, a prohibition on settlement by a contract market delivery instrument, was designed to guard against interference with deliverable supplies for settlement of exchange-traded futures or options contracts.[51] In adopting the fifth condition, a limitation on persons permitted to purchase an instrument, the Commission was seeking both to address customer protection concerns and Congress's concern, as embodied in Section 4(c)(2)(B)(i) of the CEA,[52] that only transactions entered into between appropriate persons may be exempted from the CEA.[53]

This sixth requirement is referred to as the ''predominance test.'' [54] It was designed in response to authorization granted by Congress in Section 4(c)(5)(A) of the CEA for the Commission to exempt hybrids, which were predominantly securities or depository instruments. The predominance test starts from the premise that hybrid instruments can be viewed as a combination of simpler instruments, the payments on which can be viewed as either commodity-independent or commodity-dependent. The payments on a hybrid's commodity-independent component are not indexed or calculated by reference to the price of an underlying commodity, including any index, spread or basket of commodities; the payments on a hybrid's commodity-dependent component are so indexed or referenced.

For a hybrid instrument to be exempted by Part 34, the present value of the returns associated with the commodity-independent component of an instrument (including any return of principal) must be greater than the ''commodity-dependent value'' of the instrument. In order to calculate the commodity-dependent value of a hybrid, Part 34 conceptually decomposes a hybrid's commodity-dependent portion into options. The absolute values of the premiums of all implicit options that are at- or out-of-the-money are summed to arrive at the commodity-dependent value of the hybrid instrument.[55] These values are calculated as of the time of issuance of the hybrid instrument.[56]

III. Issues for Comment

A. Background

As the foregoing discussion indicates, the Commission has recognized that differences between exchange-traded markets and the OTC derivatives market warrant differences in regulatory treatment. Pursuant to the exemptions, activity in the OTC derivatives market has generally been limited to decentralized, principal-to-principal transactions between large traders. This has significant regulatory implications.

The OTC derivatives market does not appear to perform the same price discovery function as centralized exchange markets. Accordingly, certain regulatory requirements related to price discovery have not been applied to the OTC derivatives market. Thus, for example, the Commission has not suggested that it should preapprove contract design in the OTC derivatives market as it does for exchanges.

Similarly, the decentralization of trading in the OTC market and the relative sophistication of the participants have meant that issues of financial integrity and customer protection differ from exchange markets. Thus for example, while the Commission has retained its fraud authority for the swap market, it has not required segregation of customer funds.

Developments in the market in the last five years, however, indicate the need to review the current exemptions. As mentioned above, new end-users have entered the market, new products have been developed, some products have become more standardized, and systems for centralized execution and clearing have been proposed. The terms and conditions of the exemptions may need adjustment to reflect changes in the marketplace and to facilitate continued growth and innovation.

In addition, the explosive growth in the OTC market in recent years has been accompanied by an increase in the number and size of losses even among large and sophisticated users which purport to be trying to hedge price risk in the underlying cash markets. Market losses by end-users may lead to allegations of fraud or misrepresentation after they enter transactions they do not fully understand. Moreover, as the use of the market has increased, entities such as pension funds and school districts have been affected by derivatives losses in addition to corporate shareholders.[57]

Accordingly, the Commission believes it is appropriate at this time to consider whether any modifications to the scope or the terms and conditions of the swap and hybrid instrument exemptions are needed to enhance the fairness, financial integrity, and efficiency of this market. The Commission reiterates that the items listed below are intended solely to encourage useful public comment.

The Commission urges commenters to analyze the benefits and burdens of any potential modifications in light of current market realities. In some areas, regulatory relief or expanded access to the market may be warranted while in others additional safeguards may be appropriate. The Commission is especially interested in whether modifications can be designed to stimulate growth. This might be accomplished, for example, by increasing legal certainty and investor confidence, thereby attracting new market participants, or by facilitating netting and other transactional efficiencies, thereby reducing costs. As discussed below, the Commission also welcomes comment on the extent to which certain matters can be adequately addressed through self-regulation. Finally, the Commission invites other regulators to express their views on the issues raised in this release and, in particular, how best to achieve effective coordination among regulators. The Commission anticipates that, where other regulators have adequate programs or standards in place to address

[49] Regulation of Hybrid Instruments, 58 FR 5580 at 5585 (January 22, 1993) (promulgating current Part 34 Rules).

[50] Regulation of Hybrid Instruments, 54 FR 1128 at 1135 (January 11, 1989) (proposing original Part 34 Rules).

[51] 58 FR 5580 at 5582.

[52] 7 U.S.C. 6(c)(2)(B)(i).

[53] 58 FR 5580 at 5585.

[54] 17 CFR 34.3(a)(2) (1997).

[55] More specifically, the absolute net value of all put option premiums with strike prices less than or equal to the reference price would be added to the absolute net value of all call option premiums with strike prices greater than or equal to the reference price. 58 FR 5580 at 5584. ''Reference price'' is defined in Regulation 34.2(g), 17 CFR 34.2(g), ''as the nearest current spot or forward price at which a commodity-dependent payment becomes non-zero, or in the case where two potential reference prices exist, the price that results in the greatest commodity-dependent value.''

[56] 58 FR 5580 at 5584–85.

[57] See 1997 GAO Report at 71.

particular areas, the Commission would defer to those regulators in those areas.

B. Potential Changes to Current Exemptions

The exemptions provided by Part 34 and Part 35 reflect circumstances in the relevant market at the time of their adoption. As noted, the Commission believes that it should review these exemptions in light of current market conditions. At the most general level, three issues are presented with respect to these exemptions: first, what criteria should be applied in determining whether a transaction or instrument is eligible for exemption from the CEA; second, what should be the scope of that exemption; and third, what conditions should be imposed, if any, to ensure that the public interest and the policies of the CEA are served.

1. Eligible Transactions

(a) Swaps. Part 35 sets forth certain criteria that an instrument must meet in order to qualify for the swap exemption. These criteria impose restrictions upon the design and execution of transactions that distinguish the exempted swap transactions from exchange-traded products.[58] Given the changes in the swap market since Part 35 was adopted, the Commission seeks comments as to whether the criteria set forth in Part 35 continue to provide a meaningful, objective basis for exempting transactions from provisions of the CEA and CFTC regulations.

In particular, some swap agreements have become highly standardized. The Part 35 exemption does not extend to ''fungible agreements, standardized as to their material economic terms.'' The Commission seeks comment on whether this part of the Part 35 criteria provides sufficient guidance for parties involved in swaps. Parties may have difficulty in readily assessing whether a particular transaction qualifies for treatment under the Part 35 exemption.

In order to provide greater clarity, the Commission could adopt additional or alternative requirements governing exempted swap agreements. For example, the Commission could provide additional detail concerning the concept of fungibility in this context. The Commission could also clearly specify which terms of an agreement would be considered to be material economic terms under Part 35.

Moreover, subject to consideration of the requirements set forth in Sections 4(c)(1) and (c)(2) of the CEA, the Commission could consider expanding the scope of the swap exemption so that it more clearly applies to certain classes of transactions that exhibit some degree of standardization. In this regard, while Section 4(c)(5)(B) authorizes the Commission to exempt non-fungible swaps, the lack of fungibility is not a necessary criterion under Sections 4(c)(1) or (c)(2) for exercising exemptive authority.

Request for comment. The Commission requests comment on whether the swaps exemption should be extended to fungible instruments and, if so, under what circumstances. The Commission is also seeking more general comment as to whether the swaps exemption continues to fulfill its stated goals. In this regard, the Commission is interested in commenters' views on what changes in the current rules may be needed to assure that Part 35 provides legal certainty to the current market and fulfills the statutory goals set forth in Section 4(c) of the CEA.

In particular, the Commission requests comment on the following questions.

1. In what ways has the swap market changed since the Commission adopted Part 35. Please address:

(a) the nature of the products;

(b) the nature of the participants, both dealers and end-users;

(c) the location of transactions;

(d) the business structure of participants (e.g., the use of affiliates for transacting OTC derivatives);

(e) the nature of counterparty relationships;

(f) the mechanics of execution;

(g) the methods for securing obligations; and

(h) the impact of the current regulatory structure on any of the foregoing.

2. What are the mechanisms for disseminating the prices for swap transactions?

3. Does the swap market serve as a vehicle for price discovery in underlying cash markets? If so, how? Please describe.

4. To what extent is the swap market used for hedging? To what extent is it used for speculation? Please provide details.

5. Is there a potential for transactions in the swap market to be used to manipulate commodity prices? Please explain.

6. To what degree is the swap market intermediated, i.e., to what extent do entities

(a) act as brokers bringing end-users together?

(b) act as dealers making markets in products?

Please describe the intermediaries in the market and the extent and nature of their activities.

7. To what extent do swap market participants act in more than one capacity (e.g., as principal in some transactions and broker in others)?

8. In light of current market conditions, do the existing Part 35 requirements provide reasonable, objective criteria for determining whether particular swaps transactions are exempted under the CEA? Should the meaning of terms such as ''fungible,'' ''material economic terms,'' or ''material consideration'' be clarified or modified in any way? If so, how?

9. What steps can the Commission take to promote greater legal certainty in the swap market?

10. What types of documentation are relevant in determining whether a particular transactions falls within the swaps exemption and/or the Policy Statement? Should the Commission set standards in this regard?

11. If the current restrictions set forth in the Part 35 requirements negatively affect or potentially limit the OTC market or its development in the United States, what changes would alleviate the negative effects? Should the exemption in Part 35 be broadened in any manner?

12. What steps, if any, can the Commission take to promote greater efficiency in the swap market, such as for example, by facilitating netting?

13. Are any changes in regulation relating to the design or execution of exempted swap transactions needed to protect the interests of end-users in the swap market? Are there changes in regulation that would attract new end-users to the market or lead existing end-users to increase their participation?

14. Should distinctions be made between swaps that are cash-settled and swaps that provide for physical delivery? Please explain.

15. Should transactions in fungible instruments be permitted under the swaps exemption?

16. To what extent should the creditworthiness of a counterparty continue to be required to be a material consideration under the swaps exemption? Please explain.

(b) Hybrid instruments. Part 34 was designed to exempt from Commission regulation instruments in which the commodity futures or option characteristics were subordinate to their characteristics as securities and deposits. Some experienced practitioners have stated that the definition of a hybrid instrument under Part 34 is extremely complex and difficult to understand and to apply. Moreover, the Commission staff has

[58] CFTC, OTC Derivatives Markets and Their Regulation 78–79 (1993) (''CFTC OTC Derivatives Report'') (discussing swaps exemption).

recently reviewed several hybrid instruments that had very significant commodity components yet were apparently eligible for exemption under Part 34's technical definition.

For example, the Commission staff recently reviewed an instrument structured as a medium-term debt instrument paying a small quarterly coupon rate. At maturity, after subtracting out a ''factor'' reflecting certain costs borne by the issuer, the purchaser would receive a payment that was based on the performance of an index of futures contract prices with no upward limit on the commodity-based return. Moreover, the holder could lose its entire investment based on a downward movement in the commodity index. Commission staff believed that, under Part 34 as currently written, the instrument apparently would be exempt from regulation under the CEA. A regulatory definition that treats the entire principal as ''commodity independent'' despite the fact that all of the principal on this instrument could be lost as a direct result of movement in the commodity index warrants additional analysis.

Another conceptual concern with the current definition is the manner in which it assigns value to the ''commodity dependent'' component. Futures-like elements are analyzed as a combination of offsetting at-the-money puts and calls. The sum of the absolute values of these option premiums is the assigned value of the futures-like component. Some observers have suggested that this test is not an appropriate measure of the commodity dependent value. As Part 34 is currently structured, whether or not an instrument qualifies for an exemption depends critically on the total volatility of the commodity-dependent portion. This creates three potential problems. First, the technical knowledge needed to identify the commodity-dependent volatility may be a challenge for some market participants. Second, for two instruments that are identical except for their commodity-dependent volatility, one might be classified as exempt while the other might not. Indeed, if the volatility of the underlying commodity changes through time, the classification of identical hybrid instruments issued on different dates might be different. Thus, Part 34 may create some undesirable ambiguity regarding which instruments qualify for an exemption. Third, it appears to be paradoxical that short-term instruments are more likely to be classified as exempt than long-term instruments even though short-term instruments generally are more akin to exchange-traded futures in many respects.

If the Commission were to modify or to clarify the predominance test in a way that resulted in more instruments being found to have a predominant commodity-dependent component, the Commission could exercise its authority under Section 4(c) to exempt some or all of such instruments subject to specified terms and conditions. As is the case today, instruments in which the commodity-independent component was predominant would not be subject to any such terms and conditions.

Request for comment. The Commission requests comment on the foregoing analysis. It welcomes alternative suggestions for analyzing hybrid instruments and for simplifying the definition of exempt hybrid instruments.

17. In what ways has the hybrid instrument market changed since the Commission adopted Part 34? Please address:

(a) the nature of the products;

(b) the nature of the participants, both dealers and end-users;

(c) the location of transactions;

(d) the nature of the counterparty relationships;

(e) the mechanics of execution;

(f) the methods for securing obligations; and

(g) the impact of the current regulatory structure on any of the foregoing.

18. What are the mechanisms for disseminating prices for hybrid instrument transactions?

19. Does the hybrid instrument market serve as a vehicle for price discovery in underlying commodities? If so, how? Please describe.

20. To what extent is the hybrid instrument market used for hedging? To what extent is it used for speculation? Please provide details.

21. Is there a potential for transactions in the hybrid instrument market to be used to manipulate commodity prices? Please explain.

22. To what degree is the hybrid instrument market intermediated, i.e., to what extent do entities

(a) act as brokers bringing end-users together?

(b) act as dealers making markets in products?

Please describe the intermediaries in the market and the extent and nature of their activities and the extent to which transactions in these instruments are subject to other regulatory regimes.

23. To what extent do hybrid instrument market participants act in more than one capacity (e.g., as a principal in some transactions and broker in others)?

24. In light of current market conditions, do the existing Part 34 requirements provide reasonable, objective criteria for determining whether a particular hybrid instrument performs the functions of a futures or option or those of a security or depository instrument? Are the criteria easily understood and applied by participants in the market? Do they properly distinguish types of instruments? If not, should they be changed? How?

25. What steps, if any, can the Commission take to promote greater legal certainty in the hybrid instrument market? Please explain.

26. Should Part 34 be amended to reflect more accurately or more simply whether commodity-dependent components predominate over commodity-independent components?

27. Are changes in regulation relating to the design or execution of transactions in exempted hybrid instruments needed to protect the interests of end-users in the hybrid instrument market? Are there changes in regulation that would attract new end-users to the market or lead existing end-users to increase their participation?

28. Should the Commission exercise its authority to exempt any hybrid instruments with a predominant commodity component subject to specified terms and conditions? Please explain.

2. Eligible Participants

Section 4(c)(2) states that ''the Commission shall not grant any exemption under'' authority granted therein ''unless the Commission determines that . . . the agreement, contract or transaction will be entered into solely between appropriate persons.'' Section 4(c)(3) further states that ''the term 'appropriate person' shall be limited'' to the classes of persons specifically listed therein including ''[s]uch other persons that the Commission determines to be appropriate in light of their financial or other qualifications or the applicability of appropriate regulatory protections.''

(a) Swaps. Part 35 currently contains a requirement that an exempt swap agreement be between eligible swap participants, as defined in Regulation 35.1(b)(2). The list of eligible swap participants in Part 35 is based substantially on the list of ''appropriate person'' defined in the CEA. The Commission seeks comments as to whether the current list of eligible swap participants should be modified in any way. The Commission requests comment regarding whether the definition is adversely affecting the

swaps market by excluding persons who should be included or, alternatively, by including persons who are not, or should not be, active in the current market. The Commission also seeks comment on whether additional persons should be added and, if so, whether additional protections would be appropriate. In either case, commenters are asked to describe such persons and the protections they need, if any.

Any potential change must be analyzed in light of the stated Congressional intent that any exempted transaction must be entered into solely by appropriate persons as defined in Section 4(c)(3)(A)–(K) of the Act. In addition, any changes to the definition of eligible swap participant would be considered in light of any other relevant changes that may result from Commission follow-up to this concept release.

(b) Hybrid instruments. As discussed above, if the Commission were to modify the predominance test under Part 34, it might also decide to exempt certain commodity-like hybrid instruments subject to specified terms and conditions. The Commission invites analysis on the potential applicability of an appropriate person standard in that context.

Request for comment. 29. Should the current list of eligible swap participants be expanded in any way? Should it be contracted in any way? If so, how and why?

30. Are there currently eligible swap participants who would benefit from additional protections? Are there potential swap participants who are not currently eligible but would be appropriate subject to additional protections? In either case, please describe the types of persons and the types of protections.

31. Should the Commission establish a class of eligible participants for the trading of hybrid instruments with a predominant commodity-dependent component? If so, please describe.

32. Is it advisable to use a single definition of sophisticated investor whenever that concept arises under the Commission's regulations? If so, what definition should apply?

3. Clearing

Clearing of swaps is not permitted under Part 35. The Commission expressly stated that:

> The exemption does not extend to transactions that are subject to a clearing system where the credit risk of individual members of the system to each other in a transaction to which each is a counterparty is effectively eliminated and replaced by a system of mutualized risk of loss that binds members generally whether or not they are counterparties to the original transaction.[59]

Regulation 35.2 provides, however, that ''any person may apply to the Commission for exemption from any of the provisions of the Act (except 2(a)(1)(B)) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate. * * *'' The Commission included this proviso in order to hold open the possibility that swap agreements cleared through an organized clearing facility could be exempted from requirements of the Act under appropriate terms and conditions. The Commission affirmatively stated that the proviso ''reflects the Commission's determination to encourage innovation in developing the most efficient and effective types of systemic risk reduction'' and that ''a clearing house system for swap agreements could be beneficial to participants and the public generally.'' [60]

In the years since Part 35 was issued, interest in developing clearing mechanisms for swaps and other OTC derivatives has increased. The Commission has had extensive discussions with several organizations engaged in designing clearing facilities.[61] The Commission believes that these efforts have reached a stage where it is necessary to consider and to formulate a program for appropriate oversight and exemption of swaps clearing.

Clearing organizations can provide many benefits to participants, such as the reduction of counterparty credit risk, the reduction of transaction and administrative costs, and an increase in liquidity. They also can provide benefits to the public at large by increasing transparency. These benefits are obtained at the cost of concentrating risk in the clearing organization. Accordingly, a greater need may exist for oversight of the operations of a clearing organization than for any single participant in an uncleared market.

In the 1993 CFTC OTC Derivatives Report, the Commission stated that the regulatory issues presented by a facility for clearing swaps ''would depend materially upon the facility's design, such as, for example, the extent to which the construction of such a facility is consistent with the minimum standards for netting systems recommended by the Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries (Lamfalussy Report).'' [62] Comment is requested concerning the usefulness of the Lamfalussy standards in this context.

The Commission has identified the following core elements that should be addressed: the functions that an OTC derivatives clearing facility would perform; the products it would clear; the standards it would impose on participants; and the risk management tools it would employ. As discussed below, the Commission invites comments on each of these topics.

(a) Functions. An OTC derivatives clearing facility could perform a variety of functions ranging from simple trade comparison and recordation to netting of obligations to the guarantee of performance. For example, the Commission notes that, in jurisdictions other than the U.S., there may not be a clearing guarantee, or the guarantee may attach at a time other than the initiation of the trade. The Commission requests comment on which of these functions, if any, should be permitted and under what circumstances.

(b) Products cleared. The definition of the term ''swap agreement'' in Regulation 35.1(b)(1) is very broad. Financial engineers are continually designing new products that fall within that definition but have novel characteristics. As a practical matter, the Commission believes that any OTC derivatives clearing facility would be most likely in the context of ''plain vanilla'' products for which prices can be readily established and for which there is some standardization as to

[59] 54 FR 5587 at 5591.

[60] Id. at 5591 n.30.

[61] Not all the proposed arrangements have included the mutualization of risks among members of a clearing organization. In some cases, a single entity proposed to support the clearing arrangements using its own assets.

[62] CFTC OTC Derivatives Report at 136–37. The Lamfalussy standards are the following:

1. Netting schemes should have a well-founded legal basis under all relevant jurisdictions;

2. Netting scheme participants should have a clear understanding of the impact of the particular scheme on each of the financial risks affected by the netting process;

3. Multilateral netting systems should have clearly-defined procedures for the management of credit risks and liquidity risks which specify the respective responsibilities of the netting provider and the participants. These procedures should also ensure that all parties have both the incentives and the capabilities to manage and contain each of the risks they bear and that limits are placed on the maximum level of credit exposure that can be produced by each participant.

4. Multilateral netting systems should, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single net-debit position;

5. Multilateral netting systems should have objective and publicly-disclosed criteria for admission which permit fair and open access; and

6. All netting schemes should ensure the operational reliability of technical systems and the availability of back-up facilities capable of completing daily processing requirements.

terms. The Commission requests comment on whether the range of products that may be cleared through an OTC derivative clearing facility, or their terms of settlement, should be limited in any way.

(c) Admission standards. The class of eligible swap participants ias defined in Regulation 35.1(b)(2). There is an inherent tension between the desire to promote open and competitive markets by allowing access.[63] and the desire to maintain financial integrity by imposing admission standards. The Commission requests comment on what standards, if any, it should establish, or permit an OTC derivatives clearing facility to establish, for admission as a clearing participant. Comment is also requested on whether clearing should be limited to transactions undertaken on a principal-to-principal basis or whether agency transactions should be included.[64]

(d) Risk management tools. An OTC derivatives clearing facility could choose from among many potential risk management tools. These include capital requirements for participants, reporting requirements, position or exposure limits, collateral requirements, segregation requirements, mark-to-market or other valuation procedures, risk modeling programs, auditing procedures, and information-sharing arrangements. The clearing facility could also draw upon its own capital, its lines of credit, any guarantee funds financed by clearing members, or other arrangements for sharing losses among participants. The relevance of these various items would depend, of course, on the functions the clearing facility performed and the products its cleared. The Commission requests comment on how best to assure that a clearing facility uses appropriate risk management tools without preventing flexibility in the design of such tools or inhibiting the evolution of new risk management technology.

(e) Other considerations. Permitting OTC products to be cleared may make them more like exchange-traded products. The Commission welcomes comment on how best to promote fair competition and even-handed regulation in the context of the clearance of OTC derivative products.

In approving Part 35, the Commission noted that it was ''mindful of the costs of duplicative regulation [65] and added the proviso to Regulation 35.2 that the Commission would consider ''the applicability of other regulatory regimes'' in addressing petitions for further exemptive relief relating to swaps facilities. The Commission recognizes that existing clearing facilities that are regulated by another federal regulatory authority because the clear products subject to that regulator's jurisdiction may wish to develop swap clearing facilities. The Commission requests comment on how to address this situation.

Request for comment. 33. Are any swaps currently subject to any type of clearing function, either in the U.S. or abroad? If so, please provide details.

34. Would permitting swap clearing facilities promote market growth and assist U.S. participants in remaining competitive? If so, please describe the appropriate elements of a program for the oversight of swap clearing organizations.

35. Should there be a limit on the clearing functions permitted for swaps?

36. Should there be a limit on the range of products that may be cleared through a swap clearing facility?

37. Should there be standards for admission as a clearing participant?

38. What types of risk management tools should a clearing facility employ?

39. To what degree would cleared swaps be similar to exchange traded products? How best can the Commisison promote fair competition and even-handed regulation in this context?

40. How should the Commission address OTC derivative clearing facilities that are subject to another regulatory authority by virtue of conducting activities subject to that regulator's jurisdiction?

4. Transaction Execution Facilities

Regulation 35.2(d) provides that a swap agreement may not be entered into or traded on or through a multilateral transaction execution facility (''MTEF'').[66] In the release issuing Part 35, the Commission described an MTEF as:

> [A] physical or electronic facility in which all market makers and other participants that are members simultaneously have the ability to execute transactions and bind both parties by accepting offers which are made by one member and open to all members of the facility.[67]

The Commission specified that the MTEF limitation did not:

> [P]reclude participants from engaging in privately negotiated bilateral transactions, even where these participants use computer or other electronic facilities, such as ''broker screens,'' to communicate simultaneously with other participants so long as they do not use such systems to enter orders to execute transactions.[68]

The Commission noted that there were no swap MTEFs in existence at that time.[69] Consistent with the proviso in Regulation 35.2, the Commission invited application for appropriate exemptive relief for such facilities as they were developed.[70]

The Commission is requesting comment on whether the regulatory approach to execution facilities should be modified in any way. Specifically, the Commission invites comment on whether the description of MTEFs set forth above is sufficiently clear, whether it accurately delineates the relevant features, and how the Commission should address other types of entities that facilitate execution, such as market makers or bulletin board services. The Commission recognized when it promulgated Part 35 that MTEFs ''could provide important benefits in terms of increased liquidity and price transparency.'' [71] The Commission seeks comment on whether it should permit swaps to be traded through an MTEF or other similar facilities and, if so, what terms and conditions should be applied. It also seeks comment on the degree to which such trading would be similar to exchange trading and the degree to which similar safeguards are needed. As in the case of clearing facilities, the Commission is mindful of the need to promote fair competition between and even-handed regulation of exchanges and the swap market.

Part 36 of the Commission's regulations [72] was designed to allow reduced regulation for exchange trading limited to sophisticated traders. It was intended to ''permit * * * exchange-traded products greater flexibility in competing with foreign exchange-traded products and with both foreign and domestic over-the-counter transactions while maintaining basic customer protection, financial integrity and other protections associated with trading in an exchange environment.'' [73] No contract market has applied for exemption under Part 36. An analysis of the perceived strengths and weaknesses of Part 36 may be a useful starting point in determining an appropriate regulatory regime for execution facilities. Accordingly, the Commission requests comment on whether elements

[63] See Section 15 of the Act, 7 U.S.C. 19.

[64] Current Part 35 allows only certain eligible swap participants to act on the behalf of another eligible swap participant. See 17 CFR 35.1(b)(2) (1997).

[65] 58 FR 5587 at 5591 n.30.

[66] 17 CFR 35.2(d) (1997).

[67] 58 FR 5587 at 5591.

[68] Id.

[69] Id.

[70] Id.

[71] Id.

[72] 17 CFR 36.1–36.9 (1997).

[73] Section 4(c) Contract Market Transactions, 60 FR 51323 (Oct. 2, 1995).

of Part 36 should be applicable to execution facilities. Proposals for modification of Part 36 are welcome.

Request for comment. 41. Should the definition of MTEF be changed in any way to provide more clarity?

42. Are MTEFs or other types of execution facilities currently being used for swap trading, either in the U.S. or abroad? If so, please provide details.

43. What terms and conditions, if any, should be applied to execution facilities? Please address potential competitive effects on current exchange trading and the degree to which similar requirements should be made applicable. Please also address the strengths and weaknesses of current Part 36 for this purpose.

5. Registration

Registration has been called ''the kingpin in [the CEA's] statutory machinery, giving the Commission the information about participants in commodity trading which it so vitally requires to carry out its other statutory functions of monitoring and enforcing the Act.[74] Registration identifies participants in the markets and allows for a ''screening'' process by requiring applicants to meet fitness standards. Registration may also facilitate enforcement of fraud prohibitions. In addition, the requirement to register may trigger other standards and obligations for registrants under the CEA and Commission rules.[75] Part 34 and Part 35 of the Commission's regulations currently exempt parties from the registration requirements of the Act with respect to qualifying transactions.

The Commission seeks comment on whether registration requirements for dealers or intermediaries would be useful or necessary for the Commission in its oversight of the OTC derivatives market. Registration would identify key players in the OTC derivatives markets but would not necessarily trigger the full range of regulations applicable to registered persons involved in exchange-traded futures and options. Instead it could be related to separate and limited OTC derivatives market regulations. Alternatively, the Commission seeks comment on whether it would be appropriate to adopt a notice filing, requiring parties involved in certain activities within the OTC derivatives markets to identify themselves to the Commission.

In addressing this issue, commenters should consider, among other things, whether a distinction should be made between swaps and hybrid instruments. Comment also would be useful on whether it would be sufficient that a person is registered or regulated by another federal agency so that the Commission should waive any registration requirements for such persons with respect to OTC derivatives transactions.

Differences between the OTC derivative market and exchange-traded futures and option markets may affect the need for registration in the context of OTC derivatives trading. For example, since swap transactions occur among institutional participants who bilaterally negotiate an agreement, there may be reduced value added in requiring dealers or advisors to undergo fitness checks. Such institutional participants would likely have the resources to investigate the fitness of potential counterparties and advisors.

Request for comment. 44. What benefits might arise from requiring registration of dealers, intermediaries, advisors, or others involved in OTC derivative transactions? Should any requirement be in the form of a notice filing or full registration?

45. What criteria should be used in determining the types of transactions and the types of market participants subject to registration requirements?

46. Should regulation by other federal agencies be a factor in permitting an exemption from registration or notice filing?

47. What role should membership in a designated self-regulatory organization play?

6. Capital

Capital requirements have long been considered important for assuring a firm's ability to perform its obligations to its customers and to its counterparties and for controlling systemic risk. The Commission currently imposes no capital requirements on participants in the OTC derivatives markets. Given the sophistication of the participants, the generally principal-to-principal nature of their relationships with one another, the fact that OTC derivatives dealers typically do not hold customer's funds in an agency relationship (in contrast to futures commission merchants or broker-dealers), and the applicability of other regulatory capital standards to many market participants, capital requirements may be unnecessary.

The Commission seeks to explore whether regulatory capital might serve a useful function in the context of the OTC derivatives markets. For example, regulatory capital might provide an OTC derivatives dealer's counterparties with independent assurance of the creditworthiness of the dealer or might prevent the dealer from assuming excessive leverage. Capital requirements might also serve the function of providing early warning of financial difficulties.

Request for comment. 48. Are any capital requirements for OTC derivatives dealers needed? Why? What benefits would they provide to the market? What burdens would they impose?

49. Should any reporting or disclosure requirements be established for dealers as an alternative to capital requirements in order to permit counterparties to evaluate their creditworthiness adequately? Please explain.

50. Do ratings by nationally recognized statistical rating organizations fulfill the function of assuring end-user counterparties of the creditworthiness of OTC derivatives dealers?

7. Internal Controls

The importance of internal controls for financial services firms generally and for derivatives dealers in particular is widely recognized.[76] The Commission has long required information concerning risk management and internal control systems from FCMs, as well as prompt reporting of any material inadequacies in such systems.[77] Close attention to risk management and internal control systems may be especially important in an environment where capital standards (whether imposed by regulators or internally) are reduced and are based on the results of internal value-at-risk models and calculations rather than on more standardized ''haircuts.'' While a

[74] *Commodity Futures Trading Commission* v. *British American Commodity Options Corp.*, 560 F.2d 135 at 139–40 (2d Cir. 1977) *cert. denied*, 438 U.S. 905 (1978).

[75] *See, e.g.*, Sections 8a(2) and 8a(3) of the Act (statutory disqualification) and Regulation 1.12 (requirement that registered futures commission merchants (''FCMs'') and registered introducing brokers (''IBs''), or any person who files an application to be so registered, notify the Commission if its capital falls below minimum capital requirements); Regulation 1.15 (risk assessment reporting for registered FCMs); Regulation 1.17 (minimum capital requirements for registered FCMs and registered IBs); Regulation 4.21 (requirement that commodity pool operators (''CPOs'') who are registered or required to be registered deliver a disclosure document to clients or potential clients). Other regulations, however, may be applicable to parties whether or not they are registered or required to be registered. *See, e.g.*, Part 189 (large trader reporting requirements).

[76] See, e.g., DPG Framework at 13–22; IOSCO, The Implications for Securities Regulators of the Increased use of Value at Risk Models by Securities Firms, Section 2 (Jul. 1995); Basle Committee on Banking Supervision, Framework for the Evaluation of Internal Control Systems at 1 (Jan. 1998); Group of Thirty, Derivatives: Practices and Principles at 2 (1993).

[77] See, e.g., Regulations 1.14(a)(1)(ii); 1.15(a)(1)(ii); 1.16(e)(2).

complete discussion of internal control programs is beyond the scope of this release, the following elements of such a program are generally considered particularly important: effective models for measuring market and credit risk exposure; careful procedures for continuously validating those models, including rigorous backtesting and stress testing; netting arrangements that are enforceable in the relevant jurisdictions (and programs to review their enforceability on a regular basis); and a risk monitoring unit which reports directly to senior management, is independent of the business units being monitored, and has the necessary training and resources to accomplish its control objectives.

Request for comment. 51. Would OTC derivatives market participants benefit from internal control guidelines? If so, what market participants should be covered?

52. What provisions should be included in internal control requirements, if any?

53. How should compliance with any internal control requirements be monitored (e.g., regular audits, periodic spot checks, required reports)?

54. Who should be responsible for monitoring compliance with any internal control requirements (e.g., regulatory agencies, SROs, independent auditors)?

55. Could and should internal control standards serve as a substitute for regulatory capital requirements?

8. Sales Practices

As noted in the Introduction, a significant number of participants in the OTC derivatives markets have experienced large financial losses since the Commission's last regulatory initiatives involving OTC derivatives. The 1997 GAO Report notes that ''[s]ales practice concerns were raised in 209, or 58 percent, of [the] losses [reviewed in the Report] and were associated with an estimated $3.2 billion in losses.'' [78] Size and sophistication of a market participant may not provide meaningful protection against sales practice concerns, such as fraud.

The parties to OTC derivatives transactions are commonly referred to as end-users and dealers.[79] End-users and OTC derivatives dealers may have differing views concerning the respective responsibilities of the parties to an OTC derivatives transaction. According to a survey undertaken in conjunction with the GAO Report, ''about one-half of all end-users of plain vanilla or more complex OTC derivatives believed that a fiduciary relationship of some sort existed in some or all transactions between them and their dealer.'' [80] By contrast, ''two dealer groups issued guidance asserting that such transactions are conducted on a principal-to-principal, or an 'arm's-length,' basis unless more specific responsibilities are agreed to in writing or otherwise provided by law.'' [81] These differences in view can create problems, especially because of the extraordinary complexity of some OTC derivatives instruments and the information disparity between a derivatives dealer and many end-users. Therefore, comments concerning whether there is a need for sales practice rules applicable to OTC derivatives dealers would be useful.

In granting the Part 35 swaps exemption, the Commission retained the applicability of its basic antifraud and antimanipulation authority.[82] In addition, some OTC derivatives transactions are subject to sales practice standards administered by other financial regulatory agencies. For example, both the Office of the Comptroller of the Currency and the Federal Reserve Board have issued guidance addressing sales practice issues in the context of a bank's overall responsibilities for managing the risks of its financial activities, including OTC derivatives.[83]

The Commission seeks comments concerning potential sales practice standards for principal-to-principal transactions between dealers and end-users. The Commission would also welcome information from commenters concerning the volume of transactions, if any, in which dealers act strictly as agents, rather than principals, in facilitating transactions between two end-users and whether any specific sales practice rules should apply to such agency transactions. Likewise, the Commission would welcome comments on the volume of transactions in which dealers trade directly with other dealers for their own proprietary accounts and whether any specific sales practice rules should apply to those dealer-to-dealer transactions.

(a) Disclosure. Traditionally, the most fundamental regulatory protection in the area of sales practices has been the duty to disclose risks and other material information concerning transactions to potential customers. Disclosure concerns have often been raised with respect to OTC derivatives transactions. For example, the DPG Framework, in its section on counterparty relationships, states that dealers should consider providing new end-users with ''[g]eneric [r]isk [d]isclosure,'' which it characterizes as ''disclosure statements generally identifying the principal risks associated with OTC derivatives transactions and clarifying the nature of the relationship between the [dealer] and its counterparties.'' [84] This section of the DPG Framework goes on to provide additional details on the nature of the relationship to be clarified, stating the DPG's view that ''OTC derivatives transactions are predominantly arm's-length transactions in which each counterparty has a responsibility to review and evaluate the terms and conditions, and the potential risks and benefits, of prospective transactions * * *.'' [85] However, the DPG Framework provides no further guidance as the nature or content of the generic risk disclosure.[86] Comment is

[78] 1997 GAO Report at 71.

[79] By ''end-users'' the Commission is referring generally to participants who use derivatives to manage financial risks and opportunities that arise in the course of their businesses. Dealers are distinguished from end-users by their willingness to make two-way markets in OTC derivatives, either for end-users or for other dealers. *See* however, Derivatives Policy Group, Framework for Voluntary Oversight (Mar. 1995) (''DPG Framework'') (the Framework was developed by a group of six major investment firms). The DPG Framework refers to dealers as ''professional intermediaries'' and to end-users as ''nonprofessional counterparties.'' This difference in articulation is symptomatic of the differing views that sometimes exist among the participants in these markets concerning their respective roles.

[80] 1997 GAO Report at 5.

[81] *Id. See DPG Framework* at 9; and Federal Reserve Bank of New York, Principles and Practices for Wholesale Financial Market Transactions 1 (Aug. 17, 1995) (the Principles and Practices were developed by a group of six financial industry trade associations in coordination with the Federal Reserve Bank of New York).

[82] *See* 17 CFR 35.2 (1997).

[83] *See, e.g.,* OCC, Banking Circular 277: Risk Management of Financial Derivatives, BC–277, 1993 WL 640326 (OCC) (Oct. 23, 1993); OCC Bulletin, Questions and Answers Re: BCC 277, OCC 94–31, 1994 WL 194290 (OCC) (May 10, 1994); and Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Examining Risk Management and Internal Controls for Trading Activities of Banking Organizations, [SR 93–69 (FIS)], (Dec. 20, 1993). These are not sales practice standards in the usual sense but bank risk management standards.

[84] DPG Framework at 37. The 1997 GAO Report recommends that the CFTC and SEC establish a mechanism for determining that the DPG firms are, in fact, following this and other sales practice standards in the DPG Framework.

[85] Id.

[86] The section of the DPG Framework on risk management controls lists five basic risks of OTC derivative transactions: market risk, credit risk, liquidity risk, legal risk, and operational risk. *Id.* at 14–15. in addition to these firm-specific risks, the CFTC OTC Derivatives Report lists a number of potential risks arising from OTC derivatives activities generally, including the complexity of the derivatives marketplace, the fact that dealer activity tends to be concentrated in a relatively small number of large entities, the lack of transparency,

Continued

solicited on whether risk disclosure should be required and, if so, the nature and content of such disclosure.

(b) Customer information. Comment is also solicited on whether it would be appropriate to require the dealer to obtain certain information from the end-user. Such information might include, for example:

- net worth information;
- information confirming that the end-user is within the class of eligible participants set out in Section 35.1 of the Commission's regulations;[87] or
- information demonstrating that the end-user is authorized to enter into the transaction.

(c) Other possible sales practice rules. Potential sales practice rules might also include provisions requiring dealers to supervise sales personnel and other employees responsible for handling the accounts of end-user customers. One element of such supervision might be to ensure that sales personnel are properly trained.

The Commission also wishes to consider what regime, if any, would be appropriate for overseeing the implementation and enforcement of any sales practice rules for OTC derivatives, including the costs and benefits of alternative oversight mechanisms. In that context, the Commission is seeking comments on: (1) the appropriate direct regulatory role of the CFTC with respect to potential sales practice rules; (2) the appropriate regulatory role of other financial regulatory agencies, including the applicability of any sales practice rules administered by other agencies and the degree of deference that should be accorded to such rules; and (3) the appropriate sales practice role of industry self-regulatory bodies, including the degree of CFTC oversight necessary to assure that any industry self-regulatory standards are properly implemented and enforced.

Request for comment. 56. Since Part 35 was adopted, has the swap market experienced significant problems concerning fraud or sales practice abuses? Since Part 34 was adopted, has the hybrid instrument market experienced significant problems concerning fraud or sales practice abuses? If so, please describe.

57. Is there a need for any sales practice rules in the OTC derivatives market? If so, what should the rules provide, and to whom and under what circumstances should they be applicable?

58. Is there a need for risk disclosures by OTC derivatives dealers to end-users? If so, what risks should be disclosed?

59. Should OTC derivatives dealers be required to supplement any required generic risk disclosure statement with additional firm- or transaction-specific disclosures? If so, what should such disclosures cover?

60. What kind of disclosures, if any, should dealers make to end-users clarifying the nature of the relationship between the parties? Should there be rules establishing duties of the OTC derivatives dealer to its customers, and if so, what should they require?

61. What kind of disclosures, if any, should dealers make concerning the material terms of OTC derivatives contracts, including methods for calculating price, value, profit and loss, as well as the amount of commissions, fees and other costs involved?

62. What other kinds of disclosures, if any, might be appropriate concerning, for example, potential conflicts of interest, the dealer's policies on helping end-users to unwind transactions and matters such as the dealer's financial soundness, experience, or track record?

63. Should dealers be required to make periodic status reports to end-users concerning the status of their OTC derivatives positions (*e.g.*, value, profits and losses)? If so, what kind of reports should be required, and how often should such reports be made?

64. Should dealers be required to collect information concerning their end-user customers? If so, what kind of information? Should dealers be required to retain documentation in their files concerning such information, and if so, what kind of documentation (*e.g.*, confirming that particular information has been collected and reviewed by management to assure transactions are in conformity with the end-user's investment goals and policies)?

65. What sales practice rules, if any, should apply to transactions where a dealer is acting as an agent or broker to facilitate a principal-to-principal transaction between two end-users? Similarly, what sales practice rules, if any, should apply to dealer-to-dealer transactions where both dealers are trading for their own proprietary accounts?

66. Should dealers have to comply with different sales practice standards in dealing with end-users having different levels of sophistication, based, for example, or portfolio size, investment experience, or some other measure? If so, please elaborate.

67. Should dealers be required to follow any supervision requirements in connection with the activities of sales personnel and other employees responsible for handling the accounts of end-user customers? Should complex or highly leveraged transactions require prior approval by senior management of the dealer?

68. What is the appropriate regime for formulating and overseeing the implementation and enforcement of possible sales practices rules, including the appropriate roles of the Commission, other financial regulators and industry self-regulatory bodies?

9. Recordkeeping

The Commission has not required any recordkeeping requirements for OTC derivatives dealers or other OTC market participants. Having retained authority over fraudulent and manipulative behavior in the OTC derivative market, the Commission wishes comment on whether some recordkeeping requirements would facilitate its exercise of that authority. Provisions requiring the retention of written records of transactions with counterparties, for example, might be considered. The Commission requests comment on whether there should be specific recordkeeping requirements for transactions in the OTC derivatives markets and, if so, what types of records should be kept and by whom.

Request for comment. 69. Are recordkeeping requirements for participants in the OTC derivatives markets needed? If so, what records should be required? Who should be required to keep them?

10. Reporting

The Commission currently does not impose reporting requirements on OTC derivatives market participants.[88] The

and systemic risk. See CFTC OTC Derivatives Report at 112–122. It may also be appropriate to consider whether to require dealers to disclose to prospective end-users other material information concerning OTC derivatives transactions, such as the relationship of the parties, the material terms of the contract, periodic reports of the status of the end-user's account, information on how the value of the OTC derivatives instrument would be affected by changes in the markets for the underlying components, and other similar information.

[87] 17 CFR 35.1(b)(2) (1997).

[88] The DPG has established voluntary reporting requirements. See DPG Framework at 23–25. The DPG has committed to regular periodic reporting and to respond in good faith to ad hoc requests for additional information by the CFTC. Id. at 1. The DPG member firms currently provide to the Commission on a quarterly basis a report detailing for each member except Credit Suisse First Boston: (1) a Credit-Concentration Report listing (on a ''no-names'' basis) the top 20 OTC derivatives exposures and, for each exposure, the internal credit rating, the industry segment, the current net exposure, the next replacement value, the gross replacement values (receivable and payable) and the potential additional credit exposure (at a ten-day, 99-percent confidence interval); (2) a Portfolio Summary

Commission requests comment on whether specific reporting requirements for participants in the OTC derivatives markets are needed and, if so, what reports should be made and by whom. If the Commission were to establish reporting requirements, it would coordinate with other regulatory agencies and, to the extent possible, accept reports provided to other regulatory agencies in satisfaction of the Commission's requirements. The Commission solicits comment concerning how these goals might best be accomplished.

Request for comment. 70. Should the Commission establish reporting requirements for participants in the OTC derivatives markets? If so, what information should be reported? By whom?

C. Self-Regulation

Having identified areas in which current exemptions might be modified, the Commission is also interested in the views of commenters concerning whether, and to what extent, any needed changes concerning the oversight of the OTC derivatives market could be accomplished through initiatives of industry bodies either voluntarily or through a self-regulatory organization empowered to establish rules and subject to Commission oversight. The Commission notes that several industry organizations already exist with an interest in maintaining and improving the integrity of the OTC derivatives marketplace. These organizations include, among others, the Derivatives Policy Group, the International Swaps and Derivatives Association, the Group of Thirty, and the End-Users of Derivatives Association. Industry groups have already issued a number of voluntary initiatives aimed at reducing risks and promoting stability and integrity in the OTC derivatives marketplace.[89] The Commission is interested in exploring the extent to which concerns described in this release might be addressed, and adequate oversight of the OTC derivatives marketplace might be attained, through industry bodies or through self-regulatory organizations.

Request for comment. 71. How effective are current self-regulatory efforts? What are their strengths and weaknesses?

72. Are there particular areas among those discussed above where self-regulation could obviate the need for government regulation?

73. Please discuss the costs and benefits of existing voluntary versus potential mandatory self-regulatory regimes.

74. If a self-regulatory regime were adopted, what mechanism would best assure effective oversight by the Commission?

75. How best can the Commission achieve effective coordination with other regulators in connection with the oversight of the OTC derivatives market?

IV. Summary of Request for Comment

Commenters are invited to discuss the broad range of concepts and approaches described in this release. The Commission specifically requests commenters to compare the advantages and disadvantages of the possible changes discussed above with those of the existing regulatory framework. In addition to responding to the specific questions presented, the Commission encourages commenters to submit any other relevant information or views.

Issued in Washington, D.C. this 6th day of May, 1998, by the Commodity Futures Trading Commission.

By the Commission (Chairperson BORN, Commissioners TULL and SPEARS; Commissioner HOLUM dissenting).

Jean A. Webb,

Secretary of the Commission.

Dissenting Remarks of Commissioner Barbara Pedersen Holum, Concept Release, Over-the-Counter Derivatives

In Section 4(c)(1) of the Commodity Exchange Act, Congress authorized the Commission to exempt certain transactions ''[i]n order to promote responsible economic or financial innovation and fair competition.'' Indeed, it appears that the dramatic growth in volume and the products offered in the OTC derivatives market may be attributed in part to the Commission's past exemptive action. In the spirit of the Commission's ongoing regulatory review program, it is appropriate to examine the continuing applicability of the existing exemptions, focusing on the expanding economic significance of the OTC market. However, in my judgement,the release goes beyond the scope of regulatory review by exploring regulatory areas that may be inapplicable to an OTC market. Accordingly, I am dissenting from the majority's decision to issue the Concept Release on OTC Derivatives in its current form.

Dated: May 6, 1998.

Barbara Pedersen Holum,

Commissioner.

[FR Doc. 98–12539 Filed 5–11–98; 8:45 am]

BILLING CODE 6351–01–M

listing, by credit rating category and industry segment, the current net exposure, net replacement value, and gross replacement values; (3) a Geographic Distribution listing, by country, the current net exposure, the net replacement value, and the gross replacement values; (4) a Net Revenues Report listing, by product category and month, the net revenue; and (5) a Consolidated Activity Report listing, by product category, the aggregate notional amount.

[89]See, e.g.: Framework for Voluntary Oversight, supra; Principles and Practices for Wholesale Financial Market Transactions, supra; and Global Derivatives Study Group, Group of Thirty, Derivatives: Practices and Principles, supra.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 431, 432, 433, 436, 440, 441, 442, 443, 444, 446, 448, 449, 450, 452, 453, 455, and 460

[Docket No. 98N–0211]

Removal of Regulations Regarding Certification of Antibiotic Drugs; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing this companion proposed rule to the direct final rule, published elsewhere in this issue of the **Federal Register**, which is intended to repeal FDA's regulations governing certification of antibiotic drugs. The agency is taking this action in accordance with provisions of the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDAMA repealed the statutory provision in the Federal Food, Drug, and Cosmetic Act (the act) under which the agency certified antibiotic drugs. FDAMA also made conforming amendments to the act.

DATES: Comments must be received on or before July 27, 1998.

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: Wayne H. Mitchell or Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

As described more fully in the related direct final rule, section 125(b) of FDAMA (Pub. L. 105–115) repealed section 507 of the act (21 U.S.C. 357)

and made conforming amendments to the act and other provisions of Federal law. Section 507 of the act was the section under which the agency certified antibiotic drugs. FDA is proposing to remove all provisions of Title 21 of the Code of Federal Regulations that were issued primarily to carry out the agency's program for the certification of antibiotic drugs under former section 507 of the act.

II. Additional Information

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. The companion proposed rule and the direct final rule are identical. This companion proposed rule will provide the procedural framework to finalize the rule in the event the direct final rule receives significant adverse comment and is withdrawn. The comment period for the companion proposed rule runs concurrently with the comment period of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule.

The amendments contained in this rule are a direct result of the repeal of the statutory certification provision. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to the companion proposed rule. Instead, FDA will publish a confirmation notice within 30 days after the comment period ends, and FDA intends the direct final rule to become effective 30 days after publication of the confirmation notice. If FDA receives significant adverse comments, the agency will withdraw the direct final rule. FDA will proceed to respond to all of the comments received regarding the rule and, if appropriate, the rule will be finalized under this companion proposed rule using usual notice-and-comment procedures.

For additional information, see the corresponding direct final rule published in the final rules section of this issue of the **Federal Register**. All persons who may wish to comment should review the rationale for these amendments set out in the preamble discussion of the direct final rule. If FDA receives significant adverse comments, the agency will withdraw the companion final rule and will treat those comments as comments to this proposed rule. The agency will address the comments in a subsequent final rule. FDA will not provide additional opportunity for comment. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) 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.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). 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). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. As discussed below, the agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires that if a rule has a significant impact on a substantial number of small entities, the agency must analyze regulatory options to minimize the economic impact on small entities. The agency certifies, for the reasons discussed below, that the proposed rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Reform Act requires an agency to prepare a budgetary impact statement before issuing any rule likely to result in a Federal mandate that may result in expenditures by State, local, and tribal governments or the private sector of $100 million (adjusted annually for inflation) in any 1 year. The elimination of the regulations governing the certification of antibiotic drugs will not result in any increased expenditures by State, local, and tribal governments or the private sector. Because this rule will not result in an expenditure of $100 million or more on any governmental entity or the private sector, no budgetary impact statement is required.

This rule is intended to eliminate regulatory procedures and standards that the agency, as a result of the repeal of section 507 of the act, is no longer required to maintain. The elimination of parts 430 *et seq.* is expected to streamline the regulation of antibiotic drugs by making these products subject to the same regulatory standards as all other drugs for human use. Many of the provisions that are being eliminated by this rulemaking have not had a material impact on the marketing of antibiotic drugs since 1982, when all antibiotic drugs were conditionally exempted from the batch certification requirement (47 FR 39155, September 7, 1982). Other provisions, such as the standards of identity, strength, quality, and purity, have in some instances not been kept up-to-date, are duplicative of U.S.P. standards, or have been incorporated into approved marketing applications for specific antibiotic drug products. For these reasons, the agency believes that this rule is necessary and that it is consistent with the principles of Executive Order 12866; that it is not a significant regulatory action under that Order; that it will not have a significant impact on a substantial number of small entities; and that it is not likely to result in an annual expenditure in excess of $100 million.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) is not required.

VI. Request for Comments

Interested persons may, on or before July 27, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. This comment period runs concurrently with the comment period for the direct final rule; any comments received will be considered as comments regarding the direct final rule. Two copies of any 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. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 431

Administrative practice and procedure, Antibiotics, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Part 432

Antibiotics, Labeling, Packaging and containers.

21 CFR Part 433

Antibiotics, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 436, 440, 441, 442, 443, 444, 446, 448, 449, 450, 452, 453, 455, and 460

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Food and Drug Administration Modernization Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR chapter I be amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is removed.

PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS

2. Part 431 is removed.

PART 432—PACKAGING AND LABELING OF ANTIBIOTIC DRUGS

3. Part 432 is removed.

PART 433—EXEMPTIONS FROM ANTIBIOTIC CERTIFICATION AND LABELING REQUIREMENTS

4. Part 433 is removed.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

5. Part 436 is removed.

PART 440—PENICILLIN ANTIBIOTIC DRUGS

6. Part 440 is removed.

PART 441—PENEM ANTIBIOTIC DRUGS

7. Part 441 is removed.

PART 442—CEPHA ANTIBIOTIC DRUGS

8. Part 442 is removed.

PART 443—CARBACEPHEM ANTIBIOTIC DRUGS

9. Part 443 is removed.

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

10. Part 444 is removed.

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

11. Part 446 is removed.

PART 448—PEPTIDE ANTIBIOTIC DRUGS

12. Part 448 is removed.

PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS

13. Part 449 is removed.

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

14. Part 450 is removed.

PART 452—MACROLIDE ANTIBIOTIC DRUGS

15. Part 452 is removed.

PART 453—LINCOMYCIN ANTIBIOTIC DRUGS

16. Part 453 is removed.

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

17. Part 455 is removed.

PART 460—ANTIBIOTIC DRUGS INTENDED FOR USE IN LABORATORY DIAGNOSIS OF DISEASE

18. Part 460 is removed.

Dated: May 1, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–12542 Filed 5–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803 and 804

[Docket No. 98N–0170]

Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend certain regulations governing reporting by manufacturers, importers, distributors, and health care (user) facilities of adverse events related to medical devices. This proposed rule is a companion document to the direct final rule, published elsewhere in this issue of the Federal Register. The amendments are intended to implement provisions of the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDA is publishing this companion proposed rule under FDA's usual procedures for notice and comment to provide a procedural framework to finalize the rule in the event the agency receives a significant adverse comment and withdraws the direct final rule.

DATES: Submit written comments on or before July 27, 1998. Submit written comments on the information collection requirements on or before July 13, 1998.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia A. Spitzig, Center for Devices and Radiological Health (HFZ–500), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–2812.

SUPPLEMENTARY INFORMATION: This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule is substantively identical to the direct final rule. This proposed rule will provide a procedural framework to finalize the rule in the event the agency receives a significant adverse comment and the direct final rule is withdrawn. FDA is publishing the direct final rule

because the rule contains noncontroversial changes, and FDA anticipates that it will receive no significant adverse comments. A detailed discussion of this rule is set forth in the preamble of the direct final rule. If no significant comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation notice within 30 days after the comment period ends confirming that the direct final rule will go into effect on September 24, 1998. Additional information about FDA's direct final rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

If FDA receives a significant adverse comment regarding this rule, the agency will publish a document withdrawing the direct final rule within 30 days after the comment period ends and will proceed to respond to the comments under this rule using usual notice-and-comment procedures. The comment period for this companion proposed rule runs concurrently with the direct final rule's comment period. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. For example, a comment recommending a rule change in addition to the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

This action is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiative, and is intended to reduce the burden of unnecessary regulations on medical devices without diminishing the protection of public health.

I. Background

Under the act and the Medical Device Amendments of 1976 (Pub. L. 94–295) (the 1976 amendments), FDA issued medical device reporting regulations for manufacturers on September 14, 1984 (49 FR 36326). To correct weaknesses noted in the 1976 amendments, and to better protect the public health by increasing reports of device-related adverse events, Congress enacted the Safe Medical Devices Act of 1990 (Pub. L. 101–629) that required medical device user facilities and distributors to report certain device-related adverse events.

Distributor reporting requirements became effective on May 28, 1992, following the November 26, 1991, publication of those provisions in a tentative final rule (56 FR 60024). In the **Federal Register** of September 1, 1993 (58 FR 46514), FDA published a notice announcing that the proposed distributor reporting regulations had become final by operation of law and were now codified in part 804 (21 CFR part 804).

On June 16, 1992, the President signed into law the Medical Device Amendments of 1992 (the 1992 amendments) (Pub. L. 102–112) amending certain provisions of section 519 of the act (21 U.S.C. 360i) relating to reporting of adverse device events. Prior to the 1992 amendments, distributors and manufacturers reported adverse events by using a ''reasonable probability'' standard. Importers may be manufacturers or distributors, depending on their activities. Among other things, the 1992 amendments amended section 519 to change the reporting standard for manufacturers and importers, however, the reporting standard for distributors who are not importers remained the same.

On November 21, 1997, the President signed FDAMA into law. FDAMA made several changes regarding the reporting of adverse events related to devices, including the elimination of reporting requirements for certain distributors, which became effective on February 19, 1998, that are reflected in this proposed rule. However, section 422 of FDAMA states that FDA's regulatory authority under the act, relating to tobacco products, tobacco ingredients, and tobacco additives shall be exercised under the act as in effect on the day before the date of enactment of FDAMA. Because the authority relating to tobacco products remains the same, the reporting requirements for manufacturers and distributors (including distributors who are importers) of cigarettes or smokeless tobacco remain unchanged.

Under part 897, the regulations pertaining to tobacco products, and parts 803 and 804, the regulations pertaining to device adverse event reporting, importers may be either manufacturers or distributors, depending on their activities. Under parts 897, 803, and 804, importers who repackage or relabel are manufacturers. Similarly, under those sections, importers whose sole activity is distribution of devices are defined as distributors.

As previously stated, the 1992 amendments created a bifurcated reporting standard for distributors, depending on whether they are domestic distributors or importers. When the agency asserted jurisdiction over tobacco products and issued regulations under part 897, tobacco distributors also became subject to this bifurcated reporting standard. Accordingly, the reporting standard applicable to tobacco products distributors has depended on whether the distributor is domestic or an importer. Consistent with section 422 of FDAMA, the proposed rule states that tobacco distributors will continue to use the appropriate reporting standard as described in § 804.25.

Changes made by FDAMA relating to reporting requirements for all medical devices other than tobacco products are as follows:

1. Section 213(a) of FDAMA revised section 519(a) of the act to eliminate distributors as an entity required to report adverse device events. Importers are still required to report under section 519(a) of the act.

2. Section 213(a) also amended section 519(a) of the act to clarify that existing requirements continue to apply for distributors to keep records concerning adverse device events and to make them available to FDA upon request.

3. Section 213(a)(2) revoked section 519(d) of the act, which required manufacturers, importers, and distributors to submit to FDA an annual certification concerning the number of reports filed under section 519(a) in the preceding year. As a result, certification requirements are eliminated.

4. Section 213(c)(1)(A) of FDAMA revised section 519(b)(1)(C) of the act to require that device user facilities submit an annual rather than a semiannual summary of their reports to FDA.

5. Section 213(c)(1)(B) of FDAMA eliminated section 519(b)(2)(C) of the act. This section had required FDA to

disclose, upon request, the identity of a user facility making a report under section 519(b), if the identity of the user facility was included in a report submitted by a manufacturer, distributor, or importer. As a result of this change by FDAMA, FDA may now disclose the identity of a user facility only in connection with an action concerning a failure to report or false or fraudulent reporting, in a communication to the manufacturer of the device, or to the employees of the Department of Health and Human Services, the Department of Justice, and duly authorized committees and subcommittees of Congress.

To implement these provisions, FDA is issuing this proposed rule. A summary of the rule is contained in the preamble to the direct final rule published elsewhere in this issue of the **Federal Register**.

II. Environmental Impact

The agency has determined under 21 CFR 25.30(h) 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.

III. Analysis of Impacts

FDA has examined the impact of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The proposed rule would eliminate reporting by distributors, other than distributors (including distributors who are importers) of cigarettes or smokeless tobacco, continue reporting by importers (including distributors who are importers), increase protections from disclosure of the identity of device user facilities that have submitted reports, reduce summary reporting by device user facilities from semiannual to annual, eliminate annual certification for manufacturers and distributors (including importers) of medical devices other than cigarettes or smokeless tobacco, and make other nonsubstantive changes. The agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any 1 year.

IV. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown as follows with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information. FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Reporting and recordkeeping requirements for manufacturers, importers, user facilities, and distributors of medical devices under FDAMA.

Description: FDAMA contained provisions that affect medical device reporting in a variety of ways. Section 213 of FDAMA modified the summary reporting requirements for user facilities to require annual, rather than semiannual, reporting, and increased confidentiality of user facility identities. This section of FDAMA also eliminated the reporting requirements for medical device distributors (but not for importers), as well as the certification requirements for medical device manufacturers and distributors. However, section 422 of FDAMA states that FDA's regulatory authority under the act relating to tobacco products, tobacco ingredients, and tobacco additives shall be exercised under the act as in effect on the day before the date of enactment of FDAMA. Under this rule of construction, the reporting and certification requirements for manufacturers and distributors (including distributors who are importers) of cigarettes or smokeless tobacco remain unchanged.

This proposed rule would amend FDA's regulations in 21 CFR Parts 803 and 804 to reflect the changes to medical device reporting made by FDAMA.

This proposed rule would eliminate reporting by distributors other than distributors of cigarettes or smokeless tobacco, continue reporting by importers, increase the protection from disclosure of the identity of device user facilities that have submitted reports, reduce summary reporting by device user facilities from semiannual to annual, eliminate annual certification for manufacturers and distributors (including importers) of medical devices other than cigarettes or smokeless tobacco, and make other nonsubstantive changes.

Description of Respondents: Businesses or other for profit organizations.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
803.19	150	1	150	3	450
803.33	1,800	1	1,800	1	1,800
803.40	195	1	195	3	585
803.56	750	20	15,000	1	15,000
803.57	31	1	31	1	31
804.25	10	1	10	1.5	15
804.30	1,365	1	1,365	1	1,365
804.32	5	1	5	1	5
804.33	0	0	0	1	0
Total					19,251

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
803.17	2,000	1	2,000	2	4,000
803.18	39,764	1	39,764	1.5	59,646
804.34	1,365	1	1,365	1	1,365
804.35	1,365	1	1,365	1.5	2,047
Total					67,058

Note: There are no operating and maintainance cost or capital costs associated with this collection of information.

The burdens under this proposed rule are explained as follows:

A. Reporting Requirements

Prior to the program change proposed in this rule, § 803.19 allowed manufacturers or user facilities to request an exemption or variance from the reporting requirements. The agency had estimated that it would receive approximately 100 such requests annually. Distributors (including importers) were able to request an exemption or variance from the reporting requirements under § 804.33. Under this proposed rule, § 803.19 would be modified to transfer the exemption provisions for importers of medical devices other than cigarettes or smokeless tobacco from § 804.33 to § 803.19. Furthermore, distributors (who are not importers) of medical devices other than cigarettes or smokeless tobacco would no longer be required to submit MDR reports under this proposed rule. The estimated burden for § 803.19 is further adjusted to reflect the agency's actual experience with this type of submission.

Prior to the program change proposed in this rule, § 803.33 required medical device user facilities to submit summary reports semiannually. Under this proposed rule, user facilities would be required to submit summary reports annually, thereby significantly decreasing the reporting burden on user facilities. The estimated burden for this section is also adjusted to reflect the agency's actual experience with this type of submission.

Under this proposed rule the reporting requirement for importers of medical devices other than cigarettes or smokeless tobacco previously codified under § 804.25 would be transferred to new proposed § 803.40. The estimated burden for importer reporting is based upon the agency's actual experience with this type of submission. The reporting requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco would be retained in part 804.

Prior to the program change proposed in this rule, § 803.56 required manufacturers to submit supplemental reports containing information not known or not available at the time the initial report was submitted. The agency had estimated that it would receive approximately 500 such requests annually. Distributors (including distributors who are importers) were required to submit supplemental information under § 804.32. Under this proposed rule, § 803.56 would be modified to transfer the supplemental reporting requirements for importers of medical devices other than cigarettes or smokeless tobacco from § 804.32. Furthermore, distributors (who are not importers) of medical devices other than cigarettes or smokeless tobacco would no longer be required to submit MDR reports (and thus supplemental reports as well) under this proposed rule. The estimated burden for § 803.56 is further adjusted to reflect the agency's actual experience with this type of submission. The agency also notes that any additional information requested by the agency in accordance with § 803.15 is considered to be supplemental information for the purpose of this information collection and is included in the burden estimate for § 803.56.

Prior to the program change proposed in this rule, § 803.57 required medical device manufacturers to annually certify as to the number of reports submitted during the previous year, or that no such reports had been submitted. Distributors (including importers) were required to certify under § 804.30. Under this proposed rule, § 803.57 would be modified to require annual certification only for manufacturers of cigarettes or smokeless tobacco. The certification requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco would be retained in § 804.30.

Prior to the program change proposed in this rule, § 804.25 required medical device distributors (including importers) to report adverse device events. Under this proposed rule, distributors of medical devices other than cigarettes or smokeless tobacco are no longer required to submit MDR reports, and the reporting requirements for importers of medical devices other than cigarettes or smokeless tobacco would be transferred to part 803. Section 804.25 would require distributors (including distributors who are importers) of cigarettes or smokeless tobacco to submit MDR reports for adverse events related to contamination of their products. The agency believes that there will be a very small number of MDR reports related to contamination

of cigarettes or smokeless tobacco submitted in any given year.

Prior to the program change proposed in this rule, § 804.30 required medical device distributors (including importers) to certify as to the number of MDR reports submitted during the previous year, or that no such reports were submitted. Under this rule, the certification requirement has been removed for distributors (including distributors who are importers) of medical devices other than cigarettes or smokeless tobacco. Section 804.30 now would require distributors (including distributors who are importers) of cigarettes or smokeless tobacco to submit certifications of the number of MDR reports submitted for adverse events related to contamination of their products. The agency has identified 1,365 distributors of cigarettes or smokeless tobacco, each of which would submit one certification annually.

Prior to the program change proposed in this rule, § 804.32 required medical device distributors (including importers) to submit supplemental information related to a previously submitted MDR report. Under this proposed rule, distributors of medical devices other than cigarettes or smokeless tobacco are no longer required to submit any MDR reports, and the reporting requirements for importers of medical devices other than cigarettes or smokeless tobacco would be transferred to part 803. Section 804.32 would require distributors (including distributors who are importers) of cigarettes or smokeless tobacco to submit supplemental information related to a previously submitted MDR report. Because the agency believes that there will be a very small number of MDR reports related to contamination of cigarettes or smokeless tobacco submitted in any given year, even fewer supplemental submissions are anticipated. The agency also notes that any additional information requested by the agency in accordance with section 804.31 is considered to be supplemental information for the purpose of this information collection and is included in the burden estimate for § 804.32.

Prior to the program change proposed in this rule, § 804.33 allowed medical device distributors (including importers) to request an exemption or variance from the reporting requirements. Under this rule, the exemption provisions for importers of medical devices other than cigarettes or smokeless tobacco would be transferred to § 803.19, and distributors (who are not importers) of medical devices other than cigarettes or smokeless tobacco are no longer required to submit any MDR reports under this rule. Section 804.33 would allow distributors (including distributors who are importers) of cigarettes or smokeless tobacco to request an exemption or variance from the reporting requirements. However, because distributors (including distributors who are importers) of cigarettes or smokeless tobacco are required only to submit reports of adverse events related to contamination of their products, the agency does not anticipate any requests for exemptions or variances from the reporting requirements.

B. Recordkeeping Requirements

Prior to the program change proposed in this rule, § 803.17 required manufacturers and user facilities to establish written procedures for employee education, complaint processing, and documentation of information related to MDR's. Under this proposed rule, the requirement for establishing written MDR procedures for importers of medical devices other than cigarettes or smokeless tobacco would be transferred to § 803.17, and the requirements for distributors (including importers) of medical devices other than cigarettes of smokeless tobacco would be retained in § 804.34. The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information related to MDR reporting as part of their internal quality control system. The agency has estimated that no more than 2,000 such entities would be required to establish new procedures, or revise existing procedures, in order to comply with this provision. For those entities, a one-time burden of 10 hours, annualized over a period of 5 years, is estimated for establishing written MDR procedures. The remainder of manufacturers, user facilities and importers not required to revise their written procedures to comply with this provision are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered ''usual and customary'' under 5 CFR 1320.3(b)(2).

Prior to the program change proposed in this rule, § 803.18 required manufacturers and user facilities to establish and maintain MDR event files. Distributors (including importers) were required to establish and maintain MDR event files under § 804.35. Under this proposed rule, § 803.18 would be modified to transfer the recordkeeping requirements for importers and other distributors of medical devices other than cigarettes or smokeless tobacco from § 804.35. Recordkeeping requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco would be retained in § 804.35.

Prior to the program change proposed in this rule, § 804.34 required distributors (including importers) of all medical devices to establish written procedures for employee education, complaint processing and documentation of information related to MDR reports. Under this proposed rule, distributors of medical devices other than cigarettes or smokeless tobacco would no longer be required to submit MDR reports although distributors are required to establish device complaint files in accordance with 21 CFR 820.198. Accordingly, they would no longer be subject to the requirement to establish and maintain written MDR procedures. Under the proposed rule, the requirement for establishing written MDR procedures for importers of medical devices other than cigarettes or smokeless tobacco would be transferred to § 803.17, and the requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco would be retained in § 804.34. The agency has estimated a one-time burden of 10 hours, annualized over a period of 5 years, for distributors (including distributors who are importers) of cigarettes or smokeless tobacco to establish written MDR procedures under § 804.34.

Prior to the program change proposed in this rule, § 804.35 required distributors (including importers) to establish and maintain MDR event files. Under this proposed rule, the recordkeeping burdens for distributors (including importers) of medical devices other than cigarettes or smokeless tobacco would be transferred to § 803.18. Recordkeeping requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco would be retained in § 804.35.

For consistency with the direct final rule to which this proposed rule is a companion, FDA is following the Paperwork Reduction Act comment procedures for direct final rules in this proposed rule. As provided in 5 CFR 1320.5(c)(1), collections of information in a direct final rule are subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection provisions of this proposed rule July 13, 1998 to the Dockets Management Branch (address above).

At the close of the 60 day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the Federal Register when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of the direct final rule, FDA will publish a notice in the Federal Register of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

V. Request for Comments

Interested persons may, on or before July 27, 1998, submit to the Dockets Management Branch (address above) written comments regarding this companion proposed rule. The comment period runs concurrently with the comment period for the direct final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Comments will be considered to determine whether to amend or revoke this proposed rule. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered as comments regarding the direct final rule and this proposed rule. In the event the direct final rule is withdrawn, all comments received regarding the direct final rule and this companion proposed rule will be considered comments on this proposed rule.

List of Subjects in 21 CFR Parts 803 and 804

Imports, Medical devices, Reporting and recordkeeping requirements.

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 803 and 804 be amended as follows:

PART 803—MEDICAL DEVICE REPORTING

1. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

2. Section 803.1 is amended by revising paragraph (a) to read as follows:

§ 803.1 Scope.

(a) This part establishes requirements for medical device reporting. Under this part, device user facilities, importers, and manufacturers, as defined in § 803.3, must report deaths and serious injuries to which a device has or may have caused or contributed, must establish and maintain adverse event files, and must submit to FDA specified followup and summary reports. Medical device distributors, as defined in § 803.3, are also required to maintain incident files. Furthermore, manufacturers and importers are also required to report certain device malfunctions. These reports will assist FDA in protecting the public health by helping to ensure that devices are not adulterated or misbranded and are safe and effective for their intended use.

* * * * *

3. Section 803.3 is amended by redesignating paragraphs (m) through (ee) as paragraphs (n) through (ff), respectively; by revising the last sentence of the introductory text of paragraph (c), paragraph (c)(1), and redesignated paragraphs (p), (p)(1), and (r)(2); and by adding paragraphs (g) and (m) to read as follows:

§ 803.3 Definitions.

* * * * *

(c) * * * Manufacturers and importers are considered to have become aware of an event when:

(1) Any employee becomes aware of a reportable event that is required to be reported by an importer within 10 days, or by a manufacturer within 30 days or within 5 days under a written request from FDA under § 803.53(b); and

* * * * *

(g) *Distributor* means, for the purposes of this part, any person (other than the manufacturer or importer) who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper or labeling of the device or device package. One who repackages or otherwise changes the container, wrapper, or labeling, is a manufacturer under § 803.3(o). For the purposes of this part, distributors do not include distributors of cigarettes or smokeless tobacco.

* * * * *

(m) *Importer* means, for the purposes of this part, any person who imports a device into the United States and who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package. One who repackages or otherwise changes the container, wrapper, or labeling, is a manufacturer under § 803.3(o). For the purposes of this part, importers do not include importers of cigarettes or smokeless tobacco.

* * * * *

(p) *Manufacturer or importer report number* means the number that uniquely identifies each individual adverse event report submitted by a manufacturer or importer. This number consists of three parts as follows:

(1) The FDA registration number for the manufacturing site of the reported device, or for the importer. (If the manufacturing site or the importer does not have a registration number, FDA will assign a temporary number until the site is officially registered. The manufacturer or importer will be informed of the temporary number.);

* * * * *

(r) * * *

(2) An event about which manufacturers or importers have received or become aware of information that reasonably suggests that one of their marketed devices:

(i) May have caused or contributed to a death or serious injury; or

(ii) Has malfunctioned and that the device or a similar device marketed by the manufacturer or importer would be likely to cause a death or serious injury if the malfunction were to recur.

* * * * *

§ 803.9 [Amended]

4. Section 803.9 *Public availability of reports* is amended by adding ''or'' after the semicolon at the end of paragraph (c)(2), by removing paragraph (c)(3), and by redesignating paragraph (c)(4) as paragraph (c)(3).

5. Section 803.10 is amended by revising the heading and paragraphs (a)(2) and (c)(5), and by adding paragraph (b) to read as follows:

§ 803.10 General description of reports required from user facilities, importers, and manufacturers.

(a) * * *

(2) User facilities must submit annual reports as described in § 803.33.

(b) Importers must submit MDR reports of individual adverse events within 10 working days after the importer becomes aware of an MDR reportable event as described in § 803.3. Importers must submit reports of device-related deaths or serious injuries to FDA and the manufacturer and reports of malfunctions to the manufacturer.

(c) * * *

(5) For manufacturers of cigarettes or smokeless tobacco, annual certification to FDA of the number of MDR reports filed during the preceding year as described in § 803.57.

§ 803.11 [Amended]

6. Section 803.11 *Obtaining the forms* is amended in the first sentence by adding the word ‘‘, importers,’’ after the phrase ‘‘User facilities’’.

7. Section 803.12 is amended by revising paragraph (b) to read as follows:

§ 803.12 Where to submit reports.

* * * * *

(b) Each report and its envelope shall be specifically identified, e.g., ‘‘User Facility Report,’’ ‘‘Annual Report,’’ ‘‘Importer Report,’’ ‘‘Manufacturer Report,’’ ‘‘5–Day Report,’’ ‘‘Baseline Report,’’ etc.

§ 803.17 [Amended]

8. Section 803.17 *Written MDR procedures* is amended in the introductory paragraph by adding the word ‘‘, importers,’’ after the phrase ‘‘User facilities’’.

9. Section 803.18 is amended by revising the heading, the first sentence of paragraphs (a) and (b)(1) introductory text, paragraphs (b)(1)(ii) and (b)(2), and the second sentence of paragraph (c), and by adding paragraph (d) to read as follows:

§ 803.18 Files and distributor records.

(a) User facilities, importers, and manufacturers shall establish and maintain MDR event files. * * *

(b)(1) For purposes of this part, ‘‘MDR event files’’ are written or electronic files maintained by user facilities, importers, and manufacturers. * * *

(ii) Copies of all MDR forms, as required by this part, and other information related to the event that was submitted to FDA and other entities (e.g., an importer, distributor, or manufacturer).

(2) User facilities, importers, and manufacturers shall permit any authorized FDA employee during all reasonable times to access, to copy, and to verify the records required by this part.

(c) * * * Manufacturers and importers shall retain an MDR event file relating to an adverse event for a period of 2 years from the date of the event or a period of time equivalent to the expected life of the device, whichever is greater. * * *

(d)(1) A device distributor shall establish device complaint files in accordance with § 820.198 of this chapter and maintain an incident record containing any information, including any written or oral communication, that alleges deficiencies related to the identity, quality, durability, reliability, safety, effectiveness, or performance of a device. Device incident records shall be prominently identified as such and shall be filed by device.

(2) A device distributor shall retain copies of the records required to be maintained under this section for a period of 2 years from the date of inclusion of the record in the file or for a period of time equivalent to the design and expected life of the device, whichever is greater, even if the distributor has ceased to distribute the device that is the subject of the record.

(3) A device distributor shall maintain the device complaint files established under this section at the distributor’s principal business establishment. A distributor that is also a manufacturer may maintain the file at the same location as the manufacturer maintains its complaint file under §§ 820.180 and 820.198 of this chapter. A device distributor shall permit any authorized FDA employee, during all reasonable times, to have access to, and to copy and verify, the records required by this part.

§ 803.19 [Amended]

10. Section 803.19 *Exemptions, variances, and alternative reporting requirements* is amended by adding in paragraphs (b) and (c) the word ‘‘, importers,’’ before the phrase ‘‘or user facility,’’ and by adding in paragraph (c) a comma after the word ‘‘variance’’.

11. Section 803.20 is amended by revising the last sentence of introductory text of paragraph (a), paragraph (a)(1), and the first sentence of paragraph (a)(2), and by adding paragraph (b)(2) to read as follows:

§ 803.20 How to report.

(a) * * * The form has sections that must be completed by all reporters and other sections that must be completed only by the user facility, importer, or manufacturer.

(1) The front of FDA Form 3500A is to be filled out by all reporters. The front of the form requests information regarding the patient, the event, the device, and the ‘‘initial reporter’’ (i.e., the first person or entity that submitted the information to the user facility, manufacturer, or importer).

(2) The back part of the form contains sections to be completed by user facilities, importers, and manufacturers. * * *

(b) * * *

(2) Importers are required to submit MDR reports to FDA and the device manufacturer, except for malfunctions which are reported to the manufacturer only:

(i) Within 10 working days of becoming aware of information that reasonably suggests that a device has or may have caused or contributed to a death or serious injury.

(ii) Within 10 working days of receiving information that a device marketed by the importer has malfunctioned and that such a device or a similar device marketed by the importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

* * * * *

§ 803.22 [Amended]

12. Section 803.22 *When not to file* is amended by adding in paragraphs (a) and (b)(1) the word ‘‘, importer,’’ after the word ‘‘facility’’.

§ 803.33 [Amended]

13. Section 803.33 *Semiannual reports* is amended by revising the heading to read ‘‘Annual reports’’; in introductory text of paragraph (a) by removing the phrase ‘‘(for reports made July through December) and by July 1 (for reports made January through June)’’; in introductory text of paragraph (a) and paragraphs (a)(5), (a)(7) introductory text, and (c) by removing the word ‘‘semiannual’’ wherever it appears and adding in its place the word ‘‘annual’’; in paragraph (a)(2) by removing the phrase ‘‘and period, e.g., January through June or July through December’’; and by adding in paragraph (a)(7)(vi) the word ‘‘importer,’’ after the word ‘‘distributor,’’.

14. Subpart D, consisting of §§ 803.40 and 803.43, is added to read as follows:

Subpart D—Importer Reporting Requirements

Sec.

803.40 Individual adverse event reporting requirements; importers.

803.43 Individual adverse event report data elements.

Subpart D—Importer Reporting Requirements

§ 803.40 Individual adverse event reporting requirements; importers.

(a) An importer shall submit to FDA a report, and a copy of such report to the manufacturer, containing the information required by § 803.43 on FDA form 3500A as soon as practicable, but not later than 10 working days after the importer receives or otherwise becomes aware of information from any source, including user facilities, individuals, or medical or scientific

literature, whether published or unpublished, that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury.

(b) An importer shall submit to the manufacturer a report containing information required by § 803.43 on FDA form 3500A, as soon as practicable, but not later than 10 working days after the importer receives or otherwise becomes aware of information from any source, including user facilities, individuals, or through the importer's own research, testing, evaluation, servicing, or maintenance of one of its devices, that one of the devices marketed by the importer has malfunctioned and that such device or a similar device marketed by the importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

§ 803.43 Individual adverse event report data elements.

(a) Each importer that submits a report on an MDR reportable event shall complete and submit the applicable portions of FDA form 3500A in so far as the information is known or should be known to the importer, and submit it to FDA, and to the manufacturer as required by § 803.40.

(b) Each importer shall submit the information requested on FDA form 3500A, including:

(1) Identification of the source of the report.

(i) Type of source that reported the event to the importer (e.g., lay user owner, lay user lessee, hospital, nursing home, outpatient diagnostic facility, outpatient treatment facility, ambulatory surgical facility);

(ii) Importer report number;

(iii) Name, address, and telephone number of the source that reported the event to the importer (e.g., distributor, user facility, practitioner, etc.); and

(iv) Name of the manufacturer of the device.

(2) Date information.

(i) The date of the occurrence of the event;

(ii) The date the source that reported the event to the importer became aware of the event;

(iii) The date the event was reported to the manufacturer and/or FDA; and

(iv) The date of this report.

(3) The type of MDR reportable event (e.g., death, serious illness, serious injury, or malfunction), and whether an imminent hazard was involved;

(4) Patient information including age, sex, diagnosis, and medical status immediately prior to the event and after the event;

(5) Device information including brand and labeled name, generic name, model number or catalog number or other identifying numbers, serial number or lot number, purchase date, expected shelf life/expiration date (if applicable), whether the device was labeled for single use, and date of implant (if applicable);

(6) Maintenance/service information data including the last date of service performed on the device, where service was performed, whether service documentation is available, and whether service was in accordance with the service schedule;

(7) Whether the device is available for evaluation and, if not, the disposition of the device;

(8) Description of the event, including:

(i) Who was operating or using the device when the event occurred;

(ii) Whether the device was being used as labeled or as otherwise intended;

(iii) The location of the event;

(iv) Whether there was multi-patient involvement, and if so, how many patients were involved;

(v) A list of any other devices whose performance may have contributed to the event and their manufacturers, and the results of any analysis or evaluation with respect to such device (or a statement of why no analysis or evaluation was performed); and

(vi) A complete description of the event including, but not limited to, what happened, how the device was involved, the nature of the problem, patient followup/treatment required, and any environmental conditions that may have influenced the event.

(9) The results of any analysis of the device and the event, including:

(i) The method of the evaluation or an explanation of why no evaluation was necessary or possible;

(ii) The results and conclusions of the evaluation;

(iii) The corrective actions taken; and

(iv) The degree of certainty concerning whether the device caused or contributed to the reported event;

(10) The name, title, address, telephone number, and signature of the person who prepared the report.

§ 803.56 [Amended]

15. Section 803.56 *Supplemental reports* is amended in the introductory paragraph and in paragraphs (a) and (b) by adding the words ''or importer'' after the word ''manufacturer''.

§ 803.57 [Amended]

16. Section 803.57 *Annual certification* is amended in paragraphs (a) and (d) by removing the word ''manufacturers'' wherever it appears and by adding in its place the phrase ''manufacturers of cigarettes or smokeless tobacco'', and in paragraphs (b), (c)(1), and (d) by removing the word ''manufacturer'' wherever it appears and adding in its place the phrase ''manufacturer of cigarettes or smokeless tobacco''.

PART 804—MEDICAL DEVICE REPORTING FOR DISTRIBUTORS OF CIGARETTES OR SMOKELESS TOBACCO

17. The authority citation for 21 CFR part 804 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

18. Part 804 is amended by revising the heading to read as set forth above.

19. Section 804.1 is amended by revising paragraph (a) to read as follows:

§ 804.1 Scope.

(a) FDA is requiring distributors of cigarettes or smokeless tobacco to report deaths, serious illnesses, and serious injuries that are attributed to contamination of a cigarette or smokeless tobacco product. Distributors of cigarettes or smokeless tobacco are also required to submit a report to FDA annually certifying the number of medical device reports filed during the preceding year, or that no reports were filed. These reports enable FDA to protect the public health by helping to ensure that these products are not adulterated or misbranded and are otherwise safe and effective for their intended use. In addition, distributors of cigarettes or smokeless tobacco are required to establish and maintain complaint files or incident files as described in § 804.35, and to permit any authorized FDA employee at all reasonable times to have access to, and to copy and verify, the records contained in this file. This part supplements, and does not supersede, other provisions of this subchapter, including the provisions of part 820 of this chapter.

* * * * *

20. Section 804.3 is amended by revising paragraph (d), and in paragraphs (m)(1) and (m)(2) by adding the phrase ''related to the contamination of cigarettes or smokeless tobacco'' after the word ''event'' to read as follows:

§ 804.3 Definitions.

* * * * *

(d) *Distributor* means, for the purpose of this part, any person who furthers the distribution of cigarettes or smokeless tobacco, whether domestic or imported,

at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption, but who does not repackage or otherwise change the container, wrapper, or labeling of the product package. Common carriers are not considered distributors for the purposes of this part.

* * * * *

§ 804.25 [Amended]

21. Section 804.25 *Reports by distributors* is amended in paragraph (a)(1) by removing the words ''a device'' and adding in their place the phrase ''contamination of a cigarette or smokeless tobacco product''; in paragraph (a)(2) by removing the phrase ''one of its marketed devices'' and adding in its place the phrase ''contamination of one of its cigarette or smokeless tobacco products''; and by removing paragraph (c).

Dated: May 1, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–12610 Filed 5–11–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–6012–1]

Announcement of a Stakeholder Meeting on the Draft Unregulated Contaminant Monitoring Regulation and List

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of a stakeholder meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has scheduled a two-day public meeting on EPA's draft of the Unregulated Contaminant Monitoring Regulation (UCMR) and List. The focus of this meeting will be to identify and discuss issues raised by the draft Unregulated Contaminant Monitoring Regulation and List of unregulated contaminants to be monitored by public water systems as required by the Safe Drinking Water Act (SDWA) as amended in 1996. The UCMR is expected to be published as a proposed rule in the Fall of 1998. EPA has developed the draft regulation and list based on the input of the stakeholders meeting on the options for the Unregulated Contaminant Monitoring Regulation and List held by EPA in Washington, DC on December 2–3, 1997. The meeting will be open to any interested parties. EPA encourages the full participation of stakeholders throughout this process.

DATES: The stakeholder meeting on the Unregulated Contaminant Monitoring Program will be held on June 3–4, 1998, from 9 a.m. to 5 p.m. EST.

ADDRESSES: Resolve, Inc. (an EPA contractor) will provide logistical support for the stakeholders meeting. The meeting will be held at Resolve, Inc., 1255 23rd Street, NW., Suite 275, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: For general information about the meeting, please contact Mr. Jeff Citrin at Resolve, Inc., 1255 23rd Street, NW., Suite 275, Washington, DC 20037; phone: (202) 965–6388; fax: (202) 338–1264, or e-mail at jcitrin@resolv.org. For other information on the Unregulated Contaminant Monitoring Regulation and List, please contact Charles Job, at the U.S. Environmental Protection Agency, Phone: 202–260–7084, Fax: 202–260–3762. Members of the public wishing to attend the meeting may register by phone by contacting Mr. Jeff Citrin by May 20, 1998. Those registered by May 20, 1998 will receive background materials prior to the meeting.

SUPPLEMENTARY INFORMATION:

A. Background on the Unregulated Contaminant Monitoring Regulation

The EPA must issue regulations establishing the monitoring program of unregulated contaminants under the SDWA. Within 3 years after enactment, and every 5 years thereafter, EPA shall issue a list of not more than 30 unregulated contaminants to be monitored by public water systems. The results of this monitoring will be included in the National Contaminant Occurrence Database.

Monitoring of unregulated contaminants shall vary based on system size, source water, and contaminants likely to be found. For those systems serving 10,000 persons or fewer, only a representative sample must be monitored. Each state may develop an unregulated contaminant monitoring plan for small and medium systems (serving fewer than 10,000 persons). If a state plan is implemented, the EPA is required to cover the reasonable costs of testing and laboratory analysis using funds authorized by Congress for unregulated contaminant monitoring. EPA shall waive the requirement for monitoring of specific unregulated contaminants in a state if the state demonstrates that the criteria for listing are not applicable in the state. Water systems must provide the results of unregulated contaminant monitoring to the primacy agency (state/EPA) and must notify persons served by the system of the availability of results (§ 1445(a)(2)).

B. Request for Stakeholder Involvement

The upcoming meeting deals specifically with EPA's efforts to develop a proposed Unregulated Contaminant Monitoring Regulation and List based, in part, on information obtained from Stakeholders' discussion of a draft regulation and list to be presented at the meeting and in the background materials. These items are available prior to the stakeholder meeting from Jeff Citrin, Resolve, Inc., 1255 23rd St. NW., Suite 275, Washington, DC 20037; phone: (202) 965–6388; fax: (202) 338–1264, or after the meeting from the EPA by contacting Chuck Job, at the U.S. EPA, 401 M Street, SW (4607), Washington, DC 20460 or job.chuck@epa.gov. EPA believes that the initial list of unregulated contaminants for which monitoring will be required will largely come from the Contaminant Candidate List (CCL) published in February 1998. EPA will use the CCL to establish priorities for additional occurrence data gathering, health effects research, and regulation development. One of EPA's goals is to obtain monitoring data on certain unregulated contaminants to determine whether any of the contaminants should be regulated in the future, thus protecting drinking water used by consumers from public water systems. The unregulated contaminant data will also be used to support the development of a future CCL and to guide research. These data will be reported to the National Contaminant Occurrence Data Base and to the users of the selected water systems, as required by law.

The EPA Office of Ground Water and Drinking Water (OGWDW) sees the involvement of interested parties, representing a variety of perspectives and expertise, as critical to the development of a credible, effective and implementable regulation and list. This stakeholder meeting will provide an important opportunity for such involvement. Some anticipated issues for discussion include the following questions:

1. What should be the criteria for determining which of the unregulated contaminants on the CCL should be a candidate for required monitoring?
2. What should be the monitoring frequency, location and timing for unregulated contaminants?
3. How will the Governors' petition process place contaminants on the monitoring list?

4. How should the selection of a ''representative sample'' of small and medium systems be implemented?

5. What is the relationship of state plans for representative samples to the national representative sample?

6. Should waivers for monitoring be considered for large systems only?

7. What monitoring data should be reported and how?

8. Is the use of the Consumer Confidence Reporting and the National Contaminant Occurrence Database adequate for public notification?

9. What will this program cost and what are its benefits?

EPA has convened this public meeting to hear the views of stakeholders on the draft Unregulated Contaminant Monitoring Regulation and List. The public is invited to provide comments on the issues listed above or other issues related to the draft Unregulated Contaminant Monitoring Regulation and List during the June 3–4, 1998 meeting.

Dated: April 27, 1998.

William R. Diamond,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–12306 Filed 5–11–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 64

[CC Docket No. 96–115; DA 98–864]

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission has released a Public Notice which extends the pleading cycle for comments on the Further Notice of Proposed Rulemaking (FNPRM) released February 26, 1998, which addressed telecommunications carriers' use of customer proprietary information and other customer information. Since the date of publication in the **Federal Register** occurred after the original comment cycle was over, some parties may not have had notice of the deadlines for the original comment cycle. The Commission wishes to give those parties an opportunity to comment.

DATES: Comments are due on or before June 8, 1998, and reply comments are due on or before June 23, 1998.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Brent Olson, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION:

Synopsis of Public Notice

On February 26, 1998, the Commission released the Second Report and Order and Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 96–115, 63 FR 20364, April 24, 1998, addressing telecommunications carriers' use of customer proprietary information and other customer information. The Commission established March 30, 1998 and April 14, 1998 as the deadlines for parties to submit comments and reply comments, respectively. Since, however, the FNPRM was not published in the **Federal Register** until April 24, 1998, after both dates had passed, we are extending the comment cycle in order to give those parties who did not receive notice an opportunity to comment.

Parties who did not have notice of the date to file original comments may file comments on or before June 8, 1998. We will not accept new comments from parties who have already filed comments in this proceeding. Reply comments should be filed on or before June 23, 1998.

Federal Communications Commission.

Ann Stevens,

Associate Chief, Policy and Programming Division, Common Carrier Bureau.

[FR Doc. 98–12608 Filed 5–11–98; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
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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

Animal and Plant Health Inspection Service

[Docket No. 98–053–1]

National Wildlife Services (Formerly Known as Animal Damage Control) Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the National Wildlife Services Advisory Committee.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held at the USDA Center at Riverside in the Conference Center, 4700 River Road, Riverdale, MD 20737. The Committee will meet on May 27–28, 1998, from 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Martin Mendoza, Director, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234, (301) 734–7921.

SUPPLEMENTARY INFORMATION: The National Wildlife Services Advisory Committee (Committee) advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Wildlife Services (WS) program. The Committee also serves as a public forum enabling those affected by the WS program to have a voice in the program's policies.

The meeting will focus on operational and research activities, and will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussions. Written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Mr. Martin Mendoza at the address listed under **FOR FURTHER INFORMATION CONTACT**, or may be filed at the meeting. Please refer to Docket No. 98–053–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463).

Done in Washington, DC, this 8th day of May 1998.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–12660 Filed 5–11–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Request For Proposals: Fiscal Year 1998 Funding Opportunity for Research on Rural Cooperative Opportunities and Problems

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $1.9 million in competitive cooperative agreement funds allocated from FY 1998 appropriations. RBS hereby requests proposals from institutions of higher education or nonprofit organizations interested in applying for competitively awarded cooperative agreements for research related to agricultural and nonagricultural cooperatives serving rural communities. The intent of the funding is to encourage research on critical issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities.

DATES: Cooperative agreement applications must be received on or before June 30, 1998. Proposals received after June 30, 1998, will not be considered for funding. Comments regarding the information collection requirements under the Paperwork Reduction Act of 1995 must be received on or before July 13, 1998, to be assured of consideration.

ADDRESSES: Send Proposals and other required materials to Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4204, 1400 Independence Avenue SW, Washington, D.C. 20250–3252. Telephone: (202) 690–0368.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4204, 1400 Independence Avenue SW, Washington, D.C. 20250–3252. Telephone: (202) 690–0368.

SUPPLEMENTARY INFORMATION:

General Information

This solicitation is issued pursuant to the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998 making appropriations for programs administered by USDA's Rural Business-Cooperative Service (RBS) for the fiscal year ending September 30, 1998. The Rural Business-Cooperative Service (RBS) was established by the Department of Agriculture Reorganization Act of 1994. The mission of RBS is to improve the quality of life in rural America by financing community facilities and businesses, providing technical assistance, and creating effective strategies for rural development. RBS has authority to enter into cooperative agreements pursuant to section 607(b)(4) of the Rural Development Act of 1972, as amended by section 759A of the Federal Agriculture Improvement and Reform Act of 1996.

The primary objective of this funding is to encourage research through cooperative agreements on critical issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities. Among others, these issues include:

(1) The appropriate role of cooperatives in fostering rural development;

(2) The role of cooperatives in filling the farm income safety net ''void'' created by the reduction or elimination of price support programs;

(3) The role of cooperatives in an increasingly global environment;

(4) The role of cooperatives in highly integrated agricultural industries;

(5) Effective structures and operations for agricultural bargaining associations;

(6) The role of cooperatives in low-resource areas.

(7) Barriers to small and new farmer membership in agricultural marketing cooperatives.

(8) Cooperation as a tool for small-farmer use of farmers markets.

(9) Models for shared or cooperatively-owned agricultural production inputs.

A Cooperative Agreement reflects a relationship between the United States Government and an eligible recipient where (1) the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the eligible recipient to carry out research related to rural cooperatives; and (2) substantial involvement is anticipated between RBS acting for the United States Government, and the eligible recipient during the performance of the research in the agreement. Cooperative agreements are to be awarded on the basis of merit, quality, and relevance to advancing the purpose of federally supported rural development programs which increase economic opportunities in farming and rural communities.

To obtain an application kit containing instructions and all required forms, please contact Cooperative Services Program; USDA/RBS, at (202)690–0368 or FAX (202)690–2723. When calling Cooperative Services, please indicate that you are requesting an application kit for Fiscal Year 1998 (FY 1998) Research on Rural Cooperative Opportunities and Problems (RRCOP). The application kit may also be requested via Internet by sending a message with your name, mailing address (not E-mail) and phone number to ''thomas.stafford@usda.gov'' which requests an application kit for FY 1998 funding for research on rural cooperatives. The application kit will be mailed to you (not e-mailed or faxed) as quickly as possible.

Use of Funds

Funds may be used to pay up to 75 percent of the costs for carrying out relevant projects. Applicants' contribution may be in cash or in-kind contribution and must be from nonfederal funds. Funds may not be used to: (1) Pay more than 75 percent of relevant project or administrative costs; (2) pay costs of preparing the application package; (3) fund political activities; or (4) pay costs incurred prior to the effective date of the cooperative agreement. Indirect costs may not exceed current negotiated rates. If no rate has been negotiated, an indirect cost rate proposal must be submitted for approval.

Available Funds and Award Limitations

The amount of funds available for cooperative agreements in FY 1998 is approximately $1.9 million. Up to one-quarter of the total funds awarded will be allocated to research on nonagricultural cooperatives serving rural areas. Nonagricultural cooperatives include, but are not limited to housing, child care, health care, shared services, wholesale or retail consumer cooperatives, and credit unions. Agricultural cooperatives are grower-owned and controlled businesses which purchase farm inputs, market farm products, or provide other services to their members. The actual number of cooperative agreements funded will depend on the quality of proposals received and the amount of funding requested. Maximum amount of Federal funds awarded for any one proposal will be $100,000. It is anticipated that a typical award would range from $25,000 to $50,000.

Eligible Applicants

Proposals may be submitted by public or private colleges or universities, research foundations maintained by a college or university, or private nonprofit organizations. Under the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(4)) which engages in lobbying activities, is not eligible to apply.

Methods for Evaluating and Ranking Applications

Applications will be evaluated by a panel of RBS technical experts. Applications will be evaluated competitively and points awarded as specified in the Evaluation Criteria and Weights section of this notice. After assigning points upon those criteria, applications will be listed in rank order and presented, along with funding level recommendations, to the Administrator of RBS, who will make the final decision on awarding of agreements. Applications will then be funded in rank order until all available funds have been expended.

RBS reserves the right to make selections out of rank order to provide for a geographic distribution of funded projects. With respect to any approved proposal, the amount of funding and the project period during which the project may be funded and will be completed, are subject to negotiation prior to finalization of the cooperative agreement.

Evaluation Criteria and Weights

RBS will initially determine whether the submitting organization is eligible and whether the application contains the information required by this notice. Prior to technical examination, each proposal will be reviewed for responsiveness to the funding solicitation. Submissions which do not fall within the guidelines as stated in the solicitation will be eliminated from the competition and will be returned to the applicant.

After this initial screening, RBS will use the following criteria to rate and rank proposals received in response to this notice of funding availability. The maximum number of points is 100. Zero points on any criteria will disqualify the proposal.

(1) Relevance: Focuses on an agricultural or nonagricultural cooperatives serving rural areas and demonstrates a clear relationship with the research topics contained in this notice (maximum 20 points);

(2) Demonstrates potential to contribute innovative ideas or solutions to identified problems or issues (maximum 20 points);

(3) Shows capacity for broad applicability in facilitating new or improved cooperative development or new or improved cooperative approaches (maximum 15 points);

(4) Outlines a sound plan of work and appropriate methodology to accomplish the stated objective of the research (maximum 15 points);

(5) Adequately documents the need for and clearly defines the objectives of the research (maximum 10 points);

(6) Demonstrates cost effectiveness (maximum 10 points);

(7) Identifies qualified resources and personnel, including a demonstrated track-record of similar research (maximum 10 points).

Deliverables

Upon completion of the project, recipients will deliver the results of the research to RBS, in the form of a document of publishable quality, accompanied by all applicable supporting data. Publishable documents include, but are not limited to, manuscripts, videotapes, or software, or other media, as may be identified in approved proposals. RBS retains publishing rights to such documents, as well as rights to any raw or preliminary data collected as part of the project.

Content of a Proposal

A proposal should contain the following:

(1) *Form SF–424,* ''Application for Federal Assistance.''

(2) *Form SF–424A,* ''Budget Information—Non-Construction Programs.''

(3) *Form SF–424B,* ''Assurances—Non-Construction Programs.''

(4) *Form AD–1047,* ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters.''

(5) *Form AD–1049,* ''Certification Regarding Drug-Free Workplace Requirements.''

(6) *Table of Contents:* For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(7) *Project Summary.* A summary of the Project Proposal, not to exceed one-page should include the following: title of the project; names of principal investigators and applicant organization; and a description of the overall goals and relevance of the project.

(8) *Project Proposal:* The application must contain a narrative statement describing the nature of the proposed research. The Proposal must include at least the following:

(i) Project Title. The title of the proposed project must be brief, yet represent the major thrust of the project.

(ii) Project Leaders. List the names and contact information for the principal investigators. Minor collaborators or consultants should be so designated and not listed as principal investigators.

(iii) Need for the Project. A concisely worded rationale for the research must be presented. Included should be a summarization of the body of knowledge (literature review) which substantiates the need for the research. The need for the proposed research must be clearly and directly related to the facilitation of new or improved cooperative development or new or improved cooperative approaches.

(iv) Objectives of the Project. Discuss the specific objectives of the project and the impact of the research on end-users.

(v) Procedures. Discuss the hypotheses or questions being asked and the methodology or approach to be used in carrying out the proposed research and accomplishing the objectives. A description of any subcontracting arrangements to be used in carrying out the project must be included.

(vi) Time Table. A tentative schedule for conducting the major steps of the research must be included.

(vii) Expected Output. Describe how the results will be presented and disseminated.

(viii) Coordination and Management Plan. Describe how the project will be coordinated among various participants and the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration. Describe scope of RBS involvement in the project.

(9) *Personnel Support.* To assist reviewers in assessing the competence and experience of proposed principal investigators, the following must be included for each:

(i) estimated time commitment to the project;

(ii) a one-page curriculum-vitae;

(iii) a chronological list of all publications during the past five years.

What To Submit

An original and two copies must be submitted in one package.

When and Where To Submit

Proposals must be received by close of business on June 30, 1998. Proposals must be sent to Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4204, 1400 Independence Avenue SW, Washington, D.C. 20250–3252.

Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to proposals considered for review and to cooperative agreements awarded. These include but are not limited to:

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations.

7 CFR part 3018—USDA implementation of New Restrictions on Lobbying.

7 CFR part 3019—Uniform Administrative Requirements for Grant Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Agency announces its intention to seek Office of Management and Budget (OMB) approval of new reporting and recordkeeping requirements. These requirements have been approved by emergency clearance by OMB under OMB Control Number 0570–0028.

Approximately $1.9 million in cooperative agreement funds has been allocated from FY 1998 appropriations for programs administered by USDA's Rural Business-Cooperative Service (RBS) to encourage research related to rural cooperatives. The funds will be available to institutions of higher education or nonprofit organizations for research on critical issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities. Among others, these issues include:

(1) The appropriate role of cooperatives in fostering rural development;

(2) The role of cooperatives in filling the farm income safety net ''void'' created by the reduction or elimination of price support programs;

(3) The role of cooperatives in an increasingly global environment;

(4) The role of cooperatives in highly integrated agricultural industries;

(5) Effective structures and operations for agricultural bargaining associations;

(6) The role of cooperatives in low-resource areas.

(7) Barriers to small and new farmer membership in agricultural marketing cooperatives.

(8) Cooperation as a tool for small-farmer use of farmers markets.

(9) Models for shared or cooperatively-owned agricultural production inputs.

The funds will be awarded on a competitive basis using specific selection criteria.

Public Burden in this Notice

At this time, the Agency is requesting OMB clearance of the following burden:

Form SF–424, ''Application for Federal Assistance.''

This application is used by applicants as a required face sheet for applications for federal funding.

Form SF–424A, ''Budget Information—Non Construction Programs''

This form must be completed by applicants to show the project's anticipated budget breakdown in terms of expense categories and division of Federal and non-Federal sources of funds.

Form SF–424B, ''Assurances Non-Construction Programs''

This form must be completed by the applicant to provide the Federal government certain assurances of the applicant's legal authority to apply for Federal assistance and financial capability to pay the non-Federal share of project costs. The applicant also assures compliance with various legal and regulatory requirements as described in the form.

Project Proposal

The applicant must submit a project proposal containing the elements described in the notice and in the format prescribed. The elements of the proposal are:

(1) *Table of Contents:* For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(2) *Project Summary.* A summary of the Project Proposal, not to exceed one-page should include the following: title of the project; names of principal investigators and applicant organization; and a description of the overall goals and relevance of the project.

(3) *Project Proposal:* The application must contain a narrative statement describing the nature of the proposed research. The Proposal must include at least the following:

(i) Project Title. The title of the proposed project must be brief, yet represent the major thrust of the project.

(ii) Project Leaders. List the names and contact information for the principal investigators. Minor collaborators or consultants should be so designated and not listed as principal investigators.

(iii) Need for the Project. A concisely worded rationale for the research must be presented. Included should be a summarization of the body of knowledge (literature review) which substantiates the need for the research. The need for the proposed research must be clearly and directly related to the facilitation of new or improved cooperative development or new or improved cooperative approaches.

(iv) Objectives of the Project. Discuss the specific objectives of the project and the impact of the research on end-users.

(v) Procedures. Discuss the hypotheses or questions being asked and the methodology or approach to be used in carrying out the proposed research and accomplishing the objectives. A description of any subcontracting arrangements to be used in carrying out the project must be included.

(vi) Time Table. A tentative schedule for conducting the major steps of the research must be included.

(vii) Expected Output. Describe how the results will be presented and disseminated.

(viii) Coordination and Management Plan. Describe how the project will be coordinated among various participants and the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration. Describe scope of RBS involvement in the project.

(4) *Personnel Support.* To assist reviewers in assessing the competence and experience of proposed principal investigators, the following must be included for each:

(i) estimated time commitment to the project;

(ii) a one-page curriculum-vitae;

(iii) a chronological list of all publications during the past five years.

Use of Funds

Changes in approved goals and objectives, project leadership, or project time line must be submitted to the Deputy Administrator of Cooperative Services and approved in writing.

Reporting Requirements

Funding recipients will be required to submit written project performance reports on a quarterly basis. The project performance reports will include, but are not limited to: (1) A comparison of actual accomplishments to established objectives; (2) reasons established objectives were not met; (3) problems, delays, or adverse conditions which will materially affect attainment of planned project objectives; (4) objectives for the next reporting period; and (5) status of compliance with an special conditions on the use of awarded funds.

Estimate of Burden: Public reporting burden for this collection is estimated to range from 15 minutes to 15 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 2,280 hours.

Copies of this information collection can be obtained from Michele Brooks, Regulations and Paperwork Management Branch, Support Services Division, at (202) 720–3158.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden to collect the required information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments may be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and to Michele Brooks, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Housing Service, Stop 0743, Room 6345–S, 1400 Independence Avenue S.W., Washington, D.C. 20250–0743.

Dated: April 28, 1998.

Dayton J. Watkins,

Administrator, Rural Business—Cooperative Service.

[FR Doc. 98–12463 Filed 5–11–98; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service's (RUS) invites comments on these information collections for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by July 13, 1998.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and

recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collection that RUS is submitting to OMB for reinstatement.

Comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Technical Assistance and Training Grants.

OMB Control Number: 0572–0112.

Type of Request: Reinstatement of a previously approved information collection, with change to combine 0572–0112 (Technical Assistance and Training Grants) and 0572–0113 (Technical Assistance and Training Grants, Addendum 1.)

Abstract: The Rural Utilities Service (RUS) manages programs in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended, and as prescribed by OMB Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables.

The combination of this regulation and addendum promulgates the policies and procedures to provide grants to private nonprofit organizations for technical assistance and/or training.

Respondents: Non-profit institutions.

Estimated Number of Respondents: 115.

Estimated Number of Responses per Respondent: 20.5.

Estimated Total Response Hours: 6,175 hours.

Requests for copies of an information collection can be obtained from Gail Salgado-Duff, Program Development and Regulatory Analysis, at (202) 205–3660. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 30, 1998.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 98–12572 Filed 5–11–98; 8:45 am]

BILLING CODE 3410–15–P

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 suspended 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 § 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 May 1998, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

	Period
Antidumping Duty Proceedings:	
Argentina: Rectangular Carbon Steel Tubing, A–357–802	5/1/97–4/30/98
Brazil: Certain Malleable Cast Iron Pipe Fittings, A–351–505	5/1/97–4/30/98
Brazil: Iron Construction Castings, A–351–503	5/1/97–4/30/98
Brazil: Orange Juice, A–351–605	5/1/97–4/30/98
France: Ball Bearings, A–427–801	5/1/97–4/30/98
France: Cylindrical Roller Bearings, A–427–801	5/1/97–4/30/98
France: Spherical Plain Bearings, A–427–801	5/1/97–4/30/98
Germany: Ball Bearings, A–428–801	5/1/97–4/30/98
Germany: Cylindrical Roller Bearings, A–428–801	5/1/97–4/30/98
Germany: Spherical Plain Bearings, A–428–801	5/1/97–4/30/98
India: Pipes and Tubes, A–533–502	5/1/97–4/30/98
Italy: Ball Bearings, A–475–801	5/1/97–4/30/98
Italy: Cylindrical Roller Bearings, A–475–801	5/1/97–4/30/98
Japan: Ball Bearings, A–588–804	5/1/97–4/30/98
Japan: Cement, A–588–815	5/1/97–4/30/98
Japan: Cylindrical Roller Bearings, A–588–804	5/1/97–4/30/98
Japan: Impression Fabric, A–588–066	5/1/97–4/30/98
Japan: Polyvinyl Alcohol, A–588–836	5/1/97–4/30/98
Japan: Spherical Plain Bearings, A–588–804	5/1/97–4/30/98
Republic of Korea: Malleable Cast Iron Pipe Fittings, Other than Grooved, A–580–507	5/1/97–4/30/98
Republic of Korea: DRAMS, A–580–812	5/1/97–4/30/98
Romania: Ball Bearings, A–485–801	5/1/97–4/30/98
Russia: Pure Magnesium, A–821–805	5/1/97–4/30/98
Singapore: Ball Bearings, A–559–801	5/1/97–4/30/98
Sweden: Ball Bearings, A–401–801	5/1/97–4/30/98
Sweden: Cylindrical Roller Bearings, A–401–801	5/1/97–4/30/98

	Period
Taiwan: Certain Welded Carbon Steel Pipe & Tubes, A–583–008	5/1/97–4/30/98
Taiwan: Malleable Cast Iron Pipe Fittings, Other Than Grooved, A–583–507	5/1/97–4/30/98
Taiwan: Polyvinyl Alcohol, A–583–824	5/1/97–4/30/98
The People's Republic of China: Construction Castings, A–570–502	5/1/97–4/30/98
The People's Republic of China: Polyvinyl Alcohol, A–570–842	5/1/97–4/30/98
The People's Republic of China: Pure Magnesium, A–570–832	5/1/97–4/30/98
The Ukraine: Pure Magnesium, A–823–806	5/1/97–4/30/98
The United Kingdom: Ball Bearings, A–412–801	5/1/97–4/30/98
The United Kingdom: Cylindrical Roller Bearings, A–412–801	5/1/97–4/30/98
Turkey: Pipes and Tubes, A–489–501	5/1/97–4/30/98
Countervailing Duty Proceedings:	
Brazil: Certain Iron Construction Castings, C–351–504	1/1/97–12/31/97
Sweden: Viscose Rayon Staple Fiber, C–401–056	1/1/97–12/31/97
Venezuela: Ferrosilicon, C–307–808	1/1/97–12/31/97
Suspension Agreements: None.	

In accordance with 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. In recent revisions to its regulations, 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 (Department of Commerce Regulations, 62 FR 27295, 27424 (May 19, 1997)). 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 § 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 May 1998. If the Department does not receive, by the last day of May 1998, 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: May 5, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–12442 Filed 5–11–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the review of certain corrosion-resistant carbon steel flat products from Japan. This review covers the period August 1, 1996 through July 31, 1997.

EFFECTIVE DATE: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: Doreen Chen, Robert Bolling or Stephen Jacques at 202 482–0413, 482–3434 or 482–1391, respectively; Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Extension of Preliminary Results

The Department has determined that it is not practicable to issue its preliminary results within the original time limit. (See Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Robert LaRussa, Assistant Secretary for Import Administration, May 5, 1998.) The Department is extending the time limit for completion of the preliminary results until August 31, 1998 in accordance with Section 751(a)(3)(A) of the Act.

The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

Dated: May 6, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 98–12594 Filed 5–11–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice From Brazil; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 14, 1998, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. This review covers two producers/exporters, Branco Peres Citrus, S.A. and CTM Citrus, S.A. (formerly Citro-pectina). The Department terminated the review with respect to another firm, Citrovita S.A. See Frozen Concentrated Orange Juice from Brazil: Preliminary Results of Administrative Review; Termination in Part; and Intent Not to Revoke in Part, 63 FR 2202 (January 14, 1998). This review covers the period May 1, 1993, through April 30, 1994.

We gave interested parties an opportunity to comment on our preliminary results. We have based our analysis on the comments received and have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: Fabian Rivelis or Irina Itkin, Office 5, AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3853 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1998, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the 1993–1994 administrative review of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil (62 FR 2202). The Department has now completed this administrative review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751 of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

The merchandise covered by this review is frozen concentrated orange juice from Brazil. The merchandise is currently classifiable under subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheading is provided for convenience and for customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments only from Branco Peres Citrus S.A. (Branco Peres).

Comment 1: Calculation of Comparison Market Commissions.

For the preliminary results, the Department based foreign market value (FMV) on the applicable minimum export price [1] (MEP) as a third-country offer for sale where no contemporaneous third-country sale existed. In cases where FMV was based on the MEP, we used the weighted average of the charges and adjustments reported for actual third-country sales.

According to Branco Peres, the Department erred in calculating a single average commission amount and applying it to four separate MEPs when calculating FMV. Branco Peres asserts that this methodology understated the amount of the commission that it would have paid if the merchandise had actually been sold at the MEP. Specifically, Branco Peres maintains that the commission amount would have been based on a fixed commission percentage and would have been higher than the average commission used by the Department.

Branco Peres asserts that the calculation of the single average commission amount is inconsistent with the calculation of U.S. commissions, which was based on the fixed commission percentage for each U.S. sale. Branco Peres maintains that the amount of both the third country and U.S. commissions should be exactly the same because, in every comparison, the U.S. price was exactly the same as the MEP. According to Branco Peres, the Department's use of inconsistent methodologies not only results in an unfair comparison, but also generates a dumping margin greater than *de minimis*. Branco Peres asserts that the Department should correct this error by deducting from FMV a commission amount based on the fixed commission percentage.

Branco Peres also argues that the Department's use of a single average commission amount for the period of review (POR) violated long-standing Department policy. Branco Peres states that the Department's practice in the 1993–1994 period for cases from Brazil, as illustrated in Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Brazil, 58 FR 37091, 37093 (July 9, 1993), was to determine expenses on a monthly basis because Brazil's economy experienced hyper-inflation during that period. Therefore, Branco Peres asserts that the Department must calculate expenses based on the actual monthly expenses in effect for each MEP period.

Nonetheless, Branco Peres argues that if the Department continues to use a single average commission, it should revise its calculation to include only those commissions related to sales which were contemporaneous with its U.S. sales, under the Department's usual price-to-price methodology for administrative reviews. Branco Peres notes that the Department calculated a single average commission based on the average commission expenses related to all third-country sales to the Netherlands, even though only four of those sales were contemporaneous with the U.S. sales in question.

DOC Position: We agree. Our review of the record of this case shows that a fixed commission rate was in effect for all of Branco Peres' export sales during the POR and that the payment of a commission based on this rate is Branco Peres' normal business practice. Our calculation of the average POR commissions understated the commissions Branco Peres would have paid if it had made the sale at the MEP. Accordingly, we have calculated commissions by applying the

[1] During the period of review, the minimum export price was a floor price set by the Carteira do Comercio Exterior de Banco do Brasil (CACEX), the export department of the Bank of Brazil. Minimum export prices were based on the price of FCOJ on the New York Cotton Exchange. Because the price movements of FCOJ on the futures market are irregular, the minimum export price may have remained the same or may have changed several times within a month.

commission rate to the MEP. This calculation is consistent with our calculations for Branco Peres in the 1992–1993 review, where the MEP was also used as an offer for sale to calculate FMV. See Notice of Final Results of Antidumping Duty Administrative Review: Frozen Concentrated Orange Juice from Brazil, 62 FR 5798 (February 7, 1997).

Comment 2: Revocation of the Antidumping Duty Order With Respect to Branco Peres.

Branco Peres argues that, if the Department recalculates its comparison market commissions, the Department should revoke the antidumping duty order against it because its margin in this review (1993–1994) is de minimis. Branco Peres notes that its margin in the 1995–1996 review was zero, and no review was conducted in the intervening year. That review was terminated because both Branco Peres and CTM withdrew their requests for review and there were no other requests for review (see Frozen Concentrated Orange Juice from Brazil: Termination of Antidumping Administrative Review, 60 FR 53163 (October 12, 1995)). Branco Peres cites section 351.222(d) of the Department's new regulations, published on May 19, 1997, which permits revocation after the Department has conducted reviews in the first and third years of a three-year period and has found zero or *de minimis* dumping margins. Branco Peres states that the Department's rationale not to revoke it from the order after the 1995–1996 review period no longer applies because the new regulations are now in effect.

Branco Peres asserts that it is similarly entitled to revocation under section 353.25(a) of the Department's old regulations, because that regulation required only that the company under review has ''sold the merchandise at not less than foreign market value for a period of at least three consecutive years.'' Branco Peres claims that it meets this requirement because in the intervening year its entries were liquidated at a zero duty deposit rate. Branco Peres asserts that revocation now does not contradict the Department's final results in the 1995–1996 review, where the Department stated that it had denied revocation for a respondent which had withdrawn from the second period of review. Branco Peres notes that in that case the Department could not conclude that the respondent in question had exported the merchandise at not less than fair value during the entire three year period because, in the intervening year, it had entered merchandise at deposit rates that were greater than de minimis. See Frozen Concentrated Orange Juice from Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review; Revocation in Part of the Antidumping Duty Order, 56 FR 52510, 52512 (October 21, 1991).

DOC Position: We disagree. The new regulations cited by Branco Peres did not take effect until June 19, 1997, well after the initiation of the 1995–1996 review. In addition, although it does not affect the result here, we note that the instant review was initiated prior to the effective date of the new regulations. As stated in the final results of the 1995–1996 review, the Department can conclude that a producer has sold merchandise at not less than fair value for three consecutive years, within the meaning of 19 CFR 353.25(a), only pursuant to administrative reviews actually conducted for each of the three years. See Frozen Concentrated Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, 62 FR 29328 (May 30, 1997) (1995–1996 FCOJ Review). Because no administrative review was conducted for the intervening 1994–1995 period, we cannot make this conclusion. Accordingly, we have determined not to revoke the antidumping duty order with respect to Branco Peres.

Final Results of Review

As a result of the comments received we have revised our preliminary results and determine that the following margins exist for the period May 1, 1993, through April 30, 1994:

Manufacturer/exporter	Review period	Percent margin
Branco Peres	5/1/93–4/30/94	0.18
CTM Citrus S.A.	5/1/93–4/30/94	0.00

The Department has not revoked the antidumping duty order with respect to either Branco Peres or CTM Citrus S.A. (CTM) because neither Branco Peres nor CTM has demonstrated three consecutive years of sales at not less than FMV.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States Price and FMV may vary from the percentages stated above. We have calculated a company-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total value of subject merchandise entered during the POR. The rate will be assessed uniformly on all entries of that particular company made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of FCOJ from Brazil, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) Because a subsequent administrative review of Branco Peres has been completed, the cash deposit rate for this company will continue to be the rate calculated in that administrative review (see 1995–1996 FCOJ Review); (2) the cash deposit rate for CTM will be the calculated margin in the final results of this administrative review, as stated above; (3) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (4) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (5) for all other producers and/or exporters of this merchandise, the cash deposit rate will be 1.96 percent, the ''all others'' rate from the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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 this review period. Failure to comply with this requirement could result in the Secretary's presumption that

reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1)(B) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 5, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–12446 Filed 5–11–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium From Canada; Preliminary Results of Antidumping Administrative Review and Notice of Intent Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and notice of intent not to revoke order in part of pure magnesium from Canada.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 1996 through July 31, 1997. This review covers imports of pure magnesium from one producer/exporter.

We have preliminarily found that sales of subject merchandise have not been made below normal value. Further, we intend not to revoke the order with respect to pure magnesium from Canada produced by Norsk Hydro Canada Inc. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties.

Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–1279.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations refer to the regulations, codified at 19 CFR part 351 (62 FR 27399, May 19, 1997).

Background

The Department published an antidumping duty order on pure magnesium from Canada on August 31, 1992 (57 FR 39390). On August 4, 1997, the Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on pure magnesium from Canada (62 FR 41925). On August 29, 1997, a producer/exporter, Norsk Hydro Canada Inc. (''NHCI'') requested an administrative review of its exports of the subject merchandise to the United States for the period of review August 1, 1996, through July 31, 1997. In accordance with 19 CFR 351.221, we initiated the review on September 25, 1997. The Department is now conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The product covered by this review is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope currently classifiable under subheading 8104.11.0000 of the Harmonized Tariff Schedule (''HTS''). The HTS item number is provided for convenience and for customs purposes. The written description remains dispositive.

Verification

As provided in section 751(d) of the Act, we verified information provided by the respondent, NHCI, by using our standard verification procedures, including on-site examination of relevant sales and financial records.

Export Price

For sales to the United States, we used export price (''EP'') as defined in section 772(a) of the Act because the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. The use of constructed export prices was not warranted based on the facts of the record. EP was based on the packed delivered, duties unpaid price to unaffiliated purchasers in the United States. We made a deduction for movement expenses in accordance with section 772(c)(2)(A) of the Act; this included the foreign and U.S. inland freight expense.

Normal Value

We compared the aggregate quantity of home market and U.S. sales and determined that the quantity of the company's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Consequently, pursuant to section 773(a)(1)(B) of the Act, we based normal value (''NV'') on home market sales.

We made adjustments for differences in packing in accordance with sections 773(a)(6)(A), B(i) of the Act. We also made adjustments for movement expenses, consistent with section 773(a)(6)(B)(ii) of the Act, for inland freight. In addition, we made adjustments for differences in circumstances of sale (''COS'') in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on home market sales (credit expenses) and adding U.S. direct selling expenses (credit expenses).

Revocation

Pursuant to 19 CFR 351.222(b)(2), NHCI requested revocation of the antidumping duty order in part. In accordance with 19 CFR 351.222(e), the request was accompanied by certifications that NHCI had not sold the subject merchandise at less than normal value during the current period of review and would not do so in the future. NHCI further certified that it sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. NHCI also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that NHCI, subsequent to the revocation, sold the

subject merchandise at less than normal value.

On October 22 and November 6, 1997, the petitioner submitted argumentation opposing NHCI's revocation request. On February 12, 1998, the Department established a process for the submission of factual information and argument pertaining to the issue of likelihood of future dumping.

Interested Party Comments on Whether Future Dumping Is Likely

On April 2 and April 9, 1998, NHCI and the petitioner submitted comments and rebuttals, respectively, on the issue of whether it is likely that NHCI would resume dumping if the Department granted NHCI's revocation request.

Petitioner's Arguments: The petitioner contends that NHCI did not make sales in commercial quantities during the last three consecutive review periods, and thus has not fulfilled one of the revocation requirements under the new regulations. In this case, the petitioner states that although one sale during a one-year period may be sufficient for the calculation of an antidumping margin, it does not constitute commercial quantities for the relevant product and industry. The petitioner also argues that the dramatic decline in NHCI's sales after the imposition of the order is indicative of NHCI's inability to make sales in the United States without dumping.

The petitioner made comments as to the condition of the pure magnesium market as well. The petitioner argues that the likelihood that NHCI will resume dumping is all the greater because of the substantial fall and continuing decline in magnesium prices that has occurred over the past two years, which is due to a fundamental oversupply in the global market. According to the petitioner, this oversupply will be exacerbated in coming years as new production facilities come on line in Canada (unrelated to NHCI) and in third countries. Furthermore, NHCI has plans to increase its own production capacity, which, according to the petitioner, will contribute to the oversupply in the global market and thus, likely lead to a resumption of dumping. In response to NHCI's argument that it is focusing on the alloy market, the petitioner states that greater competition in magnesium products along with supply exceeding demand will pressure NHCI to engage the U.S. pure magnesium market. Furthermore, according to the petitioner, if NHCI vigorously enters the U.S. pure magnesium market it will be facing a situation where pure magnesium prices are actually on the decline, making dumping more likely.

Respondent's Arguments: NHCI argues that it has met all the procedural requirements for revocation. It has made the proper submissions and certifications, has a record of three years of U.S. sales at not less than normal value, and will continue to trade fairly and abide by trade laws in all markets. In response to the petitioner's allegations with respect to commercial quantities, NHCI argues that the Department has stated in past cases that there has been no substantive change of the revocation policy pursuant to the new regulations, and thus no additional revocation threshold in the form of the certification of sales in commercial quantities has been created. Rather, NHCI states that the Department should give great weight to the fact that it has met the Department's requirement of three consecutive years without dumping, all based on bona fide sales.

With respect to the likelihood of future dumping, NHCI argues that it has no incentive to engage in dumping in the U.S. pure magnesium market because it has a stable customer base in Canada and third countries. Additionally, it has no incentive to shift production from alloy magnesium to pure magnesium, given the growth in the alloy magnesium market. While NHCI's planned plant expansion may give it the ability to produce more pure magnesium for sale in the U.S. market, the company contends that the planned expansion is for the alloy magnesium market, and that any increases in production are not necessarily targeted for the United States. Even if some of the new production capacity were for pure magnesium, NHCI states that there has been growth in all magnesium markets, not just alloy. NHCI notes that such market conditions do not lend themselves to dumping.

NHCI maintains that the growth in the alloy magnesium market accounts for the drop off in NHCI's U.S. sales of pure magnesium. In support of its position, NHCI argues that the Norsk Hydro group produces the subject merchandise in both Canada and Norway, yet sales from Norway also declined during the same period, despite the absence of antidumping duties applicable to Norwegian imports. NHCI explains that the controlling factor for these marketing decisions has been the growth of the alloy magnesium market.

Department Analysis

Section 351.222(b)(2) of the Department's regulations states that the Secretary may revoke an order in part if the Secretary concludes that: (i) the exporter or producer has sold the merchandise at not less than normal value for a period of three consecutive years; (ii) it is not likely that the person will in the future sell the merchandise at less than normal value; and (iii) the person agrees in writing to its immediate reinstatement in the order if the Secretary concludes that dumping has resumed (*see*, 19 CFR 351.222(b) (1998)). If these preliminary results are adopted as final results, NHCI will have met the first criterion. NHCI's agreement to its immediate reinstatement in the order if the Secretary concludes that dumping has resumed meets the third criterion. Thus, the issue is whether the evidence supports a finding that it is not likely that NHCI will in the future sell the merchandise at less than normal value.

When making this determination, the Department looks at all relevant information on the record (*see*, Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Revoke Order in Part (63 FR 6519, 6523, February 9, 1998) (''Canadian Brass Sheet'')). When assessing whether a company is not likely to sell at less than normal value in the future, the lack of dumping over the course of three years can be predictive of future behavior in the absence of contrary evidence. Where, as was done here, the petitioner makes a compelling argument that dumping may occur in the future if the order is revoked, the Department may request and consider additional relevant evidence in making its revocation decision. As we stated in Canadian Brass Sheet, ''the Department has considered, in addition to the respondent's prices and margins in the preceding periods, such other factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without sales at less than normal value.'' Id. *See also*, Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part (61 FR 49727, 49730, September 23, 1996) (''German Brass Sheet'').

Following the general practice discussed above, we closely examined NHCI's ability to compete in the U.S. market without sales at less than normal value. We based this particular analysis on NHCI's historical sales behavior, examining in particular its behavior prior to and after the issuance of the antidumping duty order. We also analyzed trends and conditions in the

U.S. and Canadian magnesium markets. (For a further discussion of the factual background to our decision, see, Memorandum to Gary Taverman dated May 4, 1998.) As discussed below, we preliminarily find that the evidence on the record does not support a conclusion that the standard for revocation has been met in this case.

An examination of the history of NHCI's U.S. pure magnesium sales behavior reveals that prior to the antidumping order NHCI had numerous U.S. pure magnesium customers and sold very large quantities of pure magnesium. Yet, after the investigation, in which the Department found that NHCI was making sales at less than normal value, imports of pure magnesium into the United States essentially stopped. In the two years after the imposition of the antidumping order, NHCI made no sales of pure magnesium into the United States. Furthermore, in the succeeding three years sales were negligible (*i.e.*, for each year, sales were less than one-half of one percent of the sales volume made in the last completed fiscal year prior to the order). The severe and abrupt drop-off in sales by NHCI after the order is a strong indicator that the company is unable to sell in the United States without engaging in dumping. As noted in German Brass Sheet, ''the sharp decrease in volume after imposition of the order . . . suggest[s] that [the respondent] has difficulty selling [the subject merchandise] above fair value'' (at 61 FR 49731). Thus, based on the virtual abandonment of the U.S. pure magnesium market by NHCI, it is reasonable to assume that the company has difficulty selling pure magnesium in the United States at or above normal value.

In order for the Department to revoke the antidumping duty order with respect to NHCI, the record evidence must support a finding that it is not likely that the company will sell at less than normal value in the future. As noted above, three years of no dumping is normally probative as to a company's future pricing practices. However, this approach assumes the company continues to participate meaningfully in the U.S. market. In this case, the three years in question are characterized by a negligible number and volume of sales by NHCI to the U.S. market and therefore does not have the same probative value.

NHCI states that the decline in its U.S. sales is not due to its inability to make sales above normal value, but rather due to its focus on the alloy magnesium market. We do not accept this explanation for two reasons. First, while we recognize the recent and projected rapid growth rates for alloy magnesium, we find it extremely difficult to conclude that NHCI's abrupt abandonment of the U.S. market for pure magnesium was unrelated to the dumping proceedings.

Second, given the size and importance of the U.S. pure magnesium market and NHCI's continued sales of pure magnesium in other markets, we are not convinced that NHCI has permanently changed its marketing and sales strategy to focus solely on alloy magnesium. Although the company implies that it has little interest in the U.S. market for pure magnesium, we note that NHCI maintains significant sales of pure magnesium in Canada and third countries. The magnitude of NHCI's pure magnesium sales in Canada reflects the current global reality of a higher demand for pure than alloy magnesium. The higher demand for pure magnesium also exists in the United States. U.S. consumption of pure magnesium in 1996, for instance, was nearly triple that of alloy magnesium consumption. Given the mix of magnesium products (alloy versus pure) in the United States and the fact that the United States is the largest market in the world for pure magnesium, it appears likely that NHCI, in the absence of the antidumping duty order, would seek to reestablish itself in the U.S. pure magnesium market.

Thus, based on the above, we preliminarily conclude that the revocation standard has not been met in this case. Therefore, we have preliminarily determined not to revoke the antidumping duty order with respect to pure magnesium from Canada produced by NHCI.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that NHCI's margin for the period August 1, 1996, through July 31, 1997, is zero.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Interested parties may also request a hearing within thirty days of publication. If requested, a hearing will be held 37 days after publication. Interested parties may submit case briefs within thirty days of publication. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the case briefs. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs, within 120 days from the publication of these preliminary results.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of pure magnesium from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required for the company if its weighted-average margin is *de minimis, i.e.,* less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21 percent, the ''all others'' rate established in Pure Magnesium from Canada; Amendment of Final Determination of Sales At Less Than Fair Value and Order in Accordance With Decision on Remand (58 FR 62643, November 29, 1993).

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR section 351.213.

Dated May 4, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–12595 Filed 5–11–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–829, A–533–814, A–588–844, A–580–830, A–469–808, A–583–829]

Initiation of Antidumping Duty Investigations: Stainless Steel Round Wire from Canada, India, Japan, the Republic of Korea, Spain, and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer (Canada) at (202) 482–4852; Diane Krawczun (India) at (202) 482–0198; Edward Easton (Japan) at (202) 482–1777; Gabriel Adler (the Republic of Korea) at (202) 482–1442; Michael Panfeld (Spain) at (202) 482–0168; or Michelle Frederick (Taiwan) at (202) 482–0186, Import Administration-Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations published in the **Federal Register** on May 19, 1997 (62 FR 27296).

The Petition

On March 27, 1998, the Department of Commerce (''the Department'') received a petition filed in proper form by the following companies: ACS Industries, Inc., Al Tech Specialty Steel Corp., Branford Wire & Manufacturing Company, Carpenter Technology Corp., Handy & Harman Specialty Wire Group, Industrial Alloys, Inc., Loos & Company, Inc., Sandvik Steel Company, Sumiden Wire Products Corporation, and Techalloy Company, Inc. (''the petitioners''). Sumiden Wire Products Corporation is not a petitioner in the Japanese case, and Carpenter Technology Corp. and Techalloy Company, Inc., are not petitioners in the Canadian case. The Department received numerous supplemental submissions throughout the month of April, 1998.

In accordance with section 732(b) of the Act, the petitioners allege that imports of stainless steel round wire (''SSRW'') from Canada, India, Japan, the Republic of Korea (Korea), Spain, and Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support (*see* discussion below).

Scope of Investigations

For purposes of these investigations, the product covered is stainless steel round wire. Stainless steel round wire is any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product, of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to these investigations is classifiable under subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed with the petitioners whether the proposed scope was an accurate reflection of the product for which the domestic industry is seeking relief. The petitioners indicated that the scope in the petition accurately reflected the product for which they are seeking relief. Consistent with the preamble to the new regulations (62 FR at 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by 20 days after the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230. This period of scope consultation is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether the domestic industry has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC are required to apply the same statutory provision regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[1] Section 771(10) of the Act defines domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. The domestic like product referred to in the petition is the single domestic like product defined in the ''Scope of Investigation'' section, above. We

[1] *See Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

consulted with the ITC, the U.S. Customs Service, and petitioners and have, as a result of these discussions, adopted the domestic like product definition set forth in the petition.

On April 8, 1998, the ITC presented us with information indicating that there may be as many as 25 additional producers of the domestic like product that were not included in the petition. On April 9, 1998, Central Wire Industries Ltd. and Greening Donald Co., Ltd., two Canadian producers of subject merchandise, submitted a list of 47 non-petitioning companies that they claimed represented U.S. producers of the domestic like product. *See* Letter from Central Wire Industries Ltd. and Greening Donald Co., Ltd. to the Secretary of Commerce dated April 9, 1998 (the Central Wire submission). Certain of these companies were included in the list of non-petitioning producers in the petition, but a majority were not. Because there was a question as to whether petitioners' met the statutory requirements cited above, we exercised our statutory discretion under section 732(c)(1)(B) to extend the deadline for determining whether to initiate an investigation to a maximum of 40 days from the date of filing in order to resolve this issue. *See* Memorandum to Joseph A. Spetrini from Laurie Parkhill dated April 16, 1998. We also invited parties to identify any other potential producers of the domestic like product.

On April 21, 1998, the petitioners provided production information concerning 42 of the then 64 nonpetitioning companies that had been identified as potential producers by the ITC, the Central Wire submission, or by the petitioners themselves at that time. *See* Letter from the petitioners to the Secretary of Commerce, April 21, 1998. The sources of this production information are affidavits from co-counsel for the petitioners, stating that they have contacted each of the 42 producers and have received the production information directly from the companies. The petitioners also included affidavits from co-counsel for the petitioners, as well as one of the petitioning company officials, indicating that certain nonpetitioning companies support the petition.

On April 21, 1998, Central Wire submitted a list of all U.S. producers (including the petitioners) that it believed produced the domestic like product. *See* Letter from Central Wire Industries Ltd. and Greening Donald Co., Ltd. to the Secretary of Commerce, April 21, 1998. While most of these potential producers had already been identified, there were several potential producers who had not been previously identified, and thus were not included in the list of 64 companies provided in the petitioners' April 21, 1998 letter.

We were able to contact all but one of the companies identified, and based on the data now on the record, we determine that the petitioners have established industry support in accordance with the statutory requirements cited above. *See* Memorandum from Laurie Parkhill and Gary Taverman to Richard W. Moreland dated May 6, 1998. Accordingly, we determine that the petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which our decisions to initiate these investigations are based. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

With respect to sales to the U.S. market, the petitioners used an export price (EP) analysis because the producers in each country make their first sale of exports to unaffiliated importers. The petitioners based export prices on affidavits based on call reports and price quotes, as appropriate. The petitioners calculated EP by subtracting domestic inland freight (except in the India and Taiwan cases), ocean freight and marine insurance (except in the Canada case), import duties (except in the India case), harbor maintenance fees, U.S. merchandise processing fees, and U.S. inland freight (except in the Canada and India cases). The data for these adjustments was based on market research, U.S. Customs statistics, affidavits, and the 1997 import duty rates. The petitioners did not deduct domestic inland freight in the Indian case because they were not able to obtain such data. Although the petitioners did not explain why they did not deduct domestic inland freight in the Taiwan case, we note that this will not cause the dumping margins to be overstated. All adjustments not mentioned above that were not made by the petitioners in specific cases were due to the terms of the sales. We restated some of the export prices in the India case to conform with the affidavits the petitioners submitted. *See* Memorandum to File dated April 16, 1998.

The petitioners based normal value (NV) on home market prices, as obtained by market research. They adjusted the home market prices by deducting foreign inland freight (except in the India case due to the terms of sale) and imputed credit, and by adding the imputed credit calculated on the U.S. sale (except in the India case). Though the petitioners did not adjust for imputed credit in the India case, we were able to calculate an imputed credit expense for that case and did deduct it from NV. *See* Memorandum to File dated April 16, 1998. The data for the adjustments the petitioners made to NV were based on market research and International Financial Statistics (published by the International Monetary Fund). The petitioners submitted affidavits to support their claims regarding packing costs in the U.S. and Japanese markets. However, there was no adjustment for packing in other cases, either because information was not available for a country or because the petitioners assumed that packing costs were the same for sales to the home market and the U.S. market. There is no public evidence available to adjust NV for the differences in packing costs between the U.S. and home markets. Furthermore, our experience in steel cases generally suggests that the packing costs of export sales are nearly always greater than or equal to the packing costs of domestic sales, because additional precautions are usually necessary to protect exported merchandise (for example, from rust) during its longer time in transit. Therefore, we conclude that not adjusting for differences in packing costs is conservative.

Pursuant to sections 773(a)(4) and 773(e) of the Act, the petitioners also based NV for sales in all countries, except Japan, on constructed value (CV). CV consists of COM, selling, general and administrative expenses (SG&A), packing and profit. The petitioners based their calculations for COM, SG&A and packing on costs obtained by market research, affidavits from the petitioning companies' officials, and U.S. industry data compiled by the petitioners. We recalculated the CVs used in the Canada, India, and Taiwan cases. The nature of the recalculations and the reasons for the recalculations are explained in Memoranda to File dated April 16, 1998.

Based on comparisons of EP to NV, the petitioners estimate margins of 2.18 to 64.24 percent in the Taiwan case. We recalculated the estimated margins to be 2.38 to 40.48 percent in the Canada case, 3.47 to 36.52 percent in the India case, 2.02 to 29.58 percent in the Japan

case, 3.46 to 66.44 percent in the Korea case, and 12.99 to 35.80 percent in the Spain case.

Initiation of Cost Investigations

Pursuant to section 773(b) of the Act, the petitioners alleged that sales in the home market of Canada, India, Korea, and Taiwan were made at prices below the cost of production (COP) and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in Canada, India, Korea, and Taiwan. The Statement of Administrative Action (''SAA''), submitted to Congress in connection with the interpretation and application of the Uruguay Round Agreements, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess., at 833 (1994). The SAA states at 833 that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''

The statute at section 773(b) states that the Department must have ''reasonable grounds to believe or suspect'' that below-cost sales have occurred before initiating such an investigation. ''Reasonable grounds'' exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. Based upon the comparison of the adjusted prices from the petition of the foreign like product in Canada, India, Korea, and Taiwan to the COP calculated in the petition (and adjusted in the Canada, India, and Taiwan cases as described in Memoranda to File dated April 16, 1998), we find ''reasonable grounds to believe or suspect'' that sales of these foreign like products were made below their respective COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation for Canada, India, Korea, and Taiwan.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of SSRW from Canada, India, Japan, Korea, Spain, and Taiwan are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The allegations of injury and causation are supported by relevant evidence including business proprietary data from the petitioning firms and U.S. Customs import data. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are sufficiently supported by accurate and adequate evidence and meet the statutory requirements for initiation.

Initiation of Antidumping Investigations

We have examined the petition on SSRW and have found that it meets the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of SSRW from Canada, India, Japan, Korea, Spain, and Taiwan are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations for the antidumping duty investigations by September 23, 1998.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Canada, India, Japan, Korea, Spain, and Taiwan. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition (as appropriate).

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by June 1, 1998, whether there is a reasonable indication that imports of SSRW from Canada, India, Japan, Korea, Spain, and Taiwan are causing material injury, or threatening to cause material injury, to a U.S. industry. Negative ITC determinations will result in the particular investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

Dated: May 6, 1998.

Richard W. Moreland,

Acting Assistant Secretary, Import Administration.

[FR Doc. 98–12593 Filed 5–11–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Wisconsin-Madison; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–106. *Applicant:* University of Wisconsin-Madison, Madison, WI 53706–1490. *Instrument:* Length Controller and Force Transducer System, Models 308B and 403A. *Manufacturer:* Aurora Scientific, Canada. *Intended Use:* See notice at 63 FR 5504, February 3, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides measurement of the contractile force of muscle cells by mechanically deforming the length of the muscle fiber. The National Institutes of Health advised April 27, 1998 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–12445 Filed 5–11–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of

Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Channel Islands National Marine Sanctuary Boater/Diver Survey.

Agency Number: N/A.

OMB Number: N/A.

Type of Request: New Collection.

Burden: 650 hours.

Number of Respondents: 3,400.

Avg. Hours Per Response: Ranges between 10 and 15 minutes depending on the survey.

Needs and Uses: This will be survey of boating and diving user groups at marinas from Santa Barbara through Los Angeles, California. The survey of users will collect demographic information on Sanctuary users, determine their knowledge about and attitudes toward the Sanctuary, how they receive information, and their level of interest in current or future educational programs offered by the Sanctuary. The information will be used to help develop education programs and to provide baseline data on users and uses of Sanctuary resources to help in the review and re-write of the Sanctuary management plan. Business owners will also have an opportunity to provide information that will be incorporated into a directory of available services.

Affected Public: Individuals, businesses or other for-profit organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of the publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: May 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–12599 Filed 5–11–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Collection; Comment Request

TITLE: Western Alaska Community Development Quota Program.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

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 Sally Bibb, Sustainable Fisheries Division, NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, telephone (907) 586–7389.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) is requesting renewal of OMB approval of the information collection requirements supporting the Western Alaska Community Development Quota (CDQ) Program. These requirements are found in 50 CFR 679. The purpose of the CDQ program is to allocate a portion of the Bering Sea and Aleutian Islands fishing quotas for groundfish, halibut, crab, and prohibited species to Western Alaska communities to assist those communities in starting and supporting regionally-based commercial seafood or other fishery-related businesses.

Communities wishing to obtain a CDQ allocation must prepare Community Development Plans. Upon receiving an allocation, CDQ participants must submit reports and file any necessary amendments to their plan. Specific requirements are shown in the estimates of response times below.

In addition to existing requirements being renewed, the clearance request will contain four proposed additions or revisions to the requirements. These are a new CDQ Delivery Report, the collection of additional information in the CDQ Catch Report, a requirement for prior notice to observers, and the collection of additional information in the Community Development Plans (CDPs).

Three approved requirements are proposed for removal—the CDQ Check-In/Check-Out Report, the CDQ Permit, and submission of Alaska Department of Fish and Game (ADF&G) fish tickets. The CDQ permit will be replaced by a request for an inspection of the observer sampling station (a subset of the original permit information requirement). These three elements are in the current information collection clearance because they were contained in a proposed rule published in the **Federal Register** on August 15, 1997 (62 FR 43865). However, NMFS has either removed these elements or revised them under a different element in the final rule.

II. Method of Collection

Respondents would comply with requirements set forth in 50 CFR 679. Forms are used for some reports.

III. Data

OMB Number: 0648–0269.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 333.

Estimated Time Per Response: 520 hours per response for preparation of the Community Development Plans, 40 hours per response for the annual report, 20 hours per response for the annual budget report, 8 hours per response for the annual budget reconciliation reports, 8 hours per response for substantial amendments, 4 hours per response for technical amendments, 2 hours per response for preparation of the request for an inspection of the observer sampling station, 1 hour per response for the CDQ delivery report, 30 minutes per response for a CDQ catch report, 15 minutes per response for printing and retaining scale printouts by shoreside processors, 2 minutes per response for prior notices to the observer of offloading of CDQ catch at the shoreside plant, 2 minutes per response for prior notices to the observer of CDQ hauls or sets on observed vessels, 8 hours per response for bin certification documents, 30 minutes per response for changes to the list of CDQ halibut and sablefish cardholders, and 1 hour per response for changes to the CDP's list of vessels for halibut and sablefish CDQ.

Estimated Total Annual Burden Hours: 4,950.

Estimated Total Annual Cost to Public: $0 (no capital costs).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–12600 Filed 5–11–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Collection; Comment Request

TITLE: Involuntary Child and Spousal Support Allotments of NOAA Corps Officers.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

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 Steve Eisenberg, NOAA Commissioned Personnel Center, 1315 East-West Highway, Silver Spring, MD 20910–3282 (301–713–3453, ext. 102).

SUPPLEMENTARY INFORMATION:

I. Abstract

Spouses, ex-spouses, or children of active NOAA Corps officers may seek to obtain involuntary deductions or allotments from an officer's pay if the officer has failed to make periodic payments under a support order. To obtain such an allotment the person, or that person's attorney or agent must, provide a certified copy of the support order, information identifying the officer, and related information.

II. Method of Collection

No form is used. Respondents follow the procedures detailed in 15 CFR 15.25.

III. Data

OMB Number: 0648–0242.

Form Number: N/A.

Type of Review: Regular submission.

Affected Public: Individuals.

Estimated Number of Respondents: 5.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 5.

Estimated Total Annual Cost to Public: $0 (no capital expenditures required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–12601 Filed 5–11–98; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Collection; Comment Request

TITLE: Marine Fisheries Initiative (MARFIN).

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

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 Ellie Francisco Roche, State/Federal Liaison Office (F/SERx2), National Marine Fisheries Service, 9721 Executive Center Drive, N., St. Petersburg, FL 33702 (813) 570–5324.

SUPPLEMENTARY INFORMATION:

I. Abstract

MARFIN is a competitive Federal assistance program that promotes and endorses programs that seek to optimize research and development benefits from U.S. marine fishery resources through cooperative efforts that involve the best research and management talents to accomplish priority activities. This grant program is described in the ''Catalog of Federal Domestic Assistance'' (CFDA) under program 11.433, Marine Fisheries Initiative. Persons seeking grants must submit applications, and those obtaining grants must submit semi-annual and annual reports.

II. Method of Collection

Standard and program forms are used, supported by narrative documentation

whose requirements are outlined in annual **Federal Register** notices.

III. Data

OMB Number: 0648–0175.
Form Number: SF–424.
Type of Review: Regular submission.
Affected Public: Individuals; state or local governments; businesses or other for-profit; non-profit institutions; and small businesses or organizations.
Estimated Number of Respondents: 60 per year.
Estimated Time Per Response: 4 hours for applications, 1 hour for semi-annual reports, and 1 hour for annual reports.
Estimated Total Annual Burden Hours: 285 hours.
Estimated Total Annual Cost to Public: No cost to the public other than the time required to fill out the forms.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–12602 Filed 5–11–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Collection; Comment Request

TITLE: Monthly Cold Storage Fish Report.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

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 Barbara K. O'Bannon, Fisheries Statistics and Economics Division (F/ST1), National Marine Fisheries Service, 1315 East-West Hwy., Silver Spring, MD 20910. (301) 713–2328.

SUPPLEMENTARY INFORMATION:

I. Abstract

These data are collected under authority of Section 742(d) of the Fish and Wildlife Act of 1956 as amended (16 U.S.C. 742(A)–754) and under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) as amended. Cold storage warehouses are asked to report on the quantity of fishery products by species held in cold storage on the last day of each month. Data are needed by industry for orderly purchases, sales, distribution and price planning for fishery products, and by NMFS and Fishery Council economics for fishery management and development purposes.

II. Method of Collection

Form 88–16 is conducted monthly via a survey form mailed to cold storage warehouses.

III. Data

OMB Number: 0648–0015.
Form Number: 88–16 Monthly Cold Storage Fish Report.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 110.
Estimated Time Per Response: 8 minutes.
Estimated Total Annual Burden Hours: 176.
Estimated Total Annual Cost to Public: No cost to the public other than the time required to fill out the form.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–12603 Filed 5–11–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Collection; Comment Request

TITLE: Applications and Reports for Registration as a Tanner or Agent. MMPA Exemption for Alaska Natives Subsistence.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

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 Steven Springer, National

Marine Fisheries Service, Office of Enforcement, 8484 Georgia Ave., Suite 415, Silver Spring, Maryland, 20910, Telephone (301) 427–2300.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the Marine Mammal Protection Act (Act) Alaskan natives may take marine mammals only for subsistence purposes or for creating and selling native handicrafts. The possession of marine mammals so taken are limited to natives or to registered agents or tanners. Agents or tanners must apply for registration, and after registration must annually submit copies of transaction records. The information is collected to (1) grant certain members of the public an exemption under the Act to which they would not otherwise be entitled, and (2) to manage the program and provide for effective law enforcement.

II. Method of Collection

Respondents will meet the requirements set forth in the regulation. No forms will be used.

III. Data

OMB Number: 0648–0179.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Business or other for profit organizations.

Estimated Number of Respondents: 75.

Estimated Time Per Response: 2.0 hrs.

Estimated Total Annual Burden Hours: 150.

Estimated Total Annual Cost to Public: $0 (no capital expenditures).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–12604 Filed 5–11–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Final Certification for the Combined Consolidation and/or Automation and Closure of 80 Weather Service Offices (WSOs) and Consolidation of Two WSOs

ACTION: Notice.

SUMMARY: On May 6, 1998 the Under Secretary for Oceans and Atmosphere approved and transmitted 14 office consolidation, 46 office automation, and 80 office closure certifications to Congress. Pub. L. 102–567 requires that the final certifications be published in the **Federal Register**.

EFFECTIVE DATE: May 12, 1998.

ADDRESSES: Requests for copies of the final certification packages should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301–713–0300 ext. 144.

SUPPLEMENTARY INFORMATION: The two consolidation certifications for Astoria and Wichita Falls were proposed in the December 27, 1996 **Federal Register** and the 60-day public comment period closed on February 25, 1997. The remaining 80 certification packages were proposed in the January 7, 1997 **Federal Register** and the 60-day public comment period closed on March 10, 1997. Thirteen timely and three late public comments were received pertaining to WSO Astoria. Individual public comments were received pertaining to each of the following WSOs: Muskegon, Michigan; Rapid City, South Dakota; Harrisburg, Pennsylvania; Apalachicola, Florida; and Port Arthur, Texas. Two public comments were received pertaining to Athens, Georgia and one comment was received that pertained to Pennsylvania sites in general. These comments and responses are set forth here for reference.

Comment: Thirteen timely and three late comments were received from individuals in the Astoria, Oregon area. Individuals providing comments included Congresswoman Elizabeth Furse, State Representative Jackie Taylor, Senator George H. Smith, Congressman Earl Blumenauer, State Representative Tim Josi, Sheriff and Director of Emergency Services John P. Raichl, Airport Manager and Director of Operations Port of Astoria Ron Larsen, and Captain and President Columbia River Bar Pilots George A. Waer. The main concern presented by all individuals was the loss of face to face interaction with National Weather Service (NWS) personnel and the perceived inability to forecast for the ''unique'' weather conditions at Astoria from Portland.

Response: To ensure all concerns were addressed and understood, the March 1997 Modernization Transition Committee (MTC) meeting was held in Astoria. The community leaders and anyone else concerned with NWS Modernization actions had the opportunity to express their concerns to the Committee. The MTC and the public in attendance listened to both the NWS management from Portland and the public. The major topics discussed during the six-hour public comment period on the Astoria Consolidation Certification during the March 18, 1997 meeting are summarized below. A major concerns surrounding the Astoria Consolidation was the ability of the Portland NEXRAD Weather Service Forecast Office (NWSFO) to provide information on the Columbia River Bar and offshore marine environment. To address these concerns the NWS presented the following: (1) the Portland office has access to all data that the Astoria office did and access to data that the Astoria office never had; (2) the Astoria WSO never produced the marine forecasts, these products have always been issued from Seattle or Portland; (3) mariners can contact the forecasters in Portland directly by phone; and (4) an Internet home page maintained in Portland allows ready access to current weather forecasts and products for Oregon and the coastal waters.

The ability of the Portland office to recognize rapid changes in the Atoria weather was questioned. However, the infrastructure affecting this ability has only improved since services were transferred to Portland. The more timely and robust data sets of the Modernization (i.e., Doppler radar, high resolution satellite imagery and continuous surface observations) provide a superior platform for Portland to monitor rapid weather changes than was previously present in the Astoria office. The severe weather spotter volunteers previously used by Astoria are still in place, except they now call Portland when severe weather threatens.

The Portland office also employs two staff from the Astoria WSO, so ''local'' expertise is available.

Since Portland is serving a larger metropolitan area, the ability of the office to give the Astoria community attention was challenged. However, most of the forecast services for Astoria have always come from Portland. A result of the Modernization in Oregon is that the Portland area of responsibility is decreasing substantially; thus more time is being spent on Astoria than before. A Warning Coordination Meteorologist and Weather Coordination Officer are assigned to the Portland office and coordinate with the Astoria office to ensure everyone receives adequate attention. Portland has made significant service adjustments in the NOAA Weather Radio (NWR) and marine reports program to meet the Astoria community needs, and will continue to take this approach in the future. After hearing both sides, the MTC members determined that there would not be a degradation of services associated with this proposed Consolidation certification. However, the MTC recognized potential future degradation of services associated with Automation and Closure certification and made the following recommendation:

The Portland WFO will work with the Astoria WCO and the community to define the remaining concerns and develop and implement procedures to ensure degradation of service does not occur. The issues identified by the committee include, but are not limited to, the need to ensure the adequacy of ASOS augmentation, the availability of consultation concerning river bar forecasts, and the implementation of special procedures during extreme conditions. In addition, the Committee has determined that a data buoy in proximity to the bar is essential. However, the characteristics of Data Buoy 46029 are not adequate to provide needed services.

The Committee agreed to pay careful attention to future actions concerning the Astoria office and requested follow-up briefings from the NWS at future meetings. The MTC also encouraged the public to keep them advised through public comments. Both the public and the NWS management seemed satisfied with the MTC conclusion, and everyone gained a better understanding of the problems and required solutions.

Comment: Mr. Roy Wheeler, Assistant Director of the Muskegon County Emergency Services, responded to the **Federal Register** Announcement concerning the Consolidation, Automation, and Closure Certifications for Muskegon, MI. He expressed concern that: (1) he is not being served as well with the Modernized technology and organizational structure as he was with the ''old system''; (2) during severe weather he does not receive ''adequate weather reports'' and he does not receive accurate information in support of major fires and chemical spills; (3) the Amateur Radio Community is installing automated weather observing equipment; (4) while the staff at NEXRAD Weather Service Office (NWSO) Grand Rapids has been cooperative, he has lost the personal contact that he received from the ''old system''; and (5) ''on more than one occasion this past season, we were not notified when severe weather was present''.

Response: The staff at NWSO Grand Rapids have had numerous contacts with the Emergency Management Services of Muskegon County since becoming operational in August of 1995 (open houses, seminars, spotter training sessions for Muskegon County, etc.). Some of the contacts were for normal operational issues, while others were to explain modernized technology and the new organizational structure. Every Emergency Management organization in the NWSO Grand Rapids County Warning Area has access to the severe weather forecaster via toll-free 800 service. Severe weather watches and warnings are provided via NOAA Weather Wire Service (NWWS), NWR, Internet Web Page, Emergency Manager Weather Information Network (EMWIN), as well as the Law Enforcement Information Network (LEIN). During HAZMAT situations on October 16, 1996 and December 13, 1996, surface observation data (i.e. wind speed and direction, temperature/dewpoint, pressure, etc.) from the Automated Surface Observing System (ASOS) at the Muskegon Airport as well as forecasts for the local area were provided to Muskegon County Emergency Dispatch and 911 upon request. NWSO Grand Rapids and the Amateur Radio Community have entered into a cooperative arrangement to expand the use of automated surface observation equipment. In fact, the NWS has provided some funding in support of the demonstration project. The automated equipment has been purchased commercially and is similar to the automated observation equipment used by television stations, utility companies, road departments, etc. NWSO Grand Rapids has been responsible for issuing severe weather warnings for Muskegon County for only the 1996 severe weather season. During that season, 3 warnings were issued. Two of them verified with reports of large hail. The other warning had no severe weather reported. Lead times were 7 and 13 minutes. When contacted in the Fall of 1996, in association with the Confirmation of Services for the NEXRAD Doppler radar at NWSO Grand Rapids, Mr. Wheeler responded ''Warnings are as good as before, but I still wish the radar had been located at Muskegon''. Mr. Wheeler has stated on previous occasions that his primary concerns are: (1) The lack of telephone contact initiated by the staff at NWSO Grand Rapids during times of severe weather; and (2) that he would have preferred the WSR–88D be located in Muskegon instead of Grand Rapids. Technology (NWR, EMWIN, Internet, NWWS, EAS, LEIN, etc.) allows severe weather warnings and statements to be transmitted quickly to all the Emergency Managers in the County Warning Area (CWA). The Muskegon County Emergency Management Services (EMS) has access to NWWS and to NWR as well as to the LEIN. Mr. Wheeler can contact the Grand Rapids staff via the 800 service anytime, but it is not possible for the staff at NWSO Grand Rapids to make calls to each of the Emergency Management Organizations in their 28 county warning area during severe weather events. The WSR–88D at Grand Rapids is of optimum range (20–50 miles) from Muskegon County for severe weather detection. Leo Grenier, the Warning Coordination Officer (WCO) at Muskegon, has made several contacts with the Muskegon County EMS and the 911 Service, discussed their concerns, and explained the most efficient means for them to receive severe weather watches, warnings, and statements, Dan Houser, Meteorologist in Charge, and Mike Heathfield, Warning Coordination Meteorologist from Grand Rapids have also had similar conversations. Mr. Houser is organizing a follow-up meeting with the Muskegon County EMS, Muskegon County 911, and the Director of the local amateur radio club. Mr. Houser will make every attempt to satisfy the concerns of the participants. [On April 30, 1998 in a conversation between Mr. Wheeler and NWSO Grand Rapids staff, Mr. Wheeler said he was satisfied with the current services provided by NWSO Grand Rapids.]

Comment: Mr. Norman Pudwill, Director of the Fall River County Emergency Management Organization, responded to the **Federal Register** Announcement concerning the Consolidation, Automation, and Closure Certification for Rapid City. While he is ''very happy'' with the products and services provided by the new NWS

office in Rapid City, he is concerned by the lack of high quality NWR coverage in Fall River County.

Response: In a reply letter from the Central Regional Director, two alternatives requiring private/public partnerships were described for Mr. Pudwill. The NWS is not funded for NWR expansion, so it is incumbent on Mr. Pudwill to work with private groups or local government entities to acquire a transmitter/antenna system that is compatible with NWS programming consoles. Central Region Headquarters will continue to work with Mr. Pudwill in his effort to improve NWS coverage in southwest South Dakota. [Central Region Headquarters has advised Mr. Pudwill of the requirements for an additional transmitter. As of April 30, 1998, Mr. Pudwill has been unable to obtain a local funding source for the additional equipment.]

Comment: A public comment from Representative George W. Gekas raised an issue regarding deficiencies in NEXRAD coverage for the Harrisburg metropolitan region. The comment cited several documented cases of severe weather conditions which went undetected by the NEXRAD system, the most recent being in May 1996.

Response: Both the June 1995 National Research Council study, ''Toward a New National Weather Service—Assessment of NEXRAD Coverage and Associated Weather Services'' and the follow-on October 1995 ''Secretary's Report to Congress on Adequacy of NEXRAD Coverage and Degradation of Weather Services under National Weather Service Modernization for 32 Areas of Concern'' concluded that NEXRAD coverage for the Harrisburg area and associated weather services would not be degraded. Harrisburg, PA was one of 32 areas of concern established by public comments solicited by the Secretary of Commerce between November 1994 and January 1995. This information as well as the detailed findings in the Secretary's Report was conveyed to Representative Gekas in an August 26, 1996 letter from Mr. Louis J. Boezi, Deputy Assistant Administrator for Modernization of the NWS. The August 26 letter also responded with the particulars on the May 1996 severe weather event and referenced previous replies from the NWS on the earlier weather events cited by Representative Gekas.

Comment: A public comment from Larry Wells, Gulf County Emergency Management, raised the issues that the WSR–88D covering Gulf County is 60 miles away from Apalachicola and that NWSO Tallahassee (the office which is responsible for Gulf County) has almost 50 counties under its responsibility versus the two counties for which WSO Apalachicola was responsible. The comment also mentioned a severe thunderstorm warning for Gulf County on February 14, 1997 which Mr. Wells thought was issued after a storm had already passed through Gulf County.

Response: Gulf County is within overlapping coverage of both the Tallahassee and Eglin Air Force Base WSR–88Ds. Almost all of Gulf County is within 60 nm of both WSR–88Ds. Even though NWSO Tallahassee is responsible for more counties than was WSO Apalachicola, NWSO Tallahassee had a much larger staff than did WSO Apalachicola. Archived data from the Tallahassee WSR–88D indicated that the February 14, 1997 severe thunderstorm warning for Gulf County was timely.

Comment: A public comment from W.M. Timmerman, Jr. mentioned inaccurate weather information broadcast by The Weather Channel and a local TV weather reporter. Mr. Timmerman also mentioned two other instances of inaccurate weather information.

Response: The NWS is not responsible for weather information presented by The Weather Channel or local TV weather reporters. Not enough information was presented about the latter two instances in the letter to determine if the weather information was from the NWS or from local TV stations. Mr. Timmerman was contacted by NWSO Lake Charles with an invitation to visit the NWSO and become a local storm spotter/rainfall observer for the Port Arthur area.

Comment: A public comment from Barry Church, Habersham County Emergency Management, (Athens, Georgia) stated his concern over the lack of attention given by NWSO Greenville/Spartanburg to spotter reports during a February 21, 1997 tornado event in Habersham County. Mr. Church also mentioned poor NWR reception in Habersham County and his perceived lack of attention given to the six northeast Georgia counties during a statewide tornado drill on February 26, 1997.

Response: NWSO Greenville/Spartanburg's log for February 21, 1997 indicated that a tornado watch which included Habersham County was issued at 2:28 PM EST. NWSO Greenville/Spartanburg issued a Severe Thunderstorm Warning for Habersham County at 2:51 PM EST which was valid until 3:30 PM EST. Habersham County was advised by telephone of the warning at 2:53 PM. Habersham County called NWSO Greenville/Spartanburg at 3:09 PM EST with a report of damaging winds county-wide with the first damage having occurred at about 3:00 PM (some of the damage was later identified as F–1 tornado damage). At 3:28 PM EST NWSO Greenville/Spartanburg received a call from Habersham County with three reports of funnel clouds just north of Cornelia. However, by this time the line of storms had already passed through Habersham County. Poor NWR reception in Habersham County has been an ongoing problem. NWSO Greenville/Spartanburg has had recent discussions with officials in Graham County, North Carolina concerning a possible new NWR transmitter in that county financed by Natahala Power Company. The NWR signal from such a transmitter should reach into Habersham County. If a repeater is necessary for reception in Habersham County, Mr. Church has offered to donate a tower site. Habersham County was included in the Georgia statewide tornado drill held on February 26, 1997. NWSO Greenville/Spartanburg issued a practice warning during the drill which included Habersham County. NWSO Greenville/Spartanburg verified through a telephone call that Habersham County received the practice warning.

Comment: A public comment from Peggy Hewatt, Barrow County Emergency Management, questioned whether NWSFO Atlanta could communicate with her office as well as WSO Athens had in the past.

Response: Ms. Hewatt gave no specific instance where NWSFO Atlanta had failed to communicate weather information to Barrow County and even stated that her comment ''does not mean that Peachtree City is not doing a fine job * * *'' NWSFO Atlanta's area of responsibility is larger than that which WSO Athens had and it may be that NWSFO Atlanta may not be able to use the telephone to communicate with each individual county as often as WSO Athens did in the past. However, communication methods such as NWR, NWWS, and EMWIN are available for the receipt of weather information.

Comment: A public comment from Senator Arlen Specter raised an issue regarding the reliance on stand-alone ASOSs at Lehigh Valley Airport (Allentown, PA) specifically and throughout Pennsylvania generally. The comment stated ''since the start of ASOS operations on November 12, 1996, Lehigh Valley International Airport has been forced to deal with numerous discrepancies in determining visibility and types of precipitation at the airport.'' The comment also stated

that Bradford Regional Airport had experienced several ASOS power losses.

Response: None of the NWS-sponsored ASOSs located at WSOs in Pennsylvania are stand-alone systems. All of these are classified as Federal Aviation Administration (FAA) service level C or higher which means that humans will be present to provide augmentation and back-up for the ASOSs. Augmentation means adding parameters that ASOS does not measure. Back-up means measuring parameters in the event of an ASOS failure or if the ASOS measurement is not representative of the meteorological conditions. Augmentation and back-up is done either by FAA controllers or a contractor. ASOS operations at Lehigh Valley International Airport did not start on November 12, 1996. This ASOS was commissioned on November 1, 1995 after a pre-commissioning checkout period to determine that the system was performing reliably and correctly. Upon commissioning, NWS employees at WSO Allentown performed required augmentation and back-up of the ASOS until November 12, 1996 when responsibility for this was transferred to the FAA. FAA was planning to provide the augmentation and backup at service level C by air traffic controllers at the airport, however, the Lehigh Valley International Airport Authority sponsored a contract to provide level B service. The Bradford Regional Airport is an FAA-sponsored expansion site. This means that prior to the ASOS being commissioned there on December 2, 1996, this airport had no round-the-clock surface observation.

The MTC considered and endorsed these certifications at its March 18, 1997 meeting, concluding that these certifications would not result in any degradation of service.

(1) Astoria, OR—Consolidation
(2) Wichita Falls, TX—Consolidation
(3) Omaha, NE—Consolidation/Closure
(4) Sacramento, CA—Consolidation/Closure
(5) Akron, OH—Automation/Closure
(6) Allentown, PA—Automation/Closure
(7) Atlanta, GA—Automation/Closure
(8) Atlantic City, NJ—Automation/Closure
(9) Baltimore, MD—Automation/Closure
(10) Baton Rouge, LA—Automation/Closure
(11) Chicago, IL—Automation/Closure
(12) Columbia, MO—Automation/Closure
(13) Columbus, OH—Automation/Closure
(14) Dayton, OH—Automation/Closure
(15) Daytona Beach, FL—Automation/Closure
(16) Detroit, MI—Automation/Closure
(17) El Paso, TX—Automation/Closure
(18) Flint, MI—Automation/Closure
(19) Knoxville, TN—Automation/Closure
(20) Lubbock, TX—Automation/Closure
(21) Lynchburg, VA—Automation/Closure
(22) Mansfield, OH—Automation/Closure
(23) Moline, IL—Automation/Closure
(24) Montgomery, AL—Automation/Closure
(25) Norfolk, VA—Automation/Closure
(26) Oklahoma City, OK—Automation/Closure
(27) Raleigh, NC—Automation/Closure
(28) Richmond, VA—Automation/Closure
(29) Roanoke, VA—Automation/Closure
(30) San Antonio, TX—Automation/Closure
(31) San Diego, CA—Automation/Closure
(32) Sioux City, IA—Automation/Closure
(33) Stockton, CA—Automation/Closure
(34) Toledo, OH—Automation/Closure
(35) Tulsa, OK—Automation/Closure
(36)West Palm Beach, FL—Automation/Closure
(37) Wilke-Barre, PA—Automation/Closure
(38) Williamsport, PA—Automation/Closure
(39) Wilmington, DE—Automation/Closure
(40) Youngstown, OH—Automation/Closure
(41) Asheville, NC—Consolidation/Automation/Closure
(42) Augusta, GA—Consolidation/Automation/Closure
(43) Cincinnati, OH—Consolidation/Automation/Closure
(44) Fargo, ND—Consolidation/Automation/Closure
(45) Greensboro, NC—Consolidation/Automation/Closure
(46) Lewiston, ID—Consolidation/Automation/Closure
(47) Muskegon, MI—Consolidation/Automation/Closure
(48) Rapid City, SD—Consolidation/Automation/Closure
(49) Savannah, GA—Consolidation/Automation/Closure
(50) Springfield, IL—Consolidation/Automation/Closure
(51) Apalachicola, FL—Closure
(52) Athens, GA—Closure
(53) Austin, TX—Closure
(54) Bakersfield, CA—Closure
(55) Billings, MT—Closure
(56) Bristol, TN—Closure
(57) Cape Hatteras, NC—Closure
(58) Columbus, GA—Closure
(59) Del Rio, TX—Closure
(60) Eugene, OR—Closure
(61) Fort Myers, FL—Closure
(62) Galveston, TX—Closure
(63) Grand Island, NE—Closure
(64) Harrisburg, PA—Closure
(65) Helena, MT—Closure
(66) Klamath Falls, OR—Closure
(67) Los Angeles, CA—Closure
(68) Macon, GA—Closure
(69) New Orleans, LA—Closure
(70) New York City, NY—Closure
(71) Olympia, WA—Closure
(72) Orlando, FL—Closure
(73) Pensacola, FL—Closure
(74) Phoenix, AZ—Closure
(75) Port Arthur, TX—Closure
(76) Reading, PA—Closure
(77) Reno, NV—Closure
(78) Rosewell, NM—Closure
(79) Salem, OR—Closure
(80) St. Louis, MO—Closure
(81) Waco, TX—Closure
(82) Winslow, AZ—Closure

After consideration of the public comments received and the MTC endorsements, the Under Secretary for Oceans and Atmosphere approved these 82 combined consolidation and/or automation and closure certifications and transmitted them to Congress on May 6, 1998. Certification approval authority was delegated from the Secretary to the Under Secretary in June 1996. The NWS is now completing the certification requirements of Pub. L. 102–567 by publishing the final consolidation and/or automation and closure certifications in the **Federal Register**.

Dated: May 7, 1998.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 98–12605 Filed 5–11–98; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), Department of the Army, DOD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a 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 July 13, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Military Traffic Management Command, (MTOP–Q), 6511 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: (Frederick Wirtz). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

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 Department of the Army Reports clearance officer at (703) 614–0454.

Title: Freight Carrier Qualification Statement/Required Documents, OMB Number 0702–0088, MT Form 377–R, MT Form 380–R, MT Form 381–R

Needs and Uses: Information is vital in determining capability to perform quality service transporting DoD freight. Carriers will furnish MTMC information to determine if individuals or associated companies are affiliated with government-debarred carriers and will also reflect carrier's financial stability.

Affected Public: Business or other for profit.

Annual Burden Hours: 8,500.

Number of Respondents: 1,000.

Respondes Per Respondent: 1,000.

Average Burden Per Response: 8.5 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The Carrier Qualification Program (CQP) is designed to protect the interest of the Government and to ensure that the Department of Defense (DOD) deals with responsible carriers having the capability to provide quality and dependable service. This program became necessary because deregulation of the motor carrier industry brought an influx of new carriers into DOD's transportation market, many of which are unreliable or do not have capability to provide consistent dependable transportation services.

Gregory D. Showalter

Army Federal Register Liaison Officer

[FR Doc. 98–12569 Filed 5–11–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for the BRAC 95 Final Environmental Assessment (EA) and Finding of No Significant Impact for the Disposal and Reuse of the Ground-to-Air Transmission and Receiving/Surface-to-Air Guidance and Equipment (GATR/SAGE) Control Site of the Charles E. Kelly Support Facility, Oakdale, PA

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and the President's Council on Environmental Quality (CEQ), the Army has prepared an environmental assessment for the disposal and reuse of the GATR/SAGE control site of the Charles E. Kelly Support Facility, Oakdale, Pennsylvania. In accordance with Public Law 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990 (BRAC), the Defense Base Closure and Realignment Commission recommended the disposal of two of the five parcels which make up the Charles E. Kelly Support Facility, Oakdale, Pennsylvania. As a result of this BRAC-mandated closure, the two parcels selected by the Army for closure are the GATR/SAGE parcel (covered by this EA) and the Irwin Annex parcel in Irwin, Pennsylvania. Due to the distance between these parcels, it was determined that the Irwin Annex parcel should be addressed by a separate EA now under preparation.

The Final EA for the GATR/SAGE parcel evaluates the environmental impacts of the disposal and subsequent reuse of the 6 acres. Alternatives examined in the EA include encumbered disposal of the property, unencumbered disposal of the property, and no action. Encumbered disposal refers to transfer or conveyance of property having restrictions on subsequent use as a result of any Army-imposed or legal restraint. Under the no action alternative, the Army would not dispose of property but would maintain it in caretaker status for an indefinite period.

While disposal of the GATR/SAGE parcel is the Army's primary action, the EA also analyzes the potential environmental effects of reuse as a secondary action by means of evaluating intensity-based reuse scenarios. The Army's preferred alternative for disposal of the GATR/SAGE parcel is encumbered disposal, with encumbrances pertaining to the possible presence of lead-based paint and asbestos-containing material, and the requirement for a right of reentry for environmental clean-up.

DATES: Written public comments must be submitted on or before June 11, 1998. The Army will not initiate the proposed action for 30 days following completion of the EA and publication of this Notice of Availability.

ADDRESSES: The Final EA is available for review at the Charles E. Kelly Support Facility Oakdale, PA, and the Collier Township Local Reuse Authority, Collier Township Municipal Building, 2418 Hilltop Road, Presto, PA. A copy of the final EA may be obtained by writing to Dr. Neil Robison, U.S. Army Corps of Engineers, Mobile District (ATTN: CESAM–PD–EI), 109 St. Joseph Street, Mobile, Alabama 36602, or by facsimile at (334) 690–2605. Written comments may be submitted to Dr. Robison at the same address.

SUPPLEMENTARY INFORMATION: A Notice of Intent (NOI) declaring the Army's intent to prepare an EA for the disposal and reuse of the GATR/SAGE parcel was published in the **Federal Register** on September 22, 1995 (60 FR 49264).

Dated: May 6, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 98–12560 Filed 5–11–98; 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 Chemical and Biological Defense Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1), announcement is made of the availability for licensing of the following U.S. Patents for nonexclusive, exclusive or partially exclusive licensing. All of the patents listed below have been assigned to the United States

of America as represented by the Secretary of the Army, Washington, DC.

''Controlled Multi-Purpose Chemical Agent Vapor Generator System'', U.S. Patent 5,728,927, Issued 17 Mar 98

A system for generating a chemical agent airstream for testing chemical agent detection devices. The system includes subsystems for generating the chemical agent airstream, a parallel subsystem for generating an airstream for preconditioning the detection device and a subsystem for generating an interferant airstream for further determining the reliability of the detection device.

''Super Toxic Analytical Glove Box System'', U.S. Patent 5,730,765, Issued 24 Mar 98

The field of the invention is the detection and analysis of toxic matter. More particularly, the invention relates to a portable analytical glove box system used to analyze highly toxic chemical samples.

''Method of Measuring the Decomposition of a Gaseous Material Under Controlled Temperature and Time Conditions'', U.S. Patent 5,719,323 issued 17 Feb 98

A method and apparatus for measuring the decomposition of a gaseous material under controlled temperature and time conditions. The method is particularly useful for testing the decomposition of pyrotechnic compositions useful in grenades.

''Oxidative Detoxification of Phosphonothiolates and Phosphonothioic Acids'', U.S. Patent 5,710,358 Issued 20 Jan 98

A method for detoxifying substituted and unsubstituted phosphonothiolates and phosphonothioic acids.

''Panoramic Infrared-Imaging Spectroradiometer with Reverse Phase Modulation Beam Broadcasting'', U.S. Patent 5,708,503, Issued 13 Jan 98

A spectroradiometer for analyzing chemicals located within a panorama comprised of hyperboloid mirrors for directing light received from the panorama through a collimator and via an interferometer to an array of detectors, the signals from which are subjected to parallel discrete Fourier transform and parallel spectra pattern recognition systems. Transmissions of data is achieved by using an interferometer having modulated photoelastic modulators positioned between linear polarizers, directing laser light through the interferometer to the hyperboloid mirrors and providing a receiver comprised of a linear polarizer, a detector, a plurality of band pass amplifiers, and a processor for recognizing the different patterns in the output of the amplifier that result from rotating at least one of the photoelastic modulators and polarizers to a different position.

''Thermite Destructive Device'', U.S. Patent 5,698,812, Issued 16 Dec 97

This invention relates to destructive devices using thermite reactions and in particular concerns improved means of utilizing such reactions in the destruction of metallic targets.

''Multifuel Combustion Engine and Use in Generating Obscurant Smoke'', U.S. Patent 5,665,272, Issued 9 Sep 97

This invention pertains generally to the field of combustion engines and more particularly to combustion engines capable of operating on diverse fuels. In general, modifications are made to a combustion engine so that it is capable of operating on diverse fuels such as gasoline, diesel and kerosene.

''Frustum Layered Canister'', U.S. Patent 5,660,173, Issued 26 Aug 97

This invention is a design improvement of the cylindrical canister or respirator filter that is used in conjunction with a gas mask for individual protection against respiratory hazards. This invention improved the problem of sacrificing protection time, against chemical and biological warfare agents, for pressure drop, in canister design.

''Earth Monitoring Satellite System with Combined Infrared Interferometry and Photopolarimetry for Chemical and Biological Sensing'', U.S. Patent 5,659,391, Issued 19 Aug 97

Apparatus for remotely sensing chemical and biological material which produces interferograms and scattergrams on an array of light detectors, and provides a means for determining the distance between the apparatus and an area under examination.

''Neural Network Computing System for Pattern Recognition of Thermoluminescence Signature Spectra and Chemical Defense'', U.S. Patent 5,631,469, Issued 20 May 97.

The present invention is related to the use of a neural network computing system recognizing the thermoluminescence signature spectra of chemical compounds and finds particular utility in the recognition of nerve and blister agent compounds.

''Competitor Primer Asymmetric Polymerase Chain Reaction'', U.S. Patent 5,627,054, Issued 6 May 97

This invention relates generally to the detection of nucleic acid sequences by polymerase chain reaction (PCR). More particularly, this invention relates to a process for efficiently producing single-stranded PCR products in an amount proportional to the amount of a target nucleic acid sequence present in a sample being analyzed.

''Apparatus and Method for Measurement of Offgassing Rate'', U.S. Patent 5,606,111, Issued 25 Feb 97

This invention relates generally to testing apparatus and more particularly to test cells for measuring the offgasses emitted from a test sample.

FOR FURTHER INFORMATION CONTACT: Mr. John Biffoni, Patent Attorney, U.S. Army CBDCOM, AMSCB–GC, APG, MD 21010–5423, Phone: (410) 671–1158.

SUPPLEMENTARY INFORMATION: None.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 98–12506 Filed 5–11–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice

AGENCY: U.S. Army Training and Doctrine Command (TRADOC).

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following meeting:

Name of Committee: Distance Learning/Training Technology Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: 27–29 May 1998.

Place: Fort Eustis, Virginia and The Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia 23185–3536.

Time: 1300–1630 on 27 May 1998; 0830–1630 on 28 May 1998; and 0830–1130 on 29 May 1998.

Proposed Agenda: Review and discussion of the status of Army Distance Learning and Classroom XXI.

Purpose of the Meeting: The members will advise the Assistant Deputy Chief of Staff (ADCST), HQ Training and Doctrine Command (TRADOC), on matters pertaining to education and training technologies to be used for

Army Distance Learning and resident instruction.

FOR FURTHER INFORMATION CONTACT: All communications regarding this subcommittee should be addressed to Dr. Millie Abell, at Commander, Headquarters TRADOC, ATTN: ATTG–CF (Dr. Millie Abell), Fort Monroe, VA 23651–5000; telephone number (757) 728–5530.

SUPPLEMENTARY INFORMATION: Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance will be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend any of the 27–29 May 1998 sessions. Contact Dr. Abell (757–728–5530) for meeting agenda and specific locations.

Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentation or oral statements at the meeting.

Gregory D. Showalter,

Army Federal Register Liasion Officer.

[FR Doc. 98–12570 Filed 5–11–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Non-Exclusive, Partially Exclusive or Exclusive Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Patent Application entitled ''Fluidtight Door Gasket'', Patent Number 5,553,871, is assigned to the United States Government and is available for licensing from the Department of the Navy.

DATES: A briefing by the inventors describing the capabilities created by this technology will be given at Carderock on July 15, 1998 at 10:00 am. The briefing will also cover the technology transfer and licensing process. Any organization interested in attending this briefing should provide notice of intent to attend by July 1, 1998.

ADDRESSES: The briefing will be held at the Naval Surface Warfare Center, Carderock Division, 9500 MacArthur Blvd., Bethesda, MD 20817–5700.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Bloomquist, Technology Transfer Manager, Naval Surface Warfare Center, Carderock Division, Code 0117, 9500 MacArthur Blvd., Bethesda, MD 20817–5700, telephone (301) 227–4299, fax (301) 227–2138 or email bloomqui@oasys.dt.navy.mil.

SUPPLEMENTARY INFORMATION: This gasket invention is uniquely proportioned to improve its sealing properties for use with fluidtight doors and hatches. The gasket is particularly long lived and resists high temperature damage, a significant safety feature. Because the gasket resists hardening and cracking, it requires far less replacement maintenance. The gasket, made of silicone rubber, is softer and therefore easier to install, providing a substantial cost saving over traditional neoprene gaskets. The invention covers a variety of fluidtight door gasket technologies and technical arts as well as other applications, including watertight electrical enclosures.

Authority: 35 U.S.C. 209, 37 CFR Part 404.

Dated: May 1, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–12501 Filed 5–11–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

ADDRESSES: Requests for copies of the patent applications cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, and must include the Patent Application Serial Number.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

SUPPLEMENTARY INFORMATION: The list of available Patent Applications is as follows:

Patent Application Serial No. 08/941,933 entitled ''Platform Independent Computer Interface Software Responsive to Scripted Commands''.

Patent Application Serial No. 08/941,257 entitled ''Computer System Providing Platform Independent Universal Client Device''.

Patent Application Serial No. 08/941,256 entitled ''Operating Methods for Computer System Providing Platform Independent Universal Client Device''.

Patent Application Serial No. 08/941,255 entitled ''Universal Client Device for Interconnecting and Operating any Two Computers''.

Patent Application Serial No. 08/941,258 entitled ''Method for Operating a Universal Client Device Permitting Interoperation Between any Two Computers''.

Patent Application Serial No. 08/941,667 entitled ''A Universal Client Device Permitting a Computer To Receive and Display Information from Several Special Applications Simultaneously''.

Patent Application Serial No. 08/941,544 entitled ''Operating Methods for a Universal Client Device Permitting a Computer to Receive and Display Information from Several Special Applications Simultaneously''.

Patent Application Serial No. 08/941,543 entitled ''Robust Computer Systems Permitting Autonomously Switching Between Alternative Redundant Components''.

Patent Application Serial No. 08/941,545 entitled ''Operating Methods for Robust Computer Systems Permitting Autonomously Switching Between Alternative Redundant Components''.

Patent Application Serial No.08/941,931 entitled ''Methods Permitting Rapid Generation of Platform Independent Software Applications Executed on a Universal Client Device''.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: April 30, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–12504 Filed 5–11–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; MedAcoustics, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to MedAcoustics, Inc., a revocable, nonassignable, exclusive license in the

United States, to practice the Government-owned inventions described in U.S. Patent No. 5,617,869 entitled ''A Device and Method for Locating Flow Blockage in a Three-Dimensional Object,'' and U. S. Patent No. 5,727,561 entitled ''Method and Apparatus for Non-Invasive Detection and Analysis of Turbulent Flow in a Patient's Blood Vessels'' in the field of medical devices.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than July 13, 1998.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Authority: 35 U. S. C. 207, 37 CFR Part 404.

Dated: April 30, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–12503 Filed 5–11–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Prime Capital Group, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Prime Capital Group, Inc., a revocable, nonassignable, exclusive license to practice, in certain foreign countries, the Government-owned invention described in U.S. Patent Application Serial No. 08/670,909 entitled ''Non-Thermal Process for Annealing Crystalline Materials,'' filed June 26, 1996, in the fields of all steps related to manufacture of semiconductors and related devices. An exclusive license to practice this invention in the United States in the same fields of use has already been granted to Prime Capital Group, Inc.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than July 13, 1998.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Authority: 35 U. S. C. 207, 37 CFR Part 404.

Dated: April 30, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–12502 Filed 5–11–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 13, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., 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 Acting 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 6, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the General Counsel

Type of Review: Revision.

Title: General Education Provisions Act (GEPA) Section 427 Guidance for All Grant Applications

Frequency: Once only per application for new awards

Affected Public: Businesses or other for-profits; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs

Reporting Burden and Recordkeeping:

Responses: 5,125

Burden Hours: 7,688

Abstract: In compliance with Section 427 of the General Education Provisions Act, as amended by Public Law No. 103–382, all applicants for grant awards made by the Department of Education are required to describe in their applications the steps they propose to take to ensure equitable access to, and equitable participation in, the proposed grant activities conducted with federal

funds. The Department has developed a single document that provides common guidance for all competitive and formula grant applicants on how they can meet this requirement. The language in this common guidance document is nearly identical to language that the Department has previously used in separate guidance documents applicable to discretionary grant applicants and to States that have previously applied for formula grants on the basis of consolidated plans available under Title XIV of the Elementary and Secondary Education Act.

[FR Doc. 98–12461 Filed 5–11–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting 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 June 12, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, 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, S.W., 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 Acting 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: May 5, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Extension.

Title: Integrated Postsecondary Education Data System (IPEDS).

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Reporting Burden and Recordkeeping:

Responses: 10,036.

Burden Hours: 277,809.

Abstract: IPEDS constitutes the core of NCES postsecondary education data collection program and helps NCES meet its mandate to report full and complete statistics on the condition of postsecondary education in the U.S. IPEDS provides data on a broad range of topics including postsecondary enrollments, faculty and staff, programs, degrees awarded, numbers and types of institutions, finances and information on time to degree/graduation rates. Because IPEDS is a system of surveys, it makes it possible to develop a more comprehensive perspective of postsecondary education than any single component could provide.

[FR Doc. 98–12368 Filed 5–11–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A–4]

Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998.

Purpose of Program: This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973, as amended (Act), consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living (IL) services.

Eligible Applicants: To be eligible to apply, an applicant must be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency as defined in 34 CFR 364.4(b); have the power and authority to meet the requirements in 34 CFR 366.2(a)(1); be able to plan, conduct, administer, and evaluate a center consistent with the requirements of section 725(b) and (c) of the Act and Subparts F and G of 34 CFR Part 366; and either—(1) not currently be receiving funds under Part C of Chapter 1 of Title VII of the Act; or (2) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) in a different geographical location. Eligibility under this competition is limited to entities that meet the requirements of 34 CFR 366.24 and propose to serve areas that are unserved or underserved in the States and territories listed under ''Available Funds.''

SUPPLEMENTARY INFORMATION: The current grantee under this program that is eligible for a grant under the statute has withdrawn its application. Therefore, the funds are available to other applicants.

Deadline For Transmittal of Applications: June 30, 1998.

Deadline for Intergovernmental Review: August 29, 1998.

Applications Available: May 14, 1998.

Available Funds: $93,421 as distributed in the following manner: Maryland—$93,421.

Estimated Number of Awards: 1 per eligible State.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 364 and 366.

For Applications Contact: The Grants and Contracts Services Team (GCST), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3317, Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–8351. The preferred method for requesting applications is to FAX your request to (202) 205–8717. 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.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Merri Pearson, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3326 Switzer Building, Washington, D.C. 20202–2741. Telephone: (202) 205–8484. Individuals who use a TDD may call the TDD number at (202) 205–8243.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at any of the previous sites. If you have questions about using the pdf, please call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. These documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 721(c) and (e) and 796(f).

Dated: May 7, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–12573 Filed 5–11–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATES: June 18 and 19, 1998.

TIME: June 18, 2:30 p.m. to 5 p.m.; June 19, 9 a.m. to 4 p.m.

LOCATION: Room 100, 80 F St., NW., Washington, DC 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208–7564. Tel.: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma Leenhouts@ed.gov, or nerppb@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The meeting is open to the public. On June 18, the Board will hear reports from its Committee on Research, Development, and Dissemination, and receive a briefing about the ERIC Clearinghouse competition. On June 19, the Board will hear reports from the National Research Institutes of the Office of Educational Research and Improvement, and from its Program and Standards Committees. A final agenda will be available from the Board office on June 10, 1998.

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW., Washington, DC 20208–7564.

Dated: May 8, 1998.

Eve M. Bither,

Executive Director.

[FR Doc. 98–12521 Filed 5–11–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC98–555–001–FERC–555]

Information Collection Submitted for Review and Request for Comments

May 6, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received public comments from two entities in response to an earlier **Federal Register** notice of December 10, 1997 (62 FR 65071) and has replied to these comments in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission, Desk Officer, 726 Jackson

Place, N.W. Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC–555 ''Preservation of Records of Public Utilities and Licensees, Natural Gas and Oil Pipeline Companies.''

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: OMB No. 1902–0098. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no substantive changes to the existing collection. There is an increase in the reporting burden due to an increase in the number of respondents participating in industry and consequently subject to the Commission's jurisdiction. This increase reflects an adjustment to the Commission's regulatory burden for this information collection requirement. These are mandatory collection requirements.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA); the Natural Gas Act (NGA); and the Interstate Commerce Act (ICA). These statutes provide the Commission with the authority and responsibility for policing jurisdictional companies' to ensure compliance with the Acts' requirements. The information retained under Commission identifier FERC–555 are records maintained by the regulated companies in accordance with Schedules provided in the Commission's regulations in 18 CFR Parts 125, 225 and 356. The companies will use the regulatory requirements to determine the minimum length of time to maintain their records. These records are retained to be used during financial/compliance audits of jurisdictional companies forming the basis of the audit staff's opinion regarding (1) the reliability of the financial data filed with Commission by companies, (2) the extent of conformance by the companies to the Uniform System of Accounts (3) compliance with the Commission's regulations for rate filings and reports.

Respondent Description: The respondent universe currently comprises on average, 515 recordkeepers subject to the Commission's regulations.

6. Estimated Burden: 1,236,000 total burden hours, 515 respondents, 1 response annually, 2,400 hours per response (average).

7. Estimated Cost Burden to Respondents: 1,236,000 hours ÷ 2,088 hours per year × $110,000 per year = $65,049,236, average cost per respondent = $126,309.

Statutory Authority: Sections 301(a), 304(a), 309, of the Federal Power Act (FPA) 16 U.S.C. 792–828o; Sections 8(a), 10(a), 16 of the Natural Gas Act (NGA), 15 U.S.C. 717–717w; and Sections 19 and 20 of the Interstate Commerce Act (ICA), 49 U.S.C. 20.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12545 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–42–000]

Algonquin LNG, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on May 1, 1998, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 200. The proposed effective date of this tariff sheet is June 1, 1998.

ALNG states that the purpose of this filing is to update its Index of Customers as of June 1, 1998.

ALNG states that copies of its filing have been served on all affected customers of ALNG and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12473 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–99–006]

Algonquin LNG, Inc.; Notice of Compliance Filing

May 6, 1998.

Take notice that on May 1, 1998, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective June 1, 1998:

Second Revised Sheet No. 31
Third Revised Sheet No. 51
Second Revised Sheet No. 83

ALNG asserts that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's Letter Order issued on July 3, 1997, in Docket Nos. RP97–90–001 and RP97–99–002. ALNG states that the above listed tariff sheets are being filed to bring ALNG's FERC Gas Tariff into compliance with Gas Industry Standards Board (GISB) Standards 4.3.6, 4.3.7, and 5.4.13 through 5.4.16.

ALNG states that copies of this filing were served on firm customers of ALNG and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12474 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–212–000]

ANR Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

May 6, 1998.

Take notice that on May 1, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to be effective June 1, 1998:

Twenty-second Revised Sheet No. 17
Third Revised Sheet No. 140

ANR states that this filing represents ANR's annual report of the net revenues attributable to the operation of its cashout program. This filing covers the period January 1, 1997 to December 31, 1997. The Net Cashout Activity for the 12-month period ending December 31, 1997 resulted in a net balance of ($1,461,898). This amount is added to the balance of ($3,162,904) from ANR's previous cashout report plus carrying charges of ($542,459), for a cumulative net cashout balance of ($5,167,261). ANR has computed the cashout price surcharge pursuant to Section 15.5(b) of the General Terms & Conditions of its tariff. The cashout price surcharge of $0.1211 will be subtracted from the cashout price where excess quantities are being cashed out (purchased), and will be added to the cashout price where deficient quantities are being cashed out (sold), consistent with ANR's approved tariff mechanism.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12488 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–206–000]

Atlanta Gas Light Company; Notice of Filing

May 6, 1998.

Take notice that on May 1, 1998, Atlanta Gas Light Company (Atlanta) tendered for filing a request for limited waivers and clarification of certain Commission regulations and policies and pipeline tariff provisions related to transportation services provided to Atlanta by interstate pipelines.

Atlanta states that on November 26, 1997, it gave notice of its election to become an electing distribution company pursuant to the Georgia Natural Gas Competition and Deregulation Act (S.B. 215), and that proceedings on Atlanta's application to unbundle its distribution services are underway at the Georgia Public Service Commission (GPSC) in GPSC Docket No. 8390–U. Atlanta states that the request for limited waivers and clarification is necessary to enable Atlanta to unbundle its system in the manner contemplated by S.B. 215.

Atlanta further states that copies of the filing have been mailed to all parties in GPSC Docket No. 8390–U, and GPSC, and each of Atlanta's interstate pipeline suppliers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12481 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1417–001 and Project No. 1835–013]

Central Nebraska Public Power and Irrigation District and Nebraska Public Power District; Notice of Public Briefing

May 6, 1998.

Parties to this relicensing proceeding recently advised the Commission that they anticipate filing a comprehensive settlement agreement on May 15, 1998. In response to a request by the U.S. Department of the Interior (Interior), the Commission will host a public briefing on the settlement agreement. The briefing will be held on Tuesday, May 19, 1998, at 1:00 p.m., in the Commission Meeting Room, located on the second floor of 888 First Street, N.E., Washington, D.C. Interior and other key parties to the settlement agreement will brief the Commissioners on the major provisions of the settlement agreement and its relationship to the Platte River Cooperative Agreement, and will answer any questions. This portion of the briefing will take approximately one hour. After a short recess, the briefing will continue with more detailed presentations and discussions with Commission staff.

The briefing will be recorded by a stenographer, and the transcript will become part of the Commission's public record of this proceeding. Anyone wishing to receive a copy of the transcript of the briefing may contact Ace Federal Reporting Company by calling (202) 347–3700 or by writing to 1120 G Street, N.W., Washington, D.C. 20005.

For further information, please contact Frankie Green at (202) 501–7704.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12546 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–209–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on May 1, 1998, Columbia Gas Transmission Corporation

(Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of June 1, 1998:

Twenty-seventh Revised Sheet No. 25
Twenty-seventh Revised Sheet No. 26
Twenty-seventh Revised Sheet No. 27
Twenty-seventh Revised Sheet No. 28
Eleventh Revised Sheet No. 30A
Eleventh Revised Sheet No. 31

Columbia states that the purpose of this filing is to make a downward adjustment to its Rate Schedule FTS base rate demand determinants as provided for in Stipulation II, Article III, Section H(2) of the Docket No. RP95–408 et al. rate case settlement. The settlement provision authorizes such adjustments associated with contract demand reductions recognizing the loss of direct firm transportation deliveries to customers from gathering facilities sold since the settlement up to 15,000 Dth/day. This filing reflects the loss in firm transportation demand determinants (and associated commodity determinants) for two Rate Schedule FTS customers.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12484 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2075–000]

CSW Energy Services, Inc.; Notice of Issuance of Order

May 6, 1998.

CSW Energy Services, Inc. (ESI), a power marketer, is wholly-owned by Central & Southwest Corporation, which owns public utilities engaged in the generation, transmission, distribution and sale of electric power at wholesale and retail. ESI filed an application for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, ESI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by ESI. On May 1, 1998, the Commission issued an Order Conditionally Accepting For Filing Proposed Tariff For Market Based Power Sales And Reassignment of Transmission Capacity And Directing Filing Of Revised Codes Of Conduct (Order), in the above-docketed proceeding.

The Commission's May 1, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (G), (H), and (J):

(G) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by ESI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(H) Absent a request to be heard within the period set forth in Ordering Paragraph (G) above, ESI is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of ESI, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(J) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of ESI's issuances of securities or assumptions of liabilities* * *.

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is June 1, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12487 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–017]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on May 1, 1998, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet to become effective May 1, 1998:

Fifteenth Revised Sheet No. 30
Eighth Revised Sheet No. 31

El Paso states that the above tariff sheets are being filed to implement six negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12476 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–346–000, TM97–3–24–000, and RP98–123–000]

Equitrans, L.P.; Notice of Informal Settlement Conference

May 6, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, May 14, 1998, at 10:00 a.m., and will continue on Friday, May 15, 1998, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Irene E. Szopo at (202) 208–1602 or Robert A. Young at (202) 208–5705.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12477 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–156–001]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on April 30, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Original Sheet Nos. 63B, 63C, and 63D proposed to be effective May 1, 1998.

Great Lakes states that the tariff sheets are being filed to comply with the Commission's Order of April 22, 1998, in the above-named proceeding. 83 FERC ¶ 61,064 (1998). The order required Great Lakes to submit tariff sheets reflecting the necessary modifications to sheets filed by Great Lakes on March 3, 1998, to implement a new Market Center Services Rate Schedule (Rate Schedule MC).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12479 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2076–000]

Hawkeye Power Partners, L.L.C.; Notice of Issuance of Order

May 6, 1998.

Hawkeye Power Partners, L.L.C. (Hawkeye Power), an affiliate of Florida Power & Light Company, filed an application for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Hawkeye Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Hawkeye Power. On April 30, 1998, the Commission issued an Order Conditionally Accepting For Filing Market-Based Rates (Order), in the above docketed proceeding.

The Commission's April 30, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Hawkeye Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Hawkeye Power is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Hawkeye Power, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Hawkeye Power's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 1, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12489 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–41–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on April 30, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective June 1, 1998:

Second Revised Sheet No. 3
First Revised Sheet No. 3A
First Revised Sheet No. 3B

Panhandle states that the purpose of this filing, made in accordance with Section 154.106 of the Commission's Regulations is to revise the system map to reflect changes in the pipeline facilities and the points at which service is provided. Specifically, the maps reflect the abandonment of the N.E. Oklahoma facilities as authorized in Docket Nos. CP96–567–000 (77 FERC ¶ 61.149) and CP93–505–000 (70 FERC ¶ 61,297), the abandonment of the North Line lateral in Michigan as authorized in Docket No. CP96–709–000 (80 FERC ¶ 61,193) and new delivery points in Kanasa (CP96–279–000, 77 FERC

§ 61,120 and CP97–767–000), Illinois (CP96–793–000), Ohio (CP97–155–000) and Michigan (CP96–709–000, 80 FERC ¶ 61,193).

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12472 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–211–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on May 1, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective June 1, 1998.

Panhandle states that it is proposing to suspend the $0.01 per Dt. Miscellaneous Stranded Transportation Cost Reservation Surcharge applicable to Rate Schedules FT, EFT and LFT and the 0.06¢ per Dt. Miscellaneous Stranded Transportation Cost Volumetric Surcharge applicable to Rate Schedule SCT in Docket No. RP98–75–000. Panhandle will file a reconciliation report as soon as practicable and provide invoice credits, with carrying charges, to applicable shippers for any excess collections through May 31, 1998.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12485 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–210–000]

Questar Pipeline Company; Notice of Tariff Filing

May 6, 1998.

Take notice that on May 1, 1998, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised sheet No. 71 and First Revised Sheet No. 71A, to be effective June 1, 1998.

Questar states that the technical implementation and programming of the business processes applicable to nominations tendered via Electronic Data Interchange (EDI) required Questar to choose one of three GISB model types for nominations—pathed, non-pathed, or pathed non-threaded. Questar states further that although none of the three model types matched perfectly the manner in which Questar's nomination process is administered, the pathed non-threaded model appeared to be the most closely related. Questar explains that implementation of the pathed non-threaded model nomination procedure and development of the associated priority-of-service algorithms requires priority-of-service tariff provisions to identify more discrete levels of service than the current tariff defines.

Accordingly, Questar is seeking Commission approval to modify Section 9.1, Priority of Service, to more discretely define and clarify priority-of-service levels that are consistent with the pathed non-threaded model nomination process.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12486 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–399–000]

Texas Eastern Transmission Corporation; Notice of Application

May 6, 1998.

Take notice that on April 29, 1998 Texas Eastern Transmission Corporation (''Texas Eastern''), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in the above docket, an abbreviated application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Texas Eastern to construct, own, operate, and maintain certain replacement facilities, abandon the existing pipeline being replaced, and utilize temporary work space and right-of-way during the construction of such facilities.

Specifically, Texas Eastern proposes to construct, own, operate, and maintain approximately 4,490 feet of 30-inch pipe between Mile Post (''M.P.'') 177.84 and M.P. 178.69 beneath the Mississippi

River in West Feliciana and Pointe Coupee, Parishes, Louisiana. This new pipe will replace an existing river crossing of the same size on its Line 18, currently located 75 feet north of the proposed location for the replacement crossing. Monitoring of the Mississippi River bottom at this location indicates significant scouring is occurring at the existing crossing. The new facilities will not increase the capacity of Texas Eastern's system. Texas Eastern states that the new replacement facilities will enable Texas Eastern to ensure the safe and reliable operation of its system in order to meet its contractual requirements. The estimated total capital cost of the proposed facilities is approximately $8,415,000.

Texas Eastern requests approval of this Application by December 1, 1998, in order to construct the proposed facilities during the 1999 summer construction season.

Any person desiring to participate in the hearing process to make any protest with reference to said application should on or before May 27, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents field by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely field, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12468 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–40–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on April 30, 1998, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to become effective May 31, 1998:

Second Revised Sheet No. 13
Second Revised Sheet No. 14
Second Revised Sheet No. 15
Second Revised Sheet No. 16
Second Revised Sheet No. 17
Second Revised Sheet No. 18
Second Revised Sheet No. 19
Second Revised Sheet No. 20

Texas Eastern states that the purpose of the filing is to update the system maps to reflect its current principal pipeline facilities and the points at which service is rendered, as required by Section 154.106 of the Commission's Regulations.

Texas Eastern states that copies of the filing were mailed to firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12471 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–002]

TransColorado Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on May 1, 1998, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective May 1, 1998:

Second Revised Sheet No. 21
First Revised Sheet No. 22

TransColorado states that the above tariff sheets are being filed to implement one negotiated rate contract pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-

Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12475 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–331–001]

Transcontinental Gas Pipe Line Corporation; Notice of Amendment

May 6, 1998.

Take notice that on April 27, 1998, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP97–331–001, an application as supplemented on May 4, 1998, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, to amend the certificate of public convenience and necessity issued in Docket No. CP97–331–000 on January 15, 1998, to authorize Transco to uprate two compressor units, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Transco seeks to uprate compressor units 3 and 4 at its Station 100 in Chilton County, Alabama, from 5,000 horsepower to 6,000 horsepower each. Transco states that the certificate authorized Transco, among other things, to re-wheel compressor units 3 and 4 at Station 100.

Any person desiring to be heard or making any protest with reference to said application should on or before May 18, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12467 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–39–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on April 30, 1998, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective June 1, 1998:

Third Revised Sheet No. 5
First Revised Sheet No. 5A
First Revised Sheet No. 5B
First Revised Sheet No. 5C

Trunkline states that the purpose of this filing made in accordance with Section 154.106 of the Commission's Regulations, is to revise the system map to reflect changes in the facilities and the points at which service is provided. Specifically, the maps reflect the abandonment of facilities in south Texas as authorized in Docket No. CP97–173–000 (81 FERC ¶ 61,351) and new delivery points in Kentucky and Louisiana as authorized in Docket Nos. CP97–273–000 and CP96–546–000, respectively.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the

Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12470 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–197–001]

Viking Gas Transmission Company; Notice of Compliance Filing

May 6, 1998.

Take notice that on May 1, 1998 Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC GAs Tariff, First Revised Volume No. 1 the following tariff sheets to become effective June 1, 1998:

Substitute Eleventh Revised Sheet No. 6
Substitute Fourth Revised Sheet No. 6A
Substitute Fourth Revised Sheet No. 14
Substitute Second Revised Sheet No. 15D
Substitute Fifth Revised Sheet No. 19
Substitute Fourth Revised Sheet No. 24
Substitute Fourth Revised Sheet No. 29

Viking states that this filing is being made pursuant to the Office of Pipeline Regulation's (OPR) May 1, 1998 Letter Order in the above-referenced proceeding in which OPR requested that Viking correct the listed tariff sheets to reflect the Commission's Pagination Guidelines. Consistent with the May 1, 1998 Letter Order, the only change that has been made to these sheets is the corrected pagination.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12480 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–105–007 and RP98–165–002]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on April 30, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of May 1, 1998:

First Revised Sheet No. 6
Substitute First Revised Sheet No. 6A
First Revised Sheet Nos. 268, 269, and 270

Williams states that the filing is being made in compliance with Ordering Paragraph (B) of the Order on Rehearing and Compliance Filing, issued March 31, 1998, in Docket No. RP98–105–001, et al. The Commission directed Williams to submit surcharge to recover its GSR Costs.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12478 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–207–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998

Take notice that on May 1, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with the proposed effective date of June 1, 1998:

Second Revised Sheet No. 6A

Williams states that this filing is being made to adjust the maximum rates under Rate Schedules ITS–M and ITS–P by discontinuing the surcharge established in Docket No. RP96–173. This surcharge, which became effective June 1, 1996, has been in effect for its 24-month recovery period.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protests with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12482 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–208–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on May 1, 1998, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective June 1, 1998:

First Revised Sheet No. 267
Second Revised Sheet No. 268
Original Sheet Nos. 271A, 271B, 271C, and 271D
First Revised Sheet No. 272

Williams states that the purpose of this filing is to modify Article 14 of its FERC Gas Tariff to include costs incurred in the assignment of any remaining gas purchase contracts through a reverse auction process as a cost eligible for recovery as GSR costs and to establish procedures to be used in conducting such reverse action.

Williams states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12483 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–38–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on April 30, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 30, 1998:

Third Revised Sheet No. 5
Third Revised Sheet No. 6
First Revised Sheet No. 6A
First Revised Sheet No. 7
Second Revised Sheet No. 8
Third Revised Sheet No. 9

Williston Basin states that the revised tariff sheets are being filed simply to update its System Maps with the most recent information available.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12469 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–67–000, et al.]

Onondaga Cogeneration Limited Partnership et al.; Electric Rate and Corporate Regulation Filings

May 4, 1998.

Take notice that the following filings have been made with the Commission:

1. Onondaga Cogeneration Limited Partnership

[Docket No. EG98–67–000]

Take notice that on April 23, 1998, Onondaga Cogeneration Limited Partnership (Onondaga) of One Upper Pond Road, Parsippany, New Jersey, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a New York limited partnership which owns a topping-cycle cogeneration facility (the Facility). All electricity produced by the Facility is sold at wholesale to Niagara Mohawk Power Corporation.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Duke Energy Oakland LLC

[Docket No. EG98–68–000]

Take notice that on April 24, 1998, Duke Energy Oakland LLC (Oakland) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Oakland is a Delaware limited liability corporation and an indirect wholly-owned subsidiary of Duke Energy Corporation. Oakland's facility consists of three diesel-fired generating units with a combined generating capacity of 137 MW. Oakland states that prior to its purchase of the facility from Pacific Gas & Electric (PG&E), the facility was part of PG&E's integrated system. Therefore a rate or charge in connection with this facility was in effect under the laws of California on October 24, 1992. On December 16, 1997, the Public Utilities Commission of the Sate of California (CPUC), issued an interim opinion which concluded that allowing the facility to be an exempt wholesale generator within the meaning of PUHCA would benefit consumers, would be in the public interest, and would not violate California law. Oakland attached a copy of the CPUC opinion to its application.

Oakland further states that copies of the application were served upon the California Independent System Operator Corporation, the California Power Exchange Corporation, the Securities and Exchange Commission, the North Carolina Utilities Commission, the South Carolina Public Service Commission, and the CPUC.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Duke Energy Moss Landing LLC

[Docket No. EG98–69–000]

Take notice that on April 24, 1998, Duke Energy Moss Landing LLC (Moss Landing), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Moss Landing is a Delaware limited liability corporation and an indirect wholly-owned subsidiary of Duke Energy Corporation. Moss Landing's facility consists of two natural gas-fired generating units with a combined generating capacity of 1,478 MW. Moss Landing states that prior to its purchase of the facility from Pacific Gas & Electric (PG&E), the facility was part of PG&E's integrated system. Therefore, a rate or charge in connection with this facility was in effect under the laws of California on October 24, 1992. On December 16, 1997, the Public Utilities Commission of the Sate of California (CPUC), issued an interim opinion which concluded that allowing the facility to be an exempt wholesale generator within the meaning of PUHCA would benefit consumers, would be in the public interest, and would not violate California law. Moss Landing attached a copy of the CPUC opinion to its application.

Moss Landing further states that copies of the application were served upon the California Independent System Operator Corporation, the California Power Exchange Corporation, the Securities and Exchange Commission, the South Carolina Public Service Commission, the North Carolina Utilities Commission, and the CPUC.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to that concern the adequacy pr accuracy of the application.

4. Atlantic City Electric Company

[Docket No. ER98–1721–001]

Take notice that on April 28, 1998, Atlantic City Electric Company (ACE), tendered for filing a refund report in compliance with Commission Order issued on March 30, 1998, in Docket No. ER98–1721–000.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas And Electric Company

[Docket No. ER98–2716–000]

Take notice that on April 29, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing of its obligation to file the Transaction detail for wholesale transactions made pursuant to its market-based Generation Sales Service (GSS) Tariff. This filing revises the filing dated April 27, 1998.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER98–2728–000]

Take notice that on April 29, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where NMPC's transmission system connects to its retail distribution system west of NMPC's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

NMPC requests an effective date of April 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Carolina Power & Light Company

[Docket No. ER98–2729–000]

Take notice that on April 29, 1998, Carolina Power & Light Company (CP&L), tendered for filing proposed changes to its FERC Tariff No. 1 for Sales of Capacity and Energy, FERC Original Volume No. 2 to permit market-based sales under that Tariff.

Copies of this filing were served on CP&L's customers currently eligible to take service under Tariff No. 1, the North Carolina Utilities Commission and The Public Service Commission of South Carolina.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER98–2730–000]

Take notice that on April 29, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5. AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective for service billed on and after April 15, 1998.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric Co.

[Docket No. ER98–2731–000]

Take notice that on April 29, 1998, Portland General Electric Company (PGE), tendered for filing under PGE's Market-Based Rate Tariff, (Docket No. ER98–1643–000) an un-executed Service Agreement for Service at Market-Based Rates with California Power Exchange. Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the un-executed Service Agreements to become effective March 31, 1998.

Copies of this filing were caused to be served upon California Power Exchange.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER98–2734–000]

Take notice that on April 29, 1998, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with OGE Energy Resources, Inc., for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on June 1, 1998.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Duquesne Light Company

[Docket No. ER98–2735–000]

Take notice that on April 29, 1998, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated April 1, 1998 with Conectiv Energy under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Conectiv Energy as a customer under the Tariff. DLC requests an effective date of April 1, 1998, for the Service Agreement.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER98–2736–000]

Take notice that on April 29, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an unexecuted electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) and an unexecuted electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2) with Amoco Energy Trading Corporation (Amoco). Wisconsin Electric respectfully requests an effective date of April 3, 1998, to allow for economic transactions.

Copies of the filing have been served on Amoco, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Texas-New Mexico Power Company

[Docket No. ER98–2737–000]

Take notice that on April 29, 1998, Texas-New Mexico Power Company (TNMP), tendered for filing an umbrella service agreement for short-term nonfirm energy transactions of one year or less between TNMP, as seller, and Cinergy Capital and Trading, Inc., as purchaser, in accordance with TNMP's rate schedule for sales of electricity at market-based rates.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER98–2738–000]

Take notice that on April 29, 1998, New England Power Company filed a Service Agreement and Certificates of Concurrence with City of Holyoke Gas & Electric Department, under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power Corporation

[Docket No. ER98–2739–000]

Take notice that on April 29, 1998, Florida Power Corporation (FPC), tendered for filing a service agreement between Tampa Electric Company and FPC for service under FPC's Cost-Based Wholesale Power Sales Tariff (CR–1), FERC Electric Tariff, Original Volume No. 9. This Tariff was accepted for filing by the Commission on April 20, 1998, effective as of October 29, 1997, in Docket No. ER98–374–000. The service agreement is proposed to be effective March 31, 1998.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corp.

[Docket No. ER98–2740–000]

Take notice that on April 29, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where NMPC's transmission system connects to its retail distribution system East of NMPC's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

NMPC requests an effective date of April 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas And Electric Company

[Docket No. ER98–2741–000]

Take notice that on April 28, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Cargill-Alliant, LLC under LG&E's Open Access Transmission Tariff.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company

[Docket No. ER98–2742–000]

Take notice that on April 29, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing a Consent of Assignment form assigning all of the rights associated with the Non-Firm Transmission Service Agreement between LG&E and Ohio Edison Company to FirstEnergy Corporation.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Southern California Edison Company

[Docket No. ER98–2743–000]

Take notice that on April 29, 1998, Southern California Edison Company (Edison), tendered for filing Amendment No. 2 to the Edison-Riverside 1996 BPA Firm Transmission Service Agreement between Edison and the City of Riverside, California.

Edison is requesting an effective date of May 1, 1998.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Peco Energy Company

[Docket No. ER98–2744–000]

Take notice that on April 29, 1998, PECO Energy Company (PECO), filed a Service Agreement dated October 21, 1997 with Market Responsive Energy, Inc., (MREI) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds MREI as a customer under the Tariff.

PECO requests an effective date of April 1, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to MREI and to the Pennsylvania Public Utility Commission.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Entergy Services, Inc.

[Docket No. ER98–2745–000]

Take notice that on April 29, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New

Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and The Dayton Power and Light Company.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Florida Power & Light Company

[Docket No. ER98–2746–000]

Take notice that on April 30, 1998, Florida Power & Light Company (FPL), tendered for filing: (a) an Amendment Number Five to the Network Service Agreement between FPL and the Florida Municipal Power Agency, and (b) the Revised Interconnection Agreement among Florida Power & Light Company and Florida Keys Electric Cooperative Association, Inc. and the Utility Board of the City of Key West. Amendment Number Five adds the City of Key West, Florida as a Network Member. The Revised Interconnection Agreement accommodates, among other things, the upgrading of transmission facilities and Key West becoming a Network Member. FPL proposes to make the Amendment Number Five and the Revised Interconnection Agreement effective April 1, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER98–2748–000]

Take notice that on April 30, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Network Operating Agreement and a Network Integration Transmission Service Agreement between NSP and Gen-Sys Energy.

NSP requests that the Commission accept both the agreements effective April 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Northern States Power Company (Minnesota)

[Docket No. ER98–2749–000]

Take notice that on April 30, 1998, Northern States Power Company (NSP–M), tendered for filing an amendment to the Municipal Transmission Service Agreement between NSP–M and the City of Blue Earth, MN.

NSP requests that the Commission accept the agreement effective April 20, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Orange and Rockland Utilities, Inc.

[Docket No. ER98–2750–000]

Take notice that on April 30, 1998, Orange and Rockland Utilities, Inc. (O&R) tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, a service agreement under which O&R will provide capacity and/or energy to Cinergy Capital & Trading, Inc., (CCT).

O&R requests waiver of the notice requirement so that the service agreement with CCT becomes effective as of April 30, 1998.

O&R has served copies of the filing on The New York State Public Service Commission and CCT.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Northeast Utilities Service

[Docket No. ER98–2751–000]

Take notice that on April 28, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with the South Jersey Energy Company under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the South Jersey Energy Company.

NUSCO requests that the Service Agreement become effective April 28, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Wisconsin Power & Light Company

[Docket No. ER98–2752–000]

Take notice that on April 30, 1998, Wisconsin Power and Light Company (WPL), tendered for filing a Power Supply Agreement dated April 29, 1998, between the Wisconsin Public Power Inc., and WPL. WPL states that this Agreement replaces the Power Supply Agreement dated June 5, 1989 and Power Supply Agreement No. 2 dated October 1, 1992. WPL is also requesting cancellation of the existing Agreements which are designated Rate Schedule FERC Nos. 152 and 173, respectively.

The parties have entered into the new Power Supply Agreement to implement combined load service terms. Service under this Power Supply Agreement will be in accordance with standard WPL Rate Schedule PR–1.

WPL requests a waiver of Commission notice requirements and that an effective date of May 1, 1998 be assigned. WPL indicates that copies of the filing have been provided to Wisconsin Public Power Inc., and to the Public Service Commission of Wisconsin.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Wisconsin Power & Light Company

[Docket No. ER98–2754–000]

Take notice that on April 30, 1998, Wisconsin Power and Light Company (WPL), tendered for filing changes to its Partial Requirements Service tariff (PR–1). WPL indicates that the changes are being made to unbundle the transmission components of the rate. WPL has one customer taking service under the tariff and the customer is in agreement with the changes.

WPL requests a waiver of Commission notice requirements and that an effective date of May 1, 1998 be assigned. WPL indicates that copies of the filing have been provided to Wisconsin Public Power Inc. and to the Public Service Commission of Wisconsin.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Central Illinois Light Company

[Docket No. ER98–2756–000]

Take notice that April 30, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, on April 30, 1998, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement for one new customer, Merchant Energy Group of the Americas, Inc.

CILCO requested an effective date of April 6, 1998.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Florida Power Corporation

[Docket No. ER98–2758–000]

Take notice that on April 30, 1998, Florida Power Corporation (Florida Power), tendered for filing revisions to the capacity charges, reservation fees and energy adders for various interchange services provided by

Florida Power pursuant to interchange contracts.

The interchange services which are affected by these revisions are (1) Service Schedule A—Emergency Service; (2) Service Schedule B—Short Term Firm Service; (3) Service Schedule D—Firm Service; (4) Service Schedule F—Assured Capacity and Energy Service; (5) Service Schedule G—Backup Service; (6) Service Schedule H—Reserve Service; (7) Service Schedule I—Regulation Service; (8) Service Schedule OS—Opportunity Sales; (9) Service Schedule RE—Replacement Energy Service; (10) Contract for Assured Capacity And Energy With Florida Power & Light Company; (11) Contract for Scheduled Power and Energy with Florida Power & Light Company.

Florida Power requests that the amended revised capacity charges, reservation fees and energy adder be made effective on May 1, 1998. Florida Power requests waiver of the Commission's sixty-day notice requirement. If waiver is denied, Florida Power requests that the filing be made effective 60 days after the filing date.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Virginia Electric and Power Company

[Docket No. ER98–2759–000]

Take notice that on April 30, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Virginia Electric and Power Company and East Kentucky Power Cooperative under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97–3561–001. Under the tendered Service Agreement Virginia Power will provide services to East Kentucky Power Cooperative under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of April 30, 1998, for the Service Agreement.

Copies of the filing were served upon East Kentucky Power Cooperative, the Kentucky Public Service Commission, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. PacifiCorp

[Docket No. ER98–2761–000]

Take notice that PacifiCorp on April 30, 1998, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Non-Firm and Short-Term Firm Point-To-Point Transmission Service Agreements with City of Idaho Falls (Idaho Falls) under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to Idaho Falls, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Transmission Function's Bulletin Board System through a personal computer by calling (503) 813–5758 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. American Electric Power Service Corporation, Inc. and Central and South West Services, Inc.

[Docket No. ER98–2770–000]

Take notice that on April 30, 1998, American Electric Power Service Corporation, Inc. and Central and South West Services, Inc., tendered for filing (1) a System Integration Agreement which provides for the integration and coordination of their respective systems following their planned merger; (2) a System Transmission Integration Agreement; and (3) a Transmission Reassignment Tariff. The filing accompanies two related filings consisting of (1) a merger application under Section 203 of the Federal Power Act, and (2) a filing under Section 205 of the Federal Power Act of a joint transmission tariff.

The Applicants propose to make the System Integration Agreement, the System Transmission Integration Agreement and the Transmission Reassignment Tariff effective upon consummation of the merger. Copies of the filing have been served on the affected state regulatory commissions and upon all of the Applicants' wholesale customers.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. The California Power Exchange Corporation

[Docket No. ER98–2774–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Engage Energy US, L.P., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1) (2) and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Engage Energy US, L.P.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. American Electric Power Service Corporation and Central and South West Services, Inc.

[Docket No. ER98–2786–000]

Take notice that on April 30, 1998, American Electric Power Service Corporation and Central and South West Services, Inc., tendered for filing on behalf of the operating company subsidiaries of American Electric Power Company, Inc., and Central and South West Corporation, a proposed Open Access Transmission Tariff and procedures for compliance with the Commission's Standard of Conduct under 18 CFR 37.4, together with supporting testimony. The documents have been filed in conjunction with an application for authority to merge pursuant to Section 203 of the Federal Power Act, which is being filed contemporaneously. AEPSC requests that the documents be placed in effect as of the date the merger is consummated.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. The California Power Exchange Corporation

[Docket No. ER98–2798–000]

Take notice on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for Arizona Public Service Co., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2, and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Arizona Public Service Co.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. The California Power Exchange Corporation

[Docket No. ER98–2799–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Enron Power Marketing, Inc., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2), and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Enron Power Marketing, Inc.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. The California Power Exchange Corporation

[Docket No. ER98–2800–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Pacific Gas & Electric Company for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2), and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Pacific Gas & Electric Company.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. The California Power Exchange Corporation

[Docket No. ER98–2801–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Southern California Edison Company for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2), and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Southern California Edison Company.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. The California Power Exchange Corporation

[Docket No. ER98–2802–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Midwest Sunset Cogeneration Company for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2), and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Midwest Sunset Cogeneration Company.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. The California Power Exchange

[Docket No. ER98–2803–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Duke Energy Trading & Marketing, L.L.C., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2), and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Duke Energy Trading & Marketing, L.L.C.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. The California Power Exchange Corporation

[Docket No. ER98–2804–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Electric Clearinghouse, Inc., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2), and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Electric Clearinghouse, Inc.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12466 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–71–000, et al.]

Origen Power Corp., et al.; Electric Rate and Corporate Regulation Filings

May 5, 1998.

Take notice that the following filings have been made with the Commission:

1. Origen Power Corp.

[Docket No. EG98–71–000]

Take notice that on April 28, 1998, Origen Power Corp. (Applicant), with its principal office at P.O. Box 321, Oklahoma City, Oklahoma 73101, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that upon consummation of the purchase by OGE Energy Corp., of the outstanding stock of Oklahoma Loan Acquisition Corp. (OLAC), and the subsequent name change of OLAC to Origen Power Corp., Applicant will be engaged in owning and operating a cogeneration facility located near Pryor, Oklahoma (the Eligible Facility), with maximum net capacity of 128 megawatts, and selling electric energy exclusively at wholesale. A portion of that energy will be sold to Energy Corp.'s electric utility subsidiary, Oklahoma Gas and Electric Company (OG&E). All electric energy produced by the Eligible Facility will be sold exclusively at wholesale.

In connection with the purchase of OLAC by Energy Corp., and the sale of power to OG&E by Applicant, OG&E has obtained orders from the Oklahoma Corporation Commission and the Arkansas Public Service Commission with the findings required by Section 32(k) of the Public Utility Holding Company Act of 1935, as amended and Part 365 of the Commission's regulations. See Application of Oklahoma Gas and Electric Company, Cause No. PUD 980000036, Order No. 421477 (O.C.C. Mar. 13, 1998) and Application of Oklahoma Gas and Electric Company, Docket No. 98–044–U, Order No. 1 (A.P.S.C. April 9, 1998).

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. American Electric Power Company, Inc.; Central and Southwest Corporation

[Docket No. EC98–40–000]

Take notice that on April 30, 1998, American Electric Power Company, Inc. (AEP), and Central and South West Corporation (CSW) (collectively, Applicants), tendered for filing an application to merge (Application).

The merger involves three corporations: the two Applicants, and Augusta Acquisition Corporation, a wholly owned subsidiary of AEP, which will serve the sole purpose of achieving the merger and will not survive the merger. Augusta will merge with and into CSW, which will survive and continue in existence for a period following the merger. At the closing, each share of CSW common stock will be converted into 0.6 of a share of AEP common stock with the former shareholders of CSW becoming shareholders of AEP. The merger will not affect any long-term or short-term debt securities of AEP, CSW, or any of their affiliates.

Following the merger, AEP will continue as a registered holding company under the Public Utility Holding Company Act. AEP will be the parent of the current seven AEP utility operating subsidiaries and the four CSW utility operating subsidiaries. None of these subsidiaries will lose its individual corporate existence as a consequence of the merger. AEP will also remain the parent of its existing non-utility subsidiaries and become the parent of CSW's non-utility subsidiaries.

Applicants state that the consideration for the merger was negotiated at arms-length. Applicants state that their merger will not have adverse effects on competition, on rates or on regulation.

Applicants state that they have, by overnight mail, served a copy of the Application, including all attached materials, on the eleven state regulatory agencies with jurisdiction over their electric utility operating subsidiaries, on all transmission dependent utilities located within the transmission service areas of those subsidiaries, on the subsidiaries' requirements customers located outside of those service areas, on all other utilities with which those subsidiaries are directly interconnected, and on representatives of the Securities and Exchange Commission, the Federal Trade Commission and the Department of Justice.

Applicants have also filed in a separate docket a joint Order No. 888 open access transmission tariff, which Applicants state would go into effect at the time the merger closes and an Order No. 889 standards of conduct. In a further docket, the Applicants have also filed a System Integration Agreement, a Transmission Integration Agreement, and a Transmission Reassignment Tariff.

Applicants assert that the proposed merger is consistent with the public interest as required by Section 203 of the FPA. Applicants have requested that the Commission approve the merger without a hearing.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Western Kentucky Energy Corp.

[Docket No. EG98–72–000]

Take notice that on April 30, 1998, Western Kentucky Energy Corp. (WKEC), a Kentucky Corporation, with its principal place of business at P.O. Box 32010, 220 West Main Street, Louisville, Kentucky 40202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

WKEC will be engaged directly and exclusively in the business of owning (in its capacity as lessee) or operating, the following eligible facilities (Facilities) owned by Big Rivers Electric Corporation (Big Rivers) and selling electric energy exclusively at wholesale: Kenneth C. Coleman Plant, 455 MW (net); Robert D. Green Plant, 454 MW (net); D.B. Wilson Plant, 420 MW (net); and the Robert D. Reid facility (65 MW (net) combustion turbine, and a 65 MW (net) steam turbine). All of the Facilities' net electric power will be sold exclusively at wholesale in interstate commerce by Big Rivers or WKEC. The Kentucky Public Service Commission has determined that the status of each of the Facilities as an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Southern Indiana Gas and Electric Company

[Docket No. ER96–705–001]

Take notice that on April 30, 1998, Southern Indiana Gas and Electric Company tendered for filing with the Federal Energy Regulatory Commission notification that it has not collected amounts in excess of the settlement

rates approved in the letter order issued on March 25, 1998 in the above-referenced docket.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. The Detroit Edison Company

[Docket No. ER97–4215–001]

Take notice that on April 30, 1998, The Detroit Edison Company filed a refund report in the above-referenced docket.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. The Detroit Edison Company

[Docket Nos. ER98–201–001 and ER98–202–001]

Take notice that on April 30, 1998, The Detroit Edison Company filed refund reports in the above-referenced dockets.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. The Detroit Edison Company

[Docket Nos. ER97–4410–001 and ER97–4411–001]

Take notice that on April 30, 1998, The Detroit Edison Company filed a refund report in the above-referenced dockets.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER98–956–000]

Take notice that on April 30, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing an amendment to its filing of a Firm Point-to-Point Transmission Service Agreement between NSP and the City of Medford, Wisconsin—Medford Electric Utility.

NSP is responding to the Commission's deficiency letter dated March 31, 1998. NSP is requesting that the filed Firm Point-to-Point Transmission Service Agreement, as revised by this filing, be accepted for filing effective January 1, 1998. NSP requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER98–2498–000]

Take notice that on April 22, 1998, the Public Service Company of New Mexico tendered for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Southern New Hampshire Hydroelectric

[Docket No. ER98–2615–000]

Take notice that on April 20, 1998, Southern New Hampshire Hydroelectric tendered for filing an Interconnection Agreement with the Public Service Company of New Hampshire.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER98–2747–000]

Take notice that on April 30, 1998, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations Restated Power Sales Agreements with Arizona Electric Power Cooperative, Inc., City of Mesa, Arizona, and Electrical District No. 2 of Pinal County, Arizona.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER98–2760–000]

Take notice that on April 30, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Long Island Lighting Company under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97–3561–001. Under the tendered Service Agreement, Virginia Power will provide services to Long Island Lighting Company under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of April 30, 1998, for the Service Agreement.

Copies of the filing were served upon Long Island Lighting Company, the New York State Public Service Commission, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Tampa Electric Company

[Docket No. ER98–2763–000]

Take notice that on April 30, 1998, Tampa Electric Company (Tampa Electric), tendered for filing updated transmission service rates under its agreements to provide qualifying facility transmission service for Mulberry Phosphates, Inc. (Mulberry), Cargill Fertilizer, Inc. (Cargill), and Auburndale Power Partners, Limited Partnership (Auburndale).

Tampa Electric proposes that the updated transmission service rates be made effective as of May 1, 1998, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Mulberry, Cargill, Auburndale, and the Florida Public Service Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Tampa Electric Company

[Docket No. ER98–2764–000]

Take notice that on April 30, 1998, Tampa Electric Company (Tampa Electric), tendered for filing cost support schedules showing an updated daily capacity charge for its scheduled/short-term firm interchange service provided under interchange contracts with each of 19 other utilities. Tampa Electric also tendered for filing updated caps on the charges for emergency and scheduled/short-term firm interchange transactions under the same contracts.

In addition, Tampa Electric tendered for filing a revised transmission loss factor, and revised open access transmission service tariff sheets on which the transmission loss factor is stated.

Tampa Electric requests that the updated daily capacity charge and caps on charges, and the revised transmission loss factor and tariff sheets, be made effective as of May 1, 1998, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon each of the parties to the affected interchange contracts with Tampa Electric and each party to a service agreement under Tampa Electric's open access tariff, as well as the Florida and Georgia Public Service Commissions.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Edison Company

[Docket No. ER98–2765–000]

Take notice that on April 30, 1998, Commonwealth Edison Company (ComEd), tendered for filing 53 service agreements establishing various entities as customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of April 1, 1998, for the service agreements and, accordingly, seek waiver of the Commission's notice requirements.

ComEd states that a copy of the filing was served on the Illinois Commerce Commission and an abbreviated copy of the filing was served on each affected customer.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. American Electric Power Service Corporation

[Docket No. ER98–2766–000]

Take notice that on April 30, 1998, American Electric Power Service Corporation, as agent for the AEP Operating Companies (AEP), tendered for filing with the Commission an executed Service Agreement with the City of Radford, Virginia (Radford), under the Wholesale Market Tariff of the AEP Companies. AEP requests that the Agreement be made effective as of July 1, 1998.

AEP states that a copy of its filing was served upon Radford, the Indiana Utility Regulatory Commission, the Public Service Commission of Kentucky, the Michigan Public Service Commission, the Public Utilities Commission of Ohio, the Tennessee Regulatory Authority, the Virginia State Corporation Commission, and the Public Service Commission of West Virginia.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. American Electric Power Service Corporation

[Docket No. ER98–2767–000]

Take notice that on April 30, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after April 1, 1998.

AEPSC also requests termination of two agreements filed under a prior open access tariff, AEP Companies' FERC Electric Tariff Original Volume No. 1. The customers holding those agreements, Engage Energy US, L.P. and Cargill-Alliant, L.L.C., have executed agreements filed in this Docket under the OATT.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Mid-Continent Area Power Pool

[Docket No. ER98–2768–000]

Take notice that on April 30, 1998, the Mid-Continent Area Power Pool (MAPP), by counsel on behalf of its members who are subject to the jurisdiction of the Federal Energy Regulatory Commission as public utilities as defined in Section 201(e) of the Federal Power Act, submitted for filing, pursuant to Section 205 of the Federal Power Act, additional transmission service charges, with supporting workpapers, applicable to service under Service Schedule F of the Restated MAPP Agreement.

A copy of the filing was sent to the Illinois Commerce Commission, the Iowa Utilities Board, the Kansas Corporation Commission, the Michigan Public Service Commission, the Minnesota Department of Public Service, the Minnesota Public Utilities Commission, the Missouri Public Service Commission, the Montana Public Service Commission, the Nebraska Power Review Board, the North Dakota Public Service Commission, the Public Service Commission of Wisconsin, and the South Dakota Public Utilities Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. The California Power Exchange Corporation

[Docket No. ER98–2773–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Noram Energy Services for acceptance by the Commission in compliance with the Commission's order issued March 20, 1998, in Docket Nos. ER98–1955–000 and ER98–1663–007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2) and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Noram Energy Services.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. The California Power Exchange Corporation

[Docket No. ER98–2775–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and California Polar Power Brokers for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2) and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon California Polar Power Brokers.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. The Detroit Edison Company

[Docket No. ER98–2776–000]

Take notice that on April 30, 1998, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (the Service Agreement), for Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and DTE Energy Trading, Inc., dated as of March 4, 1998. The parties have not engaged in any transactions under the Service Agreements prior to thirty days prior to this filing. Detroit Edison requests that the Service Agreements be made effective as rate schedules as of April 1, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Duke Energy Corporation

[Docket No. ER98–2777–000]

Take notice that on April 30, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and

acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and OGE Energy Resources, Inc. The parties have not engaged in any transactions under the TSA prior to thirty (30) days prior to the filing date. Duke requests that the TSA be made effective as a rate schedule as of April 2, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. The California Power Exchange Corporation

[Docket No. ER98–2778–000]

Take that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Texaco Energy Services for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2) and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Texaco Energy Services.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. The California Power Exchange Corporation

[Docket No. ER98–2779–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for PG&E Energy Services Corp., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon PG&E Energy Services Corp.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. AG-Energy, L.P.; Seneca Power Partners, L.P.; Sterling Power Partners, L.P.; Power City Partners, L.P.

[Docket Nos. ER98–2782–000]

Take notice that on April 30, 1998, AG-Energy, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P. and Power City Partners, L.P. (Applicants), tendered for filing with the Federal Energy Regulatory Commission FERC Electric Rate Schedules No. 1. The Applicants request authority to make wholesale power sales, including energy and capacity, at market-based rates, request certain blanket authorizations, and waiver of certain of the Commission's Regulations. The Applicants request that the tendered rate schedules become effective June 30, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Bridgeport Energy LLC

[Docket No. ER98–2783–000]

Take notice that on April 30, 1998, Bridgeport Energy LLC tendered for filing an Application for Order Accepting Initial Rate Schedule, Granting Limited Authorizations and Blanket Authority, and Waiving Certain Requirements. Such Application seeks waivers and blanket approvals under various regulations of the Commission and for an Order accepting its FERC Electric Rate Schedule No. 1. Bridgeport Energy proposes that its Rate Schedule No. 1, become effective the earlier of (1) 60 days after the date of this filing or (2) the date Commission issues an Order accepting Rate Schedule No. 1 for filing.

Bridgeport Energy is a limited liability company organized and existing under the laws of the State of Delaware. Bridgeport Energy is developing and will own and operate a 520 MW combined cycle gas turbine generating plant in Bridgeport, Connecticut and the other facilities necessary to interconnect the generating plant to the UI transmission grid (the Facility). The Facility will use natural gas as its fuel. Bridgeport Energy intends to sell energy and capacity from the Facility at market-based rates.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Pacific Gas and Electric Company

[Docket No. ER98–2785–000]

Take notice that on April 30, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing a Notice of Termination of two Reliability Must-Run rate schedules for service to the California Independent System Operator Corporation (ISO), from its Moss Landing and Oakland power plants. These facilities have been sold to Duke Energy Moss Landing LLC and Duke Energy Oakland LLC, respectively (Duke), and Duke has filed with the Commission its own rate schedules for must-run service to the ISO from these power plants. PG&E has requested that this Notice of Termination be effective on the later of June 23, 1998 or the date on which the Commission makes Duke's rate schedules effective.

Copies of this filing have been served upon the ISO and the California Public Utilities Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Central Power and Light Company

[Docket No. ER98–2787–000]

Take notice that on April 30, 1998, Central Power and Light Company (CPL), submitted for filing an executed Delivery Point and Service Specifications sheet providing for a minor change to the Service Agreement between CPL and one of its full requirements wholesale customers, Magic Valley Electric Cooperative, Inc., executed under CPL's FERC Electric Tariff, 6th Revised Volume No. 1.

CPL states that a copy of the filing has been sent to the Public Utility Commission of Texas and to Magic Valley Electric Cooperative, Inc.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Tampa Electric Company

[Docket No. ER98–2790–000]

Take notice that on April 30, 1998, Tampa Electric Company (Tampa Electric), tendered for filing an updated weekly capacity charge for short term power service provided under its interchange service contract with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies). Tampa Electric also tendered for filing updated caps on energy charges for emergency assistance and short term power service under the contract.

Tampa Electric requests that the updated capacity charge and caps on charges be made effective as of May 1, 1998, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon Southern Companies and the Florida Public Service Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Arizona Public Service Company

[Docket No. ER98–2791–000]

Take notice that on April 30, 1998, Arizona Public Service Company (APS), tendered for filing an unexecuted Service Agreement under APS' FERC Electric Tariff, Original Volume No. 3, for service to the California Power Exchange.

A copy of this filing has been served on the Arizona Corporation Commission and California Power Exchange.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. The California Power Exchange Corporation

[Docket No. ER98–2792–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for Scana Energy Marketing, Inc., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Scana Energy Marketing, Inc.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. The California Power Exchange Corporation

[Docket No. ER98–2793–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for BBOSS, LLC for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon BBOSS, LLC.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. The California Power Exchange Corporation

[Docket No. ER98–2794–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for Department of Water & Power, City of Los Angeles for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Department of Water & Power, City of Los Angeles.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. The California Power Exchange Corporation

[Docket No. ER98–2795–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for PG&E Power Trading for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon PG&E Power Trading.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. The California Power Exchange Corporation

[Docket No. ER98–2796–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for California Department of Water Resources for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon California Department of Water Resources.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. The California Power Exchange Corporation

[Docket No. ER98–2797–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for New Energy Ventures for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon New Energy Ventures.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. The California Power Exchange Corporation

[Docket No. ER98–2805–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Williams Energy Services Company for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2) and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Williams Energy Services Company.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. The California Power Exchange Corporation

[Docket No. ER98–2806–000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for American Electric Power for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon American Electric Power.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Wisconsin Public Service Corporation

[Docket No. ER98–2808–000]

Take notice that on April 30, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 10 to Service Agreement No. 5, for service to Manitowoc Public Utilities (MPU), pursuant to WPSC's FERC Electric Tariff, 2nd Revised Volume No. 1. Supplement No. 10, provides for additional delivery points for service to MPU. WPSC states that the filing proposes no other changes to the terms and conditions under which WPSC provides service to MPU.

WPSC asks that Supplement No. 10 be allowed to become effective sixty days after filing. WPSC states that MPU consents to and supports this requested effective date. WPSC further states that copies of the filing have been served upon MPU and the Wisconsin Public Service Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. The California Power Exchange Corporation

[Docket No. ER98–2827–000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed unexecuted Meter Service Agreement for PX Participants for Enron Energy Systems for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Enron Energy Systems.

Copies of this filing are on file with the Commission and are available for public inspection.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. The California Power Exchange Corporation

[Docket No. ER98–2828–000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed unexecuted Meter Service Agreement for PX Participants for Sacramento Municipal Utility District for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Sacramento Municipal Utility District.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. The California Power Exchange Corporation

[Docket No. ER98–2829–000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed unexecuted Meter Service Agreement for PX Participants for City of Riverside for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon City of Riverside.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

43. The California Power Exchange Corporation

[Docket No. ER98–2830–000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for Salt River Project A.I. & P.D., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Salt River Project A.I. & P.D.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

44. The California Power Exchange Corporation

[Docket No. ER98–2831–000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed unexecuted Meter Service Agreement for PX Participants for PacificCorp for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98–1955–000 and ER96–1663–007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon PacificCorp.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

45. Logan Generating Company, L.P.

[Docket No. QF87–617–005]

Take notice that on April 28, 1998, Logan Generating Company, L.P. (Logan), 7500 Old Georgetown Road, Bethesda, Maryland 20814–6161,

submitted for filing an application for Commission recertification as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the 218 MW, coal-fired topping-cycle cogeneration facility is located in Logan Township, Gloucester County, New Jersey. Steam recovered from the facility is used in the production of various chemical products by Solutia. Power from the facility is sold to Atlantic City Electric Company and PG&E Energy Trading-Power, L.P. The facility was certified as a QF in Docket No. QF87–617–000 [41 FERC ¶ 62,222 (1987)], and recertified in Docket No. QF87–617–001 [58 FERC ¶ 62,235 (1992)]. Logan filed a notice of self-recertification in Docket Nos. QF87–617–002, QF87–617–003, and QF87–617–004. According to the applicant, the instant recertification is requested in contemplation of changes in the ownership of the facility. It also involves changes in the operating and efficiency standard calculations, based on actual operating experience.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

46. Cambridge Electric Light Company, Commonwealth Electric Company, Florida Power & Light Company, Florida Power Corporation, GPU Energy, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, IES Utilities, Inc., Idaho Power Company, Minnesota Power & Light Company, Montana Power Company, Montaup Electric Company, Oklahoma Gas & Electric Company, Pacific Gas & Electric Company, Pennsylvania Power & Light Co., Potomac Electric Power Company, Public Service Electric & Gas Company, Southwestern Public Service Company, and Wisconsin Public Service Company.

[Docket Nos. OA97–173–000, OA97–443–000, OA97–447–000, OA97–457–000, OA97–415–000, OA97–455–000, OA97–590–000, OA97–130–000, OA97–441–000, OA97–453–000, OA97–185–000, OA97–515–000, OA97–423–000, OA97–594–000, OA97–294–000, OA97–429–000, OA97–400–000, and OA97–234–000]

Take notice that the companies listed in the above-captioned dockets submitted revised standards of conduct [1] under Order Nos. 889 *et seq.*[2] The revised standards were submitted in response to the Commission's March 12, 1998, order on standards of conduct.[3]

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–12465 Filed 5–11–98; 8:45 am]

BILLING CODE 6717–01–P

[1] The revised standards of conduct were submitted between April 9 and April 13, 1998.

[2] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, order on rehearing, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, rehearing denied, 62 FR 64715 (December 9, 1997), 81 FERC ¶61,253 (November 25, 1997).

[3] Cambridge Electric Light Company, *et al.*, 82 FERC ¶ 61,246 (1998).

ENVIRONMENTAL PROTECTION AGENCY

[FR–6012–9]

Notice of Peer Consultation Workshop on Selenium Aquatic Toxicity and Bioaccumulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: This document announces a Peer Consultation Workshop on Selenium Aquatic Toxicity and Bioaccumulation which is being sponsored by the U.S. EPA, Office of Water, Office of Science and Technology. This peer consultation workshop is being conducted to assess the state of the science underlying various technical issues related to EPA's review and revision of its freshwater, chronic aquatic life criterion for selenium. During the workshop, a panel of independent scientific experts external to the Agency will be responding to a technical charge developed by the Agency for addressing the various technical issues. The product of this workshop will be a report that will contain a summary of workshop discussions, the responses of the experts to the technical charge, and their supporting justification. EPA intends to consider the experts' responses to the technical charge during its forthcoming review and revision of the freshwater chronic aquatic life criterion for selenium.

DATES: This workshop will be held on Wednesday, May 27, 1998 through Thursday, May 28, 1998. It will begin at 9:00 a.m. on Wednesday and will conclude on Thursday at 3:30 p.m. (approximate time).

ADDRESSES: The Peer Consultation Workshop on Selenium Aquatic Toxicity and Bioaccumulation will be held at the Radisson Barcelo Hotel, Washington, DC, at 2121 P Street, NW, Washington, DC, Telephone: 202–293–3100.

FOR FURTHER INFORMATION CONTACT: Keith Sappington, Health and Ecological Criteria Division (4304), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460. Telephone: 202–260–9898, Fax 202–260–1036, or by E-mail at sappington.keith@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The purpose of the Peer Consultation Workshop on Selenium Aquatic Toxicity and Bioaccumulation is to review and discuss the scientific database regarding several technical issues confronting EPA's review of its freshwater chronic aquatic life criterion for selenium. Some of these technical issues include whether or not reliable residue-based toxicological effect levels can be established in aquatic organisms, identifying which forms of selenium are most toxicologically-relevant in tissues and other media, and quantifying the effect that various environmental factors might have on the extent and rates of selenium bioaccumulation in aquatic life. The invited experts will have expertise in areas including selenium biogeochemistry, aquatic toxicology, pharmacology, bioaccumulation, environmental and analytical chemistry, modeling, and ecotoxicology in aquatic ecosystems. In responding to the technical charge, these experts will consider the available scientific literature on selenium effects and bioaccumulation in aquatic organisms in the context of setting toxicological effect levels of selenium on aquatic life in freshwater ecosystems. The product of this workshop will be a technical

report that contains the experts' responses to the technical charge, clear statements of the supporting rationale for conclusions made, and an assessment of the level of confidence (or conversely, the degree of uncertainty) associated with each response. EPA intends to consider the experts' responses to the technical charge in its subsequent review and revision of the freshwater, chronic aquatic life criterion for selenium.

To attend the Peer Consultation Workshop on Selenium Aquatic Toxicity and Bioaccumulation as an observer, call the ERG Conference Registration Line at telephone number, 781–674–7374. You may also register online at www.erg.com. There is no charge for attending this workshop as an observer, but seats are limited, so register as soon as possible. Each registrant will receive a confirmation letter, a preliminary agenda, and a logistical fact sheet. Any observer wishing to make comments or address issues must sign up with ERG prior to the workshop. Each will be assigned a time slot on a first-come, first-served basis. Individual comments should be limited to two to three minutes.

Dated: May 1, 1998.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 98–12581 Filed 5–11–98; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Withdrawal

AGENCY: Export-Import Bank of the United States.

ACTION: Notice; withdrawal.

SUMMARY: The notice of submission for OMB review of a revision of a currently approved information collection (63 FR 24179) published on May 1, 1998 is withdrawn because the period for public comment in still open until May 26, 1998. This period for public comment was originally published on March 27, 1998, in 63 FR, No. 59, 14938.

FOR FURTHER INFORMATION CONTACT: Any additional information may be obtained from Daniel Garcia, Export-Import Bank of the United States, 811 Vermont Ave., N.W. Washington, D.C. 20571, (202) 565–3335.

Dated: May 7, 1998.

Daniel Garcia,

Agency Clearance Officer.

[FR Doc. 98–12550 Filed 5–11–98; 8:45 am]

BILLING CODE 6690–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 14, 1998, from 1:00 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*

B. *New Business*

1. Policy Statement on Interest Rate Risk
2. Investment Regulation [12 CFR Part 615, Subpart E] (Proposed)

C. *Reports*

1. Conditions in the System
2. Examiner Commissions with Specialist Certifications

*** Closed Session**

D. *Reports*

1. OSMO Report
2. OGC Litigation Report

Dated: May 7, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–12658 Filed 5–8–98; 12:29 pm]

BILLING CODE 6750–01–P

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8), 9) and (10).

FEDERAL COMMUNICATIONS COMMISSION

Third Meeting of the Advisory Committee for the 1999/2000 World Radiocommunication Conference (WRC–99 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–99 Advisory Committee will be held on Friday, May 22, 1998, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 1999 World Radiocommunication Conference. The Advisory Committee will consider any consensus views or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: May 22, 1998; 9:00 am—11:00 am.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, FCC International Bureau, Planning and Negotiations Division, at (202) 418–0420.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–99 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 1999 World Radiocommunication Conference (WRC–99). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the second meeting of the WRC–99 Advisory Committee.

The WRC–99 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the third meeting is as follows:

Agenda

Third Meeting of the WRC–99 Advisory Committee, Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C. 20554.

May 22, 1998; 9:00 am–11:00 am

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Second Meeting
3. IWG Reports

4. Consideration of Consensus Views, Proposals, or Option Papers
5. Future Meetings
6. Other Business.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–12607 Filed 5–11–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

May 7, 1998.

OPEN COMMISSION MEETING: Thursday, May 14, 1998.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 14, 1998, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No.	Bureau	Subject
1	Common Carrier	Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities. Summary: The Commission will consider action to amend its rules governing Telecommunications Relay Services (TRS).
2	Wireless Telecommunications	Title: Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report of Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services. Summary: The Commission will consider a Report fulfilling the requirement of 47 U.S.C. Section 332(c)(1)(c) (the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66, Title VI, Section 6002(b)), which directs the Commission to annually report on the state of competition with respect to commercial mobile radio services.
3	Office of Engineering and Technology; Common Carrier and International.	Title: 1998 Biennial Regulatory Review—Amendment of Part 2 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment and to Implement Mutual Recognition Agreements; Amendment of part 68 of the Commission's Rules to Modify the Equipment Authorization Process for Telephone Terminal Equipment and to Implement Mutual Recognition Agreements; and Amendment of Part 25 of the Commission's Rules to Begin Implementation of the Global Mobile Personal Communications for Satellite (GMPCS) Arrangements. Summary: The Commission will consider proposed rules to 1) further streamline the equipment authorization process for radio frequency and telephone terminal equipment; 2) implement a Mutual Recognition agreement with the European Community and allow for similar agreements with other foreign governmental parties; and 3) set standards for the approval of equipment used in the Global Mobile Personal Communications by Satellite (GMPCS) service.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail; its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–12758 Filed 5–8–98; 3:13 pm]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–808]

Waiver of Business and Industrial/Land Transportation Channel Construction Requirements

1. On February 20, 1998, Southern Company (Southern) filed a Request for Waiver of Section 90.629 of the Commission's Rules to further extend the extended implementation period for its Business and Industrial Land Transportation (I/LT) Category channels that Southern has converted to commercial use. Southern, an electric utility holding company, operates an 800 MHz Specialized Mobile Radio (SMR) system on Business and I/LT channels, and on a small number of SMR and General Category channels.[1] The channels were licensed between 1992 and 1994, and Southern received a five-year extended implementation period. In 1995, Southern, apparently by means of intercategory sharing, converted the Business and I/LT channels to commercial use. It has constructed and placed in operation all of the base stations, and sixty-five percent of the channels, for which it is licensed. Southern seeks to extend the implementation period for its Business and I/LT channels, which expires on May 20, 1999, for an additional five years or until the Commission auctions those channels, whichever is sooner.

2. In its Request for Waiver, Southern asserts that a further extension of the implementation period is necessary because the current implementation period is unduly burdensome, frustrates the purpose of our rules, and is contrary

[1] Pursuant to the recently completed auction of licenses for the upper 200 channels of the SMR Service in the 800 MHz band, on March 9, 1998, Southern was conditionally granted licenses for frequency block A in BEAs 74, 75, and 78–82. *See* FCC Announces the Corrected Conditional Grant of 800 MHz SMR Licenses, Public Notice No. DA 98–482 (released March 10, 1998).

to the public interest. Southern's system, which has a service area of over 120,000 square miles in the southeastern United States, provides internal communications for Southern's operating companies and provides service to a large external customer base, including public utilities, federal, state, and local governments, and emergency management agencies, such as sheriffs' departments and ambulance services. The system provides voice dispatch service, full-duplex telephone interconnection, short message service (similar to alphanumeric paging), and data transmission capabilities. Southern states that the continued operation of its system is necessary to maintain competition in the urban dispatch service market, and to maintain dispatch and telephone interconnection service in rural areas. It also states that it is at a severe disadvantage with respect to other Commercial Mobile Radio Service (CMRS) providers because the subsequently-adopted CMRS construction requirement based on channel usage and population coverage is more flexible than the requirement for Business and I/LT channels.

3. We also note that on April 22, 1998, the Land Mobile Communications Council filed a Petition for Rule Making regarding the allocation of spectrum for the Private Mobile Radio Services. We anticipate that the Commission will resolve the matters raised therein in another proceeding, but we invite comments on how the LMCC Petition and the Southern waiver request relate to issues the Commission is likely to consider with regard to implementation of the Balanced Budget Act of 1997 (the Act). The Act, which mandates that most mutually exclusive license applications be resolved by competitive bidding, gives rise to such issues as whether geographic area licensing for Business and I/LT channels serves the public interest, how to define bidder eligibility for auctions held to award mutually exclusive licenses for these channels, how to define the class of land mobile licensee that is exempt from licensing by auction, and whether the existence of the Southern Request for Waiver and a number of other applications requesting large numbers of channels in the I/LT and Business Categories should be considered when developing rules for future licensing of these channels.[2]

4. Interested parties may file comments on Southern's Request for Waiver on or before May 28, 1998. Parties interested in submitting reply comments must do so on or before June 12, 1998. All comments should reference Southern's Request for Waiver with the designated DA number, and should be filed with the Office of the Secretary, Federal Communications Commission, 1919 M St., N.W., Room 222, Washington, D.C. 20554. A copy of each filing should be sent to International Transcription Services, Inc. (ITS), 1231 20th St., N.W., Washington, D.C. 20036, (202) 857–3800, and to Scot Stone, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, 2025 M St., N.W., Room 8010G, (202) 418–0680 or via e-mail to sstone@fcc.gov.

5. The full text of the Request for Waiver, comments, and reply comments are available for public inspection and duplication during regular business hours in the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M St., N.W., Room 8010, Washington, D.C. 20554. Copies also may be obtained from ITS, 1231 20th St., N.W., Washington, D.C. 20036, (202) 857–3800.

6. For further information, contact Scot Stone of the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau at (202) 418–0680 or via e-mail to sstone@fcc.gov.

Federal Communications Commission.

Rosalind Allen,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 98–12606 Filed 5–11–98; 8:45 am]

BILLING CODE 6712–01–P

[2] The Wireless Telecommunications Bureau has pending before it a number of applications filed by single users for large numbers of 800 MHz I/LT and Business channels. The applicants' individual communications requirements do not appear sufficient to require such large numbers of channels. The Bureau continues to maintain these applications in pending status until the Act is fully implemented.

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 217–011620.

Title: Hapag-Lloyd/P&O Nedlloyd Slot Exchange Agreement.

Parties:

Hapag-Lloyd Container Linie GmbH (''Hapag'')

Treated as a single party, referred to as (''PONL'') P&O Nedlloyd Limited, P&O Nedlloyd B.V.

Synopsis: The proposed Agreement authorizes PONL and Hapag to exchange slots on vessels owned, operated or utilized by them in the trade between North Europe and the U.S. Atlantic and gulf Coasts, and to engage in a limited range of related cooperative arrangements in the trade. The parties have requested a shortened review period.

Agreement No.: 217–011621.

Title: Hapag-Lloyd/P&O Nedlloyd/Sea-Land Space Charter Agreement.

Parties:

Hapag-Lloyd Container Linie GmbH (''Hapag'')

Treated as a single party, referred to as (''PONL'') P&O Nedlloyd Limited, P&O Nedlloyd B.V.

Sea-Land Service, Inc. (''Sea-Land'')

Synopsis: The proposed Agreement authorizes PONL and Sea-Land to charter space to Hapag and authorizes the parties to enter into a limited range of related cooperative arrangements in the trade between North Europe and the U.S. Atlantic and Gulf Coasts. The parties have requested a shortened review period.

Agreement No.: 224–200870–001.

Title: Port of Oakland/Marine Terminals Corporation Management Agreement.

Parties:

Port of Oakland

Marine Terminals Corporation (''MTC'').

Synopsis: The proposed Agreement reduces the annual crane guarantee by 750 hours in MTC's Management Agreement with the Port for the Port's Seventh Street Marine Container Terminal. It also provides that the use of Crane No. X–423 by MTC shall not count towards MTC's annual crane guarantee, and that MTC may use Crane No. X–423 until such time as the Port elects to remove it from the facilities.

Agreement No.: 224–201051.

Title: Atlantic Coast Public Marine Terminal Discussion Agreement.

Parties:

Georgia Ports Authority

Maryland Port Administration

North Carolina State Ports Authority

South Carolina State Ports Authority
The Port Authority of New York & New Jersey
Virginia Port Authority.

Synopsis: The proposed Agreement would permit the parties to meet, discuss, and exchange information regarding a broad range of port activities and issues of concern to the marine terminal industry. The Agreement does not authorize its members to take any collective action. Any agreement the parties might desire to implement would be filed with the Commission in accordance with the provisions of the Shipping Act of 1984, if required. The Agreement will be effective for an initial term of five years.

Agreement No.: 224–201052.

Title: Port of Oakland and Marine Terminals Corporation License and Concession Agreement.

Parties:

Port of Oakland
Marine Terminals Corporation.

Synopsis: Under the proposed agreement, the port grants Marine Terminals Corporation a license, concession and privilege, subject to the terms and conditions set forth in the agreement, to use about 25 acres, plus adjacent vessel berthing area in the Oakland Outer Harbor Area, currently leased by the port from the United States Army for an initial period expiring July 31, 1998, with options for subsequent one-year extensions.

By Order of the Federal Maritime Commission.

Dated: May 7, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–12584 Filed 5–11–98; 8:45 am]

BILLING CODE 6730–01–M

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.

FirstAir, Inc. d/b/a SeaMasters, 980 Lone Oak Road, Suite 160, Eagan, MN 55121, Officers: Richard D. McCrady, Jr., President, Kim L. McCrady, Vice President

Logical Logistics International Ltd., 5188 Roswell Road, Atlanta, GA 30342, Officer: Alan M. Sheps, President

Provex, Inc., 6581 N.W. 82nd Avenue, Miami, FL 33166, Officer: Jose Arteaga, President

Paramount Transportation System, Inc., 100 N. Rancho Santa Fe Road, Suite #125, San Marcos, CA 92069, Officers: Mike Keller, President, Grace Bishar, Secretary/Treasurer

Ocean Transportation Services, LLC, Two Union Square, 601 Union Street, Suite 5568, Seattle, WA 98101–2327, Officers: Neal E. Gordon, President, Ernest Sarkissian, Vice President

A.C.T.S. American Christian Transportation Service, 136 Church Street, Rockaway, NJ 07866, Donald G. Andersen, Sole Proprietor

Dated: May 7, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–12583 Filed 5–11–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Union Planters Corporation, and its second tier subsidiary, Union Planters Holding Corporation, both of Memphis, Tennessee; to acquire 100 percent of the voting shares and to merge with its wholly owned bank holding company subsidiary, Alvin Bancshares, Inc., and its wholly owned subsidiary, Alvin Bancshares, Delaware, Inc., and thereby indirectly acquire Alvin State Bank, all of Alvin, Texas.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Merchants Holding Company, Winona, Minnesota; to acquire 32.1 percent of the voting shares of BRAD, Inc., Black River Falls, Wisconsin, and thereby indirectly acquire Black River Country Bank, Black River Falls, Wisconsin.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. WTSB Bancorp, Inc., Snyder, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of WTSB Delaware Bancorp, Inc., Dover, Delaware, and thereby indirectly acquire West Texas State Bank, Snyder, Texas.

2. WTSB Delaware Bancorp, Inc., Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of West Texas State Bank, Snyder, Texas.

Board of Governors of the Federal Reserve System, May 6, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–12454 Filed 5–11–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 12:00 noon, Monday, May 18, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 8, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–12656 Filed 5–8–98; 12:29 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pfizer, Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of four new animal drug applications (NADA's) held by Pfizer, Inc. The NADA's provide for use of oxytetracycline hydrochloride. The sponsor requested the withdrawal of approval of the NADA's because the animal drug products are no longer manufactured or marketed.

EFFECTIVE DATE: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0212.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017 is the sponsor of NADA 8–696 TM–5 Antibiotic Feed Supplement (oxytetracycline), NADA 10–661 Terramycin Egg Formula (oxytetracycline hydrochloride), NADA 11–034 Liquimast Solution for Mastitis (oxytetracycline hydrochloride), and NADA 13–470 TM–10 Premix (oxytetracycline). The animal drug products were subject to review under the National Academy of Sciences/National Research Council, Drug Efficacy Study Implementation Program, and are currently subject to requirements for finalization under that program. Pfizer, Inc., the current sponsor, requested withdrawal of approval of the NADA's because the animal drug products are no longer manufactured or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.48), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approvals of NADA's 8–696, 10–661, 11–034, 13–470, and all supplements and amendments thereto are hereby withdrawn, effective May 22, 1998.

These products had not been the subject of a regulation published under section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b). Therefore, an amendment to the animal drug regulations to reflect the withdrawal of approvals is not required.

Dated: April 24, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–12612 Filed 5–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0285]

Sanofi Pharmaceuticals, Inc., et al.; Withdrawal of Approval of 21 New Drug Applications and 62 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 21 new drug applications (NDA's) and 62 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: June 11, 1998.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 4–496	Pipanol Powder and Tablets (trihyphenidyl)	Sanofi Pharmaceuticals, Inc., 90 Park Ave., New York, NY 10016.
NDA 6–328	Isuprel (isoproterenol hydrochloride) Sublingual Tablets, 10 milligrams (mg) and 15 mg	Do.
NDA 7–514	Insulin, NPH Iletin	Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285.
NDA 8–256	Insulin	Do.
NDA 8–717	Acetaminophen Tablets USP (acetaminophen tablets)	Roxane Laboratories, Inc., P.O. Box 16532, Columbus, OH 43216–6532.
NDA 8–847	Sucostrin (succinylcholine chloride injection)	Apothecon, Inc., P.O. Box 4500, Princeton, NJ 08543–4500.
NDA 8–983	Arfonad (trimethaphan camsylate) Ampules	Hoffmann-La Roche, Inc., 40 Kingsland St., Nutley, NJ 07110–1199.
NDA 9–088	Neothylline (dyphylline) injection	TEVA Pharmaceuticals USA (formerly Lemmon Co.), 650 Cathill Rd., Sellersvile, PA 18960.
NDA 9–300	Insulin, Lente Iletin I	Eli Lilly and Co.
NDA 9–410	Lotusate Tablets and and Capsules (talbutal)	Sanofi Pharmaceuticals, Inc.
NDA 9–479	Jayne's Liquid Vermifuge (piperazine hexahydrate)	Do.

Application No.	Drug	Applicant
NDA 10–966	Insulin, Ultralente	Eli Lilly and Co.
NDA 10–967	Insulin, Semilente	Do.
NDA 11–446	Sterane (prednisolone acetate injection) Intramuscular and Intra-Articular	Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755.
NDA 11–724	Fenarol Tablets (chlormezanone)	Sanofi Pharmaceuticals, Inc.
NDA 17–108	Methadone HydrochlorideTablets, 2.5 mg, 5 mg, 10 mg, and 40 mg	Eon Labs Manufacturing, Inc., 227–15 North Conduit Ave., Laurelton, NY 11413.
NDA 17–446	pHisoScrub (hexachlorophene)	Sanofi Pharmaceuticals, Inc.
NDA 18–217	Suprol (suprofen) Capsules, 200 mg	R. W. Johnson Pharmaceutical Research Institute, 920 Rt. 202 South, P.O. Box 300, Raritan, NJ 08869–0602.
NDA 18–660	10% Travamulsion (Intravenous Fat Emulsion)	Baxter Healthcare Corp., Rt. 120 and Wilson Rd., Round Lake, IL 60073.
NDA 18–719	Modrastane (trilostane) Capsules	Sanofi Pharmaceuticals, Inc.
NDA 19–358	Azo Gantrisin (sulfisoxazole and phenazopyridine hydrochloride) Tablets	Hoffman-La Roche, Inc.
ANDA 60–734	BACIGUENT Ophthalmic Ointment (Bacitracin Ophthalmic Ointment, USP)	Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199.
ANDA 62–036	Aerosporin (Polymyxin B Sulfate Sterile Powder)	Glaxo Wellcome, Inc., Five Moore Dr., P.O. Box 13398, Research Triangle Park, NC 27709.
ANDA 62–363	Cleocin T Topical Solution (Clindamycin Phosphate Topical Solution, USP)	Pharmacia & Upjohn Co.
ANDA 62–479	Doxycycline Hyclate Capsules USP, 50 mg and 100 mg (Base)	Purepac Pharmaceutical Co. 200 Elmora Ave., Elizabeth, NJ 07207.
ANDA 62–913	Clindamycin Phosphate Injection USP, 150 mg/milliliter (mL)	Marsam Pharmaceuticals, Inc., Bldg. 31, Olney Ave., P.O. Box 1022, Cherry Hill, NJ 08034.
ANDA 70–053	Betamethasone Valerate Cream USP, 0.1%	Clay-Park Labs, Inc., 1700 Bathgate Ave., Bronx, NY 10457.
ANDA 70–829	Methyldopa and Hydrochlorothiazide Tablets USP, 250 mg/15 mg	Invamed, Inc., 2400 Rt. 130 North, Dayton, NJ 08810.
ANDA 70–830	Methyldopa and Hydrochlorothiazide Tablets USP, 250 mg/25 mg	Do.
ANDA 70–850	Metoclopramide Tablets USP, 10 mg	Do.
ANDA 70–949	Metoclopramide Oral Solution USP, Eq. 5 mg Base/5 mL	Morton Grove Pharmaceuticals, Inc., 6451 West Main St., Morton Grove, IL 60053.
ANDA 71–071	Haloperidol Tablets USP, 0.5 mg	Purepac Pharmaceutical Co.
ANDA 71–072	Haloperidol Tablets USP, 1 mg	Do.
ANDA 71–073	Haloperidol Tablets USP, 2 mg	Do.
ANDA 71–074	Haloperidol Tablets USP, 5 mg	Do.
ANDA 71–075	Haloperidol Tablets USP, 10 mg	Do.
ANDA 71–076	Haloperidol Tablets USP, 20 mg	Do.
ANDA 71–658	Propranolol Hydrochloride Tablets USP, 10 mg	Invamed, Inc.
ANDA 71–687	Propranolol Hydrochloride Tablets USP, 20 mg	Do.
ANDA 71–688	Propranolol Hydrochloride Tablets USP, 40 mg	Do.
ANDA 71–689	Propranolol Hydrochloride Tablets USP, 80 mg	Do.
ANDA 71–811	Naloxone Hydrochloride Injection USP, 0.4 mg/mL	Marsam Pharmaceuticals, Inc.
ANDA 71–812	Methyldopate Hydrochloride Injection USP, 50 mg/mL	Do.
ANDA 71–938	Ibuprofen Tablets USP, 800 mg	Invamed, Inc.
ANDA 72–064	Ibuprofen Tablets USP, 400 mg	Do.
ANDA 72–065	Ibuprofen Tablets USP, 600 mg	Do.
ANDA 72–109	Doxepin Hydrochloride Capsules, 25 mg	Purepac Pharmaceutical Co.
ANDA 72–197	Propranolol Hydrochloride Tablets USP, 60 mg	Invamed, Inc.
ANDA 72–198	Propranolol Hydrochloride Tablets USP, 90 mg	Do.
ANDA 72–233	Verapamil Hydrochloride Injection USP, 2.5 mg/mL (ampuls)	Marsam Pharmaceuticals, Inc.
ANDA 72–371	Diazepam Injection USP, 5 mg/mL, 2 mL (ampul)	Do.
ANDA 72–436	Metoclopramide Tablets USP, 5 mg	Invamed, Inc.
ANDA 72–516	Haloperidol Injection USP, 5 mg/mL, 1 mL (ampul)	Marsam Pharmaceuticals, Inc.
ANDA 72–517	Haloperidol Injection USP, 5 mg/mL, 10 mL (vial)	Do.
ANDA 73–054	Doxepin Hydrochloride Capsules, 10 mg	Purepac Pharmaceutical Co.
ANDA 73–055	Doxepin Hydrochloride Capsules, 50 mg	Do.
ANDA 73–098	PEG–Lyte (PEG 3350 and Electrolytes for Oral Solution USP)	Invamed, Inc.
ANDA 73–485	Verapamil Hydrochloride Injection USP, 2.5 mg/mL (vials)	Marsam Pharmaceuticals, Inc.
ANDA 74–125	Pindolol Tablets USP, 5 mg and 10 mg	Purepac Pharmaceutical Co.
ANDA 74–302	Albuterol Sulfate Syrup, 2 mg (base)/5 mL	Mova Pharmaceutical Corp., P.O. Box 8639, Caguas, PR 00726.
ANDA 74–510	Etoposide Injection 20 mg/mL, 50 mL Pharmacy Bulk Package	Gensia Laboratories, 19 Hughes, Irvine, CA 92718–1902.
ANDA 81–222	ADRUCIL (Flourouracil Injection, USP) 500 mg/10 mL Ampuls	Pharmacia & Upjohn Co.

Application No.	Drug	Applicant
ANDA 81–242	FOLEX PFS (Methotrexate Sodium Injection, USP) 25 mg/mL	Do.
ANDA 83–187	Afaxin (brand of vitamin A Palmitate)	Sanofi Pharmaceuticals, Inc.
ANDA 83–237	Diphenhydarmine Hydrochloride Elixir USP	Purepac Pharmaceutical Co.
ANDA 83–278	Propoxyphene Hydrochloride Capsules USP, 65 mg	Do.
ANDA 83–856	ESTRATAB (Esterified Estrogens Tablets, USP) 1.25 mg	Solvay Pharmaceuticals, Inc., 901 Sawyer Rd., Marietta, GA 30062.
ANDA 83–921	Elixophyllin (Theophylline Soft Gelatin Capsules, 200 mg)	Forest Laboratories, Inc., 909 Third Ave., New York, NY 10022–4731.
ANDA 84–003	Quinidine Sulfate Tablets USP, 200 mg	Purepac Pharmaceutical Co.
ANDA 85–545	Elixophyllin (Theophylline Soft Gelatin Capsules, 100 mg)	Forest Laboratories, Inc.
ANDA 86–826	Elixophyllin SR (Theophylline Extended-Release Capsules, USP) 125 mg and 250 mg	Do.
ANDA 87–999	Spironolactone and Hydrochlorothiazide Tablets USP, 25 mg/25 mg	Purepac Pharmaceutical Co.
ANDA 89–284	Procainamide Hydrochloride Extended-Release Tablets USP, 500 mg	Invamed, Inc.
ANDA 89–463	Promethazine Hydrochloride Injection USP, 25 mg/mL	Marsam Pharmaceuticals, Inc.
ANDA 89–477	Promethazine Hycrochloride Injection USP, 50 mg/mL	Do.
ANDA 89–501	Phenytoin Sodium Injection USP, 50 mg/mL, 2 mL (ampul)	Do.
ANDA 89–511	Codaphen (Acetaminophen and Codeine Phosphate Tablets USP) 500 mg/15 mg	Roxane Laboratories, Inc.
ANDA 89–512	Codaphen (Acetaminophen and Codeine Phosphate Tablets USP) 500 mg/30 mg	Do.
ANDA 89–513	Codaphen (Acetaminophen and Codeine Phosphate Tablets USP) 500 mg/60 mg	Do.
ANDA 89–563	Chlorpromazine Hydrochloride Injection USP, 25 mg/mL	Marsam Pharmaceuticals, Inc.
ANDA 89–675	Prochlorperazine Edisylate Injection USP, 5 mg/mL	Do.
ANDA 89–779	Phenytoin Sodium Injection USP, 50 mg/mL, 2 mL and 5 mL (vials)	Do.
ANDA 89–849	Methocarbamol Injection USP, 100 mg/mL	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective June 11, 1998.

Dated: April 28, 1998.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 98–12613 Filed 5–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0196]

Alltech Biotechnology Center; Filing of Food Additive Petition (Animal Use)-Selenium Yeast

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alltech Biotechnology Center has filed a petition proposing that the food additive regulations be amended to provide for the safe use of selenium yeast as a source of selenium in animal feeds.

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: Nelson S. Chou, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0161.

SUPPLEMENTARY INFORMATION: Under section 409 (b)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2238) has been filed by Alltech Biotechnology Center, 3031 Catnip Hill Pike, Nicholasville, KY 40356. The petition proposes to amend the food additive regulations in part 573 *Food Additives Permitted in the Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of selenium yeast as a source of selenium in animal feeds.

The agency has determined under 21 CFR 25.32(i) 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.

Dated: April 24, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–12611 Filed 5–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96F–0341]

MacMillan Bloedel, Ltd.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 6B4517) proposing that the food additive regulations be amended to provide for the safe use of diethylene glycol as a component of a pulp bleaching medium used in the manufacture of paper and paperboard intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 Ct. SW., Washington, DC 20204, 202–418–3095.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 30, 1996 (61 FR 51118), FDA announced that a food additive petition (FAP 6B4517) had been filed by MacMillan Bloedel, Ltd., c/o Camplong & Associates, Inc., P.O. Box 238, Schomberg, Ontario L0G 1T0, Canada. The filing notice stated that the petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of diethylene glycol as a pulp bleaching agent for paper and paperboard intended for use in contact with food. Upon further review, FDA has determined that the petition proposed the use of diethylene glycol as a component of a pulp bleaching medium used in the manufacture of food-contact paper and paperboard. MacMillan Bloedel, Ltd. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: April 10, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–12541 Filed 5–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0195]

Vanetta S.p.A.; Filing of Food Additive Petition (Animal Use) Menadione Nicotinamide Bisulfite

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Vanetta S.p.A. has filed a petition to allow the use of menadione nicotinamide bisulfite in swine diets as a source of vitamin K activity and niacin.

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: Michaela G. Alewynse, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6657.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) 21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2239) has been filed by Vanetta S.p.A., Via Alzia Trento 10, Milano, Corsico, Italy. The petition proposes to amend the food additive regulations in part 573 *Food Additives Permitted in the Feed and Drinking Water of Animals* (21 CFR part 573) to provide for use of menadione nicotinamide bisulfite in swine diets as a source of vitamin K activity and niacin.

The agency has determined under 21 CFR 25.32 that this action is of the 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.

Dated: April 24, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–12540 Filed 5–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 15 and 16, 1998, 8 a.m. to 6 p.m.; and June 17, 1998, 8 a.m. to 1 p.m..

Location: Sheraton Reston Hotel, Grand Ballroom, 11810 Sunrise Valley Dr., Reston, VA.

Contact: Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), 202–205–4727, or Catherine M. DeRoever (HFS–22), 202–205–4251, FAX 202–205–4970, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will receive and undertake a scientific discussion about new data that have become available regarding the food additive olestra.

In the **Federal Register** of January 30, 1996 (61 FR 3118), FDA approved olestra for use as a food additive to replace conventional fats in prepackaged savory snacks. Olestra is a sucrose polyester formed with long chain fatty acids. The agency determined, based on its evaluation of the evidence in the record at that time, that there is a reasonable certainty that no harm will result from the use of olestra in savory snacks. At the time of approval, the petitioner, Proctor and Gamble Co. (P&G), agreed to perform additional studies of olestra exposure (both amounts consumed and patterns of consumption) and the effects of olestra consumption. P&G also agreed to provide FDA with access to all data and reports of those studies as such information became available. At the time of olestra's approval, FDA committed to review all data received from P&G's studies, as well as any other new data that bear on the safe use of this additive, and present such information to the committee within 30 months of the approval.

Committee discussion will focus on data gathered from passive surveillance of complaints attributed to olestra consumption; the active surveillance of populations consuming savory snacks, including olestra snacks; any additional new data that have become available that bear on the safety of olestra (such as data and information on the health significance of carotenoids); and various other studies submitted by P&G (e.g., rechallenge, home consumption, and acute consumption test). The committee will consider whether these newly developed data are consistent with the original safety decision or whether the new data contradict FDA's original determination that there is a reasonable certainty of no harm from the use of

olestra in savory snacks. The committee will also discuss the bearing, if any, of these new data on the required label statement for olestra containing snacks.

Procedure: 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 June 5, 1998. Oral presentations from the public will be scheduled in three sessions. The approximate session schedules and the topics upon which presentations at each should be focussed are: (1) Passive surveillance and special gastrointestinal studies on June 16, 1998, 8 a.m. to 9 a.m.; (2) active surveillance and new information on carotenoids on June 16, 1998, 4 p.m. to 4:30 p.m.; and (3) labeling on June 17, 1998, 10:30 a.m. to 11 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 5, 1998, 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.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 4, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–12449 Filed 5–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1998.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: June 10, 1998; 9:00 a.m.—5:00 p.m.; June 11, 1998; 9:00 a.m.—12:00 Noon.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Agenda: Items will include, but not be limited to: an update on legislative proposals, an update on Vaccine Information Statements, an update on vaccines in clinical trials, an update on the Vaccine Adverse Events Reporting System, an update on the Vaccine Safety Action Plan, and reports from the Department of Justice, the National Vaccine Program Office, and routine program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on June 10, 1998, and before adjournment on June 11, 1998. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Melissa Palmer, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign-up in Conference Rooms G and H on June 10–11, 1998. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Palmer, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593.

Agenda items are subject to change as priorities dictate.

Dated: May 6, 1998.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–12609 Filed 5–11–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in May 1998.

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: May 26–29, 1998.

Place: Residence Inn, Calvert Room, 7335 Wisconsin Avenue, Bethesda, MD 20815.

Closed: May 26–28, 1998 9:00 a.m.–5:00 p.m.; May 29, 1998 9:00 a.m.–adjournment.

Panel: Center for Mental Health Services Circles of Care.

Contact: Richard A. Peabody, Room 17–89, Parklawn Building, Telephone: 301–443–9919 and FAX: 301–443–3437.

Dated: May 6, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–12447 Filed 5–11–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4369–N–01]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: July 13, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Ms. Shelia Jones, Reports Liaison Officer, Office of the Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development, 451–7th

Street, SW, Room 7230, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Department of Housing and Urban Development (HUD) will submit to OMB the information collection requirements for the HOME Program, previously approved under OMB Control Numbers 2506–0162 and 2501–0013.

The HOME Investment Partnerships Act (Title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101–625) and created the HOME Program to expand the supply of affordable housing. Interim regulations were first published for the program on December 16, 1991 and this and subsequent interim rules were codified at 24 CFR Part 92. Paperwork requirements for these rules were approved under OMB Control Number 2501–0013. On September 16, 1996, HUD published a final rule for the HOME Program. Additional paperwork requirements for certain optional reporting requirements were approved under OMB Control Number 2506–0162.

Title of proposal: HOME Investment Partnerships Program.

OMB Control Number, if applicable: 2501–0013; 2506–0162.

Description of the need for the information and proposed use: The HOME statute and related authorities impose a significant number of data collection and reporting requirements on the Department and on HOME participating jurisdictions. This information is collected: (1) to assist HOME participating jurisdictions in managing their programs; (2) to track performance of participating jurisdictions in meeting fund commitment and expenditure deadlines; (3) to permit HUD to determine whether each PJ meets the HOME statutory targeting and affordability requirements; and (4) to permit HUD to determine compliance with other statutory and regulatory program requirements e.g., requirements relating to match, affirmative marketing, lead-based paint, and displacmeent and relocation.

The recordkeeping and reporting burden hours for each individual respondent contained herein are largely unchanged from the previous approvals. The most significant change is in the total number of burden hours for both recordkeeping and reporting, brought about by the substantial increase in the number of program participants since the last major HOME paperwork submission in 1994. The number of participating jurisdictions has increased from 531 in 1994 to 576 in 1997. During this period, the number of Community Housing Department Organizations increased from 1,075 to 2,732 and the number of State recipients increased from 675 to 1,555. Because so many more organizations are currently participating in the HOME Program than were participating in the first years of the program, the total number of burden hours has increased substantially despite the fact that the burden per respondent has dropped slightly.

Other changes from the earlier paperwork approval include: (1) a slight reduction in the number of reporting burden hours as a result of eliminating the HOME Program Description and Annual Performance Report requirements from 24 CFR Part 92 and adding those requirements to the Consolidated Plan rule (24 CFR Part 91); (2) a slight reduction in both record-keeping and reporting hours due to the conversion of HOME participating jurisdiction from the HOME Cash and Management Information System to the paperless Integrated Disbursement and Information (C/MI) System. (Although this conversion is substantially complete, the notice assumes that the 49 participating jurisdictions currently in the C/MI will remain so); and (3) a slight increase due to the fact that three optional reporting requirements approved under OMB Control Number 2506–0162 are being added to this submission

Agency form numbers: HUD–40094; 40095; 40096; 40096–M; 40097; 40098; 40100; 40100–B; 40100–B; 40107; 40107–A.

Members of affected pubic: States, units of general local government, nonprofit organizations.

Estimation of the total annual number of hours to prepare the information collection including number of respondents, frequency of response, and hours of response:

Section affected	Paperwork requirement	Number of respondents	Frequency of response	Hours of response	Annual total
92.61	Insular Areas Program Description	4	1	10	40
92.66	Insular Areas reallocation	4	1	3	12
92.101	Consortia Designation	95	1	5	475
92.200	Public-Private Partnership	580	1	2	1,160
92.201	State Designation of Local Recipients	580	1	2	1,160
92.201	Distribution of Assistance	50	1	1.5	75
92.202	Site and Neighborhood Standards	580	1	2	1,160
92.203	Income Determination	4,867	1	2	9,734
92.206, 92.216, 92.217, 92.218, 92,250, 92.252, 92.254.	Documentation required by HUD to be included in project file to determine project eligibility.	4,867	1	5	24,335
92.206	Refinancing	200	1	4	800
92.251	Written Property Standards	4,867	1	1	4,867
92.253	Tenant Protections	4,867	1	5	24,335
92.254	Median Purchase price	20	1	5	100
92.254	Alternative to Resale/Recapture Provisions.	275	1	5	1,375
92.300	CHDO Identification	576	1	2	1,152

Section affected	Paperwork requirement	Number of respondents	Frequency of response	Hours of response	Annual total
92.300	Designation of CHDOs	300	1	1.5	450
92.300	CHDO Project Assistance	576	1	2	1,152
92.303	Tenant Participation Plan	2,732	1	10	27,320
92.350	Equal Opportunity	4,867	1	5	25,335
92.351	Affirmative marketing	4,867	1	10	48,670
92.353	Displacement, relocation and acquisition	4,867	1	5	24,335
92.354	Labor	4,867	1	2.5	12,167.5
92.355	Lead-Based Paint	4,867	1	0.5	2,433.5
92.357	Debarment and suspension	4,867	1	1	4,867
92.501	Investment Partnership Agreement	580	1	1	580
92.502	Cash and Management Information system.	49	1	10	490
92.502	Homeownership/Rental Project Set-Up (C/MI).	1,604	1	12.5	20,050
92.502	Tenant-based rental assistance Set-Up	30	1	6.25	187.5
92.502	Rental Housing Project Completion (C/MI).	1,604	1	7.5	12,030
92.502	Homeownership Project Completion (C/MI).	1,604	1	3.75	6,015
92.502	Homeownership/Rental Set-Up and Completion (IDIS).	527	1	16	8,432
92.502	Tenat-Based Rental Assistance Set-Up (IDIS).	89	1	5.5	489.5
92.504	Written Agreement	4,863	1	10	48,630
92.509	Management Reports—Annual Performance Report.	580	1	2.5	1,450
92.509	Management Reports—FY Match Report.	576	1	0.76	432

The total annual estimate of burden hours is 315,296.

Status of the proposed information collection: Public comment requested by HUD.

Contact person and telephone numbers (this is not a toll-free number) for copies of the proposed forms and other available documents: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, (This is not a toll-free number). A telecommunications device for hearing- and speech-impaired person (TTY) is available at 1–800–877–8229 (Federal Information Relay Service).

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 6, 1998.

Saul N. Ramirez, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–12618 Filed 5–11–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4367–N–01]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: D. Jackson Kinkaid, Secretary to the Mortgagee Review Board, 451 7th Street, SW, Washington, DC 20410, telephone: (202)755–0278. (This is not a toll-free number.) A Telecommunications Device for Hearing and Speech-Impaired Individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101–235, approved December 15, 1989), requires that HUD ''publish a description of and the cause for administrative action against a HUD-approved mortgagee'' by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from July 18, 1997 through December 31, 1997.

1. Advantage Mortgage Company, Inc., Knoxville, TN

Action: Proposed civil money penalty in the amount of $60,000.

Cause: A review by the Department's Quality Assurance Division that disclosed violations of HUD/FHA requirements that included: failure to remit Up Front Mortgage Insurance Premiums (UFMIPs) to HUD/FHA within 15 days of loan closing and to remit late charges and interest penalties; failure to submit loans for endorsement in a timely manner; failure to pay an appraiser for services performed; and failure to implement and maintain an adequate Quality Control Plan for the origination of HUD/FHA insured mortgages.

2. Mortgage America Nationwide, Grand Terrace, CA

Action: Proposed civil money penalty of $75,000.

Cause: Mortgage America Nationwide failed to comply with the provisions of

a settlement agreement dated April 2, 1996. The settlement agreement was put into place in order to resolve violations discovered during a review of the lender by the Department's Quality Assurance Division.

3. FT Mortgage, Inc. dba Carl I. Brown, Inc. Kansas City, MO

Action: Proposed settlement agreement that would include indemnification to the Department for 16 mortgages insured under the Title II program.

Cause: An investigation conducted by the Department's Office of Inspector General and the Federal Bureau of Investigation revealed that FT Mortgage approved these loans for an investor who committed fraud when he applied for the loans.

4. Ryland Mortgage Company, Columbia, MD

Action: Proposed settlement agreement that would protect the Department during the period the indictment remained in place pending the results of a trial.

Cause: The company and various of its officers were indicted by the United States District Court, Middle District of Florida, Jacksonville District. The indictment alleged Ryland engaged in a conspiracy to defraud the United States Government in violation of Title 18 U.S.C. Sections 371, 1001, 1343, 1032. Such an indictment is grounds for an administrative Action by the Board pursuant to 24 CFR Section 25.9(m).

5. Title I Lenders and Title II Mortgagees That Failed To Comply With HUD/FHA Requirements for the Submission of an Audited Annual Financial Statement and/or Payment of the Annual Recertification Fee

Action: Withdrawal of HUD/FHA Title I lender approval and Title II mortgagee approval.

Cause: Failure to submit to the Department the required annual audited financial statement and/or remit the required annual recertification fee.

Title I Lenders Withdrawn

BOATMEN'S NATIONAL BANK, BATESVILLE, BATESVILLE, AR
BOATMEN'S NATIONAL BANK, PINE BLUFF, PINE BLUFF, AR
BOATMEN'S NATIONAL BANK, RUSSELLVILLE, RUSSELLVILLE, AR
COLE TAYLOR BANK, BURBANK, IL
SOUTH CHICAGO BANK, CHICAGO, IL
INDIANA STATE BANK, TERRE HAUTE, IN
THE NATIONAL BANK, WATERLOO, IA
FARMERS BANK TRUST COMPANY, BARDSTOWN, KY
CALCASIEU MARINE NATIONAL BANK, LAKE CHARLES, LA
FAMILY MUTUAL SAVINGS BANK, HAVERHILL, MA
STATE BANK OF EWEN, EWEN, MI
THE STATE BANK, FENTON, MI
SAULT BANK, SAULT SAINTE MARIE, MI
GRAYLING STATE BANK, GRAYLING, MI
PELICAN VALLEY STATE BANK, PELICAN RAPIDS, MN
SECURITY STATE BANK, WYKOFF, MN
PEOPLES BANK OF COMMERCE, CAMBRIDGE, MN
BOATMEN'S NATIONAL BANK ST LOUIS, SAINT LOUIS, MO
HAVELOCK BANK, LINCOLN, NE
YOUNG MEN'S SVGS AND LOAN ASSN., BRIDGETON, NJ
HUDSON CITY SAVINGS INST, HUDSON, NY
DIME SAVINGS BANK NY FSB, UNIONDALE, NY
MECHANICS AND FARMERS BANK, DURHAM, NC
FARMERS STATE BANK, WINNER, SD
FIRST NATIONAL BANK, MARSHALL, TX
FIRST SECURITY BANK, SALT LAKE CITY, UT
CONSOLIDATED BANK AND TRUST CO, RICHMOND, VA
BANK OF BURLINGTON, BURLINGTON, WI
FIRSTAR BANK EAU CLAIRE NA, EAU CLAIRE, WI
FIRSTAR BANK, FOND DU LAC NA, FOND DU LAC, WI
LINCOLN STATE BANK, MILWAUKEE, WI
FIRSTAR BANK, SHEBOYGAN NA, SHEBOYGAN, WI
CENTRAL BANK AND TRUST, OWENSBORO, KY
STATE BANK STANDISH, STANDISH, MI
BANCO POPULAR DE P R, SAN JUAN, PR
BOATMEN'S BANK FRANKLIN COUNTY, BENTON, IL
FIRST BANK MAINLAND, LAMARQUE, TX
TERRELL STATE BANK, TERRELL, TX
FIRST NATIONAL BANK, WEST MEMPHIS, AR
TRI-COUNTIES BANK, CHICO, CA
ASHLAND STATE BANK, CHICAGO, IL
MARGUETTE BANK NA, GOLDEN VALLEY, MN
BOATMEN'S NATIONAL BANK N CEN ARKANSAS, HARRISON, AR
GRAHAM SAVINGS BANK, GRAHAM, NC
STERLING STATE BANK, AUSTIN, MN
MATEWAN NATIONAL BANK, WILLIAMSON, WV
LYTLE STATE BANK, LYTLE, TX
SOUTHBRIDGE CREDIT UNION, SOUTHBRIDGE, MA
FIRST FEDERAL SAVINGS AND LOAN, ALPENA, MI
COMMERCIAL SAVINGS BANK, ST. CLAIR, MI
BANK OF HOUSTON, HOUSTON, TX
DEL RIO BANK AND TRUST CO, DEL RIO, TX
CITIZENS STATE BANK, HAYFIELD, MN
GREENEVILLE FEDERAL BANK, FSB, GREENEVILLE, TN
BOATMEN'S NATIONAL BANK CONWAY, CONWAY, AR
FIRST NATIONAL BANK, NAVARRE, MN
WEST SIDE AUTO W F C U, FLINT, MIFARMERS
SAVINGS BANK, PIERSON, IA
MOUNTAINEER FEDERAL C U, SOUTH CHARLESTON, WV
CORNELL FEDERAL CREDIT UNION, ITHACA, NY
AMERICAN BANK AND TRUST CO, HOUMA, LA
R A C CREDIT UNION, ST LOUIS, MO
NEBRASKA STATE BANK, OSHKOSH, NE
SACRAMENTO DIST. POSTAL E.C.U, SACRAMENTO, CA
SPRINGFIELD MUNICIPAL EMP CU, SPRINGFIELD, OH
STAR MARKETS FEDERAL CREDIT UN, HONOLULU, HI
CORPUS CHRISTI AREA TEACH C U, CORPUS CHRISTI, TX
WEPCO FEDERAL CREDIT UNION, BLOOMINGTON, MD
HERMANTOWN FEDERAL CREDIT UN, HERMANTOWN, MN
CLEARWATER CREDIT UNION, LEWISTON, ID
LOS ANGELES WATER-POWER FCU, LOS ANGELES, CA
SECOND NATIONAL BANK BAY CITY, BAY CITY, MI
HARRISON DEPOSIT BANK AND TRUST CO, CYNTHIANA, KY
PADUCAH FEDERAL CR UN INC, PADUCAH, KY
SPACE AGE FEDERAL CREDIT UN, AURORA, CO
CORPUS CHRISTI CITY EMP C U, CORPUS CHRISTI, TX
BANCO CENTRAL HISPANO, HATO REY, PR
REPUBLIC BANK, DULUTH, MN
EL CAP CREDIT UNION, HUTCHINSON, KS
GREEN MOUNTAIN BANK, RUTLAND, VT
KINGS PARK EMPLOYEES FED C U, KINGS PARK, NY
STATE BANK, EDEN VALLEY, MN
NORTHERN TIER FEDERAL C U, MINOT, ND
STANDARD BANK PASB, MONROEVILLE, PA

FIRST CHEYENNE FEDERAL CREDIT UNION, CHEYENNE, WY
BANK OF NORTH ARKANSAS, MELBOURNE, AR
RENO CITY EMPLOYEES FED CR UN, RENO, NV
PAUL REVERE LIFE INSURANCE CO, WORCESTER, MA
BANK OF AMERICA FSB, SAN DIEGO, CA
DAMLA CORPORATION, ATLANTA, GA
KELLY FIELD NATIONAL BANK, SAN ANTONIO, TX
FIRST INTERSTATE BANK DENVER, TEMPE, AZ
JEFFERSON COUNTY BANK, JEFFERSON, WI
QUAIL CREEK BANK NA, OKLAHOMA CITY, OK
BANK OF AMERICA ALASKA NA, ANCHORAGE, AK
NORTHWOOD TRANSPORTATION CR, ROYAL OAK, MI
PACIFIC SHORE FUNDING, LAKE FOREST, CA
SEVENTEEN FOURTEEN FEDERAL CREDIT UNION, WARREN, OH
FB MORTGAGE CORPORATION, FORT WORTH, TX
BENCHMARK MORTGAGE FIN SERVICES INC, LUTZ, FL
STATE BANK OF KEWAUNEE, KEWAUNEE, WI
FIRSTAR BANK GREEN BAY, GREEN BAY, WI
BANK ONE OSHKOSH NA, OSHKOSH, WI
BANK OF OKLAHOMA NA, TULSA, OK
FIRSTAR BANK GRANTSBURG NA, GRANTSBURG, WI
BANK ONE GREEN BAY, GREEN BAY, WI
ROBBINS FINANCIAL INC, GLENDALE, CA
IMPERIAL M C INC, SAN DIEGO, CA
LASALLE BANK FSB, CHICAGO, IL
KILBOURN STATE BANK, MILWAUKEE, WI
FIRST TEXAS BANK, ROUND ROCK, TX
FIRST BANK AND TRUST OF MEMPHIS, MEMPHIS, TX
BANKTEXAS NA, HOUSTON, TX
THE FIRST NATIONAL BANK-BAIRD, BAIRD, TX
COMMONWEALTH THRIFT-FDIC, TORRANCE, CA
ABBEY MORTGAGE CORPORATION II, LA MESA, CA
WESTCO REAL ESTATE FINANCE CORP, COSTA MESA, CA
COAST CAPITAL, TORRANCE, CA
BANK ONE—MADISON, MADISON, WI
RCFC INC, VICTORVILLE, CA
FIRST STATE BANK—THOMPSON FALLS, THOMPSON FALLS, MT
AMERICAN SOUTHWEST FUNDING, SAN DIEGO, CA
VALLEY INDEPENDENT BANK, EL CENTRO, CA
FIRST NATIONAL BANK—BOSTON, BOSTON, MA
MIDLANTIC BANK NA, EDISON, NJ
MONOGRAM HOME EQUITY COR, SALT LAKE CITY, UT
TRIANGLE EAST BANK, RALEIGH, NC
RAMSAY MORTGAGE CO OF—NC INC, CHAPEL HILL, NC
WEST JERSEY COMMUNITY BANK, FAIRFIELD, NJ
ANNAPOLIS MORTGAGE CORPORATION, PHOENIX, AZ
FIRST JEFFERSON MORTGAGE CORP, NORFOLK, VA
KNAPPER FINANCIAL SERVICES, HUNTINGTON BEACH, CA
RL SCHMIDT MORTGAGE CORP INC, HOLLYWOOD, FL
AMERICAN WEST BANK, ENCINO, CA
FIRST FRANKLIN FINANCIAL CORP, SAN JOSE, CA
CENTURY MORTGAGE CORP, LANGHORNE, PA
CITILITES REALTY INC, RANCHO CUCAMONGA, CA
STEVENS FINANCIAL CORPORATION, BREA, CA
BETHANY INC DBA NEW ENGLAND FUNDING, NO PROVIDENCE, RI
SOMERSET TRUST COMPAY, SOMERSET, PA
FIRST BANK AND TRUST, MOUNT JULIET, TN
SECURITY NATIONAL BK AND TR CO, NEWARK, NJ
REDLANDS CENTENNIAL BANK, REDLANDS, CA
COAST PARTNERS ACCEPTANCE CORP, SAN FRANCISCO, CA
QUESTAR FINANCIAL, DANVILLE, CA
CITY NATIONAL BANK COLORADO CITY, COLORADO CITY, TX
AMERICAN FEDERAL LENDING INC, DENVER, CO
BANK OF CHERRY CREEK NA, DENVER, CO
TRI STAR MORTGAGE INC, SAN DIEGO, CA
MORTECH FINANCIAL CORPORATION, VENTURA, CA
KANSAS CITY MORTGAGE INC, KANSAS CITY, MO
REI INC, ORANGE,CA
UNION AMERICA MORTGAGE CORP, TARPON SPRINGS, FL
BANK OF RANCHO BERNARDO, SAN DIEGO, CA
GOLD KEY MORTGAGE INC, SPRINGFIELD, MO
ALTA MORTGAGE CORPORATION, CHICAGO, IL
ATLANTIC INTERNATIONAL COMPANY, TAMPA, FL
CHICAGO COMMUNITY BANK, CHICAGO, IL
AMERICAN CAPITAL HOME LN INC, RANCHO CORDOVA, CA
FAST FLOW FINANCING, HOLLYWOOD, CA
W E FINANCIAL CORPORATION, SAN BERNARDINO, CA
CORPORATE CAPITAL FINANCIAL INC, IRVINE, CA
BARCLAYS MORTGAGE CO, STREAMWOO, IL
BANK OF HOLLOYWOOD, HOLLYWOOD, CA
LE COCON DOR INC, THOUSAND OAKS, CA
M AND I MARSHALL AND ILSLEY BANK, MILWAUKEE, WI
LENDERS ASSOCIATES CORP, MARIETTA, GA
SMITH MORTGAGE SERVICING CORP, LUBBOCK, TX
OLD REPUBLIC INS FIN ACCEPT CORPORATION, BLOOMFIELD, NJ
AAA MORTGAGE AND INVESTMENTS INC, CLEARWATER, FL
SUNRISE MORTGAGE COMPANY INC, HUNTINGDON VALLEY, PA
UNITED CAPITAL CORPORATION, WESTCHESTER, IL
INDEPENDENT NATIONAL BANK, GRAND PRAIRIE, TX
AMH MORTGAGE COMPANY LP, NEWPORT BEACH, CA
ALPINE MORTGAGE SERVICES INC, SEATTLE, WA
ISLAND COMMUNITY LENDING CORPORATION, HONOLULU, HI
PREMIER LENDING CORPORATION, MARIETTA, GA
HEARTLAND ENTERPRISES INC, CANOGA PARK, CA
LONDON ACCEPTANCE CORPORATION, MARIETTA, GA
FIRST UTAH MORTGAGE CORPORATION, LOGAN, UT
SMITH SOLOMON, TEMPLE CITY, CA
VISION MORTGAGE CORPORATION, HIALEAH, FL
LOAN STORE INC, ST LOUIS, MO
BECKHAM MORTGAGE CORPORATION, BIRMINGHAM, AL
BANKATLANTIC, FT. LAUDERDALE, FL
TWENTY FIRST CENTURY REAL ESTATE SER, ROCKWALL, TX
AMERON MORTGAGE CORPORATION, MARIETTA, GA
MORTGAGE STORE, WILLOWBROOK, IL
WEST COAST CAPITAL GROUP INC, LYNNWOOD, WA
UNITED CALIFORNIA LENDERS CORPORATION, TUSTIN, CA
THE FINANCIAL COMPANY, HUNTINGTON BEACH, CA
MORTGAGE BANC, KANSAS CITY, MO
STANDARD AMERICAN FINANCIAL CORP, BATON ROUGE, LA
AMERICAN TRADITIONAL MORTGAGE, NORTHRIDGE, CA

AMERICAN MUTUAL LIFE INSURANCE CO, DES MOINES, IA
HEIGL MORTGAGE AND FINL CORP, BLOOMINGTON, MN
CROSS COUNTRY LENDING INC, GOLETA, CA
RED HILL FINANCIAL, ORANGE, CA
FIRST INTERFINANCIAL MORTGAGE COMPANY, ST PETERSBURG, FL
CASA MORTGAGE INC, ENCINO, CA
CAPITAL CITY MORTGAGE CO INC, COLUMBIA, SC
BAY MORTGAGE SERVICES, PLYMOUTH, MA
CREST FINANCIAL I INC, MIDLAND, TX
ONE SOURCE FUNDING INC, LAGUNA NIGUEL, CA
NORTHERN PACIFIC MORTGAGE, RANCHO CUCAMONGA, CA
ALLWEST LAND AND TITLE, SALT LAKE CITY, UT
CONTINENTAL FUNDING CORP, STOUGHTON, MA
LOAN WAREHOUSE LLC, COLORADO SPRINGS, CO
PALMA MORTGAGE CORP, LAKE SUCCESS, NY
TARA MORTGAGE CORPORATION, PENSACOLA, FL
BARRONS FINANCIAL INC, DALLAS, TX
AMERICAN RESIDENTIAL FUNDING, PLAINVIEW, NY
NATIONALWIDE FINANCIAL CORP, ATLANTA, GA
FOA FINANCIAL, ARCADIA, CA
REMMINGTON ACCEPTANCE CORP, AUGUSTA, GA
AMERI-FUND PROFESSIONAL LENDING SERV, TACOMA, WA

Title II Mortgagees Withdrawn

FIRST INTERSTATE BANK ARIZONA NA, PHOENIX, AZ
BOATMEN'S NATIONAL BANK AR, LITTLE ROCK, AR
BANK OF WALDRON, WALDRON, AR
BOATMEN'S NATIONAL BANK HOT SPRINGS, HOT SPRINGS, AR
BOATMEN'S NATIONAL BANK RUSSELLVILLE, RUSSELLVILLE,AR
BOATMEN'S NATIONAL BANK NW ARKANSAS,FAYETTEVILLE,AR
BOATMEN'S NATIONAL BANK CONWAY, CONWAY, AR
MEMBERS MORTGAGE CORPORATION, ARVADA, CO
LAFAYETTE AMERICAN BANK AND TRUST CO, BRIDGEPORT, CT
ARTISANS SAVINGS BANK, WILMINGTON, DE
SOCIETY FIRST FEDERAL SAVINGS BANK, FORT MYERS, FL
JEFFERSON BANK—FLORIDA, MIAMI BEACH, FL
CONSOLIDATED BANK NA, HIALEAH, FL
COMMUNITY FIRST BANK, JACKSONVILLE, FL
HOMEBANC MORTGAGE CORP, ATLANTA, GA
FIRST NATIONAL BANK GAINSVILLE, GAINESVILLE, GA
BANKERS FIRST FEDERAL SAVINGS AND LOAN, AUGUSTA, GA
KNOX MORTGAGE COMPANY, THOMSON, GA
BANKERS FIRST MORTGAGE CORP, MARTINEZ, GA
FIDELITY FEDERAL SAVINGS BANK, DALTON, GA
AMERICAN CAPITAL RESOURCE INC, ATLANTA, GA
FIRST INTERSTATE BANK IDAHO NA, BOISE, ID
ONEIDA SAVINGS BANK, ONEIDA, NY
PAN AM MORTGAGE BANKERS INC, TAMPA, FL
ST PAUL FEDERAL BANK FOR SAVINGS, CHICAGO, IL
FARMERS NATL BANK GENESEO, GENESEO, IL
SOUTH SHORE BANK CHICAGO, CHICAGO, IL
FIRST NATIONAL BANK AND TRUST, GIBSON CITY, IL
FIRST SUBURBAN NATIONAL BANK, MAYWOOD, IL
ALLSTATE INSURANCE COMPANY, NORTHBROOK, IL
ALLSTATE LIFE INS CO, NORTHBROOK, IL
DEVELOPERS MORTGAGE CORP, CHICAGO, IL
ROCKFORD MORTGAGE CO INC, ROCKFORD, IL
LA PORTE BANK AND TRUST CO, LA PORTE, IN
MERCHANTS MORTGAGE CORPORATION, INDIANAPOLIS, IN
COLUMBUS BANK AND TRUST CO, COLUMBUS, IN
STRATEGIC FINANCIAL CORP, ST JOHN, IN
FIRSTAR BANK CEDAR RAPIDS NA, CEDAR RAPIDS, IA
HARVEST SAVINGS BANK F S B, DUBUQUE, IA
FIRSTAR BANK RED OAK NA, RED OAK, IA
LIBERTY BANK AND TRUST, MASON CITY, IA
FIRSTAR BANK AMES, AMES, IA
BANK IV KANSAS NA, WICHITA, KS
SUNFLOWER BANK NA, SALINA, KS
COMMERCIAL NATIONAL BANK, SHREVEPORT, LA
CALCASIEU MARINE NATIONAL BANK, LAKE CHARLES, LA
PREMIER BANK NA, BATON ROUGE, LA
HARRIS MORTGAGE CORPORATION, METAIRIE, LA
AMERICAN BANK AND TRUST CO, HOUMA, LA
ATLANTIC FEDERAL SAVINGS BANK, BALTIMORE, MD
ODENTON FEDERAL SAVINGS AND LOAN ASSN, ODENTON, MD
CO-OPERATIVE BANK CONCORD, ACTON, MA
NEW ENGLAND MUTUAL LIFE INS CO, BOSTON, MA
CITY BANK AND TRUST COMPANY, JACKSON, MI
STATE BANK STANDISH, STANDISH, MI
SECOND NATIONAL BANK SAGINAW, SAGINAW, MI
D AND N MORTGAGE CORPORATION, HANCOCK, MI
PELICAN VALLEY STATE BANK, PELICAN RAPIDS, MN
AMERICAN EXPRESS FINANCIAL SRVCS, MINNEAPOLIS, MN
TOWLE FINANCIAL SERVICES, MINNEAPOLIS, MN
COMMUNITY FIRST NATIONAL BANK, LITTLE FALLS, MN
FIRST NATIONAL BANK, CROSBY, MN
WORTHINGTON FEDERAL SAVINGS AND LN ASSN, WORTHINGTON, MN
INTER SAVINGS BANK FSB, EDINA, MN
FBS MORTGAGE CORPORATION, MINNEAPOLIS, MN
HEIGL MORTGAGE AND FIN CORP, BLOOMINGTON, MN
SECURITY BANK WACONIA, WACONIA, MN
DELTA BANK AND TRUST, DREW, MS
BOATMEN'S NATIONAL BANK-ST LOUIS, SAINT LOUIS, MO
UNITED MISSOURI BANK NA, KANSAS CITY, MO
UNITED MISSOURI MORTGAGE CO, KANSAS CITY, MO
BOATMEN'S FIRST NATIONAL BANK KC, KANSAS CITY, MO
FIRST MIDWEST BANK OF DEXTER, DEXTER, MO
SECURITY FINANCIAL AND MTGE CORP, ST LOUIS, MO
PRIMERIT BANK FSB, LAS VEGAS, NV
MILFORD COOPERATIVE BANK, MILFORD, NH
FIRST NH MORTGAGE CORP, HOOKSETT, NH
HUDSON UNITED BANK, MAHWAH, NJ
MUTUAL BENEFIT LIFE INS CO, NEWARK, NJ
FIRST INTERSTATE BANK, SANTA FE, NM
PLAZA HOME MORTGAGE SERVICING CORP, SANTA ANA, CA
EVERGREEN BANK NA, GLENS FALLS, NY
NATIONS TITLE INSURANCE NY INC, WESTBURY, NY
EAST NEW YORK SAVINGS BANK, NEW YORK, NY
REPUBLIC NATIONAL BANK OF NY, BROOKLYN, NY
RHINEBECK SAVINGS BANK, RHINEBECK, NY

NORTH SIDE SAVINGS BANK, FLORAL PARK, NY
PROGRESSIVE EQUITY FUNDING, ITHACA, NY
BANKAMERICA NATIONAL TRUST COMPANY, NEW YORK, NY
MECHANICS AND FARMERS BANK DURHAM, DURHAM, NC
NORWEST-BARCLAYS MORTGAGE, CHARLOTTE, NC
FIRST COMMERCIAL BANK, ASHEVILLE, NC
GOOSE RIVER BANK, MAYVILLE, ND
COMMUNITY FIRST NATIONAL BANK-TR CO, DICKINSON, ND
NORTHWESTERN SAVINGS BANK FSB, FARGO, ND
FIRST NATIONAL BANK, DEVILS LAKE, ND
FIRST NATIONAL BANK AND TRUST, OKMULGEE, OK
BANCOKLAHOMA MORTGAGE CORP, TULSA, OK
FIRST INTERSTATE BANK OREGON NA, PORTLAND, OR
F V PRIME MORTGAGE COMPANY, CORVALLIS, OR
FRANKFORD TRUST COMPANY, LANCASTER, PA
FIRST FEDERAL SAVINGS ALA, HAZLETON, PA
PITTSBURGH HOME SAVINGS, PITTSBURGH, PA
PROTECTED HOME MUTUAL LIFE INS, SHARON, PA
BOULEVARD MORTGAGE COMPANY, PHILADELPHIA, PA
MERIDIAN MORTGAGE CORP, WAYNE, PA
AMERICAN FEDERAL BANK FSB, MADISON, SD
WESTERN BANK, SIOUX FALLS, SD
REGIONS BANK—TENNESSEE, NASHVILLE, TN
TRANS FINANCIAL BANK FSB, TULLAHOMA, TN
FIRST CITIZENS BANK, HOHENWALD, TN
BOMAC CAPITAL CORP, DALLAS, TX
FIRST NATIONAL BANK, MARSHALL, TX
FRANKLIN FEDERAL BANCORP, AUSTIN, TX
FIRST INTERSTATE BANK UTAH, MURRAY, UT
RICHARDS WOODBURY MTG CORP, SALT LAKE CITY, UT
UTAH INDEPENDENT BANK, SALINA, UT
MERCHANTS BANK BURLINGTON, BURLINGTON, VT
FIRST COMMONWEALTH SAVINGS BANK, ALEXANDRIA, VA
METROPOLITAN FEDERAL SAVINGS, SEATTLE, WA
CENTRAL WASHINGTON BANK, WENATCHEE, WA
FIRSTAR BANK SHEBOYGAN NA, SHEBOYGAN, WI
M-I BANK BELOIT, BELOIT, WI
FIRSTAR BANK MANITOWOC, MANITOWOC, WI
BANK OF AMERICA ALASKA NA, ANCHORAGE, AK
UPJOHN MANUFACTURING CO, ARECIBO, PR
SAVINGS ASSOCIATIONS MTG CO INC, SAN JOSE, CA
STANLEY M DAVIS MORTGAGE INC, DAVIS, CA
HOME FEDERAL SAVINGS ALA, SAN FRANCISCO, CA
HAMMOND COMPANY MTG BANKERS, NEWPORT BEACH, CA
WESTSIDE BANK, TRACY, CA
SUNRISE BANK OF CALIFORNIA, ROSEVILLE, CA
AMERICAN FIDELITY MORTGAGE, ALTAMONTE SPRINGS, FL
BANKERS BANK, ATLANTA, GA
L J WRIGHT FINANCIAL RESOURCES, PHOENIX, AZ
EQUICREDIT CORPORATION AMERICA, JACKSONVILLE, FL
SUTTER BUTTES SAVINGS BANK, YUBA CITY, CA
STERLING MORTGAGE CORP, TUKWILLA, WA
UNIVERSAL MTG CORP, INDIANAPOLIS, IN
HODGE BANK AND TRUST CO, HODGE, LA
IMPERIAL CREDIT INDUSTRIES INC, SANTA ANA HEIGHTS, CA
INDEPENDENT MORTGAGE CORP, ROCK HILL, SC
MIDWESTERN MORTGAGE, ST LOUIS, MO
COLORADO SPRINGS SAVINGS ALA, COLORADO SPRINGS, CO
METROPOLITAN BANK FOR SAVINGS FSB, ARLINGTON, VA
CONTINENTAL MORTGAGE CORP, PITTSBURGH, PA
IBERVILLE TRUST AND SAVINGS BANK, PLAQUEMINE, LA
HANCOCK SAVINGS BANK, LOS ANGELES, CA
HARVARD FINANCIAL INC, LONG BEACH, CA
FIRST CITIZENS BANK, BOZEMAN, MT
PINE TREE FINANCIAL CORP, CHERRY HILL, NJ
FARMERS BANK AND TRUST COMPANY, BLYTHEVILLE, AR
SECURE MORTGAGE INC, HOLLYWOOD, FL
SUNRISE MORTGAGE CO INC, HUNTINGDON VALLEY, PA
VISION MORTGAGE CORPORATION, HIALEAH, FL
FAMILY MORTGAGE BANKING CO INC, TROY, NY
LITENDA MORTGAGE CORPORATION, MONTCLAIR, NJ
INTEGRA MORTGAGE COMPANY, PITTSBURGH, PA
EFM MORTGAGE BANKERS INC, BURBANK, CA
FIRST MORTGAGE GROUP INC, FAIRFAX, VA
ALEXIS GROUP LTD, ARLINGTON HEIGHTS, IL
ANNAPOLIS MORTGAGE CORPORATION, PHOENIX, AZ
CORPUS CHRISTI TEACHERS FED CU, CORPUS CHRISTI, TX
FIRST NATIONAL BANK AND TRUST, BARABOO, WI
PRAGUE NATIONAL BANK, PRAGUE, OK
STEPHENS RESOURCE MANAGEMENT, LITTLE ROCK, AR
PEOPLES STATE BANK, MANY, LA
FIRST FEDERAL FUNDING CORP, ROSELLE, IL
ASSOCIATED BANK MADISON, MADISON, WI
HEARTLAND MORTGAGE CO INC, JUNCTION CITY, KS
REINLEIN-LIESER-MC GEE, SAINT LOUIS, MO
SOUTHTRUST BANK OF VOLUSIA CTY, DELAND, FL
WEATHERFORD NATIONAL BANK, WEATHERFORD, TX
KNAPPER FINANCIAL SERVICES INC, HUNTINGTON BEACH, CA
FIDELITY BANK, FORT WORTH, TX
SOUTHTRUST BANK CENTRAL FL, OCALA, FL
PROGRESSIVE NATIONAL BANK OF DE SOTO, MANSFIELD, LA
MORTGAGE FUNDING, SANTA BARBARA, CA
BILTMORE MORTGAGE CORPORATION, NASHVILLE, TN
PACIFIC SOUTHWEST BANK FSB, DALLAS, TX
CONSUMER FIRST MORTGAGE INC, COLUMBIA, MD
MIZNER MORTGAGE CORPORATION, STUART, FL
CHARTER MORTGAGE CORPORATION, OVERLAND PARK, KS
FAMILY HOME MORTGAGE NETWORK, CHARLOTTE, NC
RESOURCE MORTGAGE CORPORATION, PUYALLUP, WA
RIVER VALLEY BANK FSB, WESLACO, TX
RIVER VALLEY SAVINGS BANK FSB, PEORIA, IL
US BANK OF IDAHO, BOISE, ID
BOATMEN'S NATIONAL BANK OK, TULSA, OK
FIRST COMMUNITY BANK, GASTONIA, NC
NCB MORTGAGE CORPORATION, WINONA, MS
FIRST OMNI MORTGAGE CO, FAYETTEVILLE, NC
FMB—NORTHWESTERN BANK, BOYNE CITY, MI
LIBERTY BANK, N RICHLAND HILLS, TX

MORTGAGE RESOURCES INC, HONOLULU, HI
FIDELITY UNION MTG CORP VI, CHRISTIANSTED, VI
MINNSTAR BANK NATIONAL ASSN, LAKE CRYSTAL, MN
CONSTITUTION MTG BANKERS INC, MERIDEN, CT
BANK OF NEWNAN, NEWNAN, GA
LAUREL FEDERAL CREDIT UNION, LAUREL, MT
NATIONAL BANK COMMERCE CORINTH, CORINTH, MS
CREDIT UNION RESIDENTIAL MORTG, DES MOINES, IA
ERIN MORTGAGE CO, EASTPOINTE, MI
PIGGOTT STATE BANK, PIGGOTT, AR
JEFFERSON COUNTY BANK, JEFFERSON, WI
MORTGAGE LENDERS INC, EAST LANSING, MI
TLC MORTGAGE SPECIALISTS INC, RICHMOND HEIGHTS, OH
FARMERS STATE BANK AND TR, AURORA, NE
HONDA FEDERAL CREDIT UNION, TORRANCE, CA
COASTAL FEDERAL MTG CORP INC, MIAMI, FL
YADKIN VALLEY BANK TRUST CO, ELKIN, NC
FIRST CONNECTICUT HOUSING INC, NEW LONDON, CT
BANKERS FINANCIAL FUNDING SVC, CLEARWATER, FL
HIGHLAND BANK, SAINT PAUL, MN
FIRST MIDWEST BANK POPLAR BLUFF, POPLAR BLUFF, MO
BELVIDERE NATIONAL BANK AND TR, BELVIDERE, IL
EAGLE NATIONAL BANK, UPPER DARBY, PA
GTE FEDERAL CREDIT UNION, TAMPA, FL
BANK OF LENOX, LENOX, GA
SPRINGDALE BANK AND TRUST, SPRINGDALE, AR
MERIDIAN NATIONAL BANK, ST PAUL, MN
BENCHMARK MORTGAGE FIN SERVICES, LUTZ, FL
MARION TRUST AND BANKING CO, JASPER, TN
NORWEST BANK TEXAS S CENTRAL, VICTORIA, TX
VALLEY BANK SHAWANO NA, SHAWANO, WI
BANKFIRST, EUSTIS, FL
BLUE STAR MORTGAGE INC, RIVERSIDE, CA
HUNTERS MORTGAGE CORP, ARLINGTON, IL
FIRST BANK AND TRUST, SPIRIT LAKE, IA
MATRIX LOAN SERVICES INC, RANCHO SANTA MARGAR, CA
FIRST UTAH MORTGAGE CORP, LOGAN, UT
ALPHA MORTGAGE INC, SAN ANTONIO, TX
FB MORTGAGE CORPORATION, FORT WORTH, TX
VICTORIA MORTGAGE CORP, IRVINE, CA
SOUTHTRUST BANK JACKSONVILLE, JACKSONVILLE, FL
INTERNATIONAL BANKERS FIN GR, MIAMI, FL
OKLAHOMA BANK, OKLAHOMA CITY, OK
OLD—FIRST NATIONAL BANK IN BLUFFTON, BLUFFTON, IN
AMERICAN MORTGAGE BANKERS INC, BETHESDA, MD
BEAVER TRUST COMPANY, BEAVER, PA
BANK OF NORTH AMERICA, FORT LAUDERDALE, FL
PROVIDENTIAL HOME INCOME PLAN INC, SAN FRANCISCO, CA
BANKFIRST NA, BROOKINGS, SD
CHEMICAL BANK NA, JERICHO, NY
SOUTHLAND MORTGAGE LENDING COR, TAMPA, FL
UNIVERSAL CAPITAL CORP, TOTOWA, NJ
CITIZENS STATE BANK, CORPUS CHRISTI, TX
PATRIOT MORTGAGE COMPANY LP, ST LOUIS, MO
CITIZENS BANK NORTHWEST AR, FAYETTEVILLE, AR
BANK OF AMERICA TEXAS NA, TEMPE, AZ
BROKERS MORTGAGE CORPORATION, LONG BEACH, CA
TRANSCAPITAL FINANCIAL INC, HOUSTON, TX
FUNDING PLUS INC, SAN DIMAS, CA
SMYRNA BANK AND TRUST CO, SMYRNA, GA
CLOS INC, PALM DESERT, CA
STATESTREET MORTGAGE CORP, RICHMOND, VA
PAWTUCKET CREDIT UNION, PAWTUCKET, RI
NORTH BANK, SAGINAW, MI
CORPORATE MORTGAGE SERVICES INC, ST LOUIS, MO
CREATIVE MORTGAGE LOANS INC, OKLAHOMA CITY, OK
CITIZENS BANK AND TRUST FAYETTE, FAYETTEVILLE, GA
COLONIAL MORTGAGE CORP, FAIRFAX, VA
PREFERRED CREDIT CORPORATION, IRVINE, CA
SECURITY STATE BANK ND, CARRINGTON, ND
USA MORTGAGE GROUP INC, WOOSTER, OH
FIRST CITY MORTGAGE CORP, DALLAS, TX
IMPERIAL MC INC, SAN DIEGO, CA
MORTGAGE CORPORATION OF MISS., RIDGELAND, MS
AMERICAN LIFE AND CAUSUALTY INSURANCE CO, DES MOINES, IA
AMERICAN INDUSTRIES LIFE INS CO, HOUSTON, TX
LOS ANGELES TEACHERS CREDIT UNION, LOS ANGELES, CA
FIRST NATIONAL BANK SOUTHWEST FL, CAPE CORAL, FL
SEKON ENTERPRISES INC, SARASOTA, FL
MAXIMUM MORTGAGE CORP, MAPLE GROVE, MN
CHEMICAL BANK NY, JERICHO, NY
HAMMOND PROPERTIES INC, CUMMING, GA
ABBEY MORTGAGE CORPORATION, LA MESA, CA
GREAT SOUTH MORTGAGE CO INC, LONGWOOD, FL
A AND I MORTGAGE CORPORATION, SAN DIEGO, CA
TRINITY LENDING CORP, FORT WORTH, TX
DES CHAMPS AND GREGORY MTG CO, BRADENTON, FL
SHELTERNET INC, SAN MATEO, CA
A B MORTGAGE CORPORATION, STUART, FL
LIBERTY NATIONAL MORTGAGE INC, DENVER, CO
TEAM MORTGAGE CORP, EDEN PRAIRIE, MN
FGB REALTY ADVISORS INC, TULSA, OK
UNION AMERICA MORTGAGE CORP, TARPON SPRINGS, FL
ENTREGA MORTGAGE LENDERS INC, TAMPA, FL
BLAKE MORRIS MORTGAGE CORP, NEWPORT BEACH, CA
NORTH COAST MORTGAGE INC, ST LOUIS PARK, MN
PERPETUAL STATE BANK, LEXINGTON, NC
MORTECH INC, LINCOLN, NE
RFI MORTGAGE CORP, RIVERSIDE, CA
CITIZENSBANC MORTGAGE CO, SILVER SPRING, MD
BANK—DARIEN, DARIEN, CT,
FIRST STATE BANK—THOMPSON FALLS, THOMPSON FALLS, MT
SYNERGY MORTGAGE INC, DENVER, CO
LAKE COMMUNITY BANK, LAKEPORT, CA
COAST CAPITAL, TORRANCE, CA
ALPHA MORTGAGE INC, LOUISVILLE, KY
SOUTHERN CAPITAL MORTGAGE CORP, ATLANTA, GA
BANK OF ALTON, ALTON, IL
MILLENNIUM FIRST FUNDING, IRVINE, CA
FINAMARK INC, KENSINGTON, MD
UNITED VALLEY BANK, FARMERSVILLE, CA
PEOPLES NATIONAL MORTGAGE CORP, DALLAS, TX
ADMIRAL MORTGAGE CO, PASADENA, CA
CROSSLAND FEDERAL SAVINGS BANK, NEW YORK, NY

FAMILY MORTGAGE INC, SAINT CLAIRSVILLE, OH
O SULLIVAN DIVERSIFIED COMPANIES INC, OCEANSIDE, CA
JPJ CAPITAL GROUP INC, TEMPE, AZ
SOUTHERN CRESCENT BANK, MORROW, GA
ENTERPRISE BANK, BELLEVUE, WA
MOHAVE STATE BANK, LAKE HAVASU CITY, AZ
BANK OF—BOONE COUNTY INC, FLORENCE, KY
ECON MORTGAGE SERVICES, HINSDALE, IL
A–PLUS MORTGAGE CORPORATION, FORT WORTH, TX
PANAMERICAN BANK, MIAMI, FL
TELEPHONE EMPLOYEES CR UN, PASADENA, CA
BANCNET INC, SCHAUMBURG, IL
PROGRESS FEDERAL SAVINGS BK, BLUE BELL, PA
PREFERRED BANK, LOS ANGELES, CA
FIRST HOME SAVINGS BANK FSB, PITTSBURGH, PA
ARC FINANCIAL GROUP INC, MARLTON, NJ
SERVICE EMPLOYEES LANE COUNTY CU, EUGENE, OR
BANK OF—ZUMBROTA, ZUMBROTA, MN
BARA FINANCIAL INC, MONROVIA, CA
COWGER AND MILLER MORTGAGE INC, LOUISVILLE, KY
BANK OF WINTER PARK MORTGAGE CO, MAITLAND, FL
LINCOLN MORTGAGE CORPORATION, ELGIN, IL
STANDARD AMERICAN FINANCIAL CORP, LAKE CHARLES, LA
CRESTAR MORTGAGE CAPITAL CORP, SCHAUMBURG, IL
EPIC MORTGAGE CORPORATION, MISSION HILLS, CA
WESTPORT BANK AND TRUST, WESTPORT, CT
BANK OF—RANTOUL, RANTOUL, IL
FIRST BANK OF—WEST HARTFORD, WEST HARTFORD, CT
BATES FINANCIAL CORP, NEW HAVEN, CT
HOMES MORTGAGE CONSULTANTS, ELMHURST, IL
HARVEST MORTGAGE, ORANGE, CA
SECOND NATIONAL BANK BAY CITY, BAY CITY, MI
GRAYLING STATE BANK, GRAYLING, MI
THE BANK OF QUITMAN, QUITMAN, GA
TODAY'S BANK—EAST, FREEPORT, IL
R E I INC, ORANGE, CA
AMERICAN WEST FINANCIAL, ONTARIO, CA
HARBOR MORTGAGE LTD, GIG HARBOR, WA
FIRST HOME MORTGAGE OF VIRGINIA INC, VIRGINIA BEACH, VA
FIRSTAR BANK EAU CLAIRE NA, EAU CLAIRE, WI
MORTGAGE ASSOCIATES INC, MURRAY, UT
SUNBELT MTG AND FINANCIAL SERVICES INC, FITZGERALD, GA
ALOHA MORTGAGE AND FINANCE, HONOLULU, HI
WEST VENTURE HOME SALE INC, STEVENSON RANCH, CA
EXCHANGE BANK AND TRUST COMPANY, NATCHITOCHES, LA
MORTGAGE MART, NENDERSON, NV
FIRST CAPITAL MORTGAGE COMPANY, YORK, PA
PINNACLE BANCORP INC, SCHAUMBURG, IL
FAST FLOW FINANCING, HOLLYWOOD, CA
SEVEN HILLS SAVINGS ASSOCIATION, CINCINNATI, OH
FIRSTAR BANK CEDAR FALLS, CEDAR FALLS, IA
FIRSTAR BANK MINNESOTA NA, ROSEVILLE, MN
WESTCO REAL ESTATE FINANCE, COSTA MESA, CA
NORTHERN BANK AND TRUST CO, WOBURN, MA
COMMUNITYFIRST BANK, HARTSVILLE, TN
FIRST BANK AND TRUST, MENOMONIE, WI
TWIN CITY FEDERAL SAVINGS BANK, BRISTOL, TN
UNITED CAPITAL CORPORATION, WESTCHESTER, IL
AMERICAN LOAN AND MORTGAGE COR, PENSACOLA, FL
FIRST STATE BANK BIBB COUNTY, WEST BLOCTON, AL
FIRST NATIONAL TRUST BANK, SUNBURY, PA
MIDLANTIC BANK NA, WEST PATERSON, NJ
DANIELS CAPITAL CORPORATION, LAGUNA NIGUEL, CA
MADISON COMMERCE INC, PLANO, TX
ATLANTIC INTERNATIONAL COMPANY, CLEARWATER, FL
COMPULOAN FINANCIAL SVCS LLC, SALT LAKE CITY, UT
COMMONWEALTH THRIFT–FDIC, TORRANCE, CA
SAFETY FUND NATIONAL BANK, FITCHBURG, MA
SLAVIE FEDERAL SAV AND LN ASSN, BALTIMORE, MD
AEGIS FUNDING, SOUTHAVEN, MS
W E FINANCIAL CORPORATION, SAN BERNARDINO, CA
MORTGAGE PROFESSIONALS AMER INC, CHICAGO, IL
LAKE CITY MORTGAGE INC, ACWORTH, GA
CAPSOURCE MORTGAGE CORPORATION, DALLAS, TX
CONTINENTAL FINANCING COMPANY, SCHAUMBURG, IL
ELM MORTGAGE CORPORATION, ELMHURST, IL
COLUMBIA NATIONAL BANK, CHICAGO, IL
MORCAP INC, ATLANTA, GA
UNITY NATIONAL BANK, HOUSTON, TX
AMERICAN ELECTRONICS ASSOC CU, SUNNYVALE, CA
AMERICAN MORTGAGE INDUSTRIES INC, LAS VEGAS, NV
FIRST COAST MTG CONSULTANTS INC, ORANGE PARK, FL
FLEET REAL ESTATE CAPITAL INC, BOSTON, MA
BRADFIELD PROPERTIES INC, SAN ANTONIO, TX
OLD FAMILY MTG INC, INDIANAPOLIS, IN
ALTERNATIVE MORTGAGE CONCEPTS INC, AURORA, CO
FIRST BANK MORTGAGE CORP, SAINT SIMONS ISLAND, GA
BANKERS FINANCIAL OF CALIFORNIA INC, BAKERSFIELD, CA
PROFEX MORTGAGE LENDERS INC, MIAMI, FL
FIRST UNITED MORTGAGE COMPANY, SANDY, UT
CHEMICAL COMMERCIAL MTG BK COR, NEW YORK, NY
ROBBINS FINANCIAL INC, GLENDALE, CA
ENCHANTMENT MORTGAGE INC, SANTA FE, NM
AMH MORTGAGE COMPANY L P DBA AMH FUNDING, NEWPORT, CA
WORKERS CREDIT UNION, FITCHBURG, MA
MORTGAGE ADVANTAGE INC, ABERDEEN, SD
A AND C MORTGAGE CORPORATION, NORTH CHARLESTON, SC
APEX MORTGAGE CORPORATION, DEARBORN HEIGHTS, MI
AMERICAN NORTHWEST MORTGAGE DBA, SILVERDALE, WA
PAM CORPORATION, HONOLULU, HI
AMERICAN FINANCE AND INV INC, FAIRFAX, VA
PEOPLES BANK OF KANKAKEE COUNTY, BOURBONNAIS, IL
COLONIAL MORTGAGE SERVICE CO, HORSHAM, PA
KEYSTONE VENTURES INC, AUSTIN, TX
HEARTLAND ENTERPRISES INC, CANOGA PARK, CA
MORTGAGE MAKERS, WARWICK, RI
DISCOVER FINANCIAL SERVICES, FRANKLIN, IN
LEADER MORTGAGE INC, BOCA RATON, FL
AMERICAN HOME MORTGAGE POLK COUNTY INC, LAKELAND, FL
ROBERTS FINANCIAL INC, POMPTON PLAINS, NJ
PACIFIC EMPIRE FUNDING, LAKE FOREST, CA

STERNBERG FINANCIAL INC, ST CHARLES, MO
PROFESSIONAL REALTY SERVICES, LANHAM, MD
FARMERS BANK, NICHOLASVILLE, KY
COMMUNITY STATE BANK OF ROCK FALLS, ROCK FALLS, IL
FIRST NATIONAL BANK IN AMBOY, AMBOY, IL
PALO ALTO FUNDING GROUP INC, PALO ALTO, CA
FIRST INTERFINANCIAL MORTGAGE CORP, PINELLAS PARK, FL
MORTGAGE STORE, WILLOWBROOK, IL
SUMMIT MORTGAGE BANKERS INC, NEWNAN, GA
RDMG INC, BELLEVUE, WA
APPLE MORTGAGE CORPORATION, PEMBROKE PINES, FL
UNITED CALIFORNIA LENDERS CORP, TUSTIN, CA
UNIVERSAL BANCORP, LAGUNA HILLS, CA
THE FINANCIAL COMPANY, HUNTINGTON BEACH, CA
FIRST NATIONAL BANK OF TUTTLE, TUTTLE, OK
HUTCHINSON CREDIT UNION, HUTCHINSON, KS
HOMEOWNERS FINANCIAL SERVICES INC, COLUMBUS, OH
TEXAS UNITED MORTGAGE LTD, AUSTIN, TX
BANKALABAMA HUNTSVILLE, HUNTSVILLE, AL
CREST FINANCIAL INC, MIDLAND, TX
CASA MORTGAGE INC, ENCINO, CA
SANDHURST NATIONAL MORTGAGE CORPORATION, SAN DIEGO, CA
UPM MORTGAGE INC, AURORA, CO
FIRST MARINER MORTGAGE CORPORATION, BALTIMORE, MD
LENDING SOURCE INC, PORTLAND, OR
LIBERTY RESIDENTIAL MORTGAGE COMPANY, ARLINGTON, TX
NORTHERN PACIFIC MORTGAGE, RANCHO CUCAMONGA, CA
VOMACK CORPORATION, AUSTIN, TX
EMERALD MORTGAGE CORP, BEAVERTON, OR
WFS MORTGAGE SERVICES INC, WARREN, NJ
C AND P INNOVATIVE MARKETING SERV INC, SAN DIEGO, CA
AMERICAS MORTGAGE SOURCE LLC, MARLTON, NJ
HOMETOWN MORTGAGE INC, OWINGS MILLS, MD
NEW ENGLAND MORTGAGE LENDERS INC, STOUGHTON, MA
PEERLESS FUNDING CORPORATION, LAS VEGAS, NV
EMERALD COAST MORT CO, EMERALD ISLE, NC
BANKERS MORTGAGE CORP, EVANSTON, IL
FOA FINANCIAL, ARCADIA, CA
ADVANTAGE MORTGAGE SRVS INC, CAMP SPRINGS, MD
FIRST CHOICE MORTGAGE LLC, BURR RIDGE, IL
INTEGRA PACIFIC MORTGAGE INC, LYNNWOOD, WA
VISTA PACIFIC DEVELOPMENT CORP, LOS ANGELES, CA
CHURCHILL MORTGAGE INVESTMENT, SUFFERN, NY
AUTOMATED MORTGAGE SERVICES, JONESBORO, GA

Dated: April 22, 1998.

Art Agnos,

Acting General Deputy Assistant Secretary-Federal Housing Commissioner.

[FR Doc. 98–12616 Filed 5–11–98; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4369–N–02]

Announcement of OMB Approval Number

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to 24 CFR part 55, Floodplain Management.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Community Viability, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410–7000. For inquiry by phone or e-mail: contact Walter Prybyla, Deputy Director for Policy, Environmental Review division at (202) 708–1201, Ext. 4466 or e-mail: Walter__Prybyla@hud.gov. This is not a toll-free number. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to 24 CFR part 55, Floodplain Management. The OMB approval number for this information collection is 2506–0151, which expires on January 31, 2001.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: May 7, 1998.

Fred Karnas,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 98–12617 Filed 5–11–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Environmental Assessment, Receipt of Application for, and Intent To Issue, Incidental Take Permit for Private Land in Iron County, UT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability, receipt of application for, and intent to issue permit.

SUMMARY: Iron County and the Utah Division of Wildlife Resources (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant has been assigned permit number PRT–MB000142–0. The requested permit, which is for a period of 20 years, would authorize incidental take of the Utah Prairie Dog (*Cynomys parvidens*), a species federally listed as threatened. The proposed take would occur as a result of development of private land within Iron County, Utah.

The Service has prepared the Environmental Assessment for issuance of the incidental take permit. The Applicant has prepared a habitat conservation plan as part of the incidental take permit application. A determination of whether jeopardy to the species will occur, or a finding of No Significant Impact (FONSI), and/or issuance of the incidental take permit, will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application must be received on or before June 11, 1998.

ADDRESSES: Persons wishing to review the permit application may obtain a copy by writing to the Field Supervisor, Utah Ecological Services Field Office, Fish and Wildlife Service, 145 East 1300 South Street, Suite 404, Salt Lake City,

Utah 84115. Documents will be available for public inspection by written request, or by appointment only, during business hours (8 a.m. to 4:30 p.m) at the above address.

Written data or comments concerning the permit application should be submitted to the Field Supervisor, Utah Ecological Services Field Office, Fish and Wildlife Service Salt Lake City, Utah (see **ADDRESSES** above). Please refer to permit number PRT–MB000142–0 in all correspondence regarding these documents.

FOR FURTHER INFORMATION CONTACT: Marilet A. Zablan, Wildlife Biologist or Ted W. Owens, Wildlife Biologist, at the above U.S. Fish and Wildlife Service office in Salt Lake City, Utah (See **ADDRESSES** above) (telephone: (801) 524–5001, facsimile: (801) 524–5021).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of any threatened or endangered species, such as the threatened Utah Prairie Dog. However, the Service, under limited circumstances, may issue permits to take threatened or endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are at 50 CFR 17.22.

The Applicants have submitted an application to the Service for a permit to incidentally take Utah Prairie Dogs, pursuant to section 10(a)(1)(B) of the Act, in association with various private projects in Iron County. This permit would allow specified take levels for Utah Prairie Dogs by non-Federal entities on non-Federal property within the county when presence of Utah Prairie Dogs hinders legal uses of the property on which they reside. Details of this alternative are found in the Iron County/Utah Division of Wildlife Resources (Division) Habitat Conservation Plan (HCP), dated March 9, 1998. Proposed management actions including minimizing and mitigating take are described in detail on pages 30–65 of the HCP. The proposed permit would be in effect for 20 years. Authorized take would include harm, harassment, and direct mortality of Utah Prairie Dogs. However, if the Service determines that the obligations of the Act Section 10(a)(1)(B) permit are not being met (e.g., unauthorized taking or permit violations by the cooperators is occurring), the permit may be revoked if remedial actions are not immediately implemented to alleviate such violations.

Two types of take would occur under this incidental take permit: (1) ''Permanent'' take where habitat is permanently destroyed, and (2) ''non-permanent'' take, in which the number of Utah Prairie Dogs in a colony is reduced, but no lasting habitat destruction occurs. Permanent take from development activities such as residential or commercial construction, road construction, parking lot development, excavation, etc., contributes to a net loss of habitat and adversely affects resident Utah Prairie Dogs and future occupation of the site by Utah Prairie Dogs. However, it may not necessarily result directly in death unless Utah Prairie Dogs are hibernating and unable to escape construction activities. Non-permanent take results in a reduction of animal numbers, but no net loss of habitat. Non-permanent take may occur in areas where Utah Prairie Dogs are inhabiting agricultural lands or pastures, crops, private rangelands, recreation areas, or where presence of Utah Prairie Dogs interferes with facilities maintenance. It would also occur where the presence of Utah Prairie Dogs causes safety concern, as determined by the Implementation Committee, and areas that were previously cleared through legal means.

Recovery success depends upon continued survival of existing public land colonies and establishment of new Utah Prairie Dog colonies on public lands. Therefore, allowable levels of permanent take of habitat and/or animals on non-Federal property will depend upon successful creation of new habitat and establishment of Utah Prairie Dogs on public lands, such that there is at the very least, no loss of habitat potential. Maximum annual amounts of allowed permanent take would depend upon:

1. Parameters determined from population modeling to ascertain levels of take that will not jeopardize the species,

2. Successful establishment of Utah Prairie dogs on public lands, or long-term conservation of Utah Prairie Dogs on non-Federal lands (e.g., conservation easements), and

3. Implementation of measures to minimize and mitigate take.

Annual permanent take would be quantified in terms of habitat acres and number of animals taken. Because Utah Prairie Dogs may no longer exist at many of the locations on non-Federal lands where they have been mapped, but habitat remains intact, permanent take would be limited by either the number of Utah Prairie Dogs or acreage of habitat permanently taken. When the allowed limit of either acreage of Utah Prairie Dog number is reached, no further permanent take would be allowed during that calendar year. The maximum allowed permanent take of animals would not be more than 10 percent of the average spring count of adult Utah Prairie Dogs on public lands during the preceding 5 years. The percentage of allowed take would increase to 15 percent once counts on public lands reach 1,500 adult Utah Prairie Dogs as long as the other two conditions (number of public land complexes and quantity of public acreage providing Utah Prairie Dog habitat) are met. The maximum allowed take of habitat initially would not exceed 1 percent of the total non-Federal land habitat, and would increase as additional public land sites become established.

As more acceptable habitat is created/enhanced, and additional Utah Prairie Dog colonies are established, further permanent take on non-federally owned habitat would be allowed. Acreage protected through the establishment of long-term conservation easements on non-Federal property would count toward the protected land total as well. The remainder of Utah Prairie Dogs needed for translocation to public lands would come from non-permanent sources. Utah Prairie Dogs translocated to recovery sites, although considered taken for purposes of development, would still be protected under State law and the Act, and would be afforded full protection of a listed species under the Act.

Maximum allowed permanent take would depend upon implementation of mitigation efforts and establishment of Utah Prairie Dogs on public lands and shall not exceed that listed in the Iron County/Division HCP. Allowable permanent take is expected to always be at least 40 individuals or 400 acres based on current distribution and numbers. Permanent take that remains unused during 1 year will be credited for the following year only. Failure to implement mitigation measures will result in no allowable take.

Non-permanent take would be restricted to Utah Prairie Dogs which are (1) damaging croplands, pastures, and private rangelands, (2) reinhabiting previously cleared areas after construction is complete, (3) damaging recreational areas that remain suitable as habitat (e.g., golf course, softball fields), (4) inhibiting effective work in areas requiring maintenance (e.g., roads), (5) inhabiting sensitive areas (e.g., cemeteries, archaeological sites), and (6) compromising safety concern areas (e.g., airport runway) as identified by the Implementation Committee. In non-permanent take situations, as many Utah Prairie Dogs as can be accommodated at translocation sites

will be live-trapped and translocated. In situations where translocation sites cannot accommodate demand, landowners may be issued limited permits under the Act Section 4(d) rule, to remove the remaining allowed animals by shooting or trapping.

In the case of areas previously developed which have not undergone an Act Section 10 clearance, but which have become occupied by Utah Prairie Dogs, the area would be treated similarly to undeveloped sites. If a landowner wanted Utah Prairie Dogs removed in order to conduct otherwise lawful activities he/she would be required to conduct a clearance survey, complete an assessment of take, and schedule to have Utah Prairie Dogs trapped and translocated. Annual reports summarizing the impacts of the Proposed Action would be submitted to the Service by the Iron County Commission and the Division.

Because of the patchy distribution of Utah Prairie Dogs in Iron County, as well as the large percentage of occupied habitat and numbers of Utah Prairie Dogs on non-Federal lands, development of a county-wide HCP was analyzed. A county-wide HCP (1) allows for establishment of long-term levels of take and cumulative effects monitoring, (2) reduces costs of individuals land owners, (3) allows for planning and reduces time delays for builders, (4) facilitates cooperation between local, State, and Federal agencies and individuals, and (5) does not preclude, and may be designed to promote, Utah Prairie Dog recovery.

A no-action alternative to the proposed action was considered. This would result in no lawful development in Utah Prairie Dog habitat unless each individual landowner who wanted to develop his/her property submitted an application for, and was subsequently issued, an Act section 10 incidental take permit. In order to lawfully develop within Utah Prairie Dog Habitat, each individual landowner would also be required to develop and implement a habitat conservation plan. The non-action alternative was rejected for reasons including loss of use of the private property resulting in significant economic loss to County residents and excessive expense, in both time and money, for County residents and Service employees who must process each individual permit and ensure its suitability. The Applicants also considered an alternative which would require the purchase (in fee title or of conservation easements), preservation, and long-term management of existing Utah Prairie Dog habitat on land currently owned by private entities. However, this alternative was rejected for a number of reasons. First, such a configuration of Utah Prairie Dog habitat would have poor potential for genetic exchange among isolated Utah Prairie Dog colonies and would therefore probably not be conducive to long-term maintenance and recovery of the species. It would also disturb local and land-use patterns to an unacceptable degree. Finally, costs associated with land acquisition may be prohibitive.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: May 6, 1998.

Terry Terrell,

Regional Director, Region 6.

[FR Doc. 98–12522 Filed 5–11–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–4210–01]

Reinstatement of Information Collection on Indian Allotments; OMB Approval No. 1004–0023

AGENCY: Bureau of Land Management.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request reinstatement of approval for the collection of information from those persons who are applying for conveyance of public land under the General Allotment Act of 1887. Section 4 of that Act provides for issuing a deed to eligible Indians who are entitled to an allotment of public lands. The BLM uses the information collected on the Indian Allotment Application Form (Form 2530–1) to determine eligibility and identify legal information to assist in conveying title to the applied-for lands.

DATES: Comments on the proposed information collection must be received by July 13, 1998.

ADDRESSES: Commenters may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW, Washington, D.C., or mail comments to: Bureau of Land Management, Administrative Record, 1849 C St., NW, Mail Stop 401LS, Washington, D.C. 20240. Commenters may transmit comments electronically by way of the Internet to WOComment@wo.blm.gov. Please include ''Attn.: 1004–0023'' in your message. Comments will be available for public inspection at the L Street address during regular business hours (7:45 am. to 4:15 pm), Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Carl Gammon, (202) 452–7777.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), BLM is required to provide a 60-day notice in the **Federal Register** concerning a proposed collection of information to solicit 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Any individual seeking to acquire an allotment must make an application and provide information essential to complying with law, regulations, and procedures. Information is collected on Form 2530–1. Specific items on the form are as follows: Items 1–5 identify the applicant, mailing address, and, if appropriate, the minor child for whom the application is filed. Item 6 describes the land for which the application is filed. Item 7 requires the listing of prior allotments. Items 8 indicates whether the applicant or the minor child placed any improvements on the described land. Item 10 tells whether the applicant or minor child claims a bona fide settlement. Item 11 describes the manner in which settlement was made on the described land. Item 12 asks if the required petition for classification has been attached to the application. Specifically, completing Items 6 through 12 is necessary to determine the eligibility of the applicant/minor and the validity of the claim. Any eligible individual desiring an allotment of public lands must file a fully completed application. Items 6 through 12 are justified pursuant to the requirements of the regulations at 43 CFR Subparts 2530 and 2531. Section 4 of the Act provides that a patent cannot be issued unless a completed application form has been received by BLM. If the information required by 43 CFR Subpart 2531 were

not collected, BLM would not be able to carry out the mandate of section 4 of the Act.

Based on its experience in administering the regulations at 43 CFR Part 2530, BLM estimates that the public reporting burden for the information collection is 30 minutes per application. The respondents are individuals who seek to acquire public lands for Indian allotment purposes per the Act. The frequency of response is once per application. The BLM estimates that approximately 10 Indian allotment applications will be filed annually, for a total of 5 burden hours. Copies of Form 2530–1 may be obtained by contacting the individual under ''For Further Information Contact.''

All responses to the notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become part of the public record.

Dated: May 4, 1998.

Carole J. Smith,

Bureau of Land Management, Information Collection Officer.

[FR Doc. 98–12562 Filed 5–11–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–98–1330–00]

Notice of Closure of Public Lands to Off-Road Vehicle Use and Discharge of Firearms, Carson City, NV

AGENCY: Bureau of Land Management, Department of the Interior.

SUMMARY: Notice is hereby given that certain public lands in the vicinity of Highland Ranch Parkway, Sun Valley, Nevada are closed to off-road motorized vehicle use and the discharge of firearms. This closure is necessary to prevent impacts to soil and vegetative resources at a recently reclaimed BLM community pit.

EFFECTIVE DATES: This closure will take effect June 11, 1998, and will remain in effect until the BLM Authorized Officer determines the reclamation at the pit is successful and the closure is no longer needed. Interested parties may submit comments to the Carson City District Manager, John O. Singlaub.

SUPPLEMENTARY INFORMATION: This closure applies to all motorized vehicle traffic and discharge of firearms except for emergency and law enforcement personnel during the conduct of their official duties. The public lands affected by this closure are described as follows.

Mt. Diablo Meridian.

T. 20 N., R. 20 E., Sec, 9, S½SE¼SW¼

Authority: 43 CFR 8364-Closure and Restriction Orders; 8365.1–6-Supplementary Rules of Conduct; 8341.2-Off-road Vehicles Conditions of Use, Special Rules.

Penalty: Any person who fails to comply with this closure may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 USC 3571, or both.

FOR FURTHER INFORMATION CONTACT: Ronald J. Tauchen, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701 Telephone: (702) 885–6000

A map of the closed area is available at the Carson City Field Office.

Dated: May 5, 1998.

John O. Singlaub,

District Manager, Carson City District.

[FR Doc. 98–12590 Filed 5–11–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–033–98–1230–00–MTNMAN]

Temporary Closure of Public Lands: Nevada, Carson City District

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Temporary closure of approximately 600 acres of public lands in Douglas County during the conduct of a mountain man rendezvous encampment authorized under Special Recreation Use Permit Number NV–030–97–047. The lands are located within T13N R23E Sections 5 and 8, M.D.M.

SUMMARY: The Assistant District Manager, Non-Renewable Resources announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during shooting events and to provide an uninterrupted atmosphere during the conduct of rendezvous activities. The permittee is required to clearly mark and monitor the area during the closure period. Only registered event participants and authorized officials may occupy the event area. A map of the closure area may be obtained at the contact address.

EFFECTIVE DATES: June 19 through 29, 1998.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Outdoor Recreation Planner, Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, Nevada 89701, Telephone: (702) 885–6161.

Exemptions: Closure restrictions do not apply to fire suppression, medical/rescue, law enforcement and agency personnel monitoring the event.

Authority: 43 CFR 8364 and 43 CFR 8372.

Penalty: Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Event Specific Information: Pacific Rendezvous Corporation is sponsoring their regional, annual gathering, mountain man encampment. The encampment promotes the study and reenactment of North American fur trader history during the 1670–1840 time period. Event activities include: primitive camping, black powder target shooting, tomahawk, archery and knife skills, flintknapping and tool making, educational seminars, and trading of period goods. Motor vehicles are not used during the 10 day encampment. 300 to 700 participants are expected. The event area will be returned to a natural condition after the event.

Dated: May 5, 1998.

Clifford D. Ligons,

Assistant District Manager, Non Renewable Resources.

[FR Doc. 98–12591 Filed 5–11–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1430–00; WYW–45359]

Recreation and Public Purposes Classification and Application to Amend Lease in Lincoln County; Wyoming

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Land Management published a Notice of Realty Action in the **Federal Register** of April 15, 1998, notifying the public of decisions made concerning a Recreation and Public Purpose lease for a ski area in Lincoln County, Wyoming. The notice contained an incorrect legal description.

FOR FURTHER INFORMATION CONTACT: Mark Hatchel, Realty Specialist, Kemmerer Resource Area, Bureau of Land Management, 312 Highway 189 North, Kemmerer, Wyoming 83101, (307) 877–3933 extension 107.

SUPPLEMENTARY INFORMATION: In the **Federal Register** issue of April 15, 1998, on page 18439, an incorrect legal description was given. The corrected legal description follows:

T. 24 N., R. 118 W.,

Sec. 4, W½ of lot 6, lots 7, 8, 9, 10, W½ of lot 11, SE¼ of lot 11, lots 14, 15, 16, N½NW¼SW¼, NE¼SW¼, N½NW¼SE¼, SW¼NW¼SE¼;

Sec. 5, E½E½ of lot 5, E½ of lot 12, SW¼ of lot 12, lot 13, NE¼NE¼SE¼.

T. 25 N., R. 118 W.,

Sec. 35, E½SW¼SW¼, SE¼SW¼, SW¼SE¼.

Dated: April 30, 1998.

Jeff Rawson,

Area Manager.

[FR Doc. 98–12505 Filed 5–11–98; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before July 13, 1998.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8563.

Summary of Form Under Review

Type of Request: Revised form.

Title: Project Information Report.

Form Number: OPIC–71.

Frequency of Use: On occasion; a function of the sampling criteria. Maximum use is once per investor per contract.

Type of Respondents: Business or other institutions (except farms).

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies investing overseas.

Reporting Hours: 7 hours per project.

Number of Responses: 25 per year.

Federal Cost: $1,600 per year.

Authority for Information Collection: Title 22 USC 2191(k)(2) and 2199(h), Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Project Information Report is necessary to elicit and record the information on the developmental, environmental and U.S. economic effects of OPIC-assisted projects. The information will be used by OPIC's staff and management solely as a basis for monitoring these projects, and reporting the results in aggregate form, as required by Congress.

Dated: May 7, 1998.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 98–12592 Filed 5–11–98; 8:45 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–403]

Certain Acesulfame Potassium and Blends and Products Containing Same; Notice of Commission Determination not to Review Initial Determination Granting Motion to Amend the Complaint and Notice of Investigation to Add an Additional Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting complainant's motion for leave to amend the complaint and to amend the notice of investigation to add an additional respondent.

FOR FURTHER INFORMATION: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3098.

SUPPLEMENTARY INFORMATION: The Commission instituted this patent-based section 337 investigation on November 20, 1997, based on a complaint filed by Nutrinova Nutrition Specialties and Food Ingredients GmbH and Nutrinova, Inc. (''Nutrinova''). Four respondents were originally named in the investigation—Hangzhou Sanhe Food Company, Ltd.; JRS International, Inc.; Dingsheng, Inc.; and WYZ Tech, Inc.

On February 10, 1998, Nutrinova filed, pursuant to Commission rule 210.14(b), 19 CFR 210.14(b), a motion for leave to amend the complaint and for issuance by the ALJ of an ID amending the notice of investigation to add Hangzhou Sanhe Food Additives Factory as a respondent. No oppositions to the motion were filed.

The ALJ granted Nutrinova's motion in an ID (Order No. 7) issued on April 1, 1998. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: May 4, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–12453 Filed 5–11–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office Of Justice Programs

Bureau of Justice Assistance; Public Safety Officers Benefits Program; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; (reinstatement, with change of a previously approved collection for which approval has expired) report of Public Safety Officers' Permanent and Total Disability Program.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty 60 days'' until July 13, 1998. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. 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.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Cynthia Y. Simons. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Cynthia Y. Simons, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW, Washington, DC 20531.

Overview of This Information Collection

(1) Type of information collection: Reinstatement of collection for which OMB Clearance has expired.

(2) The Title of the form/collection: Report of Public Safety Officers' Permanent and Total Disability Program.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form 3650/7, Public Safety Officers' Benefits Program, Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Federal, State, and Local public safety agencies. *Other:* National public safety membership organizations. The Public Safety Officers' Disability Program provides a benefit to Public Safety Officers who have become permanently and totally disabled by a catastrophic injury sustained in the line of duty.

(5) An estimate of the total of number of respondents and the amount of time estimated for an average respondent to respond/reply: 30 respondents at 10 hours to respond (one hour for application form, and nine hours for compilation of required supporting documents).

(6) An estimate of the total public burden (in hours) associated with the collection: 300 annual burden hours. The total number of annual burden hours to complete the application form and compile supporting documentation is 300 annual burden hours.

If Additional information is required contact: Mrs. Brenda E. Dyer, Deputy 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: May 5, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–12547 Filed 5–11–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,339 and 339A]

AR Accessories; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on March 31, 1998, applicable to workers of AR Accessories located in West Bend, Wisconsin. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce leather goods (wallets and purses). New findings on review show that workers providing administrative support services to the West Bend production facility have been separated from employment at the AR Accessories headquarters in Milwaukee, Wisconsin.

The intent of the Department's certification is to include all workers of AR Accessories who were affected by increased imports. Accordingly, the Department is amending the worker certification to include the workers of AR Accessories, Milwaukee, Wisconsin.

The amended notice applicable to TA–W–34,339 is hereby issued as follows:

''All workers of AR Accessories, West Bend, Wisconsin (TA–W–34,339) and Milwaukee, Wisconsin (TA–W–34,339A), who became totally or partially separated from employment on or after March 3, 1997 through March 31, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 28th day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–12567 Filed 5–11–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such

request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 22, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 22, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 20th day of April, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 4/20/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,463	Northrop Grumman (Wrks)	Fleetville, PA	04/06/98	Relay Panels, Junction Boxes.
34,464	Walls Industries, Inc (Comp)	Hamilton, TX	03/23/98	Insulated Coveralls, Work Clothing.
34,465	United Industries (IAM)	Beloit, WI	04/01/98	Stainless Steel Tubing.
34,466	Beloit Corp (IAM)	Beloit, WI	04/01/98	Paper Machines.
34,467	Lone Star Cutting (Comp)	El Paso, TX	03/19/98	Garment Cuttings.
34,468	T.L. Edwards, Inc (Comp)	Statesville, NC	04/06/98	Knit Tee Shirts, Tank Tops.
34,469	Grossman and Sons, Inc (UNITE)	Passaic, NJ	04/02/98	Headwear.
34,470	SCI Systems, Inc (Wrks)	Augusta, ME	04/03/98	Computer Boards.
34,471	Louisville Manufacturing (UNITE)	Louisville, KY	04/07/98	Baseball Caps.
34,472	MagneTek (Comp)	Prairie Grove, AR	03/25/98	Fractional Horsepower Motors.
34,473	Bugatti New England (Wrks)	Gonic, NH	03/31/98	Leather Accessories.
34,474	Marshall Electric Corp (Comp)	Rochester, IN	03/31/98	Automotive Ignition Coils.
34,475	Ocean Beauty Seafood (UFCW)	Astoria, OR	04/08/98	Snapper, Salmon and Shrimp.
34,476	Nuclear Components, Inc (Wrks)	Greensburg, PA	03/27/98	Refueling Tools.
34,477	Eastman Kodak Co (Wrks)	Rochester, NY	04/08/98	Recordable CD-Rom Discs.

[FR Doc. 98–12563 Filed 5–11–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,219]

Powers Holdings, Incorporated, Curtis Industries Division, Milwaukee, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 8, 1998, applicable to workers of Powers Holdings, Incorporated located in Milwaukee, Wisconsin. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings on review show that there are two divisions of Powers Holdings operating at the Milwaukee plant. Workers, subject of the petition investigation, producing terminal blocks, along with some production of controls, RFI filters, and sockets are affiliated with the Curtis Industries Division of the subject firm.

Accordingly, the Department is amending the worker certification to reflect this matter.

The amended notice applicable to TA–W–34,219 is hereby issued as follows:

''All workers of Powers Holdings, Incorporated, Curtis Industries Division, Milwaukee, Wisconsin, who became totally or partially separated from employment on or after January 15, 1997 through April 8, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 28th day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–12566 Filed 5–11–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,174]

United Technologies Automotive Columbus, Mississippi; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked April 20, 1998, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (IUE), Local 794, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on March 5, 1998, and published in the **Federal Register** on March 23, 1998 (63 FR 13878).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The IUE Local 794 asserts that in December 1996, the production of starter motors and commercial starter motors was shifted from the Columbus, Mississippi plant to Mexico. The IUE Local 794 states that as a result of that shift in production, 225 workers were separated from employment in December 1996, and add that the TAA petition investigation did not include the workers producing these articles.

The January 8, 1998, petition for TAA filed with Department on behalf of workers at United Technologies

Automotive located in Columbus, Mississippi, identified fractional H.P. electric motors as the articles produced. Information obtained during the investigation showed that electric motors for windowlift, ABS, and windshield wiper applications was the primary output at the subject plant during the time period covered by the petition.

Section 223(b)(1) of the Trade Act of 1974 provides that a trade adjustment assistance certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed. The Trade Act does not give the Secretary authority to waive this statutory limitation. Since the December 1996 layoffs were more than one year prior to the January 8, 1998 petition date, the workers producing starter motors and commercial starter motors at Columbus cannot be considered in the TAA petition determination.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 29th day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–12564 Filed 5–11–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,637, TA –W–33,637A, and TA–W–33,637B]

Universal-Rundle Corporation; Amendment Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 31, 1997, applicable to workers of Universal-Rundle Corporation located in Hondo, Texas. The notice was published in the **Federal Register** on November 7, 1997 (62 FR 60279).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations have occurred at Universal-Rundle Corporation's production facility in Monroe, Georgia and at the corporate headquarters in New Castle, Pennsylvania. The workers are engaged in employment related to china sanitary fixtures (sinks and toilets).

The intent of the Department's certification is to include all workers of Universal-Rundle Corporation who were affected by increased imports. Accordingly, the Department is amending the worker certification to include the workers of Universal-Rundle Corporation, Monroe, Georgia and New Castle, Pennsylvania.

The amended notice applicable to TA–W–33,637 is hereby issued as follows:

''All workers of Universal-Rundle Corporation, Hondo, Texas (TA–W–33,637), Monroe, Georgia (TA–W–33,637A), and New Castle, Pennsylvania (TA–W–33,637B) who became totally or partially separated from employment on or after June 20, 1996 through October 31, 1999, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 28th day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–12565 Filed 5–11–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 98–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Cadmium in General Industry, Maritime, and Agriculture

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the standards for Cadmium in General Industry 29 CFR 1910.1027, Cadmium in the Maritime Industry 1915.1027, and Cadmium in the Agriculture Industry 1928.1027. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addresses section of this notice. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted by July 13, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 98–6, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210, telephone number (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Adrian Corsey, Directorate of Health Standards Programs, Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, Room N3718, telephone (202) 219–7075. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Adrian Corsey at (202) 219–7075 extension 105 or Barbara Bielaski at (202) 219–8076 extension 142. For electronic copies of the Information Collection Request on Cadmium, contact OSHA's WebPage on

the Internet at http://www.osha-slc.gov/ and click on ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Cadmium standard and its information collection requirements provide protection for employees from the adverse health effects associated with occupational exposure to cadmium. The standard requires that employers establish a compliance program, including exposure monitoring and medical records. These records are used by employees, physicians, employers and OSHA to determine the effectiveness of the employers' compliance efforts. Also the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Cadmium in General Industry (29 CFR 1910.1027), Cadmium in the Maritime Industry (1915.1027), and Cadmium in the Agriculture Industry (1928.1027).

OMB Control Number: 1218–0185.

Affected Public: Business or other for-profits, Federal government, State and Local governments.

Total Respondents: 54,544.

Frequency: On occasion.

Total Responses: 359,968.

Average Time per Response: Ranges from 5 minutes to maintain records to 1.5 hours for an employee to have a medical exam.

Estimated Total Burden Hours: 129,894.

Total Annualized capital/startup costs: –0–.

Total initial annual costs (operating/maintaining systems or purchasing services): $19,068,500.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection. The comments will become a matter of public record.

Signed at Washington, DC, this 30th day of April, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–12568 Filed 5–11–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, May 19, 1998.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

7002—Safety Study: Personal Watercraft Safety.

6889A—Railroad Accident Report—Collision and Derailment of Union Pacific Railroad Freight Trains in Devine, Texas on June 22, 1997.

6283A—Safety Recommendation Letter regarding AlliedSignal TPE–331 engine flameouts in icing conditions.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98–12754 Filed 5–8–98; 3:11 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC)

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 19, ''Notices, Instructions, and Reports to Workers: Inspection and Investigations''.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* As necessary in order that adequate and timely reports of radiation exposure be made to individuals involved in NRC-licensed activities.

5. *Who will be required or asked to report:* Licensees authorized to receive, possess, use, or transfer material licensed by the NRC.

6. *An estimate of the number of responses:* 414,800.

7. *The estimated number of annual respondents:* 280.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 46,018 (approximately 34,566 reporting hours— an average of 5 minutes per response, and 11,452 recordkeeping hours— an average of 1.78 hours per recordkeeper).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Title 10 of the Code of Federal Regulations, Part 19, requires licensees to advise workers on an annual basis of any radiation exposure they may have received as a result of NRC-licensed activities or when certain conditions are met. These conditions apply during termination of the worker's employment, at the request of a worker, former worker, or when the worker's employer (the NRC licensee) must report radiation exposure information on the worker to the NRC. Part 19 also establishes requirements for instructions by licensees to individuals participating in licensed activities and options available to these individuals in connection with Commission inspections of licensees to ascertain compliance with the provisions of the Atomic Energy Act of 1954, as amended, Title II of the Energy Reorganization Act of 1974, and regulations, orders and licenses thereunder regarding radiological working conditions.

The worker should be informed of the radiation dose he or she receives because: (a) that information is needed by both a new employer and the individual when the employee changes jobs in the nuclear industry; (b) the individual needs to know the radiation dose received as a result of an accident or incident (if this dose is in excess of the 10 CFR Part 20 limits) so that he or she can seek counseling about future work involving radiation, medical attention, or both, as desired; and (c) since long-term exposure to radiation may be an adverse health factor, the individual needs to know whether the accumulated dose is being controlled within NRC limits. The worker also needs to know about health risks from occupational exposure to radioactive materials or radiation, precautions or procedures to minimize exposure, worker responsibilities and options to report any licensee conditions which may lead to or cause a violation of

Commission regulations, and individual radiation exposure reports which are available to him.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by June 11, 1998: Erik Godwin, Office of Information and Regulatory Affairs (3150–0044), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 6th day of May 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–12527 Filed 5–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317, 50–318, and 72–8]

In the Matter of Baltimore Gas Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2, and the Independent Spent Fuel Storage Installation; Order Terminating the Effectiveness of the Approval of the Transfer of Licenses for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 and the Independent Spent Fuel Storage Installation

I

Baltimore Gas and Electric Company (BGE) is the licensee for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and the associated Independent Spent Fuel Storage Installation. BGE has the exclusive responsibility for the construction, operation, and maintenance of Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 and the Independent Spent Fuel Storage Installation (ISFSI), as reflected in Operating License Nos. DPR–53, DPR–69 and Material License No. SNM–2505, issued on July 31, 1974, and November 30, 1976, and November 25, 1992, respectively, by the U.S. Nuclear Regulatory Commission (NRC). The facilities are located on the western shore of the Chesapeake Bay, in Calvert County, Maryland.

II

By Order dated October 18, 1996, the Nuclear Regulatory Commission (the Commission or NRC) approved the proposed transfer of Operating Licenses Nos. DPR–53 and DPR–69 for the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, and Material License No. SNM–2505 for the Calvert Cliffs ISFSI from BGE to Constellation Energy Corporation. The approval was given in response to an application filed by BGE dated April 5, 1996, for consent under Section 50.80 and 72.50 of Title 10 of the *Code of Federal Regulations* (10 CFR 50.80 and 10 CFR 72.50). By its terms, the Order of October 18, 1996, would become null and void if the transfer of the licenses was not consummated by December 31, 1997, unless on application and for good cause shown, such date was extended by the Commission.

By letter dated November 21, 1997, BGE submitted a request for an extension of the effectiveness of the Order of October 18, 1996, such that approval of the transfer would remain effective until December 31, 1998. According to this submittal, all of the necessary regulatory approvals had been obtained to permit the consummation of the merger between BGE and Potomac Electric Power Company, resulting in Constellation Energy Corporation. BGE asserted, however, that the Maryland and District of Columbia Public Service Commissions attached conditions to their approvals that were inconsistent with the respective merger approval applications. The companies proposing to merge filed joint requests with the Maryland and District of Columbia Commissions for rehearing of their original orders approving the merger. According to BGE, an intervenor in the Maryland case appealed the Maryland Commission's Order approving the merger to the Circuit Court in Baltimore County, and this appeal delayed the expected merger process. On December 17, 1997, the Commission issued an Order providing that the effectiveness of the Order of October 18, 1996, approving the transfer of the licenses described herein was extended such that if the subject transfer of licenses was not consummated by December 31, 1998, the Order of October 18, 1996, would become null and void.

By letter dated January 30, 1998, however, BGE informed the NRC that on December 18, 1997, BGE and the Potomac Electric Power Company (PEPCO) mutually agreed to terminate the proposed merger. In addition, BGE and PEPCO requested, in light of the termination of the merger, that approval of the transfer of licenses be canceled.

III

Upon consideration of BGE's letter dated January 30, 1998, and the termination of the proposed merger, the Commission has determined that the approval of the transfer of the licenses for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and the ISFSI, should be withdrawn. Accordingly, pursuant to Sections 161b and 161i of the Atomic Energy Act, as amended, 42 U.S.C. §§ 2201(b) and 2201(i), It is hereby ordered that the approval of the transfer of the licenses described herein is immediately withdrawn, and the Orders dated October 18, 1996, and December 19, 1997 are null and void.

This Order is effective upon issuance.

For further details, with respect to this action, see the letter dated January 30, 1998, from BGE 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 Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 30th day of April 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–12524 Filed 5–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP–18 issued to Rochester Gas and Electric Corporation (the licensee) for operation of the R.E. Ginna Nuclear Power Plant located in Wayne County, New York.

The proposed amendment would revise the Ginna Station Improved Technical Specifications (ITS) to reflect a planned modification to the spent fuel pool (SFP) storage racks. Specifications associated with SFP boron concentration, fuel assembly storage, and maximum limit on the number of fuel assemblies which can be stored in the SFP would be revised.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design basis events considered for the spent fuel pool include both external events and postulated accidents in the pool. The external events considered are tornado missiles and seismic events. The evaluation of the postulated impact of a tornado missile is detailed in Sections 3, 4, and 6 of Reference 1 [see application dated March 31, 1997]. The structural evaluation indicates that there are no gross distortions of the racks or any adverse effects upon plant structures or equipment. The radiological consequences of this event indicate that offsite doses are ''well within'' the 10 CFR 100 limits.

The structural evaluation is detailed in Section 3 of Reference 1 [see application dated March 31, 1997]. Current state of the art methods are used in the structural analysis. The evaluation of the storage racks is based on a conservative interpretation of the ASME [American Society of Mechanical Engineers] Boiler and Pressure Vessel Code. The evaluation of the spent fuel pool is based on a conservative interpretation of requirements set forth in the American Concrete Institute, Code Requirements for Nuclear Safety Related Concrete Structures, and American Institute of Steel Construction, Specification for Structural Steel Buildings. The spent fuel storage system was designed to meet all applicable structural criteria for normal (Level A), upset (Level B), and faulted (Level D) conditions as defined in NUREG–0900, SRP [Standard Review Plan] 3.8.4, Appendix D. The following loadings were considered: dead weight, seismic, thermal, stuck fuel assembly, drop of a fuel assembly, and tornado missile impact. Load combinations were performed in accordance with SRP 3.8.4, Appendix D. Given the evaluated seismic events, the changes in the final position of the racks are small as compared to the initial position prior to the seismic event. The maximum closure of gaps is such that no significant changes in gaps results during any single seismic event. Furthermore, the combined gap closures resulting from a combination of 5 OBEs [Operating Basis Earthquakes] and 1 SSE [Safe Shutdown Earthquake] show that there are no rack-to-rack or rack-to-wall impacts. These evaluations conclude that under these postulated events, the stored fuel assemblies are maintained in a stable, coolable geometry, and a subcritical configuration.

As described in the bases for LCO [Limiting Condition for Operation] 3.7.12 and 3.7.13, the postulated accidents in the spent fuel pool are divided into two categories. The first are those involving a loss of cooling in the spent fuel pool. The thermal-hydraulic analysis for the maximum expected decay heat loads is described in Section 5 of Reference 1 [see application dated March 31, 1997]. The proposed modification does not change the configuration of the available spent fuel cooling systems, the limiting design conditions for maximum decay heat load which occurs during a full core offload, or the existing requirement to maintain pool temperature below 150 °F. Utilizing the three available spent fuel cooling systems, Ginna Station maintains full redundancy during high heat load conditions. The decay heat load to the spent fuel pool is maintained within the capacity of the operating cooling system by appropriately delaying fuel offload from the reactor. Should a failure occur on the operating cooling system, the resulting heat rates allow sufficient time to place a standby cooling system in service before the pool design limit temperature is exceeded. Increases in spent fuel pool temperature, with the corresponding decrease in water density and void formation from boiling, will result in a decrease in reactivity due to the decrease in moderation effects. In addition, the analysis demonstrates that the storage rack geometry and required fuel storage configurations result in a k_{eff} [less than or equal to] .95 assuming no soluble boron allowing for the potential of makeup to the pool with unborated water if credit is taken in Region 2 for minimal availability of boraflex panels installed on the storage rack. (Note that concerns with boraflex degradation are discussed later in this evaluation).

The second category is related to the movement of fuel assemblies and other loads above the spent fuel pool. The limiting accident with respect to reactivity is the fuel handling accident which is analyzed in Section 4 of Reference 1 [see application dated March 31, 1997]. For both the incorrectly transferred fuel assembly (placed in an unauthorized location) or a dropped fuel assembly, the positive reactivity effects resulting are offset by the negative reactivity from the required minimum soluble boron concentration. The resulting k_{eff} is shown to be less than 0.95 if credit is taken in Region 2 for minimal availability of boraflex panels installed on the storage racks. The radiological consequences of a fuel assembly drop remain as described in Section 15.7.3 of the UFSAR [updated final safety analysis report] and as discussed in Section 6 of Reference 1 [see application dated March 31, 1997]. Loads in excess of a fuel assembly and its handling tool are administratively prohibited from being carried over spent fuel. There are no changes anticipated for either the fuel handling equipment of the auxiliary building overhead crane due to the proposed modification to the fuel storage racks. The modification is scheduled for the Year 1998 to be performed while Ginna Station is operating. Movement of heavy loads around the spent fuel pool are controlled by the requirements of NUREG–0612 and the regulatory guidelines set forth in NRC Bulletin 96–02 (see Section 3 of Reference 1 [see application dated March 31, 1997]). Spent fuel casks and storage racks (during removal and installation) will be moved using the auxiliary building crane and lifting attachments satisfying the single failure proof criteria of NUREG–0554, obviating the need to determine the consequences for this accident.

Due to boraflex degradation within the spent fuel pool, credit must be temporarily taken for soluble boron to maintain k_{eff} [less than or equal to] 0.95. There is no increase in the probability of a loss of spent fuel pool cooling or fuel handling accident as a result of crediting soluble boron. The spent fuel pool is normally maintained at a boron concentration level greater than that proposed, including during fuel movement. Therefore, there is no effect on plant systems or spent fuel pool activities than which are currently in effect. The proposed boron concentration level is also equivalent to that required by LCO 3.9.1 during MODE 6 such that no boron dilution event is expected to occur within the pool during refueling operations when the reactor coolant system and spent fuel pool are hydraulically coupled.

Crediting soluble boron does not increase the consequences of an accident. As described in the bases for LCO 3.7.12, increases in spent fuel pool temperature, with the corresponding decrease in water density and void formation from boiling, will generally result in a decrease in reactivity due to the decrease in moderation effects. The only exception are temperature bands where positive reactivity is added as a result of the high boron concentration. This effect is bounded by the reactivity added as a result of a misloaded fuel assembly. With respect to the more limiting dropped fuel assembly accidents, boraflex neutron absorber panels were originally assumed in the criticality analysis. Requiring a high concentration of soluble boron in place of boraflex panels ensures that the spent fuel pool remains subcritical with k_{eff} [less than or equal to] 0.95 for these accidents. Fuel assembly movement will continue to be controlled in accordance with plant procedures and LCO

3.7.13 which specifies limits on fuel assembly storage locations. Periodic surveillances of boron concentration will be required every 7 days with level verified every 7 days during fuel movement per LCO 3.7.11. Due to the large inventory within the spent fuel pool, dilution of the soluble boron within the pool is very unlikely without being detected by operations personnel during auxiliary operator rounds or available level detection systems. There is also a large margin between the required boron concentration to maintain the pool subcritical k_{eff} [less than or equal to] 0.95 and the proposed value (approximately 900 ppm).

Based on the above, it is concluded that the proposed changes do not significantly increase the probability or consequences of any accident previously analyzed.

2. Operation in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed modification does not alter the function of any system associated with spent fuel handling, cooling or storage. The proposed changes do not involve a different type of equipment or changes in methods governing normal plant operation. The additional restrictions placed on the acceptable storage locations for spent fuel are consistent with the type of restriction that previously existed. The potential violation of these restrictions (incorrectly transferred fuel assembly) are analyzed as discussed above. The rerack design, analysis, fabrication, and installation meet all the appropriate NRC regulatory requirements, and appropriate industry codes and standards.

Crediting soluble boron within the spent fuel pool in place of boraflex neutron absorber panels does not create the possibility of a new or different kind of accident since the spent fuel pool is normally maintained with high boron concentrations. Assuming a boron dilution event to the level required to reach k_{eff} [less than or equal to] 0.95 conditions within the spent fuel pool would require either overfill of the pool or a controlled feed and bleed process with unborated water. In both cases, greater than 105,000 gallons of unborated water would be required to reach $k_{eff} > 0.95$. There is no source of unborated water of this size available to reach the spent fuel pool under procedural control or via a pipe break other than a fire water system pipe break or SW leak through the spent fuel pool heat exchangers. However, there are numerous alarms available within the control room to indicate this condition including high spent fuel pool water level and sump pump actuations within the residual heat removal pump pit (lowest location in the Auxiliary Building). Auxiliary operators also perform regularly scheduled tours within the Auxiliary Building. This provides sufficient time to terminate the event such that there is no credible spent fuel pool dilution accident.

Based on the above, the change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in the margin of safety.

The Licensing Report enclosed as Reference 1 [see application dated March 31, 1997] addresses the following considerations: nuclear criticality, thermal-hydraulic, and mechanical, material, and structural. Results of these evaluations demonstrate that the changes associated with the spent fuel reracking does not involve a significant reduction in the margin of safety as summarized below:

Nuclear Criticality

The established regulatory acceptance criterion is that k_{eff} be less than or equal to 0.95, including all uncertainties at the 95/95 probability/confidence level, under normal and abnormal conditions. The methodology used in the evaluation meets NRC requirements, and applicable industry codes, standards, and specifications with credit taken in Region 2 for the previously installed boraflex panels. In addition, the methodology has been reviewed and approved by the NRC in recent nuclear criticality evaluations. Specific conditions which were evaluated include misloading of a fuel assembly, drop of a fuel assembly (shallow, deep drops, and side drops), pool water temperature effects, and movement of racks due to seismic events. Results described in Section 4 of Reference 1 [see application dated March 31, 1997] document that the criticality acceptance criterion is met for all normal and abnormal conditions.

Thermal-Hydraulic

Conservative methods and assumptions have been used to calculate the maximum temperature of the fuel and the increase of the bulk pool water temperature in the spent fuel pool under normal and abnormal conditions. The methodology for performing the thermal-hydraulic evaluation meets NRC regulatory requirements. Results from the thermal-hydraulic evaluation show that the maximum temperature at the hottest fuel assembly, intact or consolidated canister, is less than the temperature for nucleate boiling condition. The effects of cell blockage on the maximum temperature of intact fuel and consolidated canisters were evaluated. Results described in Section 5 of Reference 1 [see application dated March 31, 1997] show that adequate cooling of the intact or consolidated fuel is assured. In all cases, the existing spent fuel pool cooling system will maintain the bulk pool temperature at or below 150 °F by delaying core offload from the reactor.

Mechanical, Material, and Structural

The primary safety function of the spent fuel pool and the racks is to maintain the spent fuel assemblies in a safe configuration through all normal and abnormal loads. Abnormal loadings which have been considered in the evaluation are: seismic events, the drop of a fuel assembly, the impact of a tornado missile, a stuck assembly, and the drop of a heavy load. The mechanical, material, and structural design of the new spent fuel racks is in accordance with NRC regulatory requirements (including the NRC OT Position dated April 14, 1978, [NRC letter to all power reactor licensees dated April 14, 1978] and addendum dated January 18, 1979), and applicable industry standards. The rack materials are compatible with the spent fuel pool environment and fuel assemblies. The material used as a neutron absorber (borated stainless steel) has been approved by the American Society for Testing and Materials (ASTM), and licensed previously by the NRC for use as a neutron absorber at Indian Point 3, Indian Point 2, and Millstone 2. The structural evaluation presented in Section 3 of Reference 1 [see application dated March 31, 1997] documents that the tipping or sliding of the free-standing racks will not result in rack-to-rack or rack-to-wall impacts during seismic events. The spent fuel assemblies will remain intact and the criticality criterion of k_{eff} [less than or equal] to 0.95 is met if credit is taken in Region 2 for previously installed boraflex panels.

Soluble boron within the spent fuel pool provides a significant negative reactivity such that k_{eff} is maintained [less than or equal to] 0.95. The proposed surveillance frequency will ensure that the necessary boron concentration is maintained. A boron dilution event which would remove the soluble boron from the pool has been shown to not be credible.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of

Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 11, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 31, 1997, supplemented June 18, 1997, October 10, 1997, October 20, 1997, November 11, 1997, December 22, 1997, January 15, 1998, January 27, 1998, March 30, 1998, April 23, 1998, and April 27, 1998, which are 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 Rochester Public Library, 115 South Avenue, Rochester, New York 14610. This notice supersedes the March 31, 1997, application published on April 30, 1997 (62 FR 23502) in its entirety.

Dated at Rockville, Maryland, this day of May 1998.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–12526 Filed 5–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 101st meeting on June 10–12, 1998, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

On June 10 and 11, 1998, 8:30 A.M. until 6:00 P.M., the Committee will discuss the following:

A. *Near-Field Environment and Performance of Engineered Barriers*.—The Committee will conduct a two-day working group session entitled, ''Near-Field Environment and the Performance of Engineered Barriers in the Yucca Mountain Repository.'' The participants will be scientists and engineers from a variety of governmental, academic, private, and other organizations who will focus on conditions and processes that may occur inside the disposal drifts of the proposed mined geological repository.

On June 12, 1998, 8:30 A.M. until 4:00 P.M., the Committee will discuss the following topics:

B. *Meeting with Industry Representative*.—The Committee will discuss with Mr. Ralph Beedle, Senior Vice President, Nuclear Energy Institute, the ACNW's December 23, 1997, letter to the NRC Chairman titled, ''1998 Strategic Plan and Priority Issues for the Advisory Committee on Nuclear Waste.''

C. *Meeting with NRC's Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards*.—The Committee will meet with the Director to discuss recent developments within the division such as developments at the Yucca Mountain project, rules and guidance under development, available resources, and other items of mutual interest.

D. *Election of ACNW Officers*.—The Committee will elect the Chairman and Vice Chairman for the ACNW for a 1-year term beginning July 1, 1998 through June 30, 1999.

E. *Prepare for Next Meeting with the Commission*.—The Committee will prepare for its next briefing with the Commission. The Committee is scheduled to discuss items of mutual interest with the Commission on July 21, 1998. (tentative)

F. *Preparation of ACNW Reports*.—The Committee will discuss planned reports, including: the staff's plans to review DOE's Viability Assessment, the total systems sensitivity analysis and other topics discussed during this and previous meetings as the need arises.

G. *Committee Activities/Future Agenda*.—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

H. *Miscellaneous*.—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 2, 1997 (62 FR 46382). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Acting Chief, Nuclear Waste Branch, Mr. Howard J. Larson, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the Acting Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Howard J. Larson, Acting Chief, Nuclear Waste Branch (telephone 301/415–6805), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting agenda, meeting transcripts, and letter reports are available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: May 6, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–12529 Filed 5–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meeting

AGENCIES: Nuclear Regulatory Commission and Environmental Protection Agency.

ACTION: Notice of public meeting of the Interagency Steering Committee on Radiation Standards

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will host a meeting of the Interagency Steering Committee on Radiation Standards (ISCORS) in Rockville, Maryland. The purpose of ISCORS is to foster early resolution and coordination of regulatory issues associated with radiation standards.

Agencies represented on ISCORS include the U.S. Nuclear Regulatory Commission, U.S. Environmental Protection Agency, U.S. Department of Energy, U.S. Department of Defense, U.S. Department of Transportation, the Occupational Safety and Health Administration of the U.S. Department of Labor, the U.S. Department of Health and Human Services, and any successor agencies. The Office of Science and Technology Policy, the Office of Management and Budget, and a State representative are observers at meetings.

The objectives of ISCORS are to: (1) facilitate a consensus on allowable levels of radiation risk to the public and workers; (2) promote consistent and scientifically sound risk assessment and risk management approaches in setting and implementing standards for occupational and public protection from ionizing radiation; (3) promote completeness and coherence of Federal standards for radiation protection; and (4) identify interagency radiation protection issues and coordinate their resolution.

ISCORS meetings include presentations by the chairpersons of the subcommittees and discussion of current radiation protection issues. Committee meetings normally involve pre-decisional intra-governmental discussions and, as such, are normally not open for observation by members of the public or media. However, for the June 11 meeting, all interested members of the public are invited to attend the meeting.

DATE: The meeting will be held from 9:30 a.m. to noon on Thursday, June 11, 1998.

ADDRESS: The meeting will be held in the NRC auditorium at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Summaries of previous ISCORS meetings are available at the NRC's Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555; telephone 202–634–3273; fax 202-634–3343.

FOR FURTHER INFORMATION, CONTACT: Dominick Orlando, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–6749, fax 301–415–5398, E-mail: DAO@NRC.GOV.

SUPPLEMENTARY INFORMATION: Visitor parking around the NRC building is limited; however, the workshop site is located adjacent to the White Flint Metro Station on the Red Line. Seating for the public will be on a first-come, first-served basis.

Dated at Rockville, Maryland, this 5th day of May 1998.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–12525 Filed 5–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Materials and Metallurgy; Notice of Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on June 1, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, June 1, 1998—1:30 p.m. until the conclusion of business

The Subcommittee will discuss the NRC staff's concerns regarding the changes to Class 1, 2, and 3 piping system design requirements contained in the 1994 Addenda of Section III of the ASME Boiler and Pressure Vessel Code, and the status of resolution of these concerns by the ASME Special Working Group on Seismic Rules. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and the ASME Special Working Group on Seismic Rules, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 6, 1998.

Sam Duraiswamy,

Chief Nuclear Reactors Branch.

[FR Doc. 98–12530 Filed 5–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on June 2, 1998, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, June 2, 1998—12:00 Noon—1:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the qualifications of candidates for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 5, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–12531 Filed 5–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on June 2, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting will be closed to public attendance to discuss General Electric Company proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, June 2, 1998—8:30 a.m. until the conclusion of business

The Subcommittee will review the General Electric Company extended power uprate plan for operating BWRs, and the lead-plant (Monticello Nuclear Generating Plant) power uprate application. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the General Electric Company, the Northern States Power Company, the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 6, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–12532 Filed 5–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Safety Research Program; Notice of Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on June 1, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, June 1, 1998—8:30 a.m. until 12:30 p.m.

The Subcommittee will discuss SECY–98–076, ''Core Research Capabilities,'' and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/415–6889) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: May 6, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–12533 Filed 5–11–98; 8:45 am]

BILLING CODE 7590–01–U

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request: Investigations Forms 41–44

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, Chapter 35), this notice announces that OPM intends to submit to the Office of Management and Budget (OMB) a request for reclearance of four information collections and solicit comments on them. OPM uses these forms to request information by mail for use in OPM investigations. These investigations are conducted to determine suitability for Federal employment and/or the ability to hold a security clearance as prescribed in Executive Orders 10450, 12968 and 10577 (5 CFR Part V) and 5 U.S.C. 3301.

INV Form 41, Investigative Request for Employment Data and Supervisor Information, is sent to former employers and/or supervisors.

INV Form 42, Investigative Request for Personal Information, is sent to references.

INV Form 43, Investigative Request for Educational Registrar and Dean of Students Record Data, is sent to educational institutions.

INV Form 44, Investigative Request for Law Enforcement Data, is sent to local law enforcement agencies.

Based upon current usage it is estimated that 1,609,000 individuals

will respond annually (770,000 to INV Form 41; 412,000 to INV Form 42; 98,000 to INV Form 43; and 329,000 to INV Form 44) with each response requiring approximately 5 minutes. The total burden requested is 134,083 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of collection of information on those who respond, through the use of appropriate technological collection techniques or other forms of information technology.

To obtain copies of this proposal please contact James M. Farron at (202) 418–3208 or by E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication. Submit comments on this proposal to Richard A. Ferris, Associate Director, U.S. Office of Personnel Management, Room 5416, 1900 E Street, NW., Washington, DC 20415.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–12443 Filed 5–11–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on April 10, 1998 (63 FR 17904). Individual authorities established or revoked under Schedules A and B and established under Schedule C between March 1, 1998, and March 31, 1998, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked during March 1998.

Schedule B

No Schedule B authorities were established or revoked during March 1998.

Schedule C

The following Schedule C authorities were established during March 1998:

Department of Agriculture

Chief of Staff to the Administrator, Risk Management Agency. Effective March 4, 1998.

Confidential Assistant to the Administrator, Farm Service Agency. Effective March 4, 1998.

Special Assistant to the Chief, Natural Resources Conservation Service. Effective March 12, 1998.

Confidential Assistant to the Deputy Secretary. Effective March 17, 1998.

Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective March 26, 1998.

Department of Defense (DOD)

Speechwriter to the Assistant Secretary for Public Affairs. Effective March 6, 1998.

Speechwriter to the Assistant Secretary of Defense for Public Affairs. Effective March 10, 1998.

Staff Assistant to the Special Assistant for White House Liaison. Effective March 10, 1998.

Confidential Assistant to the Assistant Secretary for Public Affairs. Effective March 19, 1998.

Staff Specialist to the Deputy Assistant Secretary (Asian and Pacific Affairs). Effective March 23, 1998.

Department of the Air Force (DOD)

Secretary Assistant to the Under Secretary of the Air Force. Effective March 10, 1998.

Department of the Army (DOD)

Personal and Confidential Assistant to the Under Secretary of the Army. Effective March 11, 1998.

Department of the Navy (DOD)

Staff Assistant to the Under Secretary of the Navy. Effective March 10, 1998.

Department of Commerce

Speechwriter to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective March 2, 1998.

Confidential Assistant to the Director, Secretariat Staff. Effective March 2, 1998.

Deputy Director, Office of Public Affairs to the Director, Office of Public Affairs. Effective March 6, 1998.

Director, Office of Business Liaison to the Secretary of Commerce. Effective March 9, 1998.

Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective March 13, 1998.

Department of Education

Special Assistant to the Special Advisor to the Secretary. Effective March 10, 1998.

Special Assistant to the Senior Advisor to the Secretary (Director, America Reads Challenge). Effective March 11, 1998.

Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective March 17, 1998.

Department of Energy

Briefing Book Coordinator to the Director, Scheduling and Logistics. Effective March 4, 1998.

Special Assistant to the Secretary of Energy. Effective March 4, 1998.

Special Assistant to the Director, Office of Energy Research. Effective March 6, 1998.

Special Assistant to the Associate Deputy Secretary for Field Management. Effective March 10, 1998.

Special Assistant to the Director, Office of Civilian Radioactive Management. Effective March 26, 1998.

Special Assistant to the Assistant Secretary for Human Resources and Administration. Effective March 30, 1998.

Department of Health and Human Services

Confidential Assistant to the Deputy Chief of Staff. Effective March 11, 1998.

Special Assistant to the Deputy Assistant Secretary for Legislation. Effective March 26, 1998.

Special Assistant to the Assistant Secretary for Aging. Effective March 27, 1998.

Department of Housing and Urban Development

Staff Assistant to the Director, Office of Special Programs. Effective March 2, 1998.

Special Assistant to the Assistant Deputy Secretary for Field Policy and Management. Effective March 6, 1998.

Department of the Interior

Special Assistant to the Director, Congressional and Legislative Affairs. Effective March 30, 1998.

Department of Justice

Confidential Assistant to the Assistant Attorney General for Civil Rights Division. Effective March 6, 1998.

Special Assistant to the Assistant Attorney General, Environment and Natural Resources Division. Effective March 13, 1998.

Department of Labor

Special Assistant to the Assistant Secretary for Veterans' Employment and Training. Effective March 10, 1998.

Director of Intergovernmental Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 10, 1998.

Executive Assistant to the Assistant Secretary for Occupational Safety and Health Standards. Effective March 10, 1998.

Special Assistant to the Director, Director, Women's Bureau. Effective March 18, 1998.

Special Assistant for Public Affairs to the Assistant Secretary, Employment Standards Administration. Effective March 26, 1998.

Department of State

Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective March 5, 1998.

Staff Assistant to the Deputy Assistant Secretary, Bureau of Administration. Effective March 5, 1998.

Foreign Affairs Officer to the Deputy Chief of Protocol. Effective March 18, 1998.

Senior Advisor to the Under Secretary for Economic, Business and Agricultural Affairs. Effective March 25, 1998.

Department of Transportation

Director of Intergovernmental and Congressional Affairs to the Administrator, National Highway Traffic Safety Administration. Effective March 23, 1998.

White House Liaison to the Chief of Staff. Effective March 24, 1998.

Special Assistant to the Assistant to the Secretary and Director of Public Affairs. Effective March 25, 1998.

Scheduling/Advance Assistant to the Director of Scheduling and Advance. Effective March 27, 1998.

Department of the Treasury

Assistant to the Commissioner, Internal Revenue Service. Effective March 6, 1998.

Equal Employment Opportunity Commission

Attorney Advisor to the General Counsel. Effective March 30, 1998.

Federal Communications Commission

Associate Chief, Office of Public Affairs to the Chief, Office of Public Affairs. Effective March 4, 1998.

National Transportation Safety Board

Special Assistant to the Director, Office of Government, Public, and Family Matters. Effective March 26, 1998.

Office of Personnel Management

Special Assistant to the Director, Office of Personnel Management. Effective March 17, 1998.

Securities and Exchange Commission

Confidential Assistant to a Commissioner. Effective March 18, 1998.

Small Business Administration

Special Assistant to the Senior Advisor to the Associate Deputy Administrator of Entrepreneurial Development. Effective March 25, 1998.

Social Security Administration

Press Officer to the Deputy Commissioner for Communications. Effective March 4, 1998.

Deputy Press Officer to the Deputy Community Commissioner for Communications. Effective March 4, 1998.

United States Information Agency

Special Assistant to the Director, United States Information Agency. Effective March 25, 1998.

Senior Advisor to the Director, Citizen Exchanges. Effective March 25, 1998.

United States Tax Court

Secretary (Confidential Assistant) to a Judge. Effective March 11, 1998.

Secretary (Confidential Assistant) to a Judge. Effective March 17, 1998.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–12444 Filed 5–11–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15Bc3–1; Form MSDW, SEC File No. 270–93, OMB Control No. 3235–0087

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is publishing the following summary of collection for public comment. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15Bc3–1 under the Securities Exchange Act of 1934 provides that a notice of withdrawal from registration with the Commission as a bank municipal securities dealer must be filed on Form MSDW.

It is estimated that approximately 20 respondents will utilize this notice procedure annually, with a total of 10 burden hours. The number of hours necessary to comply with the requirements of Rule 15Bc3–1 is estimated to be .5 hours. The average cost per hour is approximately $40. Therefore, the total cost of compliance for the respondents is $400.

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing on or before July 13, 1998.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: May 4, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12551 Filed 5–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 15a–4, SEC File No. 270–7, OMB Control No. 3235–0010.
Rule 17a–1, SEC File No. 270–244, OMB Control No. 3235–0208.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is publishing the following summary of collections for public comment.

Rule 15a–4 (17 C.F.R. § 240.15a–4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) permits a natural person who is a member of a securities exchange and who terminates its association with a registered broker-dealer to continue to do business on the exchange while the Commission reviews his application for registration as a broker-dealer, if the exchange files a statement indicating that there does not appear to be any ground for disapproving the application. The total annual burden is 240 hours, based on approximately 30 submissions, each requiring 8 hours to complete.

Rule 17a–1 (17 C.F.R. § 240.17a–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) requires that all national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board keep on file for a period of five years, two years in an accessible place, all documents which it makes or receives respecting its self-regulatory activities, and that such documents be available for examination by the Commission. The average number of hours necessary for compliance with the requirements of Rule 17a–1 is 50 hours per year. There are 26 entities required to comply with the rule: 8 national securities exchanges, 1 national securities association, 16 registered clearing agencies, and the Municipal Securities Rulemaking Board. The total number of hours required for all respondents to comply with the rule is thus 1,300 hours annually.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing on or before July 13, 1998.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

Dated: May 5, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12553 Filed 5–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, N.W., Washington, D.C. 20549.

Extension:
Rule 23c–3 and Form N–23c–3, SEC File No. 270–373, OMB Control No. 3235–0422

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension and approval of the collections of information discussed below.

Rule 23c–3 under the Investment Company Act of 1940 [17 CFR 270.23c–3] permits certain closed-end investment companies (''Closed-end funds'' or ''funds'') periodically to offer to repurchase from shareholders a limited number of shares at net asset value. The rule includes several reporting and recordkeeping requirements. The fund must send shareholders a notification that contains specified information each time the fund makes a repurchase offer (on a quarterly, semi-annual, or annual basis, or for certain funds, on a discretionary basis not more often than every two years). The fund also must file copies of the shareholder notification with the Commission (electronically through the Commission's Electronic Data Gathering, Analysis and Retrieval System (''EDGAR'') or by sending three paper copies) attached to Form N–23c–3 [17 CFR 274.221], a cover sheet that provides limited information about the fund and the type of offer the fund is making.[1] The fund must describe in its annual report to shareholders the fund's policy concerning repurchase offers and the results of any repurchase offers made during the reporting period. The fund's board of directors must adopt written procedures designed to ensure that the fund's investment portfolio is sufficiently liquid to meet its repurchase obligations and other obligations under the rule. The board periodically must review the composition of the fund's portfolio and change the liquidity procedures as necessary. The fund also must file copies of advertisements and other sales literature with the Commission as if it were an open-end investment company subject to section 24 of the Investment Company Act [15 U.S.C. 80a–24] and the rules that implement section 24.[2]

The requirement that the fund send a notification to shareholders of each offer is intended to ensure that a fund provides material information to shareholders about the terms of each offer, which may differ from previous offers on such matters as the maximum amount of shares to be repurchased (the maximum repurchase amount may range from 5% to 25% of outstanding shares). The requirement that copies be sent to the Commission is intended to enable the Commission to monitor the fund's compliance with the notification requirement. The requirement that the shareholder notification be attached to Form N–23c–3 is intended to ensure that the fund provides basic information necessary for the Commission to process the notification and to monitor the fund's use of repurchase offers. The requirement that the fund describe its current policy on repurchase offers and the results of recent offers in the annual shareholder report is intended to provide shareholders current information about the fund's repurchase policies and its recent experience. The requirement that the board approve and

[1] Form N–23c–3 requires the fund to state its registration number, its full name and address, the date of the accompanying shareholder notification, and the type of offer being made (periodic, discretionary, or both).

[2] Rule 24b–3 under the Investment Company Act [17 CFR 270.24b–3], however, would generally exempt the fund from that requirement when the materials are filed instead with the National Association of Securities Dealers (''NASD''), as nearly always occurs under NASD procedures, which apply to the underwriter of every fund.

review written procedures designed to maintain portfolio liquidity is intended to ensure that the fund has enough cash or liquid securities to meet its repurchase obligations, and that written procedures are available for review by shareholders and examination by the Commission. The requirement that the fund file advertisements and sales literature as if it were an open-end investment company is intended to facilitate the review of these materials by the Commission or the NASD to prevent incomplete, inaccurate, or misleading disclosure about the special characteristics of a closed-end fund that makes periodic repurchase offers.

The Commission estimates that 10 funds currently rely upon the rule. The Commission estimates that each fund spends approximately 80 hours annually in preparing, mailing, and filing shareholder notifications for each repurchase offer, 4 hours annually in preparing and filing Form N–23c–3, 6 hours annually in preparing disclosures in the annual shareholder report concerning the fund's repurchase policy and recent offers, 28 hours annually in preparing procedures to protect portfolio liquidity, and 8 hours annually in performing subsequent reviews of these procedures. The total annual burden of the rule's paperwork requirements for all funds thus is estimated to be 1,260 hours. This represents an increase of 940 hours from the prior estimate of 320 hours. The increase results primarily from the recognition that sending notifications to shareholders and completing Form N–23c–3 imposes burdens in addition to the burden of preparing and filing the shareholder notifications with the Commission.[3] The remaining increase results from a more accurate calculation of the component parts of other previously combined information burdens.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule and form is necessary to obtain the benefit of relying on the rule and form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB on or before June 11, 1998.

Dated: May 4, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12552 Filed 5–11–98; 8:45 am]

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[3] The Commission has not previously submitted to OMB a request for approval under the Paperwork Reduction Act for the collection of information in Form N–23c–3.

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Intercorp Excelle Inc., Common Stock, No Par Value; Redeemable Common Stock Purchase Warrants), File No. 1–13365

May 6, 1998.

Intercorp Excelle Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'').

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Company's Securities are currently registered under Section 12(b) of the Act and are listed for trading on the BSE and for quotation on the Nasdaq SmallCap Market (''Nasdaq'').

The Company recently learned that it may not qualify for continued listing on the BSE in that it may not have more than 600 shareholders. Furthermore, the Company believes that the time and expense incurred in continued listing of the Securities on the BSE does not justify the benefits from such continued listing. The Company believes that it is in the best interests of the Company's shareholders to withdraw the Securities from listing on the BSE.

The Company will continue to maintain its listing of the Securities on the Nasdaq.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Securities from listing and registration on the BSE.

Any interested person may, on or before May 28, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–12556 Filed 5–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23172; 812–11074]

Oppenheimer Series Fund, Inc., et al.; Notice of Application

May 5, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants seek an order to allow certain series of Oppenheimer Series Fund, Inc. and Oppenheimer Integrity Funds, both registered open-end management investment companies, to acquire the assets and liabilities of certain series of Oppenheimer Series Fund, Inc. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Oppenheimer Series Fund, Inc. (the ''Company''), Oppenheimer Integrity Funds (the ''Trust''), and Oppenheimer Funds, Inc. (''OFI'').

FILING DATES: The application was filed on March 18, 1998. Applicants have agreed to file an amendment to the application, the substance of which is

included in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 1, 1998, 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 Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Oppenheimer Series Fund, Inc., Oppenheimer Integrity Funds, and OppenheimerFunds, Inc., c/o Denis R. Molleur, Esq., Two World Trade Center, 34th Floor, New York, New York 10048–0203.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 942–0714, or George J. Zornada, 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. The Company, a Maryland corporation, is registered under the Act as an open-end management investment company and is organized as a series company. The Company offers five portfolios, Oppenheimer Disciplined Value Fund and Oppenheimer Disciplined Allocation Fund (each an ''Acquiring fund''), and Oppenheimer LifeSpan Growth Fund, Oppenheimer LifeSpan Balanced Fund and Oppenheimer LifeSpan Income Fund (collectively, the ''Acquired Funds'').

2. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company and is organized as a series company. Oppenheimer Bond Fund is the only portfolio of the Trust (together with Oppenheimer Disciplined Value Fund and Oppenheimer Disciplined Allocation Fund, the ''Acquiring Funds'').

3. OFI is an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act''), and is the adviser to the Acquired Funds and the Acquiring Funds. It is a subsidiary of Oppenheimer Acquisition Corp., a holding company controlled by Massachusetts Mutual Life Insurance Company (''MassMutual''). As of March 2, 1998, MassMutual held of record of 21% of the outstanding shares of the Disciplined Value Fund; 63% of the LifeSpan Growth Fund; 70% of the LifeSpan Balanced Fund; and 86% of the LifeSpan Income Fund. MassMutual also is an investment adviser registered under the Advisers Act.

4. Each Acquired Fund currently has Class A, B, and C shares. Class A shares are subject to a front-end sales charge, except for certain large purchases that are subject to a 1% contingent deferred sales charge (''CDSC'') if redeemed within one year. Class B and C shares may be subject to a CDSC depending on the length of time held, and are subject to a .75% asset-based sales charge. Each Acquiring Fund has identical Class A, B, and C shares.

5. On December 11, 1997, the board of directors of the Company (the ''Board''), including a majority of the distinterested directors, approved proposed plans of reorganization (each a ''Plan'' and collectively, the ''Plans''). Under the Plans, each Acquiring Fund will acquire all of the assets, less cash reserves,[1] and liabilities, as set out in the Plans, of the corresponding Acquired Fund in exchange for Class A, B, and C shares of the Acquiring Fund equal in value as computed at 4:00 p.m. New York, NY time (''Valuation Time'') on the date of the transaction (the ''Exchange Date'') to the net value of the assets of the corresponding Acquired Fund at the Valuation Time on the Exchange Date.[2] Each Acquired Fund will distribute pro rata to its shareholders as of the close of business on the Exchange Date the Acquiring Fund Class A, B, and C shares that were issued in exchange for the Acquired Fund's assets. All issued and outstanding corresponding Class A, B, and C shares of the Acquired Fund will simultaneously be canceled and the Acquired Fund subsequently will liquidate.

6. Shareholders of the Acquired Funds will not incur any sales charges in connection with the reorganization. Any CDSC, however, that currently applies to Acquired Fund shares will continue to apply to Acquiring Fund shares received in the transaction. Each Acquiring Fund and Acquired Fund will bear its own expenses incurred in connection with the reorganization. The investment objectives of each Acquired Fund and its corresponding Acquiring Fund are similar.

7. In approving the reorganization, the Board considered the terms and conditions of the Plans, including (a) that the exchange of Acquired Fund assets for Acquiring Fund shares will take place on a net asset value basis; (b) that no sales charge will be incurred by Acquired Fund shareholders in connection with their acquisition of Acquiring Fund shares; (c) the allocation of the expenses to each Fund; (d) the tax-free status of the reorganization; (e) the advantages that may be realized by the Acquired funds and the Acquiring Funds, including economies of scale which will result in reduced expense ratios; and (f) the comparability of the investment objectives, policies and restrictions of each Acquiring Fund with those of the corresponding Acquired fund. The Board and the Trustees of the Trust, including the disinterested members of each, also found that the Plans were fair and in the best interests of the shareholders of the Acquired Funds and the Acquiring Funds, and that the interests of existing shareholders will not be diluted as a result of the reorganization.

8. Amendments on Form N–14 to the Company's and Trust's registration statements under the Securities Act of 1933 were filed with the Commission on February 27, 1998 to register shares to be issued in the proposed reorganization. A special meeting for shareholder consideration of the Plans is scheduled for June 9, 1998.

9. Each Acquiring or Acquired Fund may abandon and terminate the Plan at any time prior to the Exchange Date without liability if a material breach of the terms of the Plan occurs or if a material legal, administrative, or other proceeding is instituted. In addition, each Acquiring or Acquired fund may, at its election, terminate the Plan in the event that any condition for the Plan to close has not been met or waived and if the transactions have not become effective on or before July 30, 1998.

[1] Assets will be retained by the Acquired Funds deemed sufficient in the discretion of the Board for the payment of the expenses of liquidation and liabilities not assumed by the Acquiring Fund.

[2] The Acquiring Funds and the corresponding Acquired Funds are:

(i) Disciplined Value Fund and LIfeSpan Growth Fund

(ii) Disciplined Allocation Fund and LifeSpan Balanced Fund

(iii) Oppenheimer Bond Fund and LifeSpan Income Fund.

10. The consummation of the reorganization will be subject to the following conditions: (a) the shareholders of each Acquired Fund will have approved the Plan; (b) applicants will have received the exemptive relief which is the subject of the application; and (c) applicants will have received an opinion of counsel or independent auditors with respect to the federal income tax aspects of the reorganization. Applicants agree not to make any material changes to the proposed Plans that affect the application without prior Commission approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from selling any security to, or purchasing any security from, such registered company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person that owns 5% or more of the outstanding voting securities of such other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by such other person, (c) any person directly or indirectly controlling, controlled by, or under common control with such other person, and (d) if such other person is an investment company, any investment adviser of that investment company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reasons of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely upon rule 17a–8 because they may be affiliated for reasons other than those set forth in the rule. The Acquiring and Acquired Funds have a common investment adviser, OFI. Mass Mutual indirectly owns more than 5% of OFI. Mass Mutual also holds of record 5% or more of the outstanding voting securities of one Acquiring Fund, the Oppenheimer Disciplined Value Fund, and controls each of the Acquired Funds. Because of this ownership, each Acquiring Fund and OFI may be deemed affiliated persons of an affiliated person of the Acquired Funds. Therefore, the proposed reorganization may not meet the ''solely by reason of'' requirement of rule 17a–8. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the proposed reorganization.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned; and the proposed transaction is consistent with the general purposes of the Act.

5. Applicants submit that the terms of the Plans satisfy the standards set forth in section 17(b) in that the terms are fair and reasonable and do not involve overreaching on the part of any person. Applicants note that the Board and the Trustees of the Trust, including the disinterested directors and trustees, have reviewed the terms of the Plans, including the consideration paid or received, and have found that the participation in the reorganization is in the best interests of each Acquiring and Acquired fund and that the interests of the existing shareholders will not be diluted as a result of the reorganization. Applicants also note that the exchange of the Acquired Funds' assets and liabilities for the shares of the Acquiring Funds will be based on the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12455 Filed 5–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23174; File No. 812–11062]

Sage Life Investment Trust, et al.

May 6, 1998.

AGENCY: The Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') granting exemptive relief from Sections 9(a), 13(a), 15(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of Sage Life Investment Trust (the ''Trust'') and any other investment company that is designed to fund insurance products and for which Sage Advisors, Inc. may serve as investment manager, investment adviser, administrator, manager, principal underwriter or sponsor (''Future Trusts,'' together with the Trust, ''Trusts'') to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies and by qualified pension and retirement plans (''Qualified Plans'' or ''Plans'') outside of the separate account context.

APPLICANTS: Sage Life Investment Trust and Sage Advisor, Inc. (''Sage'').

FILING DATE: The application was filed on March 12, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on June 1, 1998, 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 interest, the reason for the request and the issues contested. Persons may request notification of the data of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o James F. Bronsdon, Esq., Safe Life Assurance of America, Inc., 300 Atlantic Street, Suite 302, Stanford Connecticut 06901.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, N.W., Washington, D.C. (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the 1940 Act as an open-end, management investment company. The Trust currently consists of four separate portfolios (each, a ''Fund''), each of which has its own

investment objective or objectives, and policies.

2. Sage will serve as the investment manager to the Trust. Sage is a wholly-owned subsidiary of Sage Insurance Group, Inc. Sage will be registered with the Commission as an investment adviser pursuant to the Investment Advisers Act of 1940.

3. Upon effectiveness of the Trust's registration statement, shares of each Fund will be offered to Safe Life Assurance of America, Inc. (''Current Participating Insurance Company''), as investment options for its separate accounts supporting variable annuity and variable life contracts.

4. Applicants state that, upon the granting of the exemptive relief requested by the Application, the Trust intends to offer shares representing interests in each Fund, and any future portfolios (each, a ''Future Portfolio,'' together with the Fund, ''Portfolios''), to separate accounts of insurance companies, including both the Current Participating Insurance Company and other insurance companies (''Other Insurance Companies'') to serve as the investment vehicle for variable annuity contracts and variable life insurance contracts (collectively, ''Variable Contracts''). The Current Participating Insurance Company and Other Insurance Companies which elect to purchase shares of one or more Portfolios are collectively referred to herein as ''Participating Insurance Companies.'' The Participating Insurance Companies will establish their own separate accounts (''Separate Accounts'') and design their own Variable Contracts. Applicants also propose that the Portfolios offer and sell their shares directly to Qualified Plans outside of the separate account context.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the trusts to be offered and sold to, and held by: (a) both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company (''mixed funding''); (b) separate accounts of unaffiliated life insurance companies (including both variable annuity separate accounts and variable life insurance separate accounts) (''shared funding''); and (c) trustees of Qualified Plans.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. These exemptions are available only if the separate account is organized as a unit investment trust, all the assets of which consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurer. Thus, the exemptions provided by Rule 6e–2 are not available if a scheduled premium variable life insurance separate account owns shares of an underlying fund that also offers its shares to a variable annuity separate account or a flexible premium variable life insurance separate account of the same insurance company, or to an unaffiliated life insurance company. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying fund that also offers its shares to Qualified Plans.

3. Rule 6e–3(T)(b)(15) provides similar partial exemptions in connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust. These exemptions, however, are available only if all the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contacts or flexible premium variable life insurance contracts or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Thus, the exemptions provided by Rule 6e–3(T)(b)(15) are available if the underlying fund is engaged in mixed funding, but are not available if the fund is engaged in shared funding or if the fund sells its shares to Qualified Plans.

4. Applicants state that current tax law permits the Trust to increase its asset base through the sale of its shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying Variable Contracts, such as those in each Portfolio. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department (the ''Regulations''), adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) which established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of a qualified pension or retirement plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

5. The promulgation of rules 6e–2 and 6e–3(T) preceded the issuance of the Regulations. Applicants state that, given the then-current tax law, the sale of shares of the same investment company to both the separate accounts of insurers and to Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and Rule 6e–3(T)(b)(15).

6. Section 9(a)(3) of the 1940 Act provides, among other things, that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a) (1) or (2) of the 1940 Act. Rules 6e–2(b)(15) (i) and (ii) and Rules 6e–3(T)(b)(15) (i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

7. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of

Section 9. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants state that it is unnecessary to apply Section 9(a) to individuals in various unaffiliated Participating Insurance Companies (or affiliated companies of Participating Insurance Companies) that may utilize the Trusts as the funding medium for Variable Contracts. According to Applicants, there is no regulatory purpose in extending the Section 9(a) monitoring requirements because of mixed or shared funding. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management or administration of the Trusts. Moreover, those individuals who participate in the management or administration of the Trusts will remain the same regardless of which Separate Accounts, or Qualified Plans use the Trusts. Applicants argue that applying the monitoring requirements of Section 9(a) because of investment by other insurers' separate accounts would be unjustified and would not serve any regulatory purpose.

8. Applicants also state that in the case of Qualified Plans, the Plans, unlike the Separate Accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of any of the Trusts by virtue of its shareholders.

9. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming that the limitations on mixed and shared funding imposed by the 1940 Act and the rules promulgated thereunder are observed.

10. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the Participating Insurance Companies the right to disregard voting instructions of contract owners. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) each provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T) under the 1940 Act). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) each provide that the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in the underlying investment company's investment policies, principal underwriter, or any investment adviser (subject to the provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T) under the 1940 Act). Applicants represent that these rights do not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard voting instructions of contract owners only with respect to certain specified items. Applicants also note that the potential for disagreement among Separate Accounts is limited by the requirements in Rules 6e–2 and 6e–3(T) that a Participating Insurance Company's disregard of voting instructions be reasonable and based on specific good faith determinations.

11. Applicants further represent that the offer and sale of Portfolio shares to Qualified Plans will not have any impact on the relief requested in this regard. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Under Section 403(a) of the Employee Retirement Income Security Act (''ERISA''), shares of a fund sold to a Qualified Plan must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

12. If a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustees(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

13. If a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract owners and Plan investors with respect to voting of the respective Portfolio's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

14. Applicants further note that there is no reason to believe that participants in Qualified Plans which provide participants with the right to give voting instructions generally, or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage variable contract owners. Applicants, therefore, submit that the purchase of shares of the Portfolios by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

15. Applicants state that no increased conflicts of interest would be presented by granting the requested relief. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

16. Applicants submit that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit.

Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential for differences in state regulatory requirements. Applicants state that the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the Portfolios. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Portfolio.

17. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. Applicants assert that this right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

18. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represent a minority position or would preclude a majority vote, then the insurer may be required, at the relevant Portfolio's election, to withdraw its Separate Account's investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in the Portfolios.

19. Applicants submit that there is no reason why the investment policies of the Portfolios would or should be materially different from what these policies would or should be if the Portfolios funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Each Portfolio will be managed to attempt to achieve the investment objective or objectives of such Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

20. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. A Portfolio supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the continuation of the relevant Portfolio. Mixed and shared funding will broaden the base of contract owners which will facilitate the establishment of additional portfolios serving diverse goals.

21. Applicants do not believe that the sale of the shares of the Portfolios to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners.

22. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with Regulations, adequately diversified.

23. Regulations issued under Section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The Regulations, however, contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a Qualified Plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817–5(f)(3)(iii)). Thus, the Regulations specifically permit Qualified Plans and separate accounts to invest in the same portfolio of an underlying fund. For this reason, Applicants assert that neither the Code, nor the Regulations, nor the Revenue Rulings thereunder, present any inherent conflicts of interest.

24. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or a Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Portfolio at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Plan.

25. Applicants state that it is possible to provide an equitable means of giving voting rights to contract owners in the Separate Accounts and to Qualified Plans. In connection with any meeting of shareholders, the Trusts will inform each shareholder, including each Separate Account and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the relevant Portfolio. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Trust. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Trusts would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

26. Applicants submit that the ability of the Portfolios to sell their shares directly to Qualified Plans does not create a ''senior security'' as such term is defined under Section 18(g) of the

1940 Act. ''Senior security'' is defined under Section 18(g) of the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts only have rights with respect to their respective shares of the Portfolio and any Future Portfolio. They only can redeem such shares at net asset value. No shareholder of the Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

27. Applicants assert that there are no conflicts between the contract owners of the Separate Accounts and participants under the Qualified Plans with respect to the state insurance commissioners' veto powers over investment objectives. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers.

28. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Portfolios and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

29. Applicants also assert that there is no greater potential for material irreconcilable conflicts arising between the interest of participants in the Qualified Plans and contract owners of the Separate Accounts from future changes in the federal tax laws than that which already exist between variable annuity contract owners and variable life insurance contract owners.

30. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Use of a Portfolio as a common investment media for variable contracts would reduce or eliminate these concerns. Mixed and shared funding also should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of Sage, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a Portfolio, thereby promoting economics of scale, by permitting increased safety through greater diversification, or by making the addition of new Portfolios more feasible. Applicants assert that making the Portfolios available for mixed and shared funding will, therefore, encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants also assert that the sale of shares of the portfolios to Qualified Plans in addition to the Separate accounts will result in an increased amount of assets available for investment by such Portfolios. This may benefit variable contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new Portfolios more feasible.

31. Applicants see no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. As noted above, Applicants assert that mixed and shared funding will not have any adverse Federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of each Trust will consist of persons who are not ''interested persons'' of such Trust, as defined by section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board, (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable Federal or state insurance tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Trust are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, Sage, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Portfolio (collectively, the ''Participants'') will report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the relevant Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an

obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trusts, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of a Board, or a majority of the disinterested trustees of such Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Portfolio and reinvesting such assets in a different investment medium, including another Portfolio, or in the case of insurance company participants submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners or life insurance contract owners of one or more Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the relevant Trust, to withdraw such insurer's Separate Account's investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Trust, to withdraw its investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Trusts, and these responsibilities will be carried out with a view only to the interests of contract owners and Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of a Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will any Trust or Sage be required to establish a new funding medium for any variable contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any variable contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding medium for the Plan if: (a) a majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer; or (b) pursuant to documents governing the Qualified Plan, the Plan makes such decision without a Plan participant vote.

5. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all contract owners as required by the 1940 Act. Accordingly, each such Participant, where applicable, will vote shares of the applicable Portfolio held in its Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Portfolio calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges as provided in the application will be a contractual obligation of all Participating Insurance Companies under their agreement with Trust governing participation in a Portfolio. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions as well as shares it owns in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

7. Each Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, and, in particular, each Trust will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

8. The Trusts will notify all Participants that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Trust will disclose in its prospectus that: (a) shares of such Trust may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Trust and the interests of Qualified Plans investing in such Trust may conflict; and (c) the Trust's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

9. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from those terms and conditions associated with the exemptive relief requested in the application, then the Trusts and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

10. The Participants, at least annually, will submit to the Board of each Trust such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in the application, and said reports, materials, and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

11. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the relevant Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

12. The Trusts will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Plan executes an agreement with the relevant Trust governing participation in such Portfolio. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shared of any Portfolio.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12555 Filed 5–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 81–926]

Application and Opportunity for Hearing: Summit Properties Inc.

May 6, 1998.

Notice is hereby given that Summit Properties Inc. (''Applicant'') has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the ''Exchange Act'') for an order exempting applicant from the provisions of Section 16 of the Exchange Act with respect to its ownership of and transactions in units of limited partnership interest of Summit Properties Partnership, L.P.

For a detailed statement of the information presented, all persons are referred to this application, which is on file at the office of the Commission in the Public Reference Room 450 Fifth Street, N.W., Washington, D.C. 20549.

Notice is also given that any interested person not later than June 1, 1998 may submit to the Commission in writing its views or any substantial facts bearing on the application, or the desirability of a hearing thereon. Any such communication or request should be addressed to: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such a request, and the issues of fact and law raised by the application which it wishes to contest.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after the date, an order granting application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12559 Filed 5–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of May 11, 1998.

A closed meeting will be held on Thursday, May 14, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, May 14, 1998, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: May 7, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12703 Filed 5–8–98; 2:37 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39959; File No. SR–AMEX–98–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Announcement of Closing Rotations in Equity Options After 4:02 p.m.

May 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 8, 1998, the American Stock Exchange, Inc. (''Amex'' or ''the Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''the Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. 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 Amex proposes to amend Exchange Rule 1 to permit closing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rotations in equity options to be announced after 4:02 p.m. Language proposed to be deleted is in brackets.

Hours of Business

Rule 1 No change.

* * * Commentary

.01 No change.

.02 Options Trading after 4:02 p.m.—The Board has determined that no option series shall freely trade after 4:02 p.m. except that broad stock index group options shall freely trade until 4:15 p.m. each business day. However, one trading rotation in any class of options contracts may be effected even though employment of the rotations will result in the effecting of transactions on the Exchange after 4:02 p.m., provided:

(1) No change.

(2) Such rotation was initiated due to unusual market conditions pursuant to Rule 918, and: (i) Notice of such rotation is publicly disseminated no later than the commencement of the rotation or 4:00 p.m. (N.Y. time), whichever is earlier; or (ii) notice of such rotation is publicly disseminated after 4:00 p.m. [but before 4:02 p.m.], and the rotation does not commence until five minutes after news of such rotation is publicly disseminated.

(3) No change.

If prior to 4:02 p.m., a trading rotation is in progress and a Senior Floor Official and a Floor Official determine that a final trading rotation is needed to assure a fair and orderly market, the rotation in progress shall be halted and such final rotation begun as promptly as possible after 4:02 p.m. Any trading rotation commenced after 4:02 p.m. must be approved by a Senior Floor Official.

.03 through .04 No change.

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 Amex 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 14, 1997, the Exchange received approval to move the close of equity options trading from 4:10 p.m. to 4:02 p.m.[3] This change was prompted by improvements in dissemination of closing prices in the underlying securities, the limited ability of public customers to reach as quickly as professional traders to news announcements in the last ten minutes of trading, and the difficulties experienced by options specialists and registered traders trying to make orderly options markets without the ability to hedge or otherwise offset market risk with transactions in the underlying stock. Following receipt of approval, Rule 1 was amended to reflect this change to 4:02 p.m. Inadvertently, however, the provision that permits a closing rotation[4] to be initiated due to unusual market conditions, was severely limited when the rule was changed to require that notice of the closing rotation had to be publicly disseminated before 4:02 p.m. As currently written, the rule gives Floor Officials only two minutes to assess an unusual market condition, determine whether it is appropriate to have a closing rotation and disseminate the news of the rotation to the public.

The Exchange now proposes that Rule 1 by amended to permit the announcement of closing rotations in equity options after 4:02 p.m. provided such a rotation does not begin sooner than five minutes after the announcement of the closing rotation is disseminated. Permitting the announcement of closing rotations after 4:02 p.m. will allow the Exchange to more effectively address unusual market conditions by increasing its flexibility in the timing of announcing and commencing closing rotations. Further, such an amendment would conform Rule 1 to other exchanges' rules concerning the announcement of closing rotations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[5] in general and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engage in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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 written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Amex 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by June 2, 1998.

[3] Securities Exchange Act Release No. 38640, (May 14, 1997), 62 FR 28081 (May 22, 1997).

[4] A closing rotation is a trading procedure to determine appropriate closing prices or quotes for each series of options on an underlying stock.

[5] 15 U.S.C. 78f(b).

[6] U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12557 Filed 5–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39956; File No. SR–CHX–98–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Incorporated Relating to the Stopping of Market and Marketable Limit Orders

May 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 16, 1998, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change relating to the stopping of market and marketable limit orders. On February 12, 1998, the Exchange filed amendment No. 1 with the Commission.[2] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, Rule 37(b) relating to the stopping of market orders and marketable limit orders in the Midwest Automated Execution System (''MAX System''). Below is the next of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Article XX, Rule 37. Guaranteed Execution System and Midwest Automated Execution System (b) Automated Executions. The Exchange's Midwest Automated Execution System (the MAX System) may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's Article XX, Rule 37(a) (''BEST Rule'') and certain other orders. In the event that an order that is subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the BEST Rule and the following. In the event that an order that is not subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the following:

(1)–(9) No change in text.

(10) All market orders received through the MAX System that would result in an out of range execution shall be deemed to be received with a request to STOP. *Additionally, specialists may stop limit orders that are marketable when entered into the MAX System.* Subject to Interpretations and Policies .03 under [paragraph (a) under] this Rule 37, a specialist may execute a stopped order out of the primary market range, at no worse than the stopped price, provided the specialist receives approval to do so from two floor officials. *All agency and professional market orders received through the MAX System that are from 100 shares up to and including 599 shares (or such greater amount designated by a specialist on a stock-by-stock basis) (the stop volume threshold), that are not automatically executed pursuant to subsections (6) and (7) hereof shall be designated as ''pending auto-stop'' orders. A pending auto-stop order shall be automatically stopped thirty seconds after entry into the MAX System unless the order has been canceled, executed, manually stopped, or put on hold during such thirty second period. The pending auto-stop feature shall operate from 8:45 a.m. until 2:57 p.m. Notwithstanding the foregoing all or none orders, fill or kill orders, immediate or cancel orders and orders that have been stopped under the Enhanced SuperMAX program are not eligible to be ''pending auto-stop'' orders.*

(11)–(12) No change in text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose.

As described more fully below, the purpose of the proposed rule change is to amend CHX rules relating to ''stopped'' orders[3] in the MAX System[4] (i) to permit specialists to stop a marketable limit order[5] if the order is not immediately executed, and (ii) to automate the stopping of certain market orders that are not automatically executed.

Under the Exchange's BEST Rule, Exchange specialists are required to guarantee executions of all agency[6] market and limit orders for Dual Trading System issues[7] from 100 shares up to and including 2099 shares. Subject to the requirements of the short sale rule, market orders must be executed at a price equal to or better than the Intermarket Trading System (''ITS'') best bid or offer (''BBO''), up to the size associated with the ITS BBO. Limit orders must be executed at their limit price or better when: (1) the ITS BBO at the limit price has been exhausted in the primary market; (2) there has been a price penetration of the limit in the primary market (generally known as a trade-through of a CHX limit order); or (3) the issue is trading at the limit price on the primary market unless

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] *See* letter from David T. Rusoff, Foley & Lardner, to Gail A. Marshall, Division of Market Regulation, Commission, dated February 12, 1998.

[3] *See* CHX Manual, Art. XX, Rule 28 regarding member liability for stopped orders.

[4] The MAX System provides an automated delivery and, in certain cases, execution facility for orders that are eligible for execution under Article XX, Rule 37(a), and in certain other orders. *See* CHX Manual, Art. XX, Rule 37(b).

[5] For purposes of this filing, a marketable limit order is a limit order that is marketable when entered into the MAX System, *i.e.*, the limit price of the order is at or past (higher for a buy order or lower for a sell order) the relevant side of the ITS BBO at the time the order is received in the MAX System. If the ITS BBO subsequently moves away from the limit price (*i.e.*, if the limit price is lower than the ITS best offer for a buy order or higher than the ITS best bid for a sell order) after receipt of the order but before execution of the order, the order will still be considered a marketable limit order for purposes of pending auto-stop. Conversely, if a limit order is not marketable when received by the MAX System, the order will not be considered a marketable limit order for purposes of pending auto-stop, even if the ITS BBO subsequently becomes equal to or past the limit price of the order.

[6] The term ''agency order'' means an order for the account of a customer, but does not include professional orders as defined in CHX, Art. XXX, Rule 2, interpretation and policy.04. That Rule defines a ''professional order'' as any order for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[7] Dual Trading System Issues are issues that are traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and are also listed on either the New York Stock Exchange or American Stock Exchange.

it can be demonstrated that the order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related to, or other criteria for, requiring an execution.[8]

As stated above, the Exchange's MAX System provides for the automatic execution of orders that are eligible for execution under the Exchange's BEST Rule and certain other orders.[9]

The MAX System has two size parameters which must be designated by the specialist on a stock-by-stock basis. For Dual Trading System issues, the specialist must set the auto-execution threshold at 1099 shares or greater and the auto-acceptance threshold at 2099 shares or greater. In no event may the auto-acceptance threshold be less than the auto-execution threshold. If the order-entry firm sends an order through the MAX System that is greater than the specialist's auto-acceptance threshold, a specialist may cancel the order within one minute of it being entered into the MAX System.[10] If the order is not canceled by the specialist, the order is designated as an open order.[11] If the order-entry firm sends an order through the MAX System that is less than the auto-acceptance threshold but greater than the auto-execution threshold, the order is not available for automatic execution but is designated in the open order book. A specialist may manually execute any portion of the order; the difference must remain as an open order. If the order-entry firm sends an order through the MAX System that is less than or equal to the auto-execution threshold, the order is executed automatically, unless an exception applies. The MAX Rules currently provide several exceptions to automatic execution, even for orders that are less than or equal to the auto-execution threshold. First, unless a professional order is received with a ''Z'' designator, it is not automatically executed, regardless of size. Second, all market orders for Dual Trading System issues received through the MAX System that would result in an out of range[12] execution are deemed to be received with a request to ''stop.''[13] Stopped orders are not automatically executed in the usual course (*i.e.*, pursuant to Rule 37(b)(6)). Instead, they are placed in the open order file.[14] The order sending firm then receives a ''UR Stopped'' message. The specialist is then required to include the order in its quote by bidding (if it is an order to buy) or offering (if it is an order to sell) the shares at one minimum variation better than the current market, in an effort to obtain price improvement for the order.

Third, the MAX System will not automatically execute a market order or marketable limit order if the size associated with the ITS BBO is less than the size of the market or marketable limit order.[15]

Currently, the MAX System has no functionality to automatically ''stop'' marketable limit orders; only market orders are stopped, and even then, only if they would result in out of range executions or the size of the order is greater than the size associated with ITS BBO.[16] Consequently, if a marketable limit order is not immediately executed (*e.g.*, it is out of range, the order is greater than the size associated with the ITS BBO, etc.), it is merely added to the open order book. No message is sent to the order sending firm until the order is executed. The same is true for market orders that are not automatically stopped and are not automatically executed.

Because no message is sent to the order sending firm, the firm is uncertain as to the current status of its order. As a result, as stated above, the purpose of the proposed rule change is (i) to permit specialists to stop a marketable limit orders, and (ii) to automate the stopping of certain market orders. Once stopped, the order sending firm will then receive a stopped message, rather than being unsure as to the current status of the order, as is currently the case.

Specifically, the CHX is proposing to amend Article XX, Rule 37(b)(10) to provide that all MAX market orders that are from 100 up to and including 599 shares (or such higher amount determined by a specialist on a stock by stock basis) that are not automatically executed in the normal course pursuant to Rule 37(b)(6) (*i.e.*, because there is insufficient size associated with the ITS BBO, because the order would result in an out of range execution, because the order is a professional order and the specialist has not yet decided whether to accept the order, or because of any other reason permitted under CHX rules) will be identified as a ''pending auto stop'' order.[17]

These orders will retain their ''pending auto-stop'' status for 30 seconds. At the end of this 30 second period, the MAX System will automatically stop the order and send a ''UR Stopped'' message to the order sending firm, *unless*, before the end of the 30 second period, the order is executed, canceled, manually stopped by the specialist or ''put on hold.'' If any of these events occur, the ''pending auto-stop'' status will be removed from the order and the order will not automatically be stopped.[18] If an order is ''put on hold,'' the CHX's existing rules for the order will apply. If the order is stopped, the stop price will be the ITS BBO at the time the order is received in the MAX System. Furthermore, if the order is stopped after the ''pending auto-stop'' period, the *entire* order will be stopped.

The change to Rule 37(b)(10) to stop the entire order will result in better guarantees for the order than are required by existing CHX Rules. For example, professional orders are currently not guaranteed an execution under the BEST Rule. Under this change, eligible professional market orders will now be guaranteed an

[8] It is the responsibility of the specialist to be able to demonstrate that the order would not have been executed had it been routed to the other market. This is often accomplished by sending a ''marker'' order to the primary market.

[9] A MAX order that fits under the BEST parameters must be executed pursuant to BEST Rules via the MAX System. (*See* Art. XX, Rule 37(a) for BEST Rules) While the BEST Rules do not apply if the order is outside the BEST parameters, MAX System handling rules are still applicable. (*See* Art. XX, Rule 37(b) for MAX System handling rules)

[10] While the rule currently permits cancellation within three minutes, the Exchange has proposed a rule change (CHX–97–32 published in the **Federal Register** on February 11, 1998) to reduce the time to one minute. (*See* Securities Exchange Act Release No. 39615 (February 3, 1998), 63 FR 7020 (February 11, 1998).

[11] If an oversized market or limit order is received by the specialist, he will either reject the order immediately or display it immediately, in accordance with CHX Article XX, Rule 7 and the SEC's recently adopted Order Execution Rules (Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996)). If the order is displayed, the specialist will check with the order entry broker to determine the validity of the oversized order. During the one minute period, the specialist can cancel the order and return it to the order entry firm, but until it is canceled the displayed order is eligible for execution.

[12] ''Out of range'' means either higher or lower than the range in which the security has traded on the primary market during a particular trading day.

[13] *See* CHX Manual, Art. XX, Rule 37(b)(11).

[14] *See* CHX Manual, Art. XX, Rule 37(b)(2).

[15] *See* CHX Manual, Art, XX, Rule 37(b)(12).

[16] CHX Manual, Art, XX, Rule 37(b)(10) and (11), While market orders may also be stopped under the Exchange's Enhanced SuperMAX program, these orders are not subject to this filing.

[17] While both agency and professional orders will be eligible to be ''pending auto-stop'' orders, all or none orders, odd-lot orders, fill or kill orders, immediate or cancel orders, orders that re or will be stopped under the Enhanced SuperMAX program, and other orders that cannot be entered into the MAX System (*i.e.*, not held orders, sell short exempt orders and special settlement orders) will not be eligible to be ''pending auto stop'' orders.

[18] As is the case for all features of the MAX System, in unusual trading conditions, this feature of MAX can be de-activated (in its entirety or on an issue by issue basis) with the approval of two members of the Exchange's Committee on Floor Procedure or a designated member of the Exchange staff who would have authority to set execution prices. *See* CHX Article XX, Rule 37(b)(8).

execution at the stopped price. Additionally, pursuant to Article XX, Rule 28, a stopped order constitutes a guarantee that the order will be executed at the stopped price or better. However, under existing rules, if the size of the order is greater than the size of the ITS BBO in existence when the order is received, there is merely no automatic execution of the order, the order does not have to be ''stopped.'' Moreover, even if the order is ''stopped'' under Rule 28 only that portion of the order that is less than or equal to the size of the ITS BBO is stopped. The portion of the order that exceeds the ITS BBO is not stopped. As proposed, the entire size of the order (up to 599 shares) would be automatically stopped after the 30 second delay unless an exception applies.

This better guarantee can be illustrated by an example. Suppose the ITS BBO is $20 bid, $20¼ offered, 400 shares × 10,000 shares. Suppose further that a 500 share agency market order to sell is entered into the MAX System. Under current CHX rules, the order would not be automatically executed. The specialist would be required to manually execute 400 shares at $20. The remaining 100 shares would have to be executed at the next best prevailing price. If $20 were out of range, there would also be no automatic execution. If the customer requested a stop, then a specialist would stop 400 shares of the order at $20, *i.e.*, offer 400 shares at $20 1/16 and guarantee an execution at no worse than $20. The remaining 100 shares would be guaranteed an execution (pursuant to the BEST Rule), but not necessarily an execution at $20. Under Rule 37(b)(10), as proposed to be amended, if the specialist did nothing, after 30 seconds, all 500 shares of the order would be stopped. Thus, the customer would be guaranteed an execution of no worse than $20 for all 500 shares.

The Exchange believes that the 30 second delay between the time the order is entered and the time that the order is stopped is appropriate. The 30 seconds will give the specialist an opportunity to review the order to determine whether a stop is appropriate under the circumstances.

The ''pending auto-stop'' feature of the MAX System will operate from 8:45 a.m. until 2:57 p.m. Thus, only orders entered into the MAX System after 8:45 a.m. but before 2:57 p.m. will be eligible to be ''pending auto-stop'' orders.

In addition to adding the new ''pending auto stop'' order to the MAX System the CHX is proposing changes to the MAX System that would permit a specialist to manually ''stop'' a marketable limit order, regardless of size.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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 written comments were either solicited or received.

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 the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Intersted persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 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 at the Commission's Public Reference Room. 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–CHX–98–01 and should be submitted by June 2, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12558 Filed 5–11–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39946; File No. SR–DTC–98–03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

May 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 20, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission''), as amended on March 6, 1998, the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments form interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will adjust the fees charged by DTC for various services provided.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B),

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adjust the fees charged for various services in order to align them with DTC's projected service costs for 1998.[3] The adjusted fees are based upon a review of service costs conducted by DTC's Board of Directors. This fee change will be effective for services provided on and after April 1, 1998.[4]

DTC believes the 1998 fee schedule will yield $5.0 million more in operating revenue annually than the present fee schedule would have yielded. DTC believes that the new fees will result in an average fee increase of 1.0% for participants based on their monthly bills from DTC for October, November, and December of 1997.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among DTC's participants and other parties that use DTC's services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC participants or others have not been received on the proposed rule change. Participants and other users of DTC's services were informed that DTC's annual fees would likely increase by $5.0 million or approximately 1.5% in a July 2, 1997, memorandum entitled ''Preliminary Projections for 1997 Year-end General Refund and Anticipated 1998 Service Fees.'' DTC informed participants and other users of its services of the proposed fee revisions by a memorandum dated February 5, 1998, entitled ''1998 Revisions of DTC Service Fees.'' Because participants have supported cost based fees in the past and because the subject fee changes overall are modest, DTC did not consider necessary a formal period for participant comment this year.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and pursuant to Rule 19b–4(e)(2)[7] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–03 and should be submitted by June 2, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12457 Filed 5–11–98; 8:45 am]

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[2] The Commission has modified the text of the summaries prepared by DTC.

[3] The revised fee schedule is attached to DTC's rule filing and is available for copying at the Commission's public reference room.

[4] The last full scale revision of DTC's fees occurred in 1995 although several revenue adjustments were made by DTC in early 1996.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(ii)

[7] 17 CFR 240.19b–4(e)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39960; File No. SR–DTC–97–17]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to a Modification of the Coupon Collection Service

May 5, 1998.

On August 7, 1997, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on December 22, 1997, amended a proposed rule change (File No. SR–DTC–97–17) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on January 27, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

DTC currently operates a coupon collection service (''CCS''), which provides DTC participants with a method for collecting interest payable on coupons from municipal bearer bonds. The rule change modifies CCS to include the collection of interest payable on coupons from corporate bearer bonds.[3]

Currently, participants using CCS are required to deposit coupons in a standard sealed envelope or ''shell,'' each of which may contain no more than 200 coupons for the same CUSIP number, series, and payable date. DTC submits the contents of the shells to the appropriate issuer or paying agent and credits the interest to the participant's account.[4] With certain exceptions, DTC will process corporate bearer bond coupons through CCS the same way that it currently processes municipal bearer bond coupons.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39561 (January 20, 1998), 63 FR 3941.

[3] Due to the additional processing and tracking of corporate bearer coupon deposits, DTC intends to file a proposed rule change with the Commission in the future to institute a surcharge for the handling of these deposits.

[4] For a complete description of CCS, refer to Securities Exchange Act Release No. 35750 (January 22, 1996), 61 FR 2852 [File No. SR–DTC–95–18] (order approving proposed rule change).

First, DTC will contact the corporate paying agent before submitting the coupons for payment to determine whether the coupon proceeds are payable in U.S. dollars. Only corporate bearer bonds payable in either U.S. dollars or Canadian funds are eligible for CCS. Where the corporate bearer bonds are payable in Canadian funds, DTC will request the paying agent to convert the funds to U.S. dollars in accordance with the prevailing exchange rate. DTC will not process corporate bearer bonds through CCS unless the paying agent is able to and will convert Canadian funds to U.S. dollars.

Second, DTC will suppress for corporate bearer coupons the automatic payment function that it applies to municipal bearer coupons.[5] By delaying crediting participants' accounts until it has received the interest payments from paying agents, DTC will avoid having to adjust such accounts due to fluctuations in exchange rates.

DTC requires that each shell containing corporate bearer bond coupons state the following information on its face: the CUSIP number; a description of issue including purpose, series, date of issue, and maturity date; the payable date; the quantity of coupons enclosed; the dollar value of individual coupons; the total shell value unless payable in Canadian dollars; the participant number; and the contact number and telephone number of the depositing participant. In addition, each shell must be accompanied by a completed deposit ticket, each of which can cover up to twenty-five shells, which provides the participant number, the shell quantity, the total dollar value, the CUSIP number per shell, the coupon quantity per shell, the dollar value per shell unless payable in Canadian dollars, and whether the coupons are future-due or past-due.

DTC will verify the number of shells listed on the deposit ticket and give the participant a time-stamped copy of the ticket. If the number of shells listed on the deposit ticket does not agree with the physical number of shells, the entire deposit will be rejected and sent back to the participant.

II. Discussion

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to remove impediments to and to perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) because it should provide a more efficient method of settling the payment of corporate bearer bond coupons and should allow DTC participants to centralize the processing of the collection of coupons and the receipt of interest payments.

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–97–17) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12459 Filed 5–11–98; 8:45 am]

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[5] When processing municipal bearer coupons through CCS, DTC credits participants' accounts on the payable date of the coupons regardless of whether it actually has received the interest payment.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39955; File No. SR–DTC–98–2]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Adding the HUB Mailbox Service to the Institution Delivery System

May 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 10, 1998, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–98–2) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will add the HUB Mailbox Service (''HUB Mailbox'') to DTC's Institutional Delivery (''ID'') system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add the HUB Mailbox to the services provided by the ID system.[3] The HUB Mailbox will allow investment managers and custodian banks[4] to exchange messages regarding; (1) securities purchases; (2) securities sales; (3) reconciliation data relating to securities positions and cash movements; and (4) other security-related transactions as agreed to by two or more HUB users.[5] Occasionally, HUB

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Currently, the ID system enables broker-dealers to exchange conformation and affirmation messages with investment managers and custodian banks. For a complete description of the services provided by the ID system refer to Securities Exchange Act Release Nos. 33466 (January 12, 1994), 59 FR 3139 [File No. SR–DTC–93–07] (order approving proposed rule change relating to the enhanced ID system); 34166 (June 6, 1994), 59 FR 31660 [File No. SR–DTC–94–01] (order approving proposed rule change to add a standing instruction database to the ID system); 34199 (June 10, 1994), 59 FR 31660 [File No. SR–DTC–94–04] (order granting accelerated approval of a proposed rule change to implement the interactive capabilities and the electric mail features of the enhanced institutional delivery system); 36050 (August 2, 1995), 60 FR 41139 [File No. SR–DTC–95–10] (order approving proposed rule change to implementing advice of confirm correction/cancellation feature and modifying the authorization/exception processing feature of the institutional delivery system); and 39832 (April 6, 1998), 63 FR 18062 [File No. SR–DTC–95–23] (order approving proposed rule change implementing the ID system).

[4] Initially, broker-dealers will not have access to the HUB Mailbox.

[5] DTC anticipates that the HUB Mailbox will be used primarily for exchanging messages regarding securities that are not eligible for settlement at DTC. Telephone conversation among Jack Wiener, Vice

Continued

users may also transmit trade data to recordkeeping vendors where the custody and accounting functions are performed by two different parties.

According to DTC, the HUB Mailbox was developed in cooperation with the Industry Standardization for Institutional Trade Communication (''ISITC'')[6] to improve the delivery of ISITC messages. Therefore, all information will be entered in an ISITC approved format initially, but other formats may be used later if agreed upon by two or more HUB users.

To use the HUB Mailbox, investment managers and custodian banks will place formatted records into bundles for each addressee with appropriately coded headers and trailers and DTC will route the bundles to addresses' mailboxes for retrieval. Addressees will acknowledge receipt of bundles through their mailboxes. All mail messages, both delivered and undelivered, will be transferred at the end of each business day between 2 a.m. and 3 a.m. (ET) to a separate file which can be accessed directly on the next day. DTC will store mail messages for up to five days. According to DTC, it will not do any processing other than to direct mail to appropriate mailboxes.

Excerpts from the separate forms of agreement to be executed by HUB Mailbox users are attached as Exhibits C, D, and E to the filing. Exhibit C lists the fees to be charged for the service to investment manager users, and Exhibit D lists the fees to be charged for the service to custodians. Liability provisions, identical in both forms of agreement, are found in Exhibit E.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder because it will increase the speed of data transmissions between investment managers and custodians, thereby promoting efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change have not been solicited from DTC participants. Nevertheless, DTC has tested the HUB Mailbox in a pilot program with a few investment managers and custodian banks. One of the participants in the pilot program characterized the HUB Mailbox as ''the most efficient, secure and cost effective manner to obtain reconciliation data daily.''

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 DTC 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, including whether the proposed rule change is consistent with the Act. 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 filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–TDC–98–2 and should be submitted by June 2, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12554 Filed 5–11–98; 8:45 am]

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President and Senior Counsel, DTC, and Jeffrey Mooney, Special Counsel, Division of Market Regulation (''Division''), Commission, and Greg Dumark, Attorney, Division, Commission (March 2, 1998).

[6] ISITC is a committee of investment managers, custodians, and vendors which was established in 1991, has developed standard message formats and operating protocols for transmitting information concerning security-related transactions between and among investment managers and custodians. ISITC's goals are to overcome difficulties encountered by investment managers in communicating with multiple custodians and to attain straight-through-processing. Many ISITC members are DTC participants.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39957; File No. SR–NASD–98–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc.; Relating to Cancellations and Suspensions for Failure To Comply with Arbitration Award

May 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 1, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') 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 NASD Regulation, Inc. (''NASD Regulation''). 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 Association proposes to amend that portion of Rule 9514 of the Rules of the Association relating to review of non-compliance with arbitration awards and settlements. The Association proposes to change the composition of the hearing panels used in such proceedings. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

9514. Hearing and Decision.

* * * * *

(b) Designation of Party for the Association and Appointment of Hearing Panel

If a member, association person, or other person subject to a notice under Rule 9512 or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be

[1] 15 U.S.C. 78s(b)(1).

designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 9512(a) or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party[, and the NASD Regulation Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members]. *For proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 9512(a) or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members:* [One] *one* member shall be a Director of NASD Regulation, and the remaining member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on [the] *a* Hearing Panel.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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 change the composition of the Hearing Panel used for proceedings under the Rule 9510 Series in which NASD Regulation seeks to suspend or cancel the membership of a member or the registration of a person for failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. Currently, Rule 9514(b) requires that the Hearing Panel for such proceedings be composed of two or more members, one of whom must be a Director of NASD Regulation, and the remaining member or members must be a current or former Director of NASD Regulation or Governor of the NASD. NASD Regulation has determined that board-level panelists are not necessary for such hearings because the issues to be resolved are narrow and largely administrative. Generally, the only issues to be addressed are whether: (1) the member or person paid the award in full or fully complied with the settlement agreement; (2) the claimant agreed to installment payments or has otherwise settled the matter; (3) the member or person has filed a timely motion to vacate or modify the arbitration award and such motion has not been denied; (4) the member or person has filed a petition in bankruptcy and the bankruptcy proceeding is pending, or the award or payment owed under the settlement agreement has been discharged by the bankruptcy court; and (5) the member or person is unable to pay the award. The Commission has stated that a bona fide inability to pay an arbitration award is an important consideration determining whether any sanction for failure to pay an arbitration award is excessive or oppressive.[2] NASD Regulation has determined that it would be more efficient to have one Hearing Officer conduct the hearing on these issues and render a decision. Hearing Officers are well-suited to resolve the issues presented in these types of hearings due to their training and experience in the NASD's disciplinary proceedings under the Rule 9200 Series.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be 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. The NASD believes that the proposed rule change will result in a fair and efficient procedure for suspending or canceling the membership of a member or the registration of a person for failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation so that where appropriate, such members or persons are not permitted to continue to do business with investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor 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 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, including whether the proposal is consistent with the Act. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD Regulation. Al submissions should refer to the file number in the caption above and should be submitted by May 27, 1998.

[2] *See In the Matter of the Application of Bruce M. Zipper,* Securities Exchange Act Release 33376, Admin. Proc. File No. 3–7908. (Dec. 23, 1993).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12456 Filed 5–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39958; File No. SR–NASD–97–92]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed By-Law Amendment Requiring Members to Update Firm Contact Information Electronically, to Maintain Electronic Mail Account and for Other Purposes

May 5, 1998.

On December 19, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') 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''),[1] and Rule 19b–4 thereunder.[2] The filing was thereafter amended on April 22, 1998.[3] In this filing, as amended, the Association proposed amendments to the NASD By-laws, to require members to communicate with the Association electronically. Under this proposal, members will be required to set up and maintain an electronic mail account and must update their firm contact information through the Internet. In addition, the Association has included a technical amendment to the composition of the NASD National Nominating Committees, correcting a misprint from an earlier filing.[4] Notice of the proposal was published in the Federal Register on January 16, 1998 (''Notice'').[5] The Commission received three comment letters on the filing.[6]

I. Introduction and Background

On August 5, 1997, the Membership Committee of the NASD Regulation, Inc. (''NASD Regulation'') Board of Directors recommended requiring each member's executive representative to maintain an Internet electronic mail account for communication with the NASD and to update firm contact information via NASD Regulation's Internet web site. Following approval by the NASD Regulation Board of Directors and the NASD Board of Governors, the Notice was filed with the Commission and published in the Federal Register.[7] When polled on this proposal, as required by the NASD By-laws, the NASD membership voted more than two to one in favor of requiring maintenance of electronic mail accounts.[8]

II. Description of the Proposal

A. Electronic Mail Accounts and Updating of Member Information

The Proposal promotes Internet use by the Association and its members as a communication tool. As revised, the NASD By-laws will require each member to acquire and maintain an Internet electronic mail address on behalf of its executive representative before January 1, 1999.

In addition to maintaining electronic mail accounts, members will also be required to update firm contact information electronically. In its filing, the NASD maintained that the present method of collecting firm contact information (which is used for member balloting, compliance purposes and targeting key individuals for informational mailings, *etc.*) through physical filing of an *NASD Member Firm Questionnaire* (''Member Questionnaire'') needs improvement. There are significant problems with current procedures. First, information is often stale, because members rarely update the filings. Second, the Member Questionnaire information, which is currently stored and made available through the Central Registration Depository or ''CRD,'' is not readily available for use in other computer programs and systems. Finally, the planned system enhancements to the CRD do not contemplate inclusion of Member Questionnaire data. Using the new electronic mailboxes, the NASD intends to transmit e-mail reminders to members to update their Membership Questionnaires on a periodic basic. Member firms can then easily access their respective Member Questionnaire via the NASD Regulation Web Site for updating.[9] The Association has indicated that information provided in this manner is more readily interfaced to the internal NASD Regulation systems requiring the data.

The three comment letters received by the Commission on this rule filing all react negatively to required use of the Internet and electronic mail accounts. The main objections relate to the costs involved in setting up and maintaining such services. One commentator suggested that the decision to maintain an electronic mail account should be discretionary, rather than mandatory.[10] Concerns about lack of member of NASD control over the Internet and internet functionality, reliability, access, integrity and security were also noted[11] The Association's response argues that the minimal costs involved in connecting to the Internet (as little as ten dollars a month for an account and less than one thousand dollars for a computer and modem) are ''reasonable in light of the tremendous benefits that electronic mail and Internet communication will bring to the membership.''[12] The NASD also stressed its belief that all, rather than some, members should have an electronic mail account, to ''strive for uniformity of notice and enable speedy and relatively inexpensive communication with all members.''[13]

B. Technical Amendment to Nominating Committee Composition

The NASD also proposes a technical amendment to Article VII, Section 9(b) of the NASD By-Laws. In November, 1997, the Commission approved a comprehensive revision to the Association By-Laws, implementing a

[3] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated April 22, 1998. The amendment provides the members' vote and responses to the comment letters. It is technical in nature and therefore not subject to a notice and comment requirement.

[4] *See* Securities Exchange Act Release No. 39326 (Nov. 14, 1997), 62 FR 62385 (Nov. 21, 1997); *see also infra* text surrounding note 7.

[5] *See* Securities Exchange Act Release No. 39539 (January 12, 1998), 63 FR 2709 (January 16, 1998) (File No. SR–NASD–97–92). Amendment No. 1 to the proposed rule filing was filed on April 22, 1998. *See supra* note 3.

[6] *See* Letter from Marc B. Horin, National Compliance Consultants to Secretary, Commission, dated January 23, 1998; Letter from John B. Simmon, Morris Group Inc. to Secretary, Commission, dated January 22, 1998; and Letter from Marc B. Horin, National Compliance Consultants to Secretary, Commission, dated January 30, 1998.

[7] Release No. 34–39539, *supra* note 5.

[8] *See* Amendment No. 1, *supra* note 3. The membership vote was 1,884 in favor, 876 against. *Id.*

[9] A firm would be able to access only its own Member Questionnaire; the information would be password-protected to prevent any public access.

[10] *See* Letter from Marc B. Horin, National Compliance Consultants to Secretary, Commission, dated January 30, 1998.

[11] *Id.*

[12] Amendment No. 1, *supra* note 3 at 2.

[13] *Id.*

more streamlined corporate structure.[14] When voted on by the NASD members prior to Commission approval, however, Article VII, Section 9(b) incorrectly stated that the number of Industry committee members on the National Nominating Committee should equal or exceed the number of Non-Industry committee members. The terms ''Industry'' and ''Non-Industry'' had been transposed. By Commission order, the National Nominating Committee must have an equal or greater number of Non-Industry participants.[15]

Only one commentator addressed this portion of the proposal. This writer questioned numerical inconsistencies within the amendment.[16] In its response, the NASD pointed out that the commentator incorrectly assumed that the terms ''Non-Industry member'' and ''Public Member'' were synonymous. Since they are not (because Public members are a subset of Non-Industry members) there is no inconsistency.[17]

III. Discussion

As discussed below, the Commission has determined at this time to approve the Association's proposal. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.[18] In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the proposal.[19]

A. Electronic Mail Accounts and Updating of Member Information

The Commission has determined to approve the Association's proposal requiring members to acquire and maintain the ability to communicate electronically. Use of the Internet as a business tool is expanding rapidly. As a general matter, it is becoming widely recognized as an efficient and cost-effective means of communication in the business world. Specifically, use of electronic mailboxes is expected to facilitate timely communications between the Association and its members, the more rapid distribution of NASD information, notices, and publications, and reduction or elimination of printed publications. Overall, the enhanced use of electronic communications should result in significant cost savings to the Association without significant disadvantage to the member. Moreover, as noted above, the costs involved in obtaining and maintaining Internet service are minimal.[20] According to research conducted by the Association, any phone line in the United States can support Internet service.[21] Finally, the Commission agrees with the Association that ''concerns over the lack of NASD control over the Internet as well as its integrity, security, and functionality also exist for other modes of communication, such as the United States mail. In many cases, Internet communication is more desirable given its speed, timely notice of undeliverable mail, and accessibility 24 hours a day.'' [22] Since the proposal complies with the requirements of Sections 15A and 19(b)(2) of the Act, and the advantages clearly outweigh any disadvantages, the Commission is approving the filing.

b. Composition of National Nominating Committee

The Commission will also approve the adjustments to the composition of the National Nominating Committee at this time. This is necessary to ensure that membership in the National Nominating Committee conforms to the requirements of the SEC Order and related Undertakings issued in August 1996.[23] Based on the Commission's specific findings in the SEC Order, the Association agreed to ''implement and maintain at least fifty percent independent public and non-industry membership in its Board of Governors, the Board(s) of Governors or Directors of all of its subsidiaries and affiliates that exercise or have delegated self-regulatory functions, and * * * . the National Nominating Committee.'' [24] For the past several months, the Association has maintained compliance with both the SEC Order and the misprinted effective language by maintaining a equally balanced committee.[25] Revising the language to correct the misprint will allow the Association to introduce additional Non-Industry members, which furthers the intent of the SEC Order and other related Commission proceedings.

IV. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Section 15A thereof.[26] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.[27] In particular, the electronic mail accounts and updating proposal promotes procedures that are cost-efficient and will promote the fair and efficient operation of the Association and conduct of its self-regulatory responsibilities. In addition, adjustment of the National Nominating Committee composition is important, to conform the language to the intent of the Association and the Commission when originally approved. This change will help to ensure a fair representation of NASD members in the selection of Association Directors and Governors and administration of its affairs and provide an appropriate number of Governors or Directors that are representative of issuers and investors and not associated with a member of the Association, a broker, or a dealer.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NASD–97–92), including Amendment No. 1 thereto, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12458 Filed 5–11–98; 8:45 am]

BILLING CODE 8010–01–M

[14] *See* Securities Exchange Act Release No. 39326 (Nov. 14, 1997), 62 FR 62385 (Nov. 21, 1997).

[15] *See* Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3–9056) (''SEC Order'' The SEC Order includes fourteen Undertakings adopted by the Association to remediate the problems identified in the order.

[16] Letter from Marc B. Horin, National Compliance Consultants to Secretary, Commission, dated January 30, 1998.

[17] *See* Amendment No. 1, *supra* note 3 at 2.

[18] 15 U.S.C. 78s(b)

[19] 15 U.S.C. 78*o*–3.

[20] *See supra* text accompanying note 12.

[21] *See* E-Mail from Mary Dunbar, Office of General Counsel, NASD to Mandy Cohen, Office of Market Supervision, Commission dated April 30, 1998 (indicating that ''NASD Regulation staff conferred with MCI, which informed NASD Regulation that modems were widely available that are capable of providing Internet access via any telephone line used in the United States'').

[22] *See* Amendment No. 1, *supra* note 3 at 2.

[23] *See* SEC Order, *supra* note 15.

[24] *Id.*

[25] Telephone call from Mary Dunbar, Office of General Counsel, NASD Regulation to Mandy Cohen, Office of Market Supervision, Commission dated May 5, 1998.

[26] 15 U.S.C. § 78*o*–3.

[27] 15 U.S.C. § 78c(f).

[28] 15 U.S.C. § 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Region I—New England States Regional Fairness Board; Public Hearing

The New England States Regional Fairness Board Hearing to be held on June 22, 1998, starting at 9:30 a.m., at the University of Maine at Augusta, 46 University Drive, Jewett Hall Auditorium, Augusta, Maine 04330, in space is being donated by the University of Maine, to discuss such matters as may be presented by members, staff of the U. S. Small Business, and others present.

For further information contact Gary P. Peele, telephone (312) 353–0880.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–12538 Filed 5–11–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region V District Advisory Council Public Meeting

The U.S. Small Business Administration Region V District Advisory Council located in the geographical area of Minneapolis/St. Paul, Minnesota, will hold a public meeting on June 12, 1998, at 11:30 a.m., at the Decathlon Club, 1700 East 79th Street, Bloomington, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business, or other present.

For further information, write or call Edward A. Daum, District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North 6th Street, Minneapolis, Minnesota 55403, telephone (612) 370–2306.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–12537 Filed 5–11–98; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Region III District Advisory Council Public Meeting

The U.S. Small Business Administration Region III District Advisory Council, located in the geographical area of Clarksburg, West Virginia, will hold a public meeting at 10:30 a.m. on Monday, June 8, 1998, at Ponderosa Steak House, Bridgeport, West Virginia, to discuss such matters as may be presented by members, staff of the U. S. Small Business Administration, or others present.

For further information, write or call Ms. Jayne Armstrong, State Director, U. S. Small Business Administration, 168 West Main Street, Clarksburg, West Virginia 26301, telephone (304) 62305631 Ext. 223.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–12536 Filed 5–11–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 2802]

Bureau of Political-Military Affairs, Office of Defense Trade Controls

AGENCY: Department of State.

ACTION: 60-day notice of proposed information collection; DSP–9, Statement of Registration.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Statement of Registration.

Frequency: One, two, or five years.

Form Number: DSP–9.

Respondents: Exporters of U.S. Munitions List items covered under the Foreign Military Sales Program.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,250.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–12491 Filed 5–11–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2803]

Bureau of Political-Military Affairs, Office of Defense Trade Controls

AGENCY: Department of State.

ACTION: 60-day notice of proposed information collection; DSP–83, non-transfer and use certificate.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Non-Transfer and Use Certificate.

Frequency: Annually.

Form Number: DSP–83.

Respondents: Exporters of significant military equipment and foreign end-users.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,250.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–12492 Filed 5–11–98; 8:45 am]

BILLING CODE 4710–15–M

DEPARTMENT OF STATE

[Public Notice 2804]

Bureau of Political-Military Affairs, Office of Defense Trade Controls

AGENCY: Department of State.

ACTION: 60-Day Notice of Proposed Information Collection; DSP–61, Application/License for Temporary Import of Unclassified Defense Articles.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Application/License for Temporary Import of Unclassified Defense Articles.

Frequency: Triennially.

Form Number: DSP–61.

Respondents: Applicants for Import Licenses of Defense Articles.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 9,000.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–12493 Filed 5–11–98; 8:45 am]

BILLING CODE 4710–35–M

DEPARTMENT OF STATE

[Public notice 2805]

Bureau of Political-Military Affairs, Office of Defense Trade Controls

AGENCY: Department of State.

ACTION: 60-day notice of proposed information collection; OMB #1405–0093, request for approval of manufacturing license agreements, technical assistance agreements, and other agreements.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and other Agreements.

Frequency: Annually.

Form Number: OMB #1405–0093.

Respondents: Exporters of U.S. Technology.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 6 hours.

Total Estimated Burden: 6,000 hours.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: April 30, 1998.

Andrew S. Winter, Jr.

Deputy Chief Information Officer.

[FR Doc. 98–12494 Filed 5–11–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2806]

Bureau of Political-Military Affairs, Office of Defense Trade Controls

AGENCY: Department of State.

ACTION: 60-Day Notice of Proposed Information Collection; DSP–5, Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatmenet, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data.

Frequency: Annually.

Form Number: DSP–5.

Respondents: Applicants for Export Licenses of Defense Articles and Related Technical Date.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 10,000.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–12495 Filed 5–11–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2807]

Bureau of Political-Military Affairs, Office of Defense Trade Controls

AGENCY: Department of State.

ACTION: 60-Day notice of proposed information collection; DSP–73, application/license for temporary export of unclassified defense articles.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Application/License for Temporary Export of Unclassified Defense Articles.

Frequency: Annually.

Form Number: DSP–73.

Respondents: Applicants for Export Licenses of Defense Articles.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,250.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–12496 Filed 5–11–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2808]

Bureau of Political-Military Affairs, Office of Defense Trade Controls

AGENCY: Department of State.

ACTION: 60-day notice of proposed information collection; DSP–85, application/license for permanent/temporary export or temporary import of classified defense articles and classified technical data.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data.

Frequency: Annually.

Form Number: DSP–85.

Respondents: Applicants for Export/Import Licenses of Classified Defense Articles.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,250.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting

documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–12497 Filed 5–11–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2809]

Bureau of Political-Military Affairs, Office of Defense Trade Controls

AGENCY: Department of State.

ACTION: 60-day notice of proposed information collection; DSP–119, application for amendment to license for export or import of classified or unclassified defense articles and related technical data.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data.

Frequency: Annually.

Form Number: DSP–119.

Respondents: Applicants for Export/Import Licenses of Classified and Unclassified Defense Articles.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 1,125 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–12498 Filed 5–11–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2810]

Bureau of Political-Military Affairs, Office of Defense Trade Controls

AGENCY: Department of State.

ACTION: 60-Day notice of proposed information collection; DSP–94, authority to export defense articles and defense services sold under the Foreign Military Sales Program.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Authority to Export Defense Articles and Defense Services sold under the Foreign Military Sales Program.

Frequency: Annually.

Form Number: DSP–94.

Respondents: Exporters of U.S. Munitions List items covered under the foreign Military Sales Program.

Estimated Number of Respondents: 250.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,500.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–12499 Filed 5–11–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2811]

Bureau of Political-Military Affairs, Office of Defense Trade Controls

AGENCY: Department of State.

ACTION: 60-Day Notice of Proposed Information Collection; OMB #1405–0025, Statement of Political Contributions, Fees, or Commissions in Connection with the sale of Defense Articles or Services.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without charge, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Statement of Political Contributions,

Fees, or Commissions in Connection with the sale of Defense Articles or Services.

Frequency: Annually.

Form Number: OMB #1405–0025.

Respondents: Exporters of Defense Articles or Services.

Estimated Number of Respondents: 4,500.

Average House Per Response: 8 hours.

Total Estimated Burden: 96,000 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–12500 Filed 5–11–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Monterey Peninsula Airport, Monterey, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monterey Peninsula Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 11, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261 or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Susan Kovalenko, Manager, Support Services, Monterey Peninsula Airport District, at the following address: 200 Fred Kane Drive, Suite 200, Monterey, CA 93940.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Monterey Peninsula Airport District under section 158.23 of Part 158

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Specialist, Airports District Office, 831 Mitten Road, Room 210, Burlingame CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location..

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monterey Peninsula Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On April 9, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Monterey Peninsula Airport District was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 14, 1998.

The following is a brief overview of application number 98–04–C–00–MRY.

Level of proposed PFC: 3.00

Proposed charge effective date: June 1, 2000.

Proposed charge expiration date: February 1, 2001.

Total estimated PFC revenue: $510,159.

Brief description of proposed projects: Slurry Seal Aircraft Pavement at Monterey Peninsula Airport Southeast T-Hangars and Slurry Seal Fred Kane Drive; Extend Fire Protection Water Main on Northside of Airport; Airfield Lighting Improvements; Extend Old Northside Storm Drain to Detention Pond; Airfield Generator Fuel System; Install Halotron in Aircraft Rescue Firefighting Vehicle; Concrete Repair/Sealant at South Side Ramp; Holding Apron for Taxiway ''A'' at West End; Realign Portion of Sky Park Drive; Reconstruct/Realign Southeast Entrance; Slurry Seal Taxiway ''B,'' Slurry Seal General Utility Runway 10L/28R and Taxiways; Extend 12″ Water Main to Old North Side; Paving of Blast Pad at Holding Area 10R; Terminal Automatic Door Replacement; Terminal Roof Replacement Phase 1; Noise Exposure Map Update; and Relocation of Power Pole Line at Sky Park Drive.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: unscheduled/intermittent Part 135 air taxis.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, 15000 Aviation Blvd. Lawndale, CA 90261.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monterey Peninsula Airport District.

Issued in Hawthorne, California, on April 22, 1998.

Hermane C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 98–12585 Filed 5–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Orange County, FL, Notice of Intent

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Orange County, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Bartlett, Programs Operation Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone (904) 942–9598.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an EIS for a proposal to improve and extend SR 438 (John Young Parkway) from SR 50 (W. Colonial Drive) to SR 424 (Edgewater Drive) at SR 434 (Forest City Road), a distance of approximately 4.2 miles (6.7 km). The proposed improvement will complete

the link between Kissimmee and Maitland. This arterial will provide an alternative to I–4 traffic through Orlando, and will also alleviate traffic congestion on the existing local connecting streets of Lee Road, Carder Road, US 441, All American Boulevard, and Edgewater Drive that now must carry continuing northbound traffic to Forest City Road.

Alternatives under consideration are: (1) ''No Build'', or no improvements within the corridor beyond what is now committed; (2) Improvement of existing roadway facilities including transportation management system (TSM) within the corridor and; (3) New alignment: six-laning and extension of John Young Parkway from SR 50 to Forest City Road.

In the EIS, the FHWA and local agencies will evaluate all environmental impacts of the project, including socio-economic impact, cultural impact, and public recreational facility impact to the roadway corridor and surrounding communities, natural impacts to the wildlife and vegetation, and physical impacts to land use aesthetics, noise levels, and air and water quality of the area. Impacts to floodplain and Outstanding Florida Waters, wetlands and endangered or threatened species, wildlife corridors and critical habitat will be evaluated. The presence of contaminated properties or potential contamination will be evaluated. Impacts will be evaluated for both short term and long term duration and mitigation of any impacts will be studied. Storm water volume and quality management will be a major design consideration. Meeting the local transportation needs, both personal and mass transit, and public service needs of the area communities are goals of the study.

Letters with description of the proposed project soliciting comments will be sent to appropriate Federal, State, and local agencies, as well as private groups and citizens that have expressed interest in this proposal. Public notice will be issued for a series of public meetings and hearings to be held in Orange County and the City of Orlando between April, 1998 and March, 1999, where the Draft EIS will be available to the agencies and public for review and discussion. A formal scoping meeting is planned at the project site during 1998. Comments on the proposal from all interested parties are solicited and should be directed to the FHWA contact person listed above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

J.R. Skinner,

Division Administrator, Tallahasse.

[FR Doc. 98–12561 Filed 5–11–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3812; Notice 1]

Bug Motors, Inc.; Receipt of Application for Temporary Exemption From Two Federal Motor Vehicle Safety Standards

Bug Motors, Inc., which has its principal place of operations in Long Beach, California, (''Bug'') has applied for a temporary exemption of three years from two Federal motor vehicle safety standards as described below. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with each of the standards.

This notice of receipt of an application is published in accordance with the requirements of 49 U.S.C. 30113(b)(2) and does not represent any judgment of the agency on the merits of the application.

In June 1997, California granted a year's license as a ''Vehicle Remanufacturer'' to Looking Glass Replicas of Long Beach, of which Kenneth Scheiler was the sole proprietor. Mr. Scheiler changed this business entity into ''Bug Motors, Inc.'' in December 1997, a corporation of which he is the sole shareholder and president. Therefore, Bug has not manufactured any vehicles in the 12-month period preceding the filing of its Application, nor can it file financial information for the three fiscal years called for by the regulation. Upon incorporation, its assets were stated as $224,600. Mr. Scheiler has been engaged in refurbishing used Volkswagen Beetles, and would now like to produce ''new and improved replicas'' of the car. Bug intends to buy certain vehicle components from Volkswagen-Mexico, import them into the United States, and assemble Volkswagen ''Beetles'' to be sold under the name ''the Bug.'' Specifically, Bug will buy and import new chasses, axles, and bodies including interior components. The Bug will be equipped with a refurbished 1973 engine and ''a rebuilt speedometer (converted from Kilometers to Miles). Under California law, the Bug will be titled as a ''1998 Remanufactured Vehicle,'' but is considered ''used'' rather than ''new.'' NHTSA reviewed the intended modus operandi with the applicant's attorney and concurred with Bug's decision that, under these facts, the Bug should be treated under Federal law as a newly manufactured passenger car which is required to comply with all applicable Federal motor vehicle safety standards.

In addition to the conventional Beetle two-door sedan, Bug will offer two convertible models. One is a sedan modified to have an electric-powered fabric roof that opens along the roof rails. The other is a fully convertible car with a manually-operated top, the familiar Beetle convertible. Bug's Application includes a list of the applicable Federal motor vehicle safety standards, indicating the compliance status of the Bug with respect to each. Representation is made that the Bug complies (e.g., Standard No. 104) or complies with a minor exception which will be modified in production (e.g., addition of a brake warning light, Standard No. 105). However, the Bug will not comply with Standard No. 208 and Standard No. 214.

Specifically, under Standard No. 208, the Bug will be equipped with a three-point restraint system, but ''the warning system, including audio and visual aids'' will only ''be available within one year after production commences, and most likely within 6 months.'' Bug says that it ''has been working with vendors to adapt a Dual Inflatable Restraint System to the Bug,'' but it anticipates that an entire three-year period will be required for the system to be developed and implemented.

With respect to Standard No. 214, Bug states that it ''has been attempting to identify vendors and parts for the installation of door beams for the Bug'' and that it ''is uncertain as to what, if any, engineering will have to be performed to document compliance.'' It hopes to achieve compliance within a three-year period.

In support of its hardship argument, Bug informs NHTSA that it would be put out of business if the Application is not granted, as its subsidiary business of refurbishing Beetles is not sufficient to carry it alone. In addition, its national distributor would lose its entire investment in start-up costs, estimated to exceed $100,000.

An exemption would be in the public interest as it will allow Bug to increase its workforce from seven to 35 people within a year, drawn from ''a significant number of minorities, including Hispanics, Asians, and African-Americans.'' The availability of the Bug

also ought to create jobs and sales for ''suppliers and sales people at auto dealerships. In addition, ''sale of these vehicles [ought to] generate retail sales taxes of approximately $1,162.50 per unit,'' and these revenues would be lost with the denial of the Application. An exemption would be consistent with the objectives of 49 U.S.C. Chapter 301 as it would make available to the public a nostalgic vehicle that complies with all but two Federal motor vehicle safety standards.

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Central Docket Management Facility, room Pl–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket (from 10 a.m. to 5 p.m.) at the above address both before and after that date. Comments may also be viewed on the internet at web site dms.dot.gov. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 11, 1998.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on May 6, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–12597 Filed 5–11–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98–3396; Notice 2]

Orion Bus Industries Inc.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 121

This notice grants the application by Orion Bus Industries Inc. of Oriskany, New York, for a five-month exemption from Motor Vehicle Safety Standard No. 121 *Air Brake Systems*. The basis of the application was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

Notice of receipt of the application was published on February 3, 1998, and an opportunity afforded for comment (62 FR 5604).

On June 7, 1995, Western Star Truck Holdings Ltd., Canada, purchased some of the assets of Bus Industries of America. Through its wholly-owned subsidiary, Orion Bus Industries Ltd. of Ontario, a manufacturer of city transit buses, Western Star established Orion Bus Industries Inc. (''Orion Bus'') as a wholly-owned subsidiary of Orion Bus Industries Ltd. Since 1995, ''Orion Bus has been striving to re-organize the operation, update and replace obsolete facilities and turn an insolvent organization into a first class bus manufacturing facility employing over 1,000 employees.'' Orion Bus manufactured 699 buses in the 12-month period preceding the filing of its application.

Paragraph S5.1.6.1(a) of Standard No. 121 requires each ''single unit vehicle,'' including transit buses, manufactured on and after March 1, 1998, to be equipped with an antilock brake system. The company will be able to comply as of that date with buses entering production. However, it sought relief from compliance for certain Transit VI buses whose assembly will not be completed until after March 1, 1998. As it explained, these buses ''are part of bus contracts which have been delayed due to the insolvency of a major part supplier.'' This has disrupted Orion Bus's schedule for over 27 weeks ''while a new vendor could be found, new tooling produced and the new supply of parts tested and certified to meet current in-use Safety Standards.'' As the buses were not designed to be equipped with antilock braking systems, their fixed-cost contracts have no provisions for the purchaser bearing the cost of modifications, and Orion Bus would have to absorb the costs. Orion Bus increased its production schedule to minimize the number of buses needing an exemption. As of December 1, 1997, however, it appeared to Orion Bus that 148 Transit VI buses would be produced on or after March 1, 1998, and not later than August 1, 1998.

Orion Bus had a net loss of $650,000 during its limited operations in 1995, a net income of $1,223,000 in 1996, and a net income of $4,696,000 in 1997. Further costs would be incurred were Orion Bus required to conform. At a minimum, the cost to convert stock axles sets and brake assemblies to become anti-lock compliant is estimated to be $636,740. Were Orion Bus to complete its orders with conforming buses, the purchasers might demand that the buses for which they had already taken delivery be retrofitted to conform. This contingent liability is estimated to be $7,000,000. Orion Bus believes that a mixed fleet would have a detrimental effect upon its purchasers ''by forcing them to carry different replacement parts, implementing different maintenance procedures and having to train maintenance personnel and drivers on how to handle the different vehicles.'' Because drivers sometimes change buses during their shifts, in an emergency a driver may not react appropriately as the situation demands. Thus, it is in the public interest to grant the application.

Orion Bus submitted data indicating that a temporary exemption ''will have little impact on the ability of a bus to come safely to a stop within the stopping distances specified in Table II of FMVSS 121.'' These data ''indicate that the test vehicle [Orion VI Transit bus] met all stopping distance guidelines and stayed within a 12-foot lane width (without wheel lock).''

One comment was received in response to the notice. Gillig Corporation, a manufacturer of ''heavy duty buses, primarily for transit operation,'' opposed the application. It believes that ''more than enough notice [was provided] to plan for a business like change over of an important safety standard improvement,'' commenting that the rest of the industry also had ''schedule changes and increased vehicle costs [which] we had to incorporate into our business plans.'' Gillig further commented that ''rationalizing the impact by citing best effort, dry road stopping is not the intent of anti-lock systems. Anti-lock is designed to perform in adverse conditions and panic stops. Fleet mixing is destined to occur.'' Finally, Gillig said that it was ''unaware of precedent that Federal Motor Vehicle Safety Standards can be postponed due to a manufacturer's economic difficulties.''

In fact, there is a factual precedent for the application by Orion Bus, and it also involved compliance with Standard No. 121. Last year, the agency exempted one truck tractor model manufactured by Capacity of Texas, Inc., from compliance with the antilock brake requirements of Standard No. 121 for a period of three months (62 FR 10110). Capacity's contract with the U.S. Postal Service called for it to deliver 210 vehicles between September 1996 and June 1997. In applying for relief, it estimated that it could not complete the final 60 truck tractors by March 1, 1997 without an uneconomic increase in

production rates which would entail the hiring and training of new personnel, and without diverting attention from other orders in process. In support of its application, it cited its customer's desire to have 210 identical vehicles so that all drivers in the fleet could be trained in the same operating procedure and maintenance employees in the same maintenance procedures. The Postal Service also did not wish to have a fleet of dissimilar vehicles requiring different spare parts. It had not proven feasible to complete the order before the antilock effective date.

Orion Bus's inability to complete its contract on schedule was due to ''bus contracts which have been delayed due to the insolvency of a major part supplier.'' This disrupted its schedule for over 27 weeks while a new vendor could be found. As Orion Bus has asked for a 20-week exemption, it appears that the applicant would otherwise have completed the order for 210 buses almost two months before the effective date of the antilock provisions of Standard No. 121. NHTSA deems the ''insolvency of a major part supplier'' as something more than a ''schedule change,'' with which other bus manufacturers had to contend, as submitted by Gillig. Orion Bus's other buses will be manufactured to conform to the new requirements of the standard effective March 1, 1998. In NHTSA's view, Orion Bus has demonstrated sufficiently that it has tried in good faith to comply with the antilock requirements of the standard.

Orion Bus has also made a sustainable hardship argument. Although its cumulative net income for the three fiscal years of its existence is somewhat more than $5,000,000, a denial would force it to suspend production of the buses until it could bring them into conformity, and would present the possibility that its customers might demand that the buses already delivered to them be retrofitted to conform, a contingent liability estimated to be $7,000,000. Orion Bus advances the same arguments relating to the inadvisability of mixed fleets as were presented by Capacity and which NHTSA found compelling in granting Capacity's application.

With respect to the necessary finding that an exemption is consistent with considerations of motor vehicle safety, Orion Bus has stated that its Transit VI buses will comply with the stopping distances required by S5.3.1 for buses equipped with antilock. Gillig emphasizes that this argument neglects the purpose of antilock, ''to perform in adverse conditions and panic stops.'' The safety of buses is of great concern to NHTSA because these vehicles are operated on a daily basis, carrying hundreds of passengers. But transit buses, unlike intercity buses, are operated on city streets where speed is limited and where they may not even reach these limits in the start-and-halt driving between stops. The likelihood of the need for antilock is less likely to arise in urban environments under these operating conditions. The continued availability of mass transit is in the public interest as is the preservation of the orderly flow of commerce.

In consideration of the foregoing, it is hereby found that to require Orion Bus to comply immediately with Federal Motor Vehicle Safety Standard No. 121 would cause substantial economic hardship to a manufacturer that has attempted in good faith to comply with the standard, and that an exemption would be in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, Orion Bus Industries, Inc., is hereby granted NHTSA Temporary Exemption No. 98–4, expiring September 1, 1998, for the production of not more than 150 Orion VI Transit buses to be exempt from S5.1.6 of 49 CFR 571.121 Standard No. 121 *Air Brake Systems*.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued: May 6, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–12596 Filed 5–11–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Direct Deposit Sign Up Form.

DATES: Written comments should be received on or before July 14, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Direct Deposit Sign Up Form.

OMB Number: 1535–0128.

Form Number: PD F 5396.

Abstract: The information is requested to process payment data to a financial institution.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 3,400.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 6, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–12523 Filed 5–11–98; 8:45 am]

BILLING CODE 4810–39–P

Corrections

Federal Register
Vol. 63, No. 91
Tuesday, May 12, 1998

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.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 278 and 279

RIN 0584-AC46

Food Stamp Program: Retailer Integrity, Fraud Reduction and Penalties

Correction

In proposed rule document 98–12038, beginning on page 24985, in the issue of Wednesday, May 6, 1998, make the following correction:

On page 24995, in the second column, in the signature date line, ''1990'' should read ''1998''.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980429110-8110-01; I.D. 042398B]

RIN 0648-AK25

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; 1998 Management Measures

Correction

In rule document 98–11957 beginning on page 24973, in the issue of Wednesday, May 6, 1998, make the following correction:

On page 24981, in table 2., the heading ''**D. QUOTAS**'' should be moved and centered above the 10th line from the bottom.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 120996A]

Magnuson Act Provisions; Essential Fish Habitat; Extension of Comment Period

Correction

Rule document 98–4363 was inadvertently published in the Proposed Rules section of the issue of Friday, February 20, 1998, beginning on page 8607. It should have appeared in the Rules and Regulations section.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-942-5700-00]

Filing of Plats of Survey; California

Correction

In notice document 98–7127 appearing on page 13426 in the issue of Thursday, March 19, 1998, make the following corrections:

On page 13426, in the third column, under **San Bernardino Meridian, California**, in the fifth line, the plat of survey beginning Tps. 1 N and 1 S. should begin a new line. And in the 17th line ''Meets'' should read''Metes''.

BILLING CODE 1505-01-D

federal register

Tuesday
May 12, 1998

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 409, et al.

Medicare Program: Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 413, 424, 483, and 489

[HCFA–1913–IFC]

RIN 0938–AI47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule implements provisions in section 4432 of the Balanced Budget Act of 1997 related to Medicare payment for skilled nursing facility services. These include the implementation of a Medicare prospective payment system for skilled nursing facilities, consolidated billing, and a number of related changes. The prospective payment system described in this rule replaces the retrospective reasonable cost-based system currently utilized by Medicare for payment of skilled nursing facility services under Part A of the program.

DATES: These regulations are effective July 1, 1998.

Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 13, 1998.

ADDRESSES: Mail an original and 3 copies of written comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1913–IFC, P.O. Box 26688, Baltimore, MD 21207–0488

If you prefer, you may deliver an original and 3 copies of your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201,
or
Room C5–09–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1913–IFC. 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, D.C., 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:

Laurence Wilson, (410) 786–4603 (for general information). John Davis, (410) 786–0008 (for information related to the Federal rates).

Dana Burley, (410) 786–4547 (for information related to the case-mix classification methodology).

Steve Raitzyk, (410) 786–4599 (for information related to the facility-specific transition payment rates).

Bill Ullman, (410) 786–5667 (for information related to consolidated billing and related provisions).

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this document, we are providing the following table of contents.

Table of Contents

I. Background

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

B. Requirement of the Balanced Budget Act of 1997 for a Prospective Payment System for Skilled Nursing Facilities

C. Summary of the Development of the Medicare Prospective Payment System for Skilled Nursing Facilities

D. Skilled Nursing Facility Prospective Payment System—General Overview

1. Payment Provisions—Federal Rate
2. Payment Provisions—Transition Period
3. Payment Provisions—Facility-Specific Rate
4. Implementation of the Prospective Payment System (PPS)

E. Consolidated Billing for Skilled Nursing Facilities

II. Prospective Payment System for Skilled Nursing Facilities

A. Federal Payment Rates

1. Cost and Services Covered by the Federal Rates
2. Data Sources Utilized for the Development of the Federal Rates
a. Cost Report Data
b. Estimate of Part B Payments
c. Hospital Wage Index
d. Case-Mix Indices
e. MEDPAR Case-Mix Analog
(1) Rehabilitation Category
(2) Non-Rehabilitation Categories
(3) Case-Mix Using the Analog
f. Skilled Nursing Facility Market Basket Index
3. Methodology Used for the Calculation of the Federal Rates
a. Per Diem Costs
b. Updating the Data
c. Standardization of Cost Data
d. Computation of National Standardized Payment Rates

B. Design and Methodology for Case-Mix Adjustment of Federal Rates

1. Background on the Resource Utilization Groups (RUGs) Patient Classification System
2. The RUG–III Classification System
3. Use of RUG–III ''Grouper'' Software
4. Determining the Case-Mix Indices
5. Application of the RUG–III System
6. Use of the Resident Assessment Instrument—Minimum Data Set (MDS 2.0)
7. Required Schedule for Completing the MDS
8. The Relationship Between Payment and the MDS
9. Assessments and the Transition to the Prospective Payment System
a. Medicare Beneficiaries Receiving Part A Benefits Admitted Within the Past 30 Days
b. Medicare Beneficiaries Receiving Part A Benefits Admitted Over 30 Days Prior
c. Medicare Part A Beneficiaries With Less Than 14 Days of Medicare Eligibility Remaining
10. Late Assessments
11. The Default Rate

12. Case-Mix Adjusted Federal Payment Rates
C. Wage Index Adjustment to Federal Rates
D. Updates to the Federal Rates
E. Relationship of RUG–III Classification System to Existing Skilled Nursing Facility Level of Care Criteria
III. Three-Year Transition Period
A. Determination of Facility-Specific Per Diem Rates
1. Part A Cost Determination
a. Freestanding Skilled Nursing Facilities
(1) Skilled Nursing Facilities Without an Exception for Medical and Paramedical Education (§ 413.30(f)(4)) or a New Provider Exemption in the Base Year
(2) Skilled Nursing Facilities With an Exception for Medical and Paramedical Education in the Base Year
(3) Skilled Nursing Facilities With New Provider Exemptions From the Cost Limits in the Base Year
b. Hospital-Based Skilled Nursing Facilities
(1) Skilled Nursing Facilities Without an Exception for Medical and Paramedical Education or a New Provider Exemption
(2) Skilled Nursing Facilities With an Exception for Medical and Paramedical Education in the Base Year
(3) Skilled Nursing Facilities With Exemptions From the Cost Limits in the Base Year
c. Medicare Low Volume Skilled Nursing Facilities Electing Prospectively Determined Payment Rate (Fewer Than 1500 Medicare Days)
(1) Providers Filing HCFA–2540-S–87
(2) Providers Filing HCFA–2540 or HCFA–2552
d. Providers Participating in the Multistate Nursing Home Case-Mix and Quality Demonstration—Calculation of the Prospective Payment System Rate
e. Base Period Cost Reports That Are Adjusted for Exception Amounts or Other Post Settlement Adjustments
B. Determination of the Part B Estimate
C. Calculation of the Facility-Specific Per Diem Rate
D. Computation of the Skilled Nursing Facility Prospective Payment System Rate During the Transition
IV. The Skilled Nursing Facility Market Basket Index
A. Rebasing and Revising of the Skilled Nursing Facility Market Basket
1. Background
2. Rebasing and Revising of the Skilled Nursing Facility Market Basket
B. Use of the Skilled Nursing Facility Market Basket Percentage
1. Facility-Specific Rate Update Factor
a. Short Period in Base Year
b. Short Period in Initial Period
c. Short Period Between Base Year and Initial Period
2. Federal Rate Update Factor
V. Consolidated Billing
A. Background of the Skilled Nursing Facility Consolidated Billing Provision
B. Skilled Nursing Facility Consolidated Billing Legislation
1. Specific Provisions of the Legislation
2. Types of Services That Are Subject to the Provision
3. Facilities That Are Subject to the Provision
4. Skilled Nursing Facility ''Resident'' Status for Purposes of This Provision
5. Effects of This Provision
C. Effective Date for Consolidated Billing
VI. Changes in the Regulations
VII. Response to Comments
VIII. Waiver of Proposed Rulemaking
IX. Regulatory Impact Statement
A. Background
B. Impact of This Interim Final Rule
1. Budgetary Impact
2. Impact on Providers and Suppliers
C. Rural Hospital Impact Statement
X. Collection of Information Requirements
Regulations Text
Appendix A—Technical Features of the 1992 Skilled Nursing Facility Total Cost Market Basket Index
I. Synopsis of Structural Changes Adopted in the Revised and Rebased 1992 Skilled Nursing Facility Total Cost Market Basket
II. Methodology for Developing the Cost Category Weights
III. Price Proxies Used To Measure Cost Category Growth

In addition, because of the many terms to which we refer by acronym in this rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

ADLs Activities of daily living
AHEs Average Hourly Earnings
BBA 1997 Balanced Budget Act of 1997
BEA [U.S.] Bureau of Economic Analysis
BLS [U.S.] Bureau of Labor Statistics
CAH Critical access hospital
CFR Code of Federal Regulations
CPI Consumer Price Index
CPI-U Consumer Price Index for All Urban Consumers
CPT [Physicians'] Current Procedural Terminology
ECI Employment Cost Index
FI Fiscal intermediary
HCFA Health Care Financing Administration
HCPCS HCFA Common Procedure Coding System
ICD–9–CM International Classification of Diseases, Ninth Edition, Clinical Modification
MDS Minimum Data Set
MEDPAR Medicare provider analysis and review file
MSA Metropolitan Statistical Area
NECMA New England County Metropolitan Area
PCE Personal Care Expenditures
PPI Producer Price Index
PPS Prospective payment system
RAI Resident Assessment Instrument
RAPs Resident Assessment Protocol Guidelines
RUG Resource Utilization Group
SNF Skilled nursing facility
STM Staff time measure

I. Background

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Under the present payment system, Medicare skilled nursing facility (SNF) services are paid according to a retrospective, reasonable cost-based system. Under Medicare payment principles set forth in section 1861 of the Social Security Act (the Act) and part 413 of the Code of Federal Regulations (CFR), SNFs receive payment for three major categories of costs: routine costs, ancillary costs, and capital-related costs.

In general, routine costs are the costs of those services included by the provider in a daily service charge. Routine service costs include regular room, dietary, nursing services, minor medical supplies, medical social services, psychiatric social services, and the use of certain facilities and equipment for which a separate charge is not made. Ancillary costs are costs for specialized services, such as therapy, drugs, and laboratory services, that are directly identifiable to individual patients. Capital-related costs include the costs of land, building, equipment, and the interest incurred in financing the acquisition of such items.

Under Medicare rules, the reasonable costs of ancillary services and capital-related expenses are paid in full. Routine operating costs are also paid on a reasonable cost basis, subject to per diem limits. Sections 1861(v)(1) and 1888 of the Act authorize the Secretary to set limits on the allowable routine costs incurred by an SNF.

In addition, section 1888(d) of the Act gives low Medicare volume SNFs the option of receiving a single prospectively determined payment rate for routine operating and capital-related costs in lieu of the normal reasonable cost reimbursement method. A SNF may elect this payment method only if it had fewer than 1,500 Medicare covered inpatient days in its immediately preceding cost reporting period. An SNF's prospective payment rate under section 1888(d) of the Act, excluding capital-related costs, cannot exceed its routine service cost limits. Under this payment method, ancillary costs are still a pass-through cost.

B. Requirement of the Balanced Budget Act of 1997 for a Prospective Payment System for Skilled Nursing Facilities

Section 4432(a) of the Balanced Budget Act of 1997 (BBA 1997) (Public Law 105–33), enacted on August 5, 1997, amended section 1888 of the Act by adding subsection (e). This

subsection requires implementation of a Medicare SNF prospective payment system (PPS) for all SNFs for cost reporting periods beginning on or after July 1, 1998. Under the PPS, SNFs will be paid under a PPS applicable to all covered SNF services. These payment rates will encompass all costs of furnishing covered skilled nursing services (that is, routine, ancillary, and capital-related costs) other than costs associated with operating approved educational activities. Covered SNF services include posthospital SNF services for which benefits are provided under Part A (the hospital insurance program) and all items and services (other than services excluded by statute) for which, prior to July 1, 1998, payment may be made under Part B (the supplementary medical insurance program) and which are furnished to SNF residents during a Part A covered stay.

Section 1888(e)(4) of the Act provides the basis for the establishment of the per diem Federal payment rates applied under the PPS. It sets forth the formula for establishing the rates as well as the data on which they are based. In addition, this section requires adjustments to such rates based on geographic variation and case-mix and prescribes the methodology for updating the rates in future years.

Section 1888(e)(2) sets forth a requirement applicable to most providers for a transition phase covering the first three cost reporting periods under the PPS. During this transition phase, SNFs will receive a payment rate comprised of a blend between the Federal rate and a facility-specific rate based on historical costs. Section 1888(e)(3) prescribes the methodology for computing the facility-specific rates.

In addition to the payment methodology, section 4432(a) of the BBA 1997 added several other provisions to the Act related to the implementation and administration of the PPS.

Section 1888(e)(8) prohibits judicial or administrative review on matters relating to the establishment of the Federal rates. This includes the methodology used in the computation of the Federal rates, the case-mix methodology, and the development and application of the wage index. This limitation on judicial and administrative review also extends to the establishment of the facility-specific rates, except the determinations of reasonable cost in the fiscal year 1995 cost reporting period used as the basis for these rates.

In addition, section 1888(e)(7) requires the application of the PPS to extended care services furnished in hospital swing bed units. However, this requirement is to be implemented no earlier than cost reporting periods beginning on July 1, 1999 and no later than for cost reporting periods beginning in the 12-month period starting on July 1, 2001. Accordingly, we are not revising the payment regulations for swing-bed hospitals (42 CFR 413.114) at this time, but will do so at a later date.

Finally, section 4432(c) of the BBA 1997 requires the Secretary to establish a medical review process to examine the impact of the PPS, consolidated billing, and other related changes set forth in this rule on the quality of SNF services provided to Medicare beneficiaries. This medical review process will place a particular emphasis on the quality of non-routine covered ancillary and physician services.

C. Summary of the Development of the Medicare Prospective Payment System for Skilled Nursing Facilities

The prospective payment system described in the following sections is the culmination of substantial research efforts beginning as early as the 1970s, focusing on the areas of nursing home payment and quality. In addition, it is based on a foundation of knowledge and work by a number of States that have developed and implemented similar payment methodologies for their Medicaid nursing home payment systems. Over the last 20 years, approximately 25 nursing home case-mix payment systems have been implemented by such States as New York, Ohio, West Virginia, and Texas.

Building on earlier research, the Health Care Financing Administration (HCFA) funded the development of the Multistate Nursing Home Case-Mix and Quality Demonstration in 1989. The purpose of this project was to design, implement, and evaluate a Medicare nursing home prospective payment and quality monitoring system across several States. These States were Kansas, Maine, Mississippi, New York, South Dakota, and Texas. The 3-year demonstration was implemented in 1995.

The current focus in the development of State and Federal payment systems for nursing home care rests on explicit recognition of the differences among residents, particularly in the utilization of resources. Recognition of these differences ensures that payment levels are adequate to support quality and access to care, especially for more costly resource intensive patients. In a case-mix adjusted payment system, the amount of payment given to the nursing home for care of a resident is tied to the intensity of resource use (for example, hours of nursing or therapy time needed per day) and/or other relevant factors (for example, requirement for a ventilator). The focus of the demonstration was on the development and testing of such a case-mix PPS.

A case-mix system measures the intensity of care and services required for each resident and then translates it into a payment level. As discussed above, a number of States do have case-mix prospective payment systems for their Medicaid nursing home benefits. However, most of these payment systems were not readily transferrable to Medicare due to the relative differences in the resident populations served by each program. While naturally there is overlap, Medicare generally serves a more postacute resident population while Medicaid generally serves a longer-term custodial care population.

As a result of these differences, the development phase of the Multistate demonstration was devoted to developing a case-mix classification system appropriate for the Medicare population. The demonstration, like the national PPS set forth in this rule, utilized information from the Minimum Data Set (MDS) resident assessment instrument to classify residents into resource utilization groups (RUGs), which account for the relative resource use of different patient types. This classification system and its relationship to the MDS and the PPS are described in detail elsewhere in this rule.

D. Skilled Nursing Facility Prospective Payment—General Overview

As described above, the BBA 1997 requires implementation of a Medicare SNF PPS for cost reporting periods beginning on or after July 1, 1998. Under the PPS, SNFs are no longer paid in accordance with the present reasonable cost-based system but rather through per diem prospective case-mix adjusted payment rates applicable to all covered SNF services. These payment rates cover all the costs of furnishing covered skilled nursing services (that is, routine, ancillary, and capital-related costs) other than costs associated with operating approved educational activities. Covered SNF services include posthospital SNF services for which benefits are provided under Part A and all items and services for which, prior to July 1, 1998, payment had been made under Part B (other than physician and certain other services specifically excluded under the BBA 1997) but furnished to SNF residents during a Part A covered stay.

1. Payment Provisions—Federal Rate

The PPS utilizes per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the system. We develop the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in fiscal year 1995. The data used in developing the Federal rates also incorporate an estimate of the amounts payable under Part B for covered SNF services furnished during fiscal year 1995 to individuals who were residents of a facility and receiving Part A covered services. In developing the rates, we update costs to the first effective year of the PPS (15-month period beginning July 1, 1998) using a SNF market basket index, and standardize for facility differences in case-mix and for geographic variations in wages. Providers that received ''new provider'' exemptions from the routine cost limits are excluded from the data base used to compute the Federal payment rates. In addition, costs related to payments for exceptions to the routine cost limits are excluded from the data base used to compute the Federal payment rates. In accordance with the formula prescribed in the BBA 1997, we set the Federal rates at a level equal to a weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and a weighted mean of all SNF costs (hospital-based and freestanding) combined. We compute and apply separately payment rates for facilities located in urban and rural areas.

The Federal rate also incorporates adjustments to account for facility case-mix using a resident classification system that accounts for the relative resource utilization of different patient types. This classification system, Version III of the Resource Utilization Groups (RUGs-III), utilizes resident assessment data (from the Minimum Data Set or MDS) completed by SNFs to assign residents into one of 44 groups. SNFs complete these assessments according to an assessment schedule specifically designed for Medicare payment (that is, on the 5th, 14th, 30th, 60th, and 90th days after admission to the SNF). For Medicare billing purposes, there are revenue codes associated with each of the 44 RUG–III groups, and each assessment applies to specific days within a resident's SNF stay. SNFs that fail to perform assessments timely are paid a default payment for the days of a patient's care for which they are not in compliance with this schedule. In addition, we adjust the portion of the Federal rate attributable to wage-related costs by a wage index.

For the initial period of the PPS, beginning on July 1, 1998 and ending on September 30, 1999, the payment rates are contained in this interim final rule. For each succeeding fiscal year, we will publish the rates in the **Federal Register** before August 1 of the year preceding the affected Federal fiscal year. For fiscal years 2000 through 2002, we will increase the rates by a factor equal to the SNF market basket index amount minus 1 percentage point. For subsequent fiscal years, we will increase the rates by the applicable SNF market basket index amount.

2. Payment Provisions—Transition Period

Beginning with a provider's first cost reporting period beginning on or after July 1, 1998, there is a transition period covering three cost reporting periods. During this transition phase, SNFs receive a payment rate comprised of a blend between the Federal rate and a facility-specific rate based on each facility's fiscal year 1995 cost report. We exclude SNFs that received their first payment from Medicare on or after October 1, 1995, from the transition period, and we make payment according to the Federal rates only.

For SNFs that qualify for the transition, the composition of the blended rate varies depending on the year of the transition. For the first cost reporting period beginning on or after July 1, 1998, we make payment based on 75 percent of the facility-specific rate and 25 percent of the Federal rate. In the next cost reporting period, the rate consists of 50 percent of the facility-specific rate and 50 percent of the Federal rate. In the following cost reporting period, the rate consists of 25 percent of the facility-specific rate and 75 percent of the Federal rate. For all subsequent cost reporting periods, we base payment entirely on the Federal rate.

3. Payment Provisions—Facility-Specific Rate

We compute the facility-specific payment rate utilized for the transition using the allowable costs of SNF services for cost reporting periods beginning in fiscal year 1995 (cost reporting periods beginning on or after October 1, 1994 and before October 1, 1995). Included in the facility-specific per diem rate is an estimate of the amount payable under Part B for covered SNF services furnished during fiscal year 1995 to individuals who were residents of the facility and receiving Part A covered services. In contrast to the Federal rates, the facility-specific rate includes amounts paid to SNFs for exceptions to the routine cost limits. In addition, we also take into account ''new provider'' exemptions from the routine cost limits but only to the extent that routine costs do not exceed 150 percent of the routine cost limit.

We update the facility-specific rate for each cost reporting period after fiscal year 1995 to the first cost reporting period beginning on or after July 1, 1998 (the initial period of the PPS) by a factor equal to the SNF market basket percentage increase minus 1 percentage point. For the fiscal years 1998 and 1999, we update this rate by a factor equal to the SNF market basket index amount minus 1 percentage point, and, for each subsequent year, we update it by the applicable SNF market basket index amount.

4. Implementation of the Prospective Payment System (PPS)

As discussed above, the PPS is effective for cost reporting periods beginning on or after July 1, 1998. This is in contrast to the consolidated billing provision, which is effective for items and services furnished on or after July 1, 1998. Accordingly, we will require a number of SNFs to implement consolidated billing prior to migrating to the PPS.

E. Consolidated Billing for Skilled Nursing Facilities

Section 4432(b) of the BBA 1997 sets forth a consolidated billing requirement applicable to all SNFs providing Medicare services. SNF Consolidated Billing is a comprehensive billing requirement (similar to the one that has been in effect for inpatient hospital services for well over a decade), under which the SNF itself is responsible for billing Medicare for virtually all of the services that its residents receive. As with hospital bundling, the SNF consolidated billing requirement does not apply to the services of physicians and certain other types of medical practitioners. In a related provision, section 4432(b)(3) of the BBA 1997 requires the use of fee schedules and uniform coding specified by the Secretary for SNF Part B bills. These provisions are effective for services furnished on or after July 1, 1998.

II. Prospective Payment System for Skilled Nursing Facilities

A. Federal Payment Rates

This interim final rule with comment period sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services for cost

reporting periods beginning on or after July 1, 1998. This schedule incorporates per diem Federal rates designed to provide payment for all the costs of services furnished to a Medicare resident of an SNF. This section describes the components of the Federal rates and the methodology and data used to compute them.

1. Cost and Services Covered by the Federal Rates

The Federal rates apply to all costs (that is, routine, ancillary, and capital-related costs) of covered skilled nursing services other than costs associated with operating approved educational activities as defined in 42 CFR 413.85. Under section 1888(e)(2) of the Act, covered SNF services include posthospital SNF services for which benefits are provided under Part A (the hospital insurance program) and all items and services (other than services excluded by statute) for which, prior to July 1, 1998, payment may be made under Part B (the supplementary medical insurance program) and which are furnished to SNF residents during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2., in the context of the SNF Consolidated Billing provision.)

2. Data Sources Utilized for the Development of the Federal Rates

The methodology utilized by HCFA in developing the Federal rates combines a number of data sources. These sources include cost report data, claims data, case-mix indices, a wage index, and a market basket inflation index. This section describes each of these data sources while the following section describes the methodology that combines them to produce the Federal rates.

a. *Cost report data*. In accordance with sections 1888(e)(3)(A)(i) and (e)(4) of the Act, the primary data source for developing the cost basis of the Federal rates was the cost reports for hospital-based and freestanding SNFs for reporting periods beginning in fiscal year 1995 (that is, beginning on or after October 1, 1994 through September 30, 1995). Only those cost reports for periods of at least 10 months but not more than 13 months were included in the data base. We excluded shorter and longer periods on the basis that such data may not be reflective of a normal cost reporting period and, therefore, may distort the rate computation.

In accordance with section 1888(e)(4)(A) of the Act, providers that were exempted from the limits in the base year under § 413.30(e)(2) were excluded from the data base to compute the Federal rates; in addition, allowable costs related to exceptions payments were excluded. Finally, costs related to approved educational activities were excluded from the data base.

In calculating the Federal rates, we utilized fiscal year 1995 cost report data, including both settled and as-submitted cost reports. In accordance with section 1888(e)(4)(A) of the Act, adjustment factors were applied separately to routine and ancillary costs from as-submitted cost reports to make the data reflect the average adjustments that would result from the cost report settlement process. Routine costs were adjusted downward by 1.31 percent, and ancillary costs were adjusted downward by 3.26 percent.

These adjustment factors were developed through comparisons of cost data from as-submitted and settled cost reports for providers contained in the data base from 1995. The factors represent the percent change of cost elements used in the PPS rate setting methodology between submission and settlement of the cost reports. These factors were validated by examining the relationship between as-submitted and settled cost reports for SNF cost reports beginning in the three preceding Federal fiscal years (that is, 1992, 1993, and 1994) as well. This comparison showed an overall consistency in the relationship between as-submitted and settled cost reports for the SNF cost elements utilized in the PPS rate development methodology.

b. Estimate of Part B payments. Section 1888(e)(4)(A)(ii) of the Act, as added by the BBA 1997, requires that in developing the Federal rates, the Secretary estimate the amounts that would be payable under Part B for covered SNF services furnished to SNF residents. Accordingly, it was necessary to examine the Part B allowable charges (including coinsurance) associated with the SNFs contained in the cost report data base. To estimate the Part B allowable charges, we matched 100 percent of the Medicare Part B SNF claims associated with Part A covered SNF stays to the SNF cost reports described above. The matched Part B allowable charges were incorporated at a facility level by the appropriate cost report cost center (for example, laboratory services, medical supplies) with the cost report data.

c. Hospital wage index. Section 1888(e)(4) requires that we both standardize the Federal rates and provide for appropriate adjustments to account for area wage differences ''using an appropriate wage index as determined by the Secretary.'' We cannot use a wage index based on SNF wage data because the industry-specific data necessary to compute a wage index for SNFs are not yet available. However, under section 106 of the Social Security Act Amendments of 1994 (Public Law 103–432), HCFA was required to begin collecting data no later than October 31, 1995, on employee compensation and paid hours of employment in SNFs for the purpose of constructing an SNF wage index adjustment. Until this data collection effort is completed and the data are analyzed, we believe that the hospital wage data provide the best available measure of comparable wages that would also be paid by SNFs. We believe that the use of the hospital wage data results in an appropriate adjustment to the labor portion of the costs based on an appropriate wage index as required under section 1888(e) of the Act.

For the rates effective with this rule, we are using wage index values that are based on hospital wage data from cost reporting periods beginning in fiscal year 1994—the most recent hospital wage data in effect before the effective date of this rule (see Table 2.I). Accordingly, the wage index values used in this rule are based on the same wage data as used to compute the FY 1998 wage index values for the hospital PPS.

d. Case-mix indices. As discussed in section I, section 1888(e)(4) of the Act requires us to make adjustments to the Federal rates to account for the relative resource use of different patient types (that is, case-mix). In addition, the law requires us to standardize the cost data used in developing the Federal rates for case-mix.

The goal of a case-mix payment system is to measure the intensity of care and services required for each patient and translate it into an appropriate payment level. Accordingly, in making this adjustment, the Federal rates will incorporate a patient classification system based on intensity of resource use with corresponding payment weights.

As discussed previously, the patient classification system utilized under this PPS is RUG–III. RUG–III, a 44-group patient classification system, provides the basis for the case-mix payment indices used both for standardization of the Federal rates and subsequently to establish the case-mix adjustments to the rates for patients with different service use. These indices reflect the weight or value of each of the 44 RUG–III groups relative to all the groups. A full discussion of the design and structure of RUG–III is presented later in this section. These payment indices are

based on staff time measure (STM) studies conducted in 1995 and 1997 that measured the nursing and therapy staff time required to care for groups of residents. The STM is based on a 24-hour period for nursing and therapy services. Accordingly, there are separate case-mix payment indices for nursing and related services and for therapy services.

The STM studies were conducted in 12 States across 154 SNFs and 2,900 residents. These States were Kansas, Maine, Mississippi, South Dakota, Texas, California, Colorado, Maryland, Florida, Ohio, Washington, and New York. The study utilized a stratified sample of SNFs, including both freestanding and hospital-based SNFs and those with different care delivery models. The resulting indices were adjusted to account for the relative salary differences between different types of nursing staff (registered nurses, licensed practical nurses, and aides) and the different therapy disciplines (occupational therapy, physical therapy, and speech pathology). The adjustment to the nursing index for relative salary differences in nursing staff was based on data from the American Health Care Association's 1995 study of national nursing home salaries. The adjustment to the therapy index for relative salary differences among disciplines was based on data from several different sources. These sources were surveys from the American Health Care Association, the National Association for the Support of Long-Term Care, the Bureau of Labor Statistics, the American Rehabilitation Association, the University of Texas, Mutual of Omaha, and the Maryland Health Cost Review Commission. They were used in HCFA's ''best estimate'' approach in the development of rehabilitation therapy salary equivalency guidelines. The schedule detailing the national case-mix payment indices is presented later in this section (see Tables 2.E and 2.F).

e. MEDPAR case-mix analog. Section 1888(e)(4)(C) requires that the data used in developing the Federal payment rates be standardized to remove the effects of geographic variation in case-mix. Standardization ensures that the aggregate impact of the case-mix adjustments on the Federal rates does not alter the aggregate payments that would occur in the absence of such an adjustment. In order to fulfill this requirement, it is necessary to have data on the average case-mix of each SNF in our data base for its cost reporting period beginning in fiscal year 1995. Because a national source of MDS derived case-mix data does not exist for this period, it was necessary to utilize existing data sources. Accordingly, to provide national case-mix data on SNFs in our data base, we constructed a crosswalk between the RUG–III categories and the data from all Medicare claims in our Medicare Provider Analysis and Review file (MEDPAR).

The MEDPAR file is an analytical file created from Part A Medicare hospital and SNF claims and maintained by HCFA. These claims are the basis of the interim payments made by fiscal intermediaries and contain information on SNF stays paid for by Medicare Part A nationwide. Although Medicare claims information does not include all the data elements necessary to classify SNF patients exactly as they are in RUG–III, it does contain sufficient information to assign Medicare SNF patients to RUG–III categories at a general level. Classification into a RUG–III category is based on detailed clinical information from the patient assessment performed in the SNF. The claims in the MEDPAR file do not have the level of clinical detail required for classification into the RUG–III categories but do have basic clinical information that has been required on the claim for payment in the cost-based Medicare payment system. By using the clinical information in the MEDPAR file to crosswalk to the RUG–III grouping specifications, we were able to model how the national Medicare SNF population will classify into RUG–III categories. The model is referred to as the ''MEDPAR analog.'' The value of the MEDPAR analog is that it provides a means to use available data to examine the case-mix of Medicare SNF patients nationally.

In order to examine case-mix based on the MEDPAR file data, it was necessary to recognize certain limitations of this file, identify where crosswalks could be made between the data contained in the MEDPAR file and that needed to assign an SNF patient to a RUG–III group, and establish proxy criteria where feasible to make more case classifications possible.

One limitation of the analog results from the Medicare coverage rules for physical, occupational, and speech rehabilitation therapy services. Rehabilitation therapy provided in the SNF is covered under Part A (and thereby will have claims data in MEDPAR), unless the services are provided by an independent agency, in which case they may be billed under Part B (although our analysis of Part B supplier bills indicated relatively few rehabilitation therapy services being billed in this way). In addition, a small number of facilities do not detail rehabilitation therapy charges in their claims. For these reasons, the MEDPAR proxy may not be a complete record of all the services a patient in the SNF may receive during the course of a beneficiary's stay.

In spite of these limitations, MEDPAR is a reasonable tool to use in approximating the RUG–III categories related to Medicare SNF claims and appropriate for use in rate standardization. The file contains ICD–9–CM (International Classification of Diseases, Ninth Edition, Clinical Modification) diagnosis and procedure codes that provide a partial clinical profile of the patient supplemented by lengths of stay, revenue codes that represent types of services provided during each nursing home stay, and limited admission and discharge information. In addition, some of the facilities report rehabilitation charge information, making it possible for us to approximate frequency and duration of rehabilitation therapies, as well as to directly reproduce which discipline provided services.

The analog was first created in 1993, using the 1990 MEDPAR SNF file and an earlier version of the Minimum Data Set (MDS), the MDS+. We updated that work for the national implementation analyses, using instead the 1997 MEDPAR SNF file and the MDS 2.0. As stated above, the MDS 2.0 collects extensive patient information that includes demographic information, diagnoses, medication use, nursing rehabilitation services, activities of daily living (ADL) capabilities, and minutes per day of rehabilitative services provided. This information is the basis for assignment to a particular RUG–III group. Thus, in the creation of the MEDPAR analog, MDS+ (and now, MDS 2.0) definitions formed the key against which MEDPAR diagnosis and revenue service codes were matched.

The RUG–III classification system is a hierarchy of major patient types, organized into seven major categories. The categories are Rehabilitation, Extensive Services, Special Care, Clinically Complex, Impaired Cognition, Behavior Problems, and Reduced Physical Function. Each of these categories is further differentiated to yield the 44 specific patient groups used for payment.

The categories and groups within them are based on the research findings of staff time measurement studies performed in 1990, 1995, and 1997, described in detail below. Through analyses of the patient characteristics recorded on the MDS and the staff time associated with caring for patients in nursing homes, clinical criteria were identified that were predictive of resource use, and categories were

formed that would group patients according to resource use. The criteria for each category were derived from the actual staff time measurement study data.

The information contained in the MEDPAR file is not adequate to enable differentiation to the 44 groups, however. Therefore, the analog classifies patients only to the category level.

There are seven RUG–III categories: Rehabilitation, Extensive Services, Special Services, Clinically Complex, Impaired Cognition, Behavior, and Physical. The Rehabilitation category has five sub-categories, based on the number of minutes therapy is provided and the number of disciplines providing service. The sub-categories are: Ultra High, Very High, High, Medium, and Low. Using the crosswalk model, we were able to classify the claims in the MEDPAR file into the five rehabilitation therapy sub-categories and four of the remaining six categories: Extensive Services, Special Services, Clinically Complex, and Impaired Cognition. There were no available data elements in the MEDPAR to crosswalk for classification into the Behavior or Physical categories.

(1) Rehabilitation category. This is the most complex RUG–III category to crosswalk using the MEDPAR data base. A patient classifies into the Rehabilitation category based on the minutes per week of rehabilitation therapy services received. We also considered whether more than one of the rehabilitation disciplines provided services. MEDPAR data do not include minutes of service, but do reflect types of service provided. We, therefore, used charges as a proxy for minutes in approximating the amounts of service each beneficiary received. Since service patterns had to be approximated using ranges of rehabilitation therapy charges, great attention was paid to developing decision rules that would yield the most accurate description possible using Medicare claims. In addition, there are five levels of intensity within the Rehabilitation category. Using research study findings (Marsteller, Jill A. and Korbin Liu, ''High End Therapy Patients: How Many and How Much?'' Washington, DC, The Urban Institute, May 1994) and consultation with rehabilitation professionals, upper and lower charge limits were set to create groupings like each of the five RUG–III Rehabilitation categories.

As previously mentioned, nursing home case-mix is not a direct function of diagnosis. Diagnosis obviously has a role in determining what services a patient receives, but it is the services themselves, with the staff time required to provide them, that determine case-mix in nursing homes. Thus, for the Rehabilitation categories, the RUG–III system uses measures of staff time and service frequency, variety, and duration to classify patients. The criteria are in the form of minimum numbers of minutes of therapy per day or per week, minimum frequencies of therapy sessions over a week, and minimum numbers of therapy disciplines used per patient. While the MEDPAR analog can directly reproduce the variety of therapy given, frequency and duration can only be approximated using Part A covered charges for skilled therapy thought to be commensurate with certain patterns of service.

The five Rehabilitation sub-categories for the MEDPAR analog were determined using ranges of covered charges per day to approximate the RUG–III criteria. The ranges of covered charges used to classify the MEDPAR cases were based on an average charge of $300 per day for rehabilitation services. This amount is based on the covered charges for rehabilitation therapy in the MEDPAR file. To group cases using the MEDPAR file, the following ranges of covered charges were used: the Low Rehabilitation sub-category ranges from $150 per day and below in any combination of types of skilled therapy; the Medium Rehabilitation sub-category ranges from $150 to $199 per day in any combination of therapies; the High Rehabilitation sub-category ranges from $200 to $299 per day in any combination of therapies; the Very High Rehabilitation sub-category ranges from $300 to $399 per day in any combination of therapies (or $400 per day and above if only one therapy); and the Ultra High Rehabilitation sub-category range encompasses any case with covered charges higher than $400 per day in at least two of the three therapies. Refer to Table 2.C for comparison of these charge ranges to the number of minutes per day and per week required by the RUG–III system.

We set a threshold at $1,000 of covered charges for rehabilitation therapy services as a minimum for classification into any of the rehabilitation sub-categories. We based this on our finding, based on claims in the National Claims History file, that $400 is a common charge for an initial evaluation and $250 is a common charge for treatment by licensed therapists. Thus, we determined this threshold amount as representative of patients who received an evaluation by a professional rehabilitative therapist but no substantial course of rehabilitative therapy. That is, claims for patients with total therapy charges less than $1,000 were identified as having received an initial evaluation to determine the need for therapy but generally received no more than 1 week of rehabilitative therapy services.

Using the MEDPAR file, there was no way to approximate the nursing rehabilitation component of the RUG–III Low Rehabilitation sub-category. It was possible, however, to model rehabilitative therapy (of less than 5 days per week) using therapy charges that parallel such a pattern of treatment.

The Ultra High Rehabilitation sub-category is intended to apply only to the most complex cases requiring rehabilitative therapy well above the average amount of service time. This translates into higher charges for therapy services, both because treatment is more frequent and complex, and because length of stay is longer than for other skilled rehabilitation groups. In line with the intended complexity of this classification group, the lowest charge that the Ultra High sub-category includes is $400 per day in at least two of the three therapies.

The RUG–III criteria for Ultra High Rehabilitation are:

- Two of the three rehabilitation therapy disciplines are represented.
- At least 720 minutes of treatment per week across the three disciplines.
- One discipline providing services at least 5 days per week.

The remaining three sub-categories, Very High, High, and Medium Rehabilitation are not driven by a specific number of disciplines represented. All three require at least 5 days per week of skilled rehabilitative therapy, but they are split according to weekly treatment time. The Very High cases must be receiving 500 minutes per week and must be receiving at least one of the disciplines all 5 days; any additional disciplines will count toward the total time, but no other disciplines are required for assignment to this sub-category. Similarly, those in the High sub-category must be receiving a minimum of 325 minutes per week and this time must include one of the rehabilitation disciplines being provided daily (at least 5 days per week). Cases in the Medium sub-category must be receiving at least 150 minutes of skilled rehabilitation in any combination of disciplines over the minimum 5 days (or five 30-minute sessions).

(2) Non-rehabilitation categories. As stated above, MEDPAR contains ICD–9–CM codes as the variables describing patient diagnoses and procedures. This numerical coding system is used by hospitals to report patient information,

and nursing homes use these codes on a more limited basis for reporting. The MDS 2.0 has many of the most prevalent diagnoses found in this patient population listed for check-off by the nurse performing the assessment, with a section elsewhere on the form available to write in any relevant additional ICD–9–CM codes. The analog for the non-rehabilitation categories was created by matching the ICD–9–CM codes in the MEDPAR file to as much of the specific clinical criteria on the MDS 2.0 used to classify residents into the Extensive Services, Special Care, Clinically Complex, and Impaired Cognition categories.

Certain RUG–III criteria could not be satisfactorily coded by an ICD–9–CM code. Although we could capture the clinical characteristics of the patients, many of the items used to assign patients to specific RUG–III groups are not included in the ICD–9–CM coding scheme. In the Clinically Complex category, for example, the number of physician visits or order changes is a qualifying factor that cannot be captured by an ICD–9–CM code, and will not be reported in the MEDPAR file. Similarly, we could not capture the patient's ADL capabilities.

For the lower categories, Impaired Cognition, Behavior Only, and Physical Function Reduced, our ability to match the MDS 2.0 items to those likely to be reported on the MEDPAR was greatly diminished. We were able to identify a few codes with which to group some of the cases that would fall into the Cognitively Impaired category, but there were no ICD–9–CM codes that describe the patients who meet the criteria for the remaining two categories. Therefore, the analog only groups patients into the top five categories, leaving all other cases as unclassified.

(3) Case-mix using the analog. As explained above, in the RUG–III system, the case-mix index is a function of the distribution of residents in each of the categories, further detailed across the ADL index, and then by service counts, depression, or nursing rehabilitation services. ADLs, nursing rehabilitation, depression, and service counts could not be modeled using MEDPAR. For the analog, the nursing and nursing/therapy weights could not be applied to the second and third levels of the RUG–III system. In the Rehabilitation category, weights for the five sub-categories were combined.

f. Skilled Nursing Facility market basket index. Section 1888(e)(4) of the Act requires the Secretary to establish an SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. The SNF market basket index is used to develop the Federal rates and also to update the Federal rates on an annual basis beginning in fiscal year 2000. We have developed an SNF market basket index that consists of the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. A complete discussion concerning the design and application of the SNF market basket index and the factors used in developing the payment rates is presented in section IV of this rule.

3. Methodology Used for the Calculation of the Federal Rates

The methodology used to compute the per diem standardized Federal rates was a multi-step process combining each of the data sources described above. This section details each of these steps. The schedule of Federal rates (Tables 2.G and 2.H) that results from this methodology is presented later in this section.

a. Per diem costs. In developing the per diem costs of SNFs, the cost data (including the estimate of Part B costs) for each facility are separated in components based on their relationship to the case-mix indices described above. This facilitates both the standardization of costs for case-mix and, similarly, the application of appropriate case-mix adjustment to the Federal rates. Costs related to nursing (excluding nurse management) and social services salaries (including benefits) and total costs (after allocation) of non-therapy ancillary services are grouped in the component related to the nursing index. Our analysis of patient level charges for these non-therapy ancillary services indicates a correlation between the RUG–III classification system and these services.

Occupational, physical, and speech therapy costs (after allocation) are grouped in the component related to the therapy index. The majority of SNF therapy costs are included in this therapy component of the per diem rate. As can be seen in the schedule of rates presented in Tables 2.E and 2.F, the therapy component of the per diem rates is only applicable to the 14 RUG–III therapy groups. However, through our analysis of Medicare claims and other data, we observed a low level of therapy services being utilized by patients that would not be classified into a RUG–III therapy group. These therapy services would include evaluations for rehabilitation in one or more of the therapy disciplines. Therefore, in order to provide more appropriate payment levels in the non-therapy RUG–III groups, we estimated therapy costs in our data base associated with non-therapy RUG–III groups. These costs were grouped into the non-case-mix component of costs but, as can be seen in the rate schedule, are only applicable to the non-therapy RUG III groups.

This estimate was determined using the percentage of therapy charges by discipline for each facility in our data base associated with the non-therapy RUG–III RUG categories as determined by the MEDPAR Analog. This percentage was applied by discipline to the therapy costs in each facility's cost report data. The results of this calculation are presented in Tables 2.A and 2.B. All other costs are grouped in the non-case-mix related component.

For each facility in the data base, components are converted to a per diem by dividing the costs by Medicare days. For the therapy component, costs are divided by the number of Medicare days related to patients receiving therapy. For the remaining components, costs are divided by total Medicare days. For each component of cost, an outlier elimination process is performed to eliminate aberrant values. Facilities with per diem amounts greater than three standard deviations from the geometric mean are determined to be outliers and are eliminated from the calculation of the per diem cost for that component.

As required by section 1888(e)(4)(E)(i) of the Act, all costs are updated from the base year to the initial period of the PPS (that is, the 15-month period beginning July 1, 1998 and ending September 30, 1999) using the SNF market basket index described in section IV of this rule (see Tables 4.D. and 4.E). As required by the statute, this update is determined using the annual SNF market basket percentage minus 1 percentage point.

b. Updating the data. The SNF market basket index is used to adjust each per diem amount forward to reflect cost increases occurring between the midpoint of the cost reporting period represented in the data and the midpoint of the initial period (beginning July 1, 1998 and ending September 30, 1999) to which the payment rates apply. In accordance with section 1888(e)(4)(B) of the Act, the cost data are updated for each year between the cost reporting period and the initial period by a factor equivalent to the annual market basket index percentage minus 1 percentage point.

c. Standardization of cost data. Section 1888(e)(4)(C) of the Act requires that the Secretary standardize the updated cost data for each facility for the effects of case-mix and geographic

differences in wage levels. In order to standardize for wage differences, the proportion of labor related and non-labor related components of SNF costs must be identified. These proportions are based on the relative importance of the different components of the SNF market basket index (see Table 4.C). Accordingly, the labor-related portion of costs is 75.888 percent of costs while the non-labor portion is 24.112 percent. Costs are standardized for geographic differences in wage levels using the hospital wage index (described earlier in this section).

To standardize the cost data for the effects of case-mix, we used the MEDPAR Analog on claims data applicable to the fiscal year 1995 cost reporting periods in the data base. This allowed us to classify each SNF's residents into one of 10 RUG–III categories produced by the analog. By applying the case mix indices applicable to the RUG–III categories assigned by the analog, we were able to develop average case-mix index values (nursing and therapy) for each facility. As described below, these index values were used in standardizing SNF costs for case-mix.

As discussed earlier in this rule, a MEDPAR Analog is used to standardize for case-mix because actual MDS data are not available on a national level. However, in order to correct for systematic differences between the case-mix estimates produced by the analog method and the method that will be used under this PPS (that is, based on MDS data), a sensitivity analysis of the analog was performed. This analysis involved a comparison of case-mix values (based on the application of the case-mix indices) generated by the analog and corresponding values generated from actual MDS resident assessments for a sample of SNFs and patients. While the availability of such comparative data is limited, we were able to draw a sample from the States participating in the Multistate Nursing Home Demonstration that included patients from approximately 100 SNFs in five States. The sample contained 13,354 Medicare claims covering 139,766 days of care. On average, case-mix values based on MDS data are 3 percent higher than analog-based values for the nursing index and 28 percent higher for the therapy index. This variance produced by the analog in the assignment of case-mix values is factored into the standardization methodology to ensure the rates are set at the appropriate level.

Each urban and rural component of per diem cost is standardized for differences in wage levels and case-mix by dividing total unstandardized cost by a standardization factor that reflects each facility's wage level and case-mix. This factor is based in part on each facility's wage adjustment (.7588 times its wage index plus .2412) multiplied by the appropriate case-mix value and number of days of care. These facility values are summed to obtain the standardization factor. The standardized cost is divided by the appropriate total days to obtain the standardized per diem cost.

This process equates per diem standardized cost (per diem cost adjusted for individual facility wage and case-mix differences) to per diem unstandardized cost. In this manner, standardization accounts for the application of individual facility wage index and case-mix adjustments to the per diem payment rates without altering the aggregates of the per diem cost data used to construct the per diem payment rates.

d. Computation of national standardized payment rates. Section 1888(e)(4)(D)(iii) of the Act authorizes the Secretary to compute separate payment rates for SNFs in urban and rural areas as defined in section 1886(d)(2)(D). Under the statute, urban areas are those defined by the Office of Management and Budget as metropolitan statistical areas (MSAs) or New England County Metropolitan Areas (NECMAs). All other areas are considered rural areas. Table 2.I showing the wage index indicates all areas considered urban for purposes of establishing these rates.

Using the data described above and the formula prescribed in section 1888(e)(4)(E) of the Act, we calculated the national average per diem standardized payment rates separately for urban and rural SNFs using the following steps. The unadjusted Federal rates resulting from this calculation are presented in Tables 2.A and 2.B below.

(1) As required by section 1888(e)(4)(D)(ii) of the Act, for each of the four components of cost, we computed the mean based on data from freestanding SNFs only. This mean was weighted by the total number of Medicare days of the facility.

(2) As required by section 1888(e)(4)(D)(i) of the Act, for each of the four components of cost, we computed the mean based on data from both hospital-based and freestanding SNFs. Again, this mean was weighted by the total number of Medicare days of the facility.

(3) As required by section 1888(e)(4)(E)(i) of the Act, for each of the four components of cost, we calculated arithmetic mean of the amounts determined under steps (1) and (2) above.

(4) The unadjusted Federal rate for the initial period is calculated differently depending on the RUG–III case-mix grouping. For the 14 RUG–III therapy groups, the unadjusted Federal rate is the sum of the nursing case-mix, non-case-mix and therapy case-mix components. For other RUG–III groups, the unadjusted Federal rate is the sum of the nursing case-mix, non-case-mix and therapy non-case-mix components.

TABLE 2.A.—UNADJUSTED FEDERAL RATE PER DIEM

[Urban]

Rate component	Nursing—case mix	Therapy—case mix	Therapy—non-case mix	Non-case mix
Per Diem Amount	$109.48	$82.67	$10.91	$55.88

TABLE 2.B.—UNADJUSTED FEDERAL RATE PER DIEM

[Rural]

Rate Component	Nursing—case mix	Therapy—case mix	Therapy—non-case mix	Non-case mix
Per Diem Amount	$104.88	$95.51	$11.66	$56.95

B. Design and Methodology for Case-Mix Adjustment of Federal Rates

As indicated earlier, section 1888(e)(4)(G) of the Act requires that the Federal rates be adjusted for case-mix (the relative resource utilization of patients). The RUG-III classification is a patient classification system that accounts for the relative resource utilization of different patient types. To adjust for case-mix, care provided directly to, or for, a patient is represented by an index score (case-mix index) that is based on the amount of staff time, weighted by salary levels, associated with each group. That is, each RUG-III group is assigned an index score that represents the amount of nursing time and rehabilitation treatment time associated with caring for the patients who qualify for the group. The nursing weight includes both patient-specific time spent daily on behalf of each patient type by registered nurses, licensed practical nurses, and aides, as well as patient non-specific time spent by these staff members on other necessary functions such as staff education, administrative duties, and other tasks associated with maintenance of the care giving environment.

The case-mix indices are applied to the unadjusted rates presented above resulting in 44 separate rates, each corresponding with one of the 44 RUG–III classification groups. To determine the appropriate payment rate, SNFs are required to classify patients into a RUG–III group based on assessment data from the MDS 2.0. The design and structure of RUG–III and the methodology and Federal policy associated with the classification of patients into RUG–III groups, including the completion of assessments (MDS 2.0) for Medicare patients, under this PPS, are described in the following pages.

1. Background on the Resource Utilization Groups (RUGs) Patient Classification System

As part of the Nursing Home Case-Mix and Quality demonstration project, Version III of the Resource Utilization Groups (RUG–III) case-mix classification system was developed to capture resource use of nursing home patients and to provide an improved method of tracking the quality of their care.

RUG–III is a 44-group model for classifying nursing home patients into homogeneous groups according to the amount and type of resources they use. The RUG–III groups are the basis for the payment indices used to establish equitable prospective payment levels for patients with different service use. Care provided directly to, or for, a patient is represented by an index score that is based on the amount of staff time, weighted by salary levels, associated with each group. That is, each RUG–III group is assigned an index score that represents the amount of nursing time and rehabilitation treatment time associated with caring for the patients who qualify for the group. The nursing weight includes both patient-specific time spent daily on behalf of each patient type by registered nurses, licensed practical nurses, and aides, as well as patient non-specific time spent by these staff members on other necessary functions such as staff education, administrative duties, and other tasks associated with maintenance of the care giving environment.

The principal goal of case-mix measurement is to identify patient characteristics associated with measured resource use. In nursing homes, no adequate models have been found for using length of stay or episode cost to explain resource use. Thus, the RUG–III nursing home case-mix system explains patient resource use on a daily basis.

The classification system was designed using resident characteristic information and measures of wage-weighted staff time. Information regarding a patient's characteristics and care needs is derived from the MDS, a set of core screening and assessment items and item definitions. The MDS is part of a standardized, comprehensive patient assessment instrument (the Resident Assessment Instrument or RAI) that all long term care facilities that are certified to participate in Medicare or Medicaid are required to use to develop individualized plans of care for each individual in the facility. The staff time measure (STM) study captured the amount of nursing staff time required to care for groups of residents over a 24-hour period and over the span of a week for therapy services.

Patient assessment and staff time data used to develop the initial version of the RUG–III classification system were collected from March to December 1990 for 7,648 patients in 202 nursing facilities in Kansas, Maine, Mississippi, South Dakota, Nebraska, Texas, and New York. Since then, two more staff time data collections have been performed on 154 Medicare certified units of hospital and freestanding facilities in 12 States (California, Colorado, Florida, Kansas, Maine, Maryland, Mississippi, New York, Ohio, South Dakota, Texas, and Washington). Only units that were judged to be providing adequate care were considered for participation in the study. Of these, States were asked to select facilities that included 35 percent Medicare certified units, 25 percent hospital units, and two Alzheimer's units. ''Unit'' was defined as a nursing center such as a corridor or a floor, controlled from one nursing station. The remainder of the sample was selected by the State's demonstration project staff to represent the characteristics of the State's nursing homes.

The sample was purposefully targeted toward residents needing complex care and/or with cognitive impairments. This assured that sufficient numbers of patients with rare types of complex care needs were included in the sample. Facilities with special care units (for example, Alzheimer's or Rehabilitation units) that participated in the study were also asked to provide data from a non-specialized unit.

During the data collection, personnel on the study units electronically recorded all of the time in their work days: time providing services directly to patients; in activities related to specific patients, such as charting or consultation with family members or other members of the patient care team; as well as time that is not attributable to any particular patient, like that spent in meetings, in training, on breaks, etc. The time was allocated according to whether or not it was directly related to a particular patient, and was categorized as either patient specific time or non-patient specific time.

Those data have been used to modify the classification system to create the current RUG–III and establish updated average staff times to be salary-weighted. Analyses of the staff time data in conjunction with the patient MDS information identified three main predictors of a patient's resource utilization: (1) clinical characteristics; (2) limitations in the activities of daily living (ADLs); and (3) skilled services received. The RUG–III classification system uses these three types of variables to describe SNF patients for the purposes of determining the relative cost of caring for different types of patients (case-mix).

Analysis of the data indicated that patients with serious clinical conditions such as dehydration and respiratory infections, as well as patients who were very dependent in ADLs, require more nursing time than patients without complicating conditions. The RUG–III classification system resulting from the analyses is hierarchical. The clinical characteristics of patients, as identified by the MDS, that were associated with the greatest utilization of nursing time and rehabilitative therapy time, were used to categorize patients into the highest case-mix classification groups.

Similarly, the clinical characteristics associated with the lowest utilization of nursing time were used to categorize patients into the lowest case-mix classification group. Not all clinical characteristics are recognized separately by the classification system. Only those characteristics that were predictive of resource use and that would not introduce incentives that are considered to be negative, or not compatible with high quality patient care, are used to classify patients into RUG–III groups.

Table 2.C shows the mutually exclusive, layered categories of the RUG–III classification system. The table describes which patient clinical characteristics, levels of assistance used in performing ADLs, and services are used to assign the patient to a RUGs group. Clinical characteristics include the patient diagnoses, conditions, and comorbidities. ADLs include bed mobility, toilet use, transfer from bed to chair, and eating. Patients receive a single RUG–III ADL score that measures the patient's ability to perform these activities (scores range from 4–18; higher scores represent greater functional dependence and a need for more assistance). Finally, treatments and services include respiratory therapy, amount of rehabilitation received, and treatments such as suctioning and intravenous medication administration.

TABLE 2.C.—CROSSWALK OF MDS 2.0 ITEMS AND RUG III GROUPS

Category	ADL index	End splits	MDS RUG III codes
REHABILITATION			
ULTRA HIGH	16–18	Not Used	RUC
Rx 720 minutes/week minimum	9–15	Not Used	RUB
At least 2 disciplines, one at least 5 days/week	4–8	Not Used	RUA
VERY HIGH	16–18	Not Used	RVC
Rx 500 mins. a wk. minimum	9–15	Not Used	RVB
At least 1 discipline—5 days	4–8	Not Used	RVA
HIGH	13–18	Not Used	RHC
Rx 325 mins. a wk. minimum	8–12	Not Used	RHB
1 discipline 5 days a week	4–7	Not Used	RHA
MEDIUM	15–18	Not Used	RMC
Rx 150 mins. a wk. minimum	8–14	Not Used	RMB
5 days across 3 disciplines	4–7	Not Used	RMA
LOW—Rx 45 minutes/week over at least 3 days	14–18	Not Used	RLB
Nursing rehabilitation 6 days/week, 2 activities	4–13	Not Used	RLA
EXTENSIVE SERVICES—(Adlsum <7 Special)			
IV Feeding in last 7 days	7–18	count of other categories code	SE3
In last 14 days, IV medications, suctioning	7–18	into plus IV	SE2
Tracheostomy care, ventilator/respirator	7–18	Meds +Feed	SE1
SPECIAL CARE—(ADLSUM <7 Clin. Complex)			
MS, Quad, or CP with ADLsum >=10, Resp. Ther.=7 days	17–18	Not Used	SSC
Tube fed and aphasic; Radiation tx; Rec'g tx for surgical wnds/lesions or ulcers (2=sites, any stg; 1 site stg 3 or 4).	15–16	Not Used	SSB
Fever with Dehy., Pneu., Vomit., Weight Loss, or Tube Fed	7–14	Not Used (Extensive <7 ADL)	SSA
CLINICALLY COMPLEX—Burns, Coma, Septicemia, Pneumonia, Footwnds, Internal Bld, Dehyd, Tube fed (minimum.	17–18D	Signs of depression	CC2
501 ml. fl, 26% cals), Oxygen, Transfusions	17–18		CC1
Hemiplegia with ADL sum >=10, Chemotherapy, Dialysis	12–16D	Signs of depression	CB2
No. of Days in last 14—Phys. Visits/makes order changes:	12–16		CB1
visits>=1 and chng.>=4; or visits>=2 and chng.>=2	4–11D	Signs of depression	CA2
Diabetes with injection 7 days/wk and order chng.>=2 days	4–11	(Special <7 ADL)	CA1
IMPAIRED COGNITION:			
Score on MDS2.0 Cognitive	6–10	Nursing rehabilitation not receiving	IB2
Performance Scale >=3	6–10		IB1
(Score of ''6'' will be Clin. Comp. or PE2–PD1)	4–5	Nursing rehabilitation not receiving	IA2 IA1
BEHAVIOR ONLY:			
Code on MDS 2.0 items	6–10	Nursing rehabilitation not receiving	BB2
4+ days a week	6–10		BB1
wandering, physical or verbal abuse	4–5		BB2
inappropriate behavior or resists care	4–5		BA1
or hallucinations, or delusions	4–5		BA1
PHYSICAL FUNCTION REDUCED:			
No clinical variables used	16–18 16–18 11–15	Nursing rehabilitation not receiving	PE2 PE1
Nursing Rehab. Activities >=2, at least 6 days a wk	11–15	Nursing rehabilitation not receiving	PD2 PD1
Passive or Active ROM, amputation care, splint care	9–10	Nursing rehabilitation	PC2
Training in dressing or grooming, eating or swallowing	9–10	not receiving	PC1
transfer, bed mobility or walking, communication, scheduled toileting program or bladder retraining.	6–8 6–8 4–5 4–5	Nursing rehabilitation not receiving Nursing rehabilitation not receiving	PB2 PB1 PA2 PA1

TABLE 2.C.—CROSSWALK OF MDS 2.0 ITEMS AND RUG III GROUPS—Continued

Category	ADL index	End splits	MDS RUG III codes
			Default

Source: Analysis of the 1995 Medicare Units Staff Time.
Study: Update of RUG III Classification MDS.

2. The RUG–III Classification System

In the RUG–III classification system, patient characteristic and health status information from the MDS, such as ''diagnoses,'' ''ability to perform ADLs,'' and ''treatments received,'' will be used to assign the patient to a resource group for payment. The RUG–III system is a hierarchy of major patient types. RUG–III consists of seven major categories that are the first level of patient classification. The major categories, in hierarchical order, are Rehabilitation, Extensive Services, Special Care, Clinically Complex, Impaired Cognition, Behavior Problems, and Reduced Physical Function. These major categories are further differentiated into 44 more specific patient groupings. Except for Rehabilitation and Extensive Services, these categories are first subdivided into groups based on the patient's ADL score. The next level of subdivision is based on nursing rehabilitation services and signs of depression.

The initial subdivision of the Rehabilitation category is based on minutes per week of rehabilitative therapy services. The second level of subdivision uses ADL score. The Extensive Services category does not use ADL limitations except as a threshold for assignment into the category. Rather, services that require more technical clinical knowledge and skill are the variables used for assignment of patients into this category. Examples of these services are intravenous feeding or medications and tracheostomy care.

For example, the Special Care category includes patients with quadriplegia, multiple sclerosis, surgical wound(s), open lesions, fever with vomiting, dehydration, pneumonia, tube feedings, or weight loss, those who are aphasic and need to be tube fed, those receiving treatment for 2 or more skin ulcers, and patients who are receiving radiation therapy. Any patient with one or more of these conditions, who is not receiving rehabilitation services, will be assigned to this category. The patient's assignment to one of the three groups within this category is dependent on the patient's ADL score.

The Rehabilitation category is organized differently than the clinical categories that follow in the hierarchy. Within this category, there are five sub-categories (Ultra High, Very High, High, Medium, and Low) that are then further split into the individual groups for payment. The sub-categories are defined by minutes per week of rehabilitation received by the patient, number of rehabilitation disciplines providing service, and the number of days per week on which rehabilitation services were provided. Assignment into a specific payment group is based on the patient's ability to perform certain of the activities of daily living as represented by his ADL score. As stated elsewhere, the patient is assessed on his ability to perform independently all of the activities of daily living and is assigned an ADL sum score that represents performance of the four ''late loss'' ADLs. The ''late loss'' ADLs used in the MDS ADL sum score are: eating; toileting; bed mobility; and transferring.

A brief description of the respective RUG–III categories follows.

Rehabilitation: This category includes patients who, if they were not receiving rehabilitation therapy, would qualify for one of the other RUG–III skilled care categories. This category is divided into subcategories based on the number of minutes of rehabilitative services received in a week, combinations of rehabilitation disciplines providing services, receipt of nursing rehabilitative services, and the patient ADL scores. The range of rehabilitation therapy minutes per day represented in the Rehabilitation category varies from a low of 45 minutes per week to a high of more than 720 minutes per week. Patients who qualify for assignment to the Ultra High Rehabilitation sub-category receive at least 720 minutes per week of rehabilitation therapies. At least two disciplines must be providing services: one of the disciplines must provide services 5 days each week, and the other must provide services at least 3 days each week. In contrast, patients assigned to the lowest rehabilitation sub-category, Low Rehabilitation, must receive at least 45 minutes of rehabilitative therapy services across at least 3 days each week, in addition to 6 days per week of nursing rehabilitation in two activities.

Extensive Services: To qualify for this category, patients must have, in the past 14 days, received intravenous medications, tracheostomy care, required a ventilator/respirator, required suctioning, or must have, in the past 7 days, received intravenous feeding. In addition, the patients assigned to this category will have an ADL score that is at least 7.

Each patient in the extensive services category is assigned a score of 0–5 based on five criteria. The score is used to classify the patient to one of the three RUG–III groups in this category—0 or 1 will classify into the SE1 group, those with scores of 2 or 3 will go to SE2, and those with 4 or 5 will group to SE3.

For the following five criteria, the patient receives one point for each criterion that applies to him or her. The first three criteria are presence of a clinical condition that qualifies the patient for classification to the Special Care category, Clinically Complex category, or the Cognitively Impaired category. The fourth and fifth criteria are whether the patient is receiving intravenous feeding or whether the patient is receiving intravenous medication.

For example, a person who qualifies for both the Cognitively Impaired and Special Care categories will be assigned a score of 2 and will be classified into the SE2 group. Similarly, a patient who is ventilator dependent and requires suctioning will be assigned a score of 0 and will be classified into SE1.

Special Care: Patients who are assigned to this category have at least one of the following: multiple sclerosis, cerebral palsy, quadriplegia with an ADL score of 10 or more, or receive respiratory therapy 7 days per week; have, and receive treatment for, pressure or stasis ulcers on 2 or more body sites; have a surgical wound(s) or open lesions; be tube fed with at least 26 percent of daily calorie requirements and at least 501 ml of fluid through the tube per day, and aphasic; receive radiation therapy; or have a fever in combination with dehydration, pneumonia, vomiting, weight loss, or tube feedings.

Clinically Complex: Patients qualify for this category if they are comatose, have burns, septicemia, pneumonia, internal bleeding, dehydration, dialysis, hemiplegia in combination with an ADL

score of 10 or more, receive chemotherapy, tube feedings that comprise at least 26 percent of daily calorie requirements and at least 501 ml of fluid through the tube per day, treatments for foot wounds, or transfusions. Also included in this category are diabetics who receive injections 7 days per week and who have two or more physician order changes in the past 14 days as well as patients who have received oxygen therapy in the past 14 days. In order to assure inclusion of patients with unstable conditions, we also use a combination of physician visits and order changes as qualifying criteria for this category. This is a proxy measure for the amounts of skilled nursing observation, care planning, and monitoring usually required by this type of patient. The qualifying combinations of physician visit/order changes that must occur within the 14-day observation period to qualify for this category are: one or more visits with at least four order changes, or two or more visits with two or more order changes.

Impaired Cognition: Patients in this category and the following two categories frequently will not qualify for Medicare coverage although some may, due to specific circumstances. The patients in this category will have scores on the MDS 2.0 Cognition Performance Scale of 3, 4, or 5, and for two of the groups in this category will be receiving nursing rehabilitation services 6 days per week. Some patients with Alzheimer's disease or other types of dementia who have been acutely ill will classify to this category for Medicare. Under the SNF coverage guidelines, these patients could qualify based on the need for skilled nursing rehabilitation.

Behavior Only: These are patients who, in 4 of the last 7 days, exhibited behaviors that include resisting care, being combative, being physically and/or verbally abusive, wandering, and who have hallucinations or delusions.

Physical Function Reduced: The patients in this category are those who do not have any of the conditions or characteristics identified above. However, some have been documented as receiving ''skilled nursing'' and have been covered by Medicare in the past. With proper documentation and justification regarding the need for skilled care, Medicare may continue to cover SNF services.

3. Use of RUG–III ''Grouper'' Software

As discussed at the beginning of this section, all data necessary to classify a patient to one of the RUG–III categories is contained on the MDS 2.0. Under this PPS, SNFs are required to use the MDS 2.0 as the data source for classification of patients for case-mix. The software programs that use the MDS 2.0 to assign patients to the appropriate groups, called groupers, are available from many software vendors. The version we use is available at no cost from our web site at: http://www.hcfa.gov/medicare/ hsqb/ mds20.

The logic used in the groupers is based on the hierarchical nature of the RUG–III system. This means that the patient is first assigned to the highest category for which the patient qualifies, and then, using relevant additional criteria, as explained above (ADL score, nursing rehabilitation, etc.), the patient is assigned to one of the groups within that category.

The grouper assigns patients to the highest-weighted group rather than to the highest group in the hierarchy. This is important because there may be rare instances in which a case would qualify for a group that, although higher in the hierarchy, has a lower payment index than a group that is lower in the hierarchy.

4. Determining the Case-Mix Indices

Care provided directly to, or for, a patient is represented by an index score that is based on the amount of staff time, weighted by salary levels, associated with each group. That is, each RUG–III group is assigned an index score that represents the amount of nursing time and rehabilitation treatment time associated with caring for the patients who qualify for the group. The nursing weight includes both patient-specific time spent daily on behalf of each patient type by registered nurses, licensed practical nurses, and aides, as well as patient non-specific time spent by these staff members on other necessary functions such as staff education, administrative duties, and other tasks associated with maintenance of the care giving environment.

As explained above (in section II.B.1), measures of the staff time required to care for nursing home patients were collected and used to identify specific clinical characteristics that are predictive of patient resource use. In order to do this, characteristics of the patients in the STM study and the time it took to care for them were combined and analyzed. In addition, the ratio of salaries for nursing staff and rehabilitative therapy staff were computed in order to calculate nursing and therapy weights for each RUG–III category. These analyses were then used to identify the patient characteristics that best explain weighted patient specific time. From this, the 44 groups and an index for each was calculated. The basic calculation performed for each group was to take the minutes spent providing patient care and multiply them by the weight that represents the staff person's salary. Thus, the registered nurse's minutes were multiplied by 1.41, whereas those of the aide were multiplied by 0.59. The therapy weights include physical therapist (1.32), occupational therapist (1.23), and speech pathologist (1.16) time plus licensed physical therapy assistant (0.87), licensed occupational therapy assistant (0.81), and therapy aide (0.61) time, on a weekly basis. The nursing and therapy weights are multiplied by the number of patients in each group to yield an array of 44 nursing case-mix index scores and 5 therapy case-mix index scores. These indices are shown later in this section (see Tables 2.E and 2.F).

5. Application of the RUG–III System

Following are some illustrative case studies to illustrate how the RUG–III classification system would compare patients with similar descriptions but disparate classifications.

Example 1. Ms. A was recently hospitalized with a stroke. She has several comorbidities that include cardiac dysrhythmia, hypertension, and diabetes mellitus, and experienced a urinary tract infection within the last 30 days. In addition, she has lost voluntary movement in her left arm and leg, and has an unsteady gait, pain almost daily, and some localized edema, but is continent when toileted at regular intervals. She can see, hear, understand, and make herself understood. She tires easily and carries out ADLs slowly. Her mood is frequently tearful, and she expresses sadness about the loss of past life roles. She is concerned about her health and views herself, and is viewed by staff, as having potential for rehabilitation.

Her memory is good, although she does have some difficulty making decisions in new situations. She is involved in the daily life of the nursing home, interacts well with others, and is able to set her own goals. She spends some time in her own room in self-initiated activities.

Ms. A requires the assistance of one person to accomplish her personal hygiene, dressing, toileting (RUG–III ADL index score=4), bed mobility and transferring (ADL scores=4 each), and locomotion and eating (ADL score=2). She uses pressure-relieving chair and bed pads and receives special attention for her skin. She undergoes physical therapy and occupational therapy for 1 hour each, 5 days per week. Ms. A

receives daily restorative/rehabilitative follow-up nursing care and skill training for eating, active and passive range of motion, transferring, dressing, grooming, and locomotion, and participates in a bowel and bladder retraining program. Discharge from the facility is planned within the next 3 months.

As a stroke patient receiving two therapies five times a week, Ms. A is classified in the Very High Rehabilitation category. She has an ADL index score of 14 (4+4+4+2) and will therefore be classified into the RVB group. In case-mix calculations, her case receives a nursing weight of 1.04 and a therapy weight of 1.41.

Example 2, a non-rehabilitation patient. Ms. B has multiple sclerosis. At the present time she is recovering from a bout of pneumonia. She also had a urinary tract infection within the last 30 days. She has lost some voluntary movement in her extremities and cannot balance herself well in a standing position. She is not bedfast, however, and is in a wheelchair during the day. She has a history of pressure sores, but none are present at this time. There is stiffness in her hips, hands, feet, and shoulders. She complains of constipation and is sometimes incontinent of the bladder. She is able to see, hear, fully understand what is said, and is understood.

Her memory is good, and she is independent in her decision making. Her mood, however, is tearful, and she expresses distress. She grieves for her past life as a professional musician, and she is often withdrawn and has been verbally abusive to her roommate during the past week.

Ms. B uses extensive assistance with transferring (RUG–III ADL index score=4), locomotion, and toileting (ADL score=4), and limited assistance with bed mobility (ADL score=3), personal hygiene, and dressing. As she has had a history of pressure sores, she uses bed and chair pressure prevention pads and receives special skin care, positioning, and turning regularly over the day. Her intake and output are monitored, and the nursing staff provides passive and active range of motion and skill training for transferring with a trapeze while encouraging active range of motion where possible. She also began a bowel and bladder retraining program last week. Any discharge plan for Ms. B is uncertain at this time.

With multiple sclerosis and a high level of ADL dependency, Ms. B is classified into the Special Care category. Her ADL score is at least 12 (4+3+4+1). Service counts and mental state are not used in the Special Care category, so her depressed mood does not factor into her assignment into a RUG group, although it influences her plan of care. She will be classified to the SSA group in the Special Care category. In RUG–III case-mix calculations, Ms. B is assigned a nursing weight of 1.01 and a therapy weight of 0 since she did not receive occupational, physical, or speech therapy in the last 7 days. Note that these weights are lower than those assigned to Ms. A in example 1, despite the similarities in their clinical descriptions.

6. Use of the Resident Assessment Instrument—Minimum Data Set (MDS 2.0)

The requirements for patient assessment found at § 483.20 apply to all patients in a Medicare or Medicaid certified long term care facility, regardless of the patient's age, diagnoses, length of stay, or payer source. Certified facilities are required to use the RAI specified by the State to assess patients. Each State's RAI consists of HCFA's MDS at a minimum. The RUG–III classification system and, subsequently, the Medicare SNF prospective payment, are based on the Minimum Data Set (MDS). The MDS contains a core set of screening, clinical, and functional status elements, including common definitions and coding categories, that form the basis of a comprehensive assessment.

In order to receive Medicare payment under PPS, in addition to completion of the uniform MDS as set forth at § 483.20, the facility will be required to complete two additional sections of the MDS: Sections T and U. Section U is currently an optional section of the MDS used to collect information on medication. However, completion of this section is required for States participating in HCFA's Nursing Home Case-Mix and Quality (NHCMQ) demonstration and several other States as well. Although collection of medication information on Section U will be required for Medicare patients under this PPS, we will not require completion and transmission of this information until October 1, 1999. In the interim, we will examine the potential for refining Section U in a way that would streamline data collection, reduce opportunities for error, and thereby maximize the accuracy and usefulness of the data.

Section T provides information on special treatments and therapies not reported elsewhere in the patient assessment. In section T, the facility must record the rehabilitative therapy services (physical therapy, occupational therapy, and speech therapy) that have been ordered and are scheduled to occur during the early days of the patient's SNF stay. As rehabilitation services often are not initiated until after the first MDS assessment's observation period ends, we believe that allowing the patient time for transition is appropriate. Section T provides an overall picture of the amount of rehabilitation that a patient will likely receive through the 15th day from admission. This information on the MDS will make possible an accurate classification of the patient for whom rehabilitation is planned into the appropriate RUG–III group. SNFs must complete this section for services furnished on or after July 1, 1998.

Section T also provides information needed to evaluate a patient's response to therapy. For example, by assessing a patient's ability to walk at his most self-sufficient level, small increments of improvement can be measured. This level of detail is not contained in other areas of the MDS in contrast with the information recorded elsewhere in the MDS, regarding the patient's walking ability most of the time. Assessment of the patient's ''most self sufficient'' can be used to evaluate the effectiveness of physical therapy and nursing rehabilitation, the continued need for therapy and nursing rehabilitation, and maintenance of walking ability immediately after therapy is discontinued.

7. Required Schedule for Completing the MDS

Under section 1888(e)(6) of the Act, SNFs must ''provide the Secretary, in a manner and within the timeframes prescribed by the Secretary, the resident assessment data necessary to develop and implement the rates under this subsection.'' We are requiring that SNFs perform patient assessments by the 5th day (although there is a grace period that allows performance by the 8th day) of the SNF stay, again by the 14th day, by the 30th day, and every 30 days thereafter as long as the patient is in a Medicare Part A stay. A full MDS must be submitted by facilities at each of these timeframes during a patient's Medicare Part A stay. Each Medicare patient is classified in a RUG–III group for each assessment period for which he is in a Part A SNF stay. The group to which the patient classifies is based on the information about his clinical resource needs as recorded on the MDS assessment.

Facilities will send each patient's MDS assessments to the State and claims for Medicare payment to the fiscal intermediary on a 30-day cycle.

Payment will be made according to the RUG–III group(s) recorded on the claim sent to the fiscal intermediary. For the first 30 days in an SNF, a Medicare patient will be assessed three times (at 5 days, 14 days, and 30 days) and perhaps more often, if the patient's needs change requiring additional MDS assessments and care plan modifications. Any of the assessments performed may result in a RUG–III classification change.

Each patient is to be assessed using full or comprehensive assessments according to the stated schedule. The State's RAI constitutes a ''comprehensive'' assessment, which is required at various timeframes according to Federal regulations found at § 483.20. In the following schedule, ''full'' assessment refers to completion of the entire MDS, and ''comprehensive'' refers to completion of the Resident Assessment Protocols (RAPs) in addition to the entire MDS. The SNF provider should adhere to the following assessment schedule for newly admitted and readmitted beneficiaries whose stays are expected to be covered by Medicare during the first 30 days of admission/readmission to the SNF.

Day 0 Represents the period prior to admission

Day 1 Patient admission day and notification of ''Non-coverage''

Day 5 Last day for Assessment Reference Date for the Medicare 5 Day Assessment

Day 14 Last day for Assessment Reference Date for the Medicare 14 day Assessment (In accordance with Federal requirements at § 483.20, RAPS must be completed with the 5 day or the 14 day assessment)

Day 29 Last day for Assessment Reference Date for the Medicare 30 day assessment (RAPs not required for Medicare unless a Significant Change in Status has occurred)

Day 59 Last day for Assessment Reference Date for the Medicare 60 day assessment (RAPs not required for Medicare unless a Significant Change in Status has occurred)

Day 89 Last day for Assessment Reference Date for Medicare 90 day assessment (RAPs not required for Medicare unless a Significant Change in Status has occurred)

Day 100 Last possible day of Medicare coverage. Staff should return to the State-required MDS assessment schedule.

This schedule applies to Medicare beneficiaries during Part A Medicare nursing home stays.

Note that historically, instructions for completing the RAI, as in the *Long Term Care Resident Assessment Instrument User's Manual,* state that ''when calculating when the Resident Assessment Instrument (RAI) is due, the day of admission is counted as day zero.'' Counting the day of admission as day zero has allowed the maximum flexibility in terms of time to complete the RAI. For case-mix reimbursement purposes, however, States that participated in HCFA's Nursing Home Case-Mix and Quality Demonstration (NHCMQ) project have required that the day of admission be counted as day one. The use of the day of admission as day one is continued under the PPS rules for reimbursement scheduling. In support of this scheduling, in the future, HCFA will provide instructions for RAI completion counting the day of admission as day one.

In order to be in compliance with the requirements of Medicare and Medicaid certification, facilities must complete an Initial Admission assessment, including RAPs, within 14 days of a patient's admission to the facility. Within approximately the same time, the requirements for PPS specify that facilities must complete two assessments for each patient in a Medicare-covered Part A stay. These include a Medicare 5-day and a Medicare 14-day assessment. According to the rules for PPS, the RAPs must be completed with either the 5-day or the 14-day assessment, and the facility may choose with which of these assessments to complete the RAPs.

In order to minimize burden on facility staff, in some instances, the same assessment that is completed and electronically submitted to the State to meet the clinical requirements at § 483.20 may also be used to meet the PPS requirements. For example, the facility may use either the Medicare 5-day or the Medicare 14-day assessment (whichever one included the RAPs) to meet both the requirements for PPS, as well as the clinical requirements for completing and transmitting an Initial Admission assessment. In this case, the ''Reason for Assessment'' item on the MDS would be coded both as an Initial Admission assessment and as a Medicare 5-day or 14-day assessment. There is no grace period for the Initial Admission assessment to correspond with the grace period that the PPS rules allow for the Medicare 14-day assessment. Therefore, if a facility is using the Medicare 14-day assessment to also meet the requirement for the Initial Admission assessment, the assessment must be completed by day 14, and the grace period does not apply.

In order to be in compliance with the requirements for Medicare and Medicaid certification, facilities must perform the HCFA Standard Quarterly Review assessment for each resident in the facility at least every 92 days. The requirements for PPS specify that a Medicare 90-day assessment be completed for each patient whose stay is still covered under Medicare. To minimize burden on facility staff, the Medicare 90-day assessment that is completed to meet PPS requirements may also be used to meet the clinical requirements at § 483.20 for completion of a Quarterly Review assessment. In this case, the ''Reason for Assessment'' item on the assessment would be coded both as a ''Quarterly Review'' assessment, and as a Medicare 90-day assessment. Although the PPS rules allow a 5-day grace period in completing the Medicare 90-day assessment, the Quarterly Review assessment must be completed within 92 days of completion of the last assessment. Therefore, if a facility is using the Medicare 90-day assessment to also meet the requirement for the Quarterly Review assessment, the assessment must be completed within 92 days of completion of the prior assessment, and only 2 days of the 5-day grace period could apply.

Facilities must also adhere to Federal regulations that require a comprehensive reassessment if the patient experiences a significant change in status. A significant change is a major change in a patient's status that is not self-limiting, affects more than one area of his health status, and requires interdisciplinary review. Accordingly, a patient must be reassessed whenever significant improvement or decline is consistently noted by facility staff. The current guidelines for determining a significant change in the patient's status are listed in the *Long Term Care Resident Assessment Instrument User's Manual.* These include, for example, a change in the patient's decision-making abilities from 0 or 1 to 2 or 3 on item B4 of the MDS 2.0. As a complement to these standard guidelines, we are requiring under PPS, that a comprehensive assessment be performed when a patient's rehabilitation service is discontinued unless the patient is physically discharged from the facility. For those rare instances in which a Significant Change in Status assessment is not clinically warranted, but rehabilitative services are discontinued, we are requiring a comprehensive assessment to be coded as ''Other Medicare Required Assessment.''

The assessment reference date for this assessment may be no earlier than 8 days after the conclusion of all rehabilitative therapies and no later than 10 days after the conclusion of such services. If the patient expires or is discharged from the facility, no

assessment is required. This assessment will result in a new case-mix classification for the patient and a new rate of payment. The new classification and payment rate will be effective as of the assessment reference date of this comprehensive assessment. If the resulting new classification is below those groups deemed covered by Medicare in the RUG–III hierarchy and the patient would not be covered by the existing administrative criteria for making SNF level of care determinations, a ''continued stay'' denial notice should be issued.

A Significant Change in Status assessment or Other Medicare Required Assessment that falls during the assessment window of a Medicare mandated assessment may take the place of one of the regularly scheduled assessments. If the assessment reference date of an Other Medicare Required Assessment or a Significant Change in Status assessment coincides with the range of days allowable for use as the assessment reference date for a regularly scheduled Medicare assessment, a single assessment may be coded as both a Significant Change in Status or Other Medicare Required Assessment and as a regularly scheduled Medicare assessment. For example, a Significant Change in Status assessment completed on day 28 of the patient's nursing home stay would replace the 30-day scheduled assessment. However, a significant change that occurs on day 40 would not replace any scheduled assessment. Table 2.D below presents the schedule for MDS completion related to days covered and payment.

TABLE 2.D.—MEDICARE ASSESSMENT SCHEDULE

Medicare MDS assessment type	Reason for assessment (AA8b code)	Assessment reference date	Number of days authorized for coverage and payment	Applicable medicare payment days
5 day	1	Days 1–8*	14	1 through 14.
14 day	7	Days 11–14**	16	15 through 30.
30 day	2	Days 21–29	30	31 through 60.
60 day	3	Days 50–59	30	61 through 90.
90 day	4	Days 80–89	10	91 through 100.

*If a patient expires or transfers to another facility before day 8, the facility will still need to prepare an MDS as completely as possible for the RUG–III classification and Medicare payment purposes. Otherwise the days will be paid at the default rate.

**–RAPs follow Federal rules; RAPs must be performed with either the 5-day or 14-day assessment.

SNFs must submit the RAPs with either the 5-day or 14-day assessment. As noted above, RAPs must be completed as part of any Significant Change in Status assessments and Other Medicare Required Assessments that are appropriate. SNFs should consult the current version of the *Long Term Care Resident Assessment Instrument User's Manual* for more specific information regarding the RAPs.

The first MDS assessment for Medicare eligible beneficiaries should be completed by day 5 of the patient's SNF stay. The admission day counts as day 1. The Assessment Reference Date for the 5-day assessment may be any day between days 1 and 5 (although there is a 3-day grace period to day 8).

As stated in the note following Table 2.D, if a patient expires or transfers to another facility before day 8, the facility will still need to prepare an MDS as completely as possible for RUG–III classification and Medicare payment purposes. Otherwise, the days will be paid at the default group rate.

Subsequent to the 5-day assessment, the SNF must complete assessments for each coverage period in accordance with the Medicare assessment schedule. The staff must use the time periods as specified in the current *Long Term Care Resident Assessment Instrument User's Manual* and must include the assessment reference date/last day of the observation period to judge the patient's condition except for the change items found at the end of particular MDS sections. The change items in Sections B, C, E, G, and H are assessed by referring back to the reference day of the last MDS completed.

The nurse coordinating the care of a Medicare Part A covered patient has considerable leeway in determining the reference date for all assessments after the initial MDS. This should be helpful in making the assessment schedule required for Medicare coincide with Significant Change in Status, and Other Medicare Required Assessments that may be necessary, or in avoiding scheduling or service delivery problems during holiday periods. The following is an example: Ms. Smith was admitted on March 21, 1997. The assessment reference date for Ms. Smith's 14-day assessment was April 2, 1997. The nurse coordinator has selected April 16, 1997 as the assessment reference date for her 30-day assessment. In this case, the instructions for the change items should be interpreted as the period between the assessment reference date of April 2, 1997 (the 14-day assessment) and the assessment reference date of April 16, 1997 (the 30-day assessment).

8. The Relationship Between Payment and the MDS

As explained above, each Medicare patient is classified in a RUG–III group for each assessment period for which he is in a Part A SNF stay. The group to which the patient classifies is based on the information about his clinical resource needs as recorded on the MDS assessment.

Facilities will send each patient's MDS assessments to the State and claims for Medicare payment to the fiscal intermediary on a 30-day cycle. Payment will be made according to the RUG–III group(s) recorded on the claim sent to the fiscal intermediary. For the first 30 days in an SNF, a Medicare patient will be assessed three times (at 5 days, 14 days, and 30 days) and perhaps more often, if the patient's needs change requiring additional MDS assessments and care plan modifications. Any of the assessments performed may result in a RUG–III classification change.

For example, a facility may have a patient whose first (5-day) MDS results in assignment to a Special Care group, but whose second assessment (14-day) indicates an assignment to a High Rehabilitation group. The facility must record these groups on its claim and will receive payment at the Special Care group rate for 14 days and then at the High Rehabilitation group rate for the

15th through 30th days. If a third MDS is performed during that 30 days indicating a change in the patient's condition that results in assignment to yet a third RUG–III group, the facility must record three groups on its claim to the fiscal intermediary and will receive payment accordingly for the days in the third RUG–III group. Table 2.D shows the relationship of the billing cycle to the MDS submissions.

9. Assessments and the Transition to the Prospective Payment System

For Medicare patients already in the nursing home during the facility's transition into the PPS, we are providing several alternative assessment schedule options from which to choose.

a. Medicare beneficiaries receiving Part A benefits admitted within the past 30 days. For a Medicare patient in a Part A covered stay, admitted in the 30 days before the SNF became subject to PPS, who has had an MDS completed during those 30 days, facility staff may choose to use the most recent full MDS assessment completed (within the past 30 days) for RUG–III classification. This classification would be effective on the first day the SNF joins PPS and determines the payment the SNF receives for the patient for the first 14 days the facility is in the new system. The next assessment must be completed by the 14th calendar day of the month the facility entered the PPS.

Another option is for the facility staff to choose to treat the beneficiary as a ''new'' admission on the first day of the facility's billing period. In this instance, a Medicare 5-day assessment must be performed as if the day the facility enters the PPS is day 1 of the patient's Part A nursing home stay, and then the assessment schedule followed as it would be for a new admission, as detailed above. There is no change in the patient's Medicare eligibility or coverage. Further, no additional days are added to Medicare's 100-day limit.

b. Medicare beneficiaries receiving Part A benefits admitted over 30 days prior. If a Medicare beneficiary was receiving Medicare Part A benefits for the past 30 days and has not had a full MDS assessment completed within the past 30 days, the beneficiary is considered a new admission to the PPS and follows the assessment schedule presented above (paragraph (a)). The new admission status is only for Medicare MDS assessment scheduling. There is no change in the patient's Medicare eligibility or coverage. Further, no additional days are added to Medicare's 100-day limit.

c. Medicare Part A beneficiaries with less than 14 days of Medicare eligibility remaining. If the patient has less than 14 days of Medicare eligibility remaining when the SNF becomes subject to PPS, the facility has the option of completing an Other Medicare Required assessment or using the most recent assessment to classify the resident.

These guidelines are intended to maximize the beneficiary's opportunity to receive Medicare Part A benefits during the facility's transition from one payment system to another, provided that the Medicare Part A eligibility rules and coverage guidelines are met. Facility staff are able to utilize the RUG–III clinical categories to determine coverage for this group of beneficiaries.

10. Late Assessments

We recognize that the effect on revenue for missing an assessment can be great. To allow facilities flexibility and to minimize their revenue loss, we will permit an assessment to be completed as quickly as possible. Once a late assessment is conducted, the facility should return to the regular Medicare assessment schedule.

Frequent late assessments may result in an on-site review of assessment scheduling practices for the facility. Also, facilities need to be aware that assessments not completed within Federal timeframes established at § 483.20 may be cited as evidence of regulatory noncompliance.

Late 5-day assessments. As discussed above, the assessment reference date for a 5-day assessment may be set as early as day 1 or as late as day 5 of the patient's stay. However, in the event of a late 5-day assessment, a facility will be allowed to use up to and including day 8 as the assessment reference date with no financial penalty. This means that the facility may set an assessment reference date that is up to 3 days beyond the regular schedule and still receive the RUG–III rate calculated from the late assessment for the entire 14-day period of service covered by the 5-day assessment.

A 5-day assessment with an assessment reference date of day 9 or later will be paid at the RUG–III default rate for all 8 or more days of service provided before the assessment reference date of the late or missed assessment. The RUG–III rate calculated from the late assessment will be paid starting on the assessment reference date entered on the late assessment through day 14.

Late 14-day assessments. In order for an SNF to be in compliance with the requirements for Medicare or Medicaid certification, a comprehensive assessment must be performed for each patient in the facility by day 14. Therefore, unless the 5-day assessment included the RAPs, the 14-day assessment must include RAPs and must be completed by day 14. If the RAPs were completed with the 5-day assessment, then this assessment counts as the admission assessment and should be coded as both a Medicare 5-day assessment and as the admission assessment. When the 5-day assessment is the admission assessment (that is, it includes the RAPs), then no RAPs are required with the 14-day assessment, and the 14-day assessment may have an assessment reference date through day 19, and a 5-day grace period like that allowed for the 30- and 60-day assessments.

Late 30-day, 60-day, or 90-day assessments. A 5-day grace period is permitted for late 30- or 60-day assessments with no financial penalty. This means that the facility may set an assessment reference date that is up to 5 days beyond the regular schedule and still receive the RUG–III rate calculated from the late assessment for the entire period of service covered by the assessment.

To be in compliance with the requirements for Medicare and Medicaid certification, facilities must perform assessments quarterly. For this reason, the 90-day assessment grace period is only 2 days, in agreement with that allowed by the certification requirement. The latest that the first quarterly assessment may be completed is on day 92. The 90-day assessment should be coded both as a Medicare 90-day assessment and a quarterly review assessment.

Assessments that have an assessment reference date that is 6 or more days beyond the regular schedule will result in a payment at the RUG–III default rate for those 5 or more days of service without a current assessment. The RUG–III rate calculated from the late assessment will be paid starting on the day of the assessment reference date entered on the late assessment.

In the case of an error on an MDS that has been locked (in accordance with the requirements set forth at § 483.20(f)), the facility must follow the normal MDS correction procedures. These procedures may require that the facility perform a Significant Change in Status assessment or a ''significant correction'' assessment. If appropriate, the facility must perform a new assessment with a new assessment reference period and then submit this new assessment. Payment will be based on the new assessment reference date if appropriate.

11. The Default Rate

As described above, assessments are completed by SNFs according to an assessment schedule specifically designed for Medicare payment, and each assessment applies to specific days within a resident's SNF stay for purposes of making that payment. Compliance with this assessment schedule is critical to ensure that the appropriate level of payment is made by Medicare and the quality of Medicare SNF services is maintained under the PPS. Accordingly, SNFs that fail to perform assessments timely are to be paid a RUG–III default rate for the days of a patient's care for which they are not in compliance with this schedule (assuming that they submit sufficient documentation in lieu of a completed assessment to enable the fiscal intermediary to establish coverage under the existing administrative criteria used for this purpose, as discussed in section II.D of this rule). The RUG-III default rate takes the place of the otherwise applicable Federal rate (it does not supersede the facility-specific portion of the blended rate used for the transition period—see section III of this rule).

The RUG–III default rate may be lower than the Federal rate that would have been paid for a patient had an SNF submitted an assessment in accordance with the prescribed assessment schedule. For the initial period of the PPS, the RUG–III default rate is $117.15 per day for urban SNFs and $116.85 per day for rural SNFs. This rate equals the lowest Federal rate category (PA1) listed in Tables 2.G and 2.H. and is subject to the wage index adjustment.

12. Case-Mix Adjusted Federal Payment Rates

Application of the case-mix indices to the per diem Federal rates presented in Tables 2.A and 2.B result in 44 separate case-mix adjusted payment rates corresponding to the 44 separate RUG–III classification groups described above (see Tables 2.E and 2.F). The case-mix adjusted payment rates are listed separately for urban and rural SNFs (44 each) in Tables 2.E and 2.F below along with the corresponding case-mix index values. The rates are listed in total and by component. The application of the wage index, described later in this section, is the final adjustment applied to the Federal rates.

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Table 2.E
CASE MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES
URBAN

RUG III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Therapy Non-Case Mix Component	Non-Case Mix Component	**Total Rate**
RUC	1.30	2.25	$142.32	$186.01		$55.88	**$384.21**
RUB	0.95	2.25	$104.01	$186.01		$55.88	**$345.90**
RUA	0.78	2.25	$ 85.39	$186.01		$55.88	**$327.28**
RVC	1.13	1.41	$123.71	$116.56		$55.88	**$296.15**
RVB	1.04	1.41	$113.86	$116.56		$55.88	**$286.30**
RVA	0.81	1.41	$ 88.68	$116.56		$55.88	**$261.12**
RHC	1.26	0.94	$137.94	$ 77.71		$55.88	**$271.53**
RHB	1.06	0.94	$116.05	$ 77.71		$55.88	**$249.64**
RHA	0.87	0.94	$ 95.25	$ 77.71		$55.88	**$228.84**
RMC	1.35	0.77	$147.80	$ 63.66		$55.88	**$267.34**
RMB	1.09	0.77	$119.33	$ 63.66		$55.88	**$238.87**
RMA.	0.96	0.77	$105.10	$ 63.66		$55.88	**$224.64**
RLB	1.11	0.43	$121.52	$ 35.55		$55.88	**$212.95**
RLA	0.80	0.43	$ 87.58	$ 35.55		$55.88	**$179.01**
SE3	1.70		$186.12		$10.91	$55.88	**$252.91**
SE2	1.39		$152.18		$10.91	$55.88	**$218.97**
SE1	1.17		$128.09		$10.91	$55.88	**$194.88**
SSC	1.13		$123.71		$10.91	$55.88	**$190.50**
SSB	1.05		$114.95		$10.91	$55.88	**$181.74**
SSA	1.01		$110.57		$10.91	$55.88	**$177.36**
CC2	1.12		$122.62		$10.91	$55.88	**$189.41**
CC1	0.99		$108.39		$10.91	$55.88	**$175.18**
CB2	0.91		$ 99.63		$10.91	$55.88	**$166.42**
CB1	0.84		$ 91.96		$10.91	$55.88	**$158.75**

RUG III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Therapy Non-Case Mix Component	Non-Case Mix Component	**Total Rate**
CA2	0.83		$ 90.87		$10.91	$55.88	**$157.66**
CA1	0.75		$ 82.11		$10.91	$55.88	**$148.90**
IB2	0.69		$ 75.54		$10.91	$55.88	**$142.33**
IB1	0.67		$ 73.35		$10.91	$55.88	**$140.14**
IA2	0.57		$ 62.40		$10.91	$55.88	**$129.19**
IA1	0.53		$ 58.02		$10.91	$55.88	**$124.81**
BB2	0.68		$ 74.45		$10.91	$55.88	**$141.24**
BB1	0.65		$ 71.16		$10.91	$55.88	**$137.95**
BA2	0.56		$ 61.31		$10.91	$55.88	**$128.10**
BA1	0.48		$ 52.55		$10.91	$55.88	**$119.34**
PE2	0.79		$ 86.49		$10.91	$55.88	**$153.28**
PE1	0.77		$ 84.30		$10.91	$55.88	**$151.09**
PD2	0.72		$ 78.83		$10.91	$55.88	**$145.62**
PD1	0.70		$ 76.64		$10.91	$55.88	**$143.43**
PC2	0.65		$ 71.16		$10.91	$55.88	**$137.95**
PC1	0.64		$ 70.07		$10.91	$55.88	**$136.86**
PB2	0.51		$ 55.83		$10.91	$55.88	**$122.62**
PB1	0.50		$ 54.74		$10.91	$55.88	**$121.53**
PA2	0.49		$ 53.65		$10.91	$55.88	**$120.44**
PA1	0.46		$ 50.36		$10.91	$55.88	**$117.15**

Table 2.F
CASE MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES
RURAL

RUG III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Therapy Non-Case Mix Component	Non-Case Mix Component	**Total Rate**
RUC	1.30	2.25	$136.34	$214.90		$56.95	**$408.19**
RUB	0.95	2.25	$ 99.64	$214.90		$56.95	**$371.49**
RUA	0.78	2.25	$ 81.81	$214.90		$56.95	**$353.66**
RVC	1.13	1.41	$118.51	$134.67		$56.95	**$310.13**
RVB	1.04	1.41	$109.08	$134.67		$56.95	**$300.70**
RVA	0.81	1.41	$ 84.95	$134.67		$56.95	**$276.57**
RHC	1.26	0.94	$132.15	$ 89.78		$56.95	**$278.88**
RHB	1.06	0.94	$111.17	$ 89.78		$56.95	**$257.90**
RHA	0.87	0.94	$ 91.25	$ 89.78		$56.95	**$237.98**
RMC	1.35	0.77	$141.59	$ 73.54		$56.95	**$272.08**
RMB	1.09	0.77	$114.32	$ 73.54		$56.95	**$244.81**
RMA	0.96	0.77	$100.68	$ 73.54		$56.95	**$231.17**
RLB	1.11	0.43	$116.42	$ 41.07		$56.95	**$214.44**
RLA	0.80	0.43	$ 83.90	$ 41.07		$56.95	**$181.92**
SE3	1.70		$178.30		$11.66	$56.95	**$246.91**
SE2	1.39		$145.78		$11.66	$56.95	**$214.39**
SE1	1.17		$122.71		$11.66	$56.95	**$191.32**
SSC	1.13		$118.51		$11.66	$56.95	**$187.12**
SSB	1.05		$110.12		$11.66	$56.95	**$178.73**
SSA	1.01		$105.93		$11.66	$56.95	**$174.54**
CC2	1.12		$117.47		$11.66	$56.95	**$186.08**
CC1	0.99		$103.83		$11.66	$56.95	**$172.44**
CB2	0.91		$ 95.44		$11.66	$56.95	**$164.05**
CB1	0.84		$ 88.10		$11.66	$56.95	**$156.71**

RUG III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Therapy Non-Case Mix Component	Non-Case Mix Component	**Total Rate**
CA2	0.83		$ 87.05		$11.66	$56.95	**$155.66**
CA1	0.75		$ 78.66		$11.66	$56.95	**$147.27**
IB2	0.69		$ 72.37		$11.66	$56.95	**$140.98**
IB1	0.67		$ 70.27		$11.66	$56.95	**$138.88**
IA2	0.57		$ 59.78		$11.66	$56.95	**$128.39**
IA1	0.53		$ 55.59		$11.66	$56.95	**$124.20**
BB2	0.68		$ 71.32		$11.66	$56.95	**$139.93**
BB1	0.65		$ 68.17		$11.66	$56.95	**$136.78**
BA2	0.56		$ 58.73		$11.66	$56.95	**$127.34**
BA1	0.48		$ 50.34		$11.66	$56.95	**$118.95**
PE2	0.79		$ 82.86		$11.66	$56.95	**$151.47**
PE1	0.77		$ 80.76		$11.66	$56.95	**$149.37**
PD2	0.72		$ 75.51		$11.66	$56.95	**$144.12**
PD1	0.70		$ 73.42		$11.66	$56.95	**$143.03**
PC2	0.65		$ 68.17		$11.66	$56.95	**$136.78**
PC1	0.64		$ 67.12		$11.66	$56.95	**$135.73**
PB2	0.51		$ 53.49		$11.66	$56.95	**$122.10**
PB1	0.50		$ 52.44		$11.66	$56.95	**$121.05**
PA2	0.49		$ 51.39		$11.66	$56.95	**$120.00**
PA1	0.46		$ 48.24		$11.66	$56.95	**$116.85**

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C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we provide for adjustments to the Federal rates to account for differences in area wage levels using ''an appropriate wage index as determined by the Secretary.'' As discussed elsewhere in this rule, for the rates effective with this rule, we are using wage index values that are based on hospital wage data from cost reporting periods beginning in fiscal year 1994—the most recent hospital wage data in effect before the effective date of this rule. Accordingly, the wage values used in this rule are based on the same wage data as used to compute the wage index values for the hospital prospective payment system for discharges occurring in fiscal year 1998. To compute the SNF wage index values, HCFA groups wage data from all hospitals by urban (MSA) and rural area. Total wages and hours are summed for all hospitals in each area. An average hourly wage is computed for each area by dividing the total wages by the total hours. Wage index values are computed for each area by comparing the area specific average hourly wage to the national average hourly wage (computed in a similar manner). (A detailed description of the methodology used to compute the hospital prospective payment wage index is set forth in the final rule published in the **Federal Register** on August 29, 1997 (62 FR 45966).)

The SNF wage index values are based on the Metropolitan Statistical Area (MSA) designations in effect prior to publication of this rule. For purposes of computing SNF wage index values, we are not taking into account changes in geographic classification for certain rural hospitals required under section 1886(d)(8)(B) of the Act or geographic reclassifications based on decisions of the Medicare Geographic Classification Review Board or the Secretary under section 1886(d)(10) of the Act. For SNF routine cost limits established under section 1888(a) of the Act and in effect for cost reporting periods beginning prior to July 1, 1998, HCFA has always applied a hospital wage index that does not reflect geographic reclassifications. Changing the basis of the wage index now would likely have a distributional impact on payments. In consideration of this and the fact that HCFA may be changing to a SNF wage index in the near future (which could also have distributional effects), we find it appropriate to employ a hospital wage index that does not reflect these reclassifications. Accordingly, we continue to believe that the MSA (or non-MSA) designation provides the best method for determining the wage index values used for SNF payments and the physical location of hospitals is the appropriate basis upon which to construct the wage index.

Table 2.I at the end of this section presents the wage indices applicable to urban and rural areas for use in making geographic adjustments to the Federal rates. Similar to the methodology described earlier relating to the standardization of the cost data for geographic differences in wage levels, the wage index adjustment is applied to the labor-related portion of the Federal rate, which is 75.888 percent of the total rate. The schedule of Federal rates below shows the Federal rates by labor-related and non-labor related components. Instructions and an example related to the application of the wage index to the case-mix adjusted rates are provided following the table.

In addition, section 1888(e)(4)(G) of the Act requires that the wage index adjustment to the Federal rates be made in a manner that does not result in aggregate payments that are greater or less than those that would otherwise be made if the rates were not adjusted by the wage index. In the initial year of the PPS, this requirement is addressed through the standardization methodology, described earlier, which ensures that the application of the wage index has no effect on the level of aggregate payments (that is, any effects are purely distributional). In future years, HCFA must make wage index budget neutrality adjustment in updating the payment rates.

TABLE 2.G.—CASE MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT

RUGs III category	Labor-related	Non-labor related	Total Federal rate
RUC	$291.57	$92.64	$384.21
RUB	262.50	83.40	345.90
RUA	248.37	78.91	327.28
RVC	224.74	71.41	296.15
RVB	217.27	69.03	286.30
RVA	198.16	62.96	261.12
RHC	206.06	65.47	271.53
RHB	189.45	60.19	249.64
RHA	173.66	55.18	228.84
RMC	202.88	64.46	267.34
RMB	181.27	57.60	238.87
RMA	170.47	54.17	224.64
RLB	161.60	51.35	212.95
RLA	135.85	43.16	179.01
SE3	191.93	60.98	252.91
SE2	166.17	52.80	218.97
SE1	147.89	46.99	194.88
SSC	144.57	45.93	190.50
SSB	137.92	43.82	181.74
SSA	134.59	42.77	177.36
CC2	143.74	45.67	189.41
CC1	132.94	42.24	175.18
CB2	126.29	40.13	166.42
CB1	120.47	38.28	158.75
CA2	119.65	38.01	157.66
CA1	113.00	35.90	148.90
IB2	108.01	34.32	142.33

TABLE 2.G.—CASE MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUGs III category	Labor-related	Non-labor related	Total Federal rate
IB1	106.35	33.79	140.14
IA2	98.04	31.15	129.19
IA1	94.72	30.09	124.81
BB2	107.18	34.06	141.24
BB1	104.69	33.26	137.95
BA2	97.21	30.89	128.10
BA1	90.56	28.78	119.34
PE2	116.32	36.96	153.28
PE1	114.66	36.43	151.09
PD2	110.51	35.11	145.62
PD1	108.85	34.58	143.43
PC2	104.69	33.26	137.95
PC1	103.86	33.00	136.86
PB2	93.05	29.57	122.62
PB1	92.23	29.30	121.53
PA2	91.40	29.04	120.44
PA1	88.90	28.25	117.15

TABLE 2.H.—CASE MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT

RUGs III category	Labor-related	Non-labor related	Total Federal rate
RUC	$309.77	$98.42	$408.19
RUB	281.92	89.57	371.49
RUA	268.39	85.27	353.66
RVC	235.35	74.78	310.13
RVB	228.20	72.50	300.70
RVA	209.88	66.69	276.57
RHC	211.64	67.24	278.88
RHB	195.72	62.18	257.90
RHA	180.60	57.38	237.98
RMC	206.48	65.60	272.08
RMB	186.78	59.03	244.81
RMA	175.43	55.74	231.17
RLB	162.73	51.71	214.44
RLA	138.06	43.86	181.92
SE3	187.38	59.53	246.91
SE2	162.70	51.69	214.39
SE1	145.19	46.13	191.32
SSC	142.00	45.12	187.12
SSB	135.63	43.10	178.73
SSA	132.45	42.09	174.54
CC2	141.21	44.87	186.08
CC1	130.86	41.58	172.44
CB2	124.49	39.56	164.05
CB1	118.92	37.79	156.71
CA2	118.13	37.53	155.66
CA1	111.76	35.51	147.27
IB2	106.99	33.99	140.98
IB1	105.39	33.49	138.88
IA2	97.43	30.96	128.39
IA1	94.25	29.95	124.20
BB2	106.19	33.74	139.93
BB1	103.80	32.98	136.78
BA2	96.64	30.70	127.34
BA1	90.27	28.68	118.95
PE2	114.95	36.52	151.47
PE1	113.35	36.02	149.37
PD2	109.37	34.75	144.12
PD1	107.78	34.25	142.03
PC2	103.80	32.98	136.78
PC1	103.00	32.73	135.73
PB2	92.66	29.44	122.10
PB1	91.86	29.19	121.05
PA2	91.07	28.93	120.00
PA1	88.68	28.17	116.85

For any RUG–III group, to compute a wage adjusted Federal payment rate applicable to the initial period of the PPS, the labor related portion of the payment rate is multiplied by the SNF's appropriate wage index factor listed in Table 2.I. The product of that calculation is added to the corresponding non-labor related component. The resulting amount is the Federal rate applicable to a patient in that RUG–III group for that SNF. See the example below.

ABC SNF is located in State College, Pennsylvania. The per diem Federal rate applicable to an Ultra High Rehabilitation 'A' patient (RUA) is calculated using the rates listed in Table 2.G and the wage index factor found in Table 2.I. Accordingly, the computation of the adjusted per diem rate is made as follows: (248.37×.9635)+78.91=$318.21 per diem.

This Federal rate will be applicable to all patients in the RUA category for Happy Valley SNF for the initial period of the PPS (July 1, 1998 through September 30, 1999).

D. Updates to the Federal Rates

For the initial period of the PPS beginning on July 1, 1998 and ending on September 30, 1999, the payment rates are those contained in this interim final rule. In accordance with section 1888(e)(4)(H) of the Act, for each succeeding fiscal year, we will publish the rates in the **Federal Register** before August 1 of the year preceding the affected Federal fiscal year.

For fiscal years 2000 through 2002, section 1888(e)(4)(E)(ii) of the Act requires that the rates be increased by a factor equal to the SNF market basket index change minus 1 percentage point. In addition, for subsequent fiscal years, this section requires the rates to be increased by the applicable SNF market basket index change.

Section 1888(e)(4)(F) of the Act provides that the Secretary ''may'' adjust the unadjusted Federal per diem rates if the Secretary ''determines that the adjustments under subparagraph (G)(i) for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments'' during the fiscal year because of changes in the aggregate case-mix of the Medicare patient population that are not related to actual patient condition (that is, ''case-mix creep''). HCFA is currently developing a methodology to implement this adjustment.

In addition, since enactment of the BBA 1997, various suggestions have been made relating to adjustments to the rates promulgated in this interim final regulation. Some have suggested that the rates should be increased to reflect such factors as additional nursing care, the future growth of subacute care practices, specific services, and other items that may not be accurately reflected in the rates, etc. Other suggestions have related to downward adjustments to the rates to reflect the presence of inappropriate care or payments in the 1995 cost data used to establish the rates promulgated in this rule. For example, concerns have been raised regarding whether these data are inflated, reflecting medically unnecessary care and/or improper payments related to therapies and other ancillary services and that the inclusion of such costs results in inappropriately high payments to SNFs under the PPS. Studies by the Office of the Inspector General (OIG) and HCFA program integrity activities have found that incorrect payments have been made to SNFs in the past. One way to remove such costs from the data is the application of adjustments to the 1995 data base and recomputing the payment rates. However, the magnitude of these incorrect payments is not definitively known at this time. Therefore, the OIG, in conjunction with HCFA, is proposing to examine the extent to which the base period costs reflect costs that were inappropriately allowed. If this examination reveals excessive inappropriate costs, we would address this issue in a future proposed rule, or perhaps seek legislation to adjust future payment rates downward.

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS

Urban Area (Constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.8287
Taylor, TX	
0060 Aguadilla, PR	0.4188
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9772
Portage, OH	
Summit, OH	
0120 Albany, GA	0.7914
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8480
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9309
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8162
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	1.0086
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9137
Blair, PA	
0320 Amarillo, TX	0.9425
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2842
Anchorage, AK	
0440 Ann Arbor, MI	1.1785
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8266
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.8996
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4218
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9072
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9087
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	0.9823
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.1155
Atlantic City, NJ	
Cape May, NJ	
0600 Augusta-Aiken, GA–SC	0.9333
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9133

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	1.0014
Kern, CA	
0720 Baltimore, MD	0.9689
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9478
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.4291
Barnstable, MA	
0760 Baton Rouge, LA	0.8382
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8593
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1221
Whatcom, WA	
0870 Benton Harbor, MI	0.8634
Berrien, MI	
0875 Bergen-Passaic, NJ	1.2156
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9783
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8415
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8914
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9005
Blount, AL	
Jefferson, AL	
St Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7695
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.9128
Monroe, IN	
1040 Bloomington-Normal, IL	0.8733
McLean, IL	
1080 Boise City, ID	0.8856
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1506
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	1.0015
Boulder, CO	
1145 Brazoria, TX	0.9341
Brazoria, TX	
1150 Bremerton, WA	1.0999
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8740
Cameron, TX	
1260 Bryan-College Station, TX	0.8571
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9272
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0142
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4459
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8961
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9013
Natrona, WY	
1360 Cedar Rapids, IA	0.8529
Linn, IA	
1400 Champaign-Urbana, IL	0.8824
Champaign, IL	
1440 Charleston-North Charleston, SC	0.8807
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.9142
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC–SC	0.9710
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	0.9051
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.8658
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.7555
Laramie, WY	
1600 Chicago, IL	1.0860

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Cook, IL	
De Kalb, IL	
Du Page, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	1.0429
Butte, CA	
1640 Cincinnati, OH–KY–IN	0.9474
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN–KY	0.7852
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9804
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9316
El Paso, CO	
1740 Columbia, MO	0.9001
Boone, MO	
1760 Columbia, SC	0.9192
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL	0.8288
Russell, AL	
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9793
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8945
Nueces, TX	
San Patricio, TX	
1900 Cumberland, MD–WV	0.8822
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9703
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
1950 Danville, VA	0.8146
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA–IL	0.8405
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9584
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.8375
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8286
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.7915
Macon, IL	
2080 Denver, CO	1.0386
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8837
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0825
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.8070
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9303
Kent, DE	
2200 Dubuque, IA	0.8088
Dubuque, IA	
2240 Duluth-Superior, MN–WI	0.9779
St Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0632
Dutchess, NY	
2290 Eau Claire, WI	0.8764
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	1.0123
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9081
Elkhart, IN	
2335 Elmira, NY	0.8247
Chemung, NY	
2340 Enid, OK	0.7962
Garfield, OK	
2360 Erie, PA	0.8862
Erie, PA	
2400 Eugene-Springfield, OR	1.1435
Lane, OR	
2440 Evansville-Henderson, IN–KY	0.8641
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.8837
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8734
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.7461
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	0.9115
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1171
Genesee, MI	
2650 Florence, AL	0.7551
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8711
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0248
Larimer, CO	
2680 Ft Lauderdale, FL	1.0448
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.8788
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	1.0257
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR–OK	0.7769
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.8765
Okaloosa, FL	
2760 Fort Wayne, IN	0.8901
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9979
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0607
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8815
Etowah, AL	
2900 Gainesville, FL	0.9616
Alachua, FL	
2920 Galveston-Texas City, TX	1.0564
Galveston, TX	
2960 Gary, IN	0.9633
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8386
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8443
Wayne, NC	
2985 Grand Forks, ND–MN	0.8745
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9090
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	1.0147
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8803
Cascade, MT	
3060 Greeley, CO	1.0097
Weld, CO	
3080 Green Bay, WI	0.9097
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9351
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9064
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9059
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9681
Washington, MD	
3200 Hamilton-Middletown, OH	0.8767
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	1.0187
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.2562
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7192
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.8686
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1816
Honolulu, HI	
3350 Houma, LA	0.7854
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9855
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
3400 Huntington-Ashland, WV–KY–OH	0.9160
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8485
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9848
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9413
Johnson, IA	
3520 Jackson, MI	0.9052
Jackson, MI	
3560 Jackson, MS	0.7760
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8522
Chester, TN	
Madison, TN	
3600 Jacksonville, FL	0.8969
Clay, FL	
Duval, FL	
Nassau, FL	
St Johns, FL	
3605 Jacksonville, NC	0.6973
Onslow, NC	
3610 Jamestown, NY	0.7552
Chautaqua, NY	
3620 Janesville-Beloit, WI	0.8824
Rock, WI	
3640 Jersey City, NJ	1.1412
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.9114
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8378
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7443
Craighead, AR	
3710 Joplin, MO	0.7510
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0668
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.8653
Kankakee, IL	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
3760 Kansas City, KS–MO	0.9564
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
Kenosha, WI	
3810 Killeen-Temple, TX	1.0252
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8831
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.8416
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.8749
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8206
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9174
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7776
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8806
Polk, FL	
4000 Lancaster, PA	0.9481
Lancaster, PA	
4040 Lansing-East Lansing, MI	1.0088
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.7325
Webb, TX	
4100 Las Cruces, NM	0.8646
Dona Ana, NM	
4120 Las Vegas, NV–AZ	1.0592
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8608
Douglas, KS	
4200 Lawton, OK	0.9045
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9536
Androscoggin, ME	
4280 Lexington, KY	0.8390
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Woodford, KY	
4320 Lima, OH	0.9185
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9231
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8490
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8613
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.2232
Los Angeles, CA	
4520 Louisville, KY–IN	0.9507
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8400
Lubbock, TX	
4640 Lynchburg, VA	0.8228
Amherst, VA	
Bedford City, VA	
Bedford, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.9227
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0055
Dane, WI	
4800 Mansfield, OH	0.8639
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4475
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8371
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0354
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.8819
Brevard, FL	
4920 Memphis, TN–AR–MS	0.8589
Crittenden, AR	
De Soto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	1.0947
Merced, CA	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
5000 Miami, FL	0.9859
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1059
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9819
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St Paul, MN–WI	1.0733
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
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0794
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.0934
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8414
Ouachita, LA	
5240 Montgomery, AL	0.7671
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9173
Delaware, IN	
5330 Myrtle Beach, SC	0.8072
Horry, SC	
5345 Naples, FL	1.0109
Collier, FL	
5360 Nashville, TN	0.9182
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3807
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2618
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.2013
New London, CT	
5560 New Orleans, LA	0.9566
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St Bernard, LA	
St Charles, LA	
St James, LA	
St John The Baptist, LA	
St Tammany, LA	
5600 New York, NY	1.4449
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1980
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY–PA	1.1283
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA–NC	0.8316
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.5068
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9032
Marion, FL	
5800 Odessa-Midland, TX	0.8660
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8481
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0901
Thurston, WA	
5920 Omaha, NE–IA	0.9421
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1605
Orange, CA	
5960 Orlando, FL	0.9397
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.7480
Daviess, KY	
6015 Panama City, FL	0.8337
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.8046
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8193
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8571
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA–NJ	1.1398
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9606
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7826
Jefferson, AR	
6280 Pittsburgh, PA	0.9725
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0960
Berkshire, MA	
6340 Pocatello, ID	0.9586
Bannock, ID	
6360 Ponce, PR	0.4589
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9627
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR–WA	1.1344
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.1049
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
6520 Provo-Orem, UT	1.0073
Utah, UT	
6560 Pueblo, CO	0.8450
Pueblo, CO	
6580 Punta Gorda, FL	0.8725
Charlotte, FL	
6600 Racine, WI	0.8934
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9818
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8345
Pennington, SD	
6680 Reading, PA	0.9516
Berks, PA	
6690 Redding, CA	1.1790
Shasta, CA	
6720 Reno, NV	1.0768
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	0.9918
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9152
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1307
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8402
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.0502
Olmsted, MN	
6840 Rochester, NY	0.9524
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9081
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9029
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.2202
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9564
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St Cloud, MN	0.9544
Benton, MN	
Stearns, MN	
7000 St Joseph, MO	0.8366
Andrews, MO	
Buchanan, MO	
7040 St Louis, MO–IL	0.9130
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	
Sullivan City, MO	
7080 Salem, OR	0.9935
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4513
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9857
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.7780
Tom Green, TX	
7240 San Antonio, TX	0.8499
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.2193
San Diego, CA	
7360 San Francisco, CA	1.4180
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4332
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4625
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
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
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0688
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.4187
Santa Cruz, CA	
7490 Santa Fe, NM	1.0332
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2815
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9757
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.8638
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8539
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1339
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8783
Mercer, PA	
7620 Sheboygan, WI	0.7862
Sheboygan, WI	
7640 Sherman-Denison, TX	0.8499
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9381
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA–NE	0.8031
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.8712
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9868
St Joseph, IN	
7840 Spokane, WA	1.0486
Spokane, WA	
7880 Springfield, IL	0.8713
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.7989
Christian, MO	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0740
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9635
Centre, PA	
8080 Steubenville-Weirton, OH–WV	0.8645
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.1496
San Joaquin, CA	
8140 Sumter, SC	0.7842
Sumter, SC	
8160 Syracuse, NY	0.9464
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1016
Pierce, WA	
8240 Tallahassee, FL	0.8332
Gadsden, FL	
Leon, FL	
8280 Tampa-St Petersburg-Clearwater, FL	0.9103
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8614
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8664
Miller, AR	
Bowie, TX	
8400 Toledo, OH	1.0390
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9438
Shawnee, KS	
8480 Trenton, NJ	1.0380
Mercer, NJ	
8520 Tucson, AZ	0.9180
Pima, AZ	
8560 Tulsa, OK	0.8074
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8187
Tuscaloosa, AL	
8640 Tyler, TX	0.9567
Smith, TX	
8680 Utica-Rome, NY	0.8398
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3754
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.0946
Ventura, CA	
8750 Victoria, TX	0.8474
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0110
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9924
Tulare, CA	
8800 Waco, TX	0.7696
McLennan, TX	
8840 Washington, DC–MD–VA–WV	1.0911
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8640
Black Hawk, IA	
8940 Wausau, WI	1.0545
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	1.0372
Palm Beach, FL	
9000 Wheeling, OH–WV	0.7707
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9403
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7646
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8548
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.1538
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9322
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0102
Yakima, WA	
9270 Yolo, CA	1.1431
Yolo, CA	
9280 York, PA	0.9415
York, PA	
9320 Youngstown-Warren, OH	0.9937
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0324
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9732
Yuma, AZ	

TABLE 2.I.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7260
Alaska	1.2302
Arizona	0.7989
Arkansas	0.6995
California	0.9977
Colorado	0.8129
Connecticut	1.2617
Delaware	0.8925
Florida	0.8838
Georgia	0.7761
Hawaii	1.0229
Idaho	0.8221
Illinois	0.7644
Indiana	0.8161
Iowa	0.7391
Kansas	0.7203
Kentucky	0.7772
Louisiana	0.7383
Maine	0.8468
Maryland	0.8617
Massachusetts	1.0718
Michigan	0.8923
Minnesota	0.8179
Mississippi	0.6911
Missouri	0.7205
Montana	0.8302
Nebraska	0.7401
Nevada	0.8914
New Hampshire	0.9717
New Jersey [1]	.....
New Mexico	0.8070
New York	0.8401
North Carolina	0.7937
North Dakota	0.7360
Ohio	0.8434
Oklahoma	0.7072
Oregon	0.9975
Pennsylvania	0.8421
Puerto Rico	0.3939
Rhode Island [1]	.....
South Carolina	0.7921
South Dakota	0.6983
Tennessee	0.7353
Texas	0.7404
Utah	0.8926
Vermont	0.9314
Virginia	0.7782
Washington	1.0221
West Virginia	0.7938
Wisconsin	0.8471
Wyoming	0.8247

[1] All counties within the State are classified urban.

E. Relationship of RUG–III Classification System to Existing Skilled Nursing Facility Level of Care Criteria

Section 1814(a)(2)(B) of the Act provides that, in order for Part A to make payment under the extended care benefit, a physician, nurse practitioner, or clinical nurse specialist must initially certify (and periodically recertify) that the beneficiary needs a specific level of care, specifically, skilled nursing or rehabilitation services on a daily basis which, as a practical matter, can only be provided in an SNF on an inpatient basis. Longstanding administrative criteria for determining whether a beneficiary meets this statutory SNF level of care definition appear in regulations at §§ 409.31 through 409.35 and manual instructions in the Medicare Intermediary Manual, Part 3 (MIM–3), §§ 3132ff and the Skilled Nursing Facility Manual §§ 214ff. These criteria entail a retrospective review that focuses primarily on a beneficiary's need for and receipt of specific, individual skilled services as indicators of the need for a covered SNF level of care. (The certification/recertification procedure itself is implemented in regulations at § 424.20.)

In this context, the RUG–III system serves three distinct but related purposes:

- Streamlining and simplifying the process for determining that a beneficiary meets the statutory criteria for an SNF level of care (which is a prerequisite for making program payment under the extended care benefit), by automatically classifying those beneficiaries assigned to any of the highest 26 of the 44 RUG–III groups as meeting the definition. (For those beneficiaries assigned to the lowest 18 groups, level of care determinations are performed on an individual basis, using the existing administrative criteria established for this purpose.)
- Determining the level of the Part A per diem payment under the SNF PPS, which varies with the resource intensity of the particular RUG–III group to which an individual beneficiary is assigned. In addition to developing a per diem payment rate for each of the RUG–III groups, we are also creating a default payment rate (as discussed previously in section II.B.11.) to address situations such as those in which the facility's failure to submit a completed assessment in a timely manner prevents the beneficiary from being assigned to a particular RUG–III group. In order to receive payment at the default rate in the absence of completing an assessment timely, the SNF would have to submit sufficient information to its Medicare fiscal intermediary (FI) to enable the FI to establish coverage under the existing administrative criteria.
- Providing an additional basis for making an administrative presumption (under regulations at § 409.60(c)(2)) that an SNF resident who has exhausted Part A benefits continues to meet the skilled level of care definition in the SNF, since a resident assigned to any of the upper 26 RUG–III groups is automatically classified as meeting this definition. Such a resident continues to be considered an ''inpatient'' of the SNF for purposes of prolonging his or her current benefit period under section 1861(a)(2) of the Act and § 409.60(b)(2) of the regulations.

As discussed below, we believe that certain specific modifications are appropriate in the existing administrative criteria that are used for making SNF level of care determinations, in order to achieve greater consistency between them and the RUG–III classification system. Under the demonstration, those beneficiaries assigned to any of the highest 26 of the 44 RUG–III groups have been defined as meeting the SNF level of care specified in the statute. Thus, the RUG–III classification system used under the demonstration and the existing administrative level of care criteria essentially represent two different approaches toward achieving the same objective—identifying those beneficiaries who meet the SNF level of care definition in section 1814(a)(2)(B) of the Act. Under the demonstration, RUG–III has been used as a means of qualifying beneficiaries for coverage, not disqualifying them. That is, those beneficiaries assigned to any of the upper 26 groups are automatically classified as meeting the SNF level of care definition while those beneficiaries assigned to any of the lower 18 groups are not automatically classified as either meeting or not meeting the definition, but instead receive an individual level of care determination using the existing administrative criteria. This procedure will continue under the new SNF PPS. Thus, a beneficiary who is assigned to one of the upper 26 RUG–III groups is automatically designated as meeting the SNF level of care definition, and the required initial certification under § 424.20(a) regarding such a beneficiary's general need for an SNF level of care would, in effect, simply serve to confirm the correctness of this designation. Accordingly, we are amending the regulations at § 424.20(a) to provide that, at the option of the individual completing it, the initial certification for a beneficiary who is assigned to one of the upper 26 RUG–III groups can either consist of the existing content described in that provision or, alternatively, can state simply that the beneficiary's assignment to that particular RUG–III group is correct.

Under this type of framework, it is not essential for the RUG–III system to conform exactly to the existing administrative criteria, since any beneficiary who does not initially meet the criteria for coverage under the former will then receive an individual level of care determination under the latter. Nevertheless, it is desirable from a programmatic standpoint to reconcile, whenever possible, any specific inconsistencies that may exist between these two approaches in their treatment of particular conditions and circumstances. Further, for the reasons discussed below, we believe that resolving these inconsistencies in favor of the approach taken under RUG–III would also help bring the existing administrative criteria more into line with the current state of clinical practice. We note that these changes in the existing administrative criteria will become effective with the introduction of the Part A SNF PPS and its RUG–III classification system (that is, for cost reporting periods beginning on or after July 1, 1998), and will be implemented on a prospective basis only. Accordingly, we will advise Medicare contractors that any beneficiary who, upon the effective date of these changes, is currently in a covered SNF stay will not have his or her coverage terminated on the basis of these revisions for the duration of that covered stay.

The existing administrative criteria for making SNF level of care determinations focus primarily on the use of specific, individual skilled services as indicators of a beneficiary's need for a covered level of care. The particular services identified in these criteria date back to the Senate Finance Committee Report language (S. Rep. No. 92–1230, pp. 282–285) that accompanied the Social Security Amendments of 1972 (Public Law 92–603). However, in the 25 years since that legislation was enacted, the state of clinical practice for the nursing home population has advanced dramatically, to the point where some of the specific types of services cited in the Committee Report either have fallen largely into disuse or have now become routinely available in less intensive settings. Accordingly, with the passage of time, some of the individual services identified as skilled in the existing administrative criteria no longer, in themselves, represent valid indicators of

the need for a covered SNF level of care. Consequently, while such services might still be considered ''skilled'' in a technical sense (in that they may arguably require rendition by skilled personnel in order to be furnished safely and effectively), we believe that they are no longer appropriate for inclusion in the SNF level of care criteria.

For example, we believe that from a clinical as well as programmatic standpoint, it is no longer necessary or appropriate to include ''hypodermoclysis'' (injection of fluids into the subcutaneous tissues to supply the body with liquids quickly) in the list of examples of skilled nursing services at § 409.33(b). Medically, this service is equivalent to giving fluids in an intravenous infusion. As more SNFs have become proficient in the administration of intravenous medications and fluids, the number of cases in which this service would be appropriate becomes extremely small. Although there may be a very small number of beneficiaries who cannot be hydrated with intravenous fluids, it is likely that they would be sufficiently medically complex as to be classified into one of the top 26 RUG–III categories, regardless of the use of hypodermoclysis.

We also believe that the ordering of subcutaneous injections can no longer be considered sufficient in itself to justify the designation of a covered SNF level of care. We note that the most frequently administered type of subcutaneous medication is insulin, which has long been defined as a nonskilled service with respect to any beneficiary who is capable of self-administration. Further, with the evolving state of clinical practice over time, the administration of a subcutaneous injection has now become commonly accepted as a nonskilled service even in less intensive settings such as physician offices and home health agencies, making its continued categorization as a skilled service in the SNF context increasingly anomalous. In the RUG–III classifications, an insulin-dependent diabetic beneficiary who is clinically unstable enough to have had two physician order changes within the preceding 7 days would be assigned to one of the top 26 groups and, thus, would automatically be classified as meeting the standard for a covered level of care. By contrast, a beneficiary who has stabilized and continues to receive subcutaneous injections on a chronic basis will, in all likelihood, have already exhausted the 100 days of available SNF coverage per benefit period at that point. In this situation, categorizing the injections as a nonskilled service would actually work to the beneficiary's advantage, as it would enable such a beneficiary to end that benefit period in the SNF under regulations at § 409.60(b)(2).

The vast majority of urinary catheters are placed in the urethra, but a few are suprapubic. The current administrative criteria also identify the insertion into the urethra and sterile irrigation of urinary catheters as a skilled nursing service. However, RUG–III does not consider any of these catheters in assigning patients to a RUG–III category. Further, we believe that it may well be inherently undesirable to specify the use of urinary catheters as a criterion that effectively governs SNF coverage determinations, because of the risk that this creates of providing an unwarranted incentive for the inappropriate use of urinary catheters. It is widely recognized that there is a significant amount of unnecessary use of catheters for the convenience of care givers, with the potential to place beneficiaries at increased risk of infection. Nevertheless, we also recognize that a catheter can be medically necessary, especially in those particular situations where obstruction is present. Accordingly, we are not deleting this particular procedure from the administrative criteria at this time. We invite comments on whether the care of suprapubic catheters should be considered skilled.

The RUG–III groups recognize enteral feeding as a criterion for patient classification only if it is providing the patient with more 26 percent of his or her calories and at least 501 milliliters of hydration daily. Historically, the administrative criteria have only required the mere presence of a ''Levin tube'' (now referred to as a nasogastric tube) or a gastrostomy tube for enteral feeding. We note that, in recent years, gastrostomy tube feedings have become the more commonly used procedure, as the chronic use of nasogastric tubes has been replaced because of the increased risk of pneumonia from aspirating fluid into the lungs. The demonstration took a more specifically defined approach because a few beneficiaries in all the demonstration states were found to have had feeding tubes retained even though they were no longer used (or even usable), with the only apparent purpose being to maintain the beneficiary's ''skilled'' status. Because we believe that it is clearly inappropriate for such a practice to serve as an indicator of the need for a covered level of care, we are revising the administrative criteria to adopt the RUG–III system's more specific approach. That approach incorporates specific criteria (that is, comprising at least 26 per cent of daily calorie requirements and providing at least 501 milliliters of fluid per day) that effectively limit the recognition of enteral feeding as a skilled service (regardless of whether administered by nasogastric, gastrostomy, or gastro-jejunostomy tube) to those instances in which it currently is clinically relevant to the beneficiary. We note that this particular change would not result in removing enteral feeding altogether from the list of skilled nursing services in § 409.33(b), but merely would provide more specific, objective criteria for ensuring that coverage determinations take this particular procedure into account only in those instances where its use is, in fact, reasonable and necessary in accordance with section 1862(a)(1) of the Act.

Under the existing administrative criteria, ''management and evaluation of a care plan,'' ''observation and assessment,'' and ''patient education'' needed to teach a patient self-maintenance during the initial stages of treatment would be sufficient in themselves to justify the need for skilled nursing services. The RUG–III system uses nursing rehabilitation frequency of physician visits and number of days on which physician orders change as criteria to assign patients. ''Nursing rehabilitation'' is defined in the *Long Term Care Resident Assessment Manual.* The services considered to be nursing rehabilitation in the PPS system include, but are not limited to, teaching self-care for diabetic management, self-administration of medications, and ostomy care.

It is our experience in the demonstration that these criteria effectively serve as proxies to the existing categories of ''management and evaluation of a care plan,'' ''observation and assessment,'' and ''patient education'' (see the preceding discussion on the RUG–III Clinically Complex category). Observation and assessment (§ 409.33(a)(2)) involves a medically fragile beneficiary who (although not presently receiving any specific skilled services) could potentially undergo a sudden and rapid decline at any time and, consequently, may require skilled expertise on the part of facility staff in order to recognize and respond quickly to the earliest signs of an impending change in condition.

Because the category of observation and assessment is, by definition, limited to a beneficiary whose condition is potentially unstable, the RUG–III criteria for frequency of physician visits and number of order changes clearly represent appropriate proxies in this situation. They similarly serve as appropriate proxies for the category of

skilled management and evaluation (§ 403.33(a)(1)) of an aggregate of nonskilled services (which is generally invoked only during the first few days of a beneficiary's SNF stay, until more specific skilled care needs can be identified through the completion of the resident assessment) and of patient education (§ 409.33(a)(3), which involves teaching self-maintenance during the initial stages of treatment), since these categories are generally confined to the initial portion of the SNF stay, typically before the beneficiary's condition has stabilized. Accordingly, because we anticipate that essentially all patients falling into these categories will be assigned to one of the highest 26 RUG–III groups, we believe that it is no longer necessary to retain these particular categories in the administrative criteria.

As noted above, the dramatic advances in the state of medical and nursing practice that have occurred over the past 25 years have necessitated a reevaluation of some of the specific elements in the existing SNF level of care criteria. These advances in clinical practice have also been accompanied by a significant improvement in the ability to collect and utilize clinical data for program purposes, as exemplified by the MDS and RUG–III. Therefore, we believe it may be appropriate to consider the feasibility of ultimately moving beyond the limited, incremental adjustments in the existing SNF level of care criteria discussed above, in favor of a more fundamental change in the overall process of performing SNF level of care determinations themselves. Specifically, it may be possible to eliminate the use of the existing administrative criteria altogether, by utilizing RUG–III as the exclusive means for making these determinations rather than as a mere adjunct to the administrative criteria.

We believe that the RUG–III system's basic approach, which provides for an ongoing evaluation of an entire cluster of patient indicators, may well represent a more predictable and reliable way of making accurate SNF level of care determinations than the existing administrative criteria's primary focus on reviewing claims information retrospectively for the presence or absence of individual skilled services. Besides being a far simpler procedure from an administrative standpoint, we believe that basing SNF level of care determinations exclusively on the RUG–III system would represent a significant improvement over certain aspects of the existing criteria:

• *Greater reliability in predicting in advance whether a particular beneficiary will qualify for coverage.* Under the current process of determining Medicare coverage with the existing administrative criteria based on a retrospective claims review, it can be difficult to predict with certainty whether a particular beneficiary's SNF care will be covered. One early attempt to address the resulting problem of retroactive coverage denials was the enactment of the ''presumed coverage'' provision in section 228(a) of Public Law 92–603, which was designed to grant periods of SNF coverage prospectively on the basis of a beneficiary's diagnosis. However, in section 941 of the Omnibus Reconciliation Act of 1980 (Public Law 96–499), the Congress ultimately repealed this provision as unworkable. Thus, while the subsequently-enacted hospital PPS was able to use diagnosis successfully as a predictor of resource intensity for acute care, the long-term care setting required the development of indicators that were more sensitive to the particular characteristics of patients in this setting. We believe that in the RUG–III classification system, we have now developed such an instrument, with the potential to bring greater reliability and predictability to the SNF coverage determination process.

• *Increased consistency and uniformity among different contractors in making level of care determinations.* The process of retrospective claims review conducted under the existing administrative criteria inherently relies upon the medical judgment of the individual reviewer. Thus, it would be possible for two claims with essentially identical sets of facts to be adjudicated differently by different contractors. By contrast, RUG–III utilizes a unified set of specific clinical criteria that is more coherent and objective, thus diminishing the potential for variation based on differences in individual judgment.

It is worth noting that even the existing criteria implicitly acknowledge the limitations of an approach that looks solely at the presence or absence of individual skilled services. As mentioned previously, the existing criteria have historically recognized situations that may require skilled overall management and evaluation of the care plan of a beneficiary who receives only an aggregate of unskilled services, or that may require skilled observation and assessment of changes in the condition of an extremely unstable and medically fragile beneficiary, even though the beneficiary does not presently receive any specific skilled services. Further, RUG–III's approach of evaluating a broad cluster of services and other patient indicators is consistent with the recent Medicare trend of grouping individual services into increasingly larger bundles for program purposes, as exemplified by the SNF PPS and Consolidated Billing provisions.

Another reason that it may now be feasible to rely exclusively on the RUG–III system in making level of care determinations is that the upper 26 RUG–III categories and the existing administrative criteria (as now modified) should serve to identify increasingly similar sets of patients as meeting the SNF level of care definition. We also note a steady decline over the course of the demonstration in the proportion of covered days for those beneficiaries assigned to any of the lower 18 RUG–III groups (which initially represented approximately 15 percent of total covered days), to the point where such beneficiaries ultimately accounted for only about 5 to 8 percent of total covered days. Thus, one possible approach might be simply to establish that beneficiaries assigned to the highest 26 groups meet the SNF level of care definition, while those assigned to the lowest 18 groups do not, and we specifically solicit comments on the feasibility of this approach. However, we also solicit comments on the possible extent and specific nature of situations in which beneficiaries who are assigned to one of the lower 18 RUG–III groups might nonetheless meet the statutory standard for an SNF level of care, including information on their clinical profiles as well as the specific basis on which they would qualify for Medicare SNF coverage.

We are also creating a new, rebuttable presumption of an SNF resident's continued ''inpatient'' status for benefit period purposes, based on his or her assignment to one of the upper 26 RUG–III groups. We are adding this new administrative presumption to paragraph (c)(2) of § 409.60 rather than to paragraph (c)(1) since, unlike the presumptions included in paragraph (c)(1), it is not limited to instances in which a claim for Medicare SNF benefits is actually filed. Thus, a benefit period determination under this presumption could be rebutted by presenting evidence establishing that the beneficiary should have been assigned to one of the lower 18 RUG-III groups which, in turn, would permit a determination that the beneficiary was not actually receiving a covered level of care.

III. Three-Year Transition Period

Under sections 1888(e) (1) and (2) of the Act, during a facility's first three

cost reporting periods that begin on or after July 1, 1998 (transition period), the facility's PPS rate will be equal to the sum of a percentage of an adjusted facility-specific per diem rate and a percentage of the adjusted Federal per diem rate. After the transition period, the PPS rate will equal the adjusted Federal per diem rate. The transition period payment method will not apply to SNFs that first received Medicare payments (interim or otherwise) on or after October 1, 1995 under present or previous ownership; these facilities will be paid based on 100 percent of the Federal rate.

The facility-specific per diem rate is the sum of the facility's total allowable Part A Medicare costs and an estimate of the amounts that would be payable under Part B for covered SNF services for cost reporting periods beginning in fiscal year 1995 (base year). The base year cost report used to compute the facility-specific per diem rate in the transition period must be the latest available cost report. It may be settled (either tentative or final) or as-submitted for Medicare payment purposes. Under section 1888(e)(3) of the Act, any adjustments to the base year cost report made as a result of settlement or other action by the fiscal intermediary, including cost limit exceptions/exemptions, results of an appeal, etc., will result in a retroactive adjustment to the facility-specific per diem rate. The instructions below should be used to calculate the facility-specific per diem rate.

A. Determination of Facility-Specific Per Diem Rates

1. Part A Cost Determination

The facility-specific per diem rate reflects the total allowable Part A Medicare cost (routine, ancillary, and capital-related) incurred during a facility's cost reporting period beginning in Federal fiscal year 1995 (base year). The facility-specific per diem rate will be adjusted to account for the amounts of (1) exceptions granted to the inpatient routine services cost limits under § 413.30(f), and (2) new provider exemptions from the cost limits under § 413.30(e), only to the extent that routine service costs do not exceed 150 percent of applicable unadjusted cost limits.

Part A Medicare costs associated with approved educational activities, as defined in § 413.85, are not included in the facility-specific per diem rate. A facility's actual reasonable costs of approved educational activities will be separately identified and apportioned to the Medicare program for payment purposes on the Medicare cost report effective for cost reporting periods beginning on or after July 1, 1998.

Under section 1888(e)(3)(B)(ii) of the Act, for facilities participating in the Nursing Home Case-Mix and Quality Demonstration (RUG–III), the Part A Medicare costs used to compute the facility-specific per diem rate will be the aggregate RUG–III payment received for services furnished in the cost reporting period beginning calendar year 1997 plus the routine capital costs and ancillary costs (other than occupational therapy, physical therapy, and speech pathology costs) as reported on the facility's Medicare cost report that begins in calendar year 1997.

For those low volume SNFs that received a prospectively determined payment rate for SNF routine services, under section 1888(d) of the Act and part 413, subpart I, the facility-specific per diem rate will be the applicable prospectively determined payment rate plus Medicare ancillary cost per diem.

Calculations to determine Medicare Part A costs are to be made as follows:

a. Freestanding Skilled Nursing Facilities. (1) Skilled Nursing Facilities Without an Exception for Medical and Paramedical Education (§ 413.30(f)(4)) or a New Provider Exemption in the Base Year.

i. Routine Costs

Step 1. Determine total program routine service costs for comparison to the cost limitation (HCFA–2540–92, worksheet D–1, line 23 or HCFA–2540–96, worksheet D–1, line 25).

Step 2. Determine Medicare Routine medical education costs—worksheet B, part I, line 16, column 14 divided by total patient days (Worksheet S–3, line 1, column 7) then multiplied by total Medicare days (Worksheet S–3, line 1, column 4).

Step 3. Subtract amount in Step 2. from amount in Step 1. above.

Step 4. Compare amount in Step 3. above to the inpatient routine service cost limitation, including exception amounts other than Medical and Paramedical Education: see (2) below (HCFA–2540–92, worksheet D–1, line 24 or HCFA–2540–96, worksheet D–1, line 27) and take the lesser of the two amounts.

Step 5. Add the amount in Step 4. to the program capital related cost (HCFA–2540–92, worksheet D–1, line 20 or HCFA–2540–96, worksheet D–1, line 22).

ii. Part A Ancillary Costs

Step 1. Determine total program inpatient ancillary services (HCFA–2540–92 or HCFA–2540–96, Worksheet E, part I, line 1).

Step 2. Determine Medicare Ancillary medical education costs—worksheet B, part I, calculate separately each line 21–33, dividing column 14 by column 18. Multiply the resulting percentage by the corresponding line (lines 21–33) on worksheet D, column 4. Total the resulting amounts calculated for lines 21–33.

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

iii. Part A cost Equals the Amount in i.Step 5. Plus the Amount in ii.Step 3. Above

(2) Skilled Nursing Facilities With an Exception for Medical and Paramedical Education in the Base Year.

i. Routine Costs

Step 1. Determine total program routine service costs for comparison to the cost limitation (HCFA–2540–92, worksheet D–1, line 23 or HCFA–2540–96, worksheet D–1, line 25).

Step 2. Determine Medicare Routine medical education costs—worksheet B, part I, line 16, column 14 divided by total patient days (Worksheet S–3, line 1, column 7) then multiplied by total Medicare days (Worksheet S–3, line 1, column 4).

Step 3. Subtract the amount in Step 2. from the amount in Step 1. above

Step 4. From the inpatient routine service cost limitation, including all exception amounts granted, (HCFA–2540–92, worksheet D–1, line 24 or HCFA–2540–96, worksheet D–1, line 27) subtract the exception amount granted for medical and paramedical education costs.

Step 5. Compare amount in Step 3. above with the amount in Step 4. above and take the lesser of the two amounts.

Step 6. Add amount in Step 5. to the program capital related cost (HCFA–2540–92, worksheet D–1, line 20 or HCFA–2540–96, worksheet D–1, line 22).

ii. Part A Ancillary Costs

Step 1. Determine total program inpatient ancillary services (HCFA–2540–92 or HCFA–2540–96, Worksheet E, part I, line 1).

Step 2. Determine Medicare Ancillary medical education costs—worksheet B, part I, calculate separately each line 21–33, dividing column 14 by column 18. Multiply the resulting percentage by the corresponding line (lines 21–33) on worksheet D, column 4. Total the amounts calculated for lines 21–33.

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

iii. Part A cost Equals the Amount in i.Step 6. Plus the Amount in ii.Step 3. Above

(3) Skilled Nursing Facilities With New Provider Exemptions From the Cost Limits in the Base Year.

i. Routine Costs

Step 1. Determine total program routine service costs for comparison to the cost limitation (HCFA–2540–92, worksheet D–1, line 23 or HCFA–2540–96, worksheet D–1, line 25).

Step 2. Determine Medicare Routine medical education costs—worksheet B, part I, line 16, column 14 divided by total patient days (Worksheet S–3, line 1, column 7) then multiplied by total Medicare days (Worksheet S–3, line 1, column 4).

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

Step 4. Multiply the unadjusted inpatient routine service cost limitation (the cost limit amount had the SNF not received an exemption, which is normally reported on HCFA–2540–92, worksheet D–1, line 24 or HCFA–2540–96, worksheet D–1, line 27) by 1.5.

Step 5. Compare amount in Step 3. above with the amount in Step 4. above and take the lesser of the two amounts.

Step 6. Add to the amount in Step 5. the program capital related cost (HCFA–2540–92, worksheet D–1, line 20 or HCFA–2540–96, worksheet D–1, line 22).

ii. Part A Ancillary Costs

Step 1. Determine total program inpatient ancillary services (HCFA–2540–92 or HCFA–2540–96, Worksheet E, part I, line 1).

Step 2. Determine Medicare Ancillary medical education costs—worksheet B, part I, calculate separately each line 21–33, dividing column 14 by column 18. Multiply the resulting percentage by the corresponding line (lines 21–33) on worksheet D, column 4. Total the amounts calculated for lines 21–33.

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

iii. Part A Cost Equals the Amount in i. Step 6. Plus the Amount in ii.Step 3. Above

b. Hospital-based skilled nursing facilities. (1) Skilled Nursing Facilities Without an Exception for Medical and Paramedical Education or a New Provider Exemption.

i. Routine Costs

Step 1. Determine total program routine service costs for comparison to the cost limitation (HCFA–2552–92 or HCFA–2552–96, worksheet D–1, part III, line 76).

Step 2. Determine Medicare Routine medical education costs—worksheet B part I, line 34, sum of columns 21 and 24 (only amounts that are for approved education programs), divided by total patient days (worksheet S–3, part I, line 11 (HCFA–2552–92) or part I, line 15 (HCFA–2552–96) column 6) then multiplied by total Medicare days (worksheet S–3, part I, line 11 (HCFA–2552–92) or part I, line 15 (HCFA–2552–96), column 4).

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

Step 4. Compare amount in Step 3. above to the inpatient routine service cost limitation, including exception amounts other than Medical and Paramedical education; see (2) below, (HCFA–2552–92 or HCFA–2552–96, worksheet D–1, part III, line 78) and take the lesser of the two amounts.

Step 5. Add to amount in Step 4. The program capital related cost (HCFA–2552–92 or HCFA–2552–96, worksheet D–1, part III, line 73).

ii. Part A Ancillary Costs

Step 1. Determine total program inpatient ancillary services (HCFA–2552–92 or HCFA–2552–96, worksheet D–1, part III, line 80).

Step 2. Determine Medicare Ancillary medical education costs—worksheet B, part I, (calculate separately each line 37–59), dividing the sum of columns 21 and 24 (approved programs only) by column 27. Multiply the resulting percentage by the corresponding line (lines 37–59) on worksheet D–4 (SNF), column 3. Total the amounts calculated for lines 37–59.

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

iii. Part A Cost Equals the Amount in i.Step 5. Plus the Amount in ii.Step 3. Above

(2) Skilled Nursing Facilities With an Exception for Medical and Paramedical Education in the Base Year.

i. Routine Costs

Step 1. Determine total program routine service costs for comparison to the cost limitation (HCFA–2552–92 or HCFA–2552–96, worksheet D–1, part III, line 76).

Step 2. Determine Medicare Routine medical education costs—worksheet B part I, line 34, sum of columns 21 and 24 (only amounts that are for approved education programs), divided by total patient days (worksheet S–3, part I, line 11 (HCFA–2552–92) or part I, line 15 (HCFA–2552–96) column 6) then multiplied by total Medicare days (worksheet S–3, part I, line 11 (HCFA–2552–92) or part I, line 15 (HCFA–2552–96), column 4).

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

Step 4. From the inpatient routine service cost limitation, including all exception amounts granted, (HCFA–2552–92 or HCFA–2552–96, worksheet D–1, part III, line 78) subtract the exception amount granted for medical and paramedical education costs.

Step 5. Compare amount in Step 3. above with the amount in Step 4. above and take the lesser of the two amounts.

Step 6. Add to the amount in Step 5. the program capital related cost (HCFA–2552–92 or HCFA–2552–96, worksheet D–1, part III, line 73).

ii. Part A Ancillary Costs

Step 1. Determine total program inpatient ancillary services (HCFA–2552–92 or HCFA–2552–96, worksheet D–1, part III, line 80).

Step 2. Determine Medicare Ancillary medical education costs—worksheet B, part I (calculate separately each line 37–59), dividing the sum of columns 21 and 24 (approved programs only) by column 27. Multiply the resulting percentage by the corresponding line (lines 37–59) on worksheet D–4 (SNF), column 3. Total the amounts calculated for lines 37–59.

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

iii. Part A Cost Equals the Amount in i.Step 6. plus the amount in ii.Step 3. Above

(3) Skilled Nursing Facilities with exemptions from the cost limits in the base year.

i. Routine Costs

Step 1. Determine total program routine service costs for comparison to the cost limitation (HCFA–2552–92 or HCFA–2552–96, worksheet D–1, part III, line 76).

Step 2. Determine Medicare Routine medical education costs—worksheet B, part I, line 34, sum of columns 21 and 24 (only amounts that are for approved education programs), divided by total patient days (worksheet S–3, part I, line 11 (HCFA–2552–92) or part I, line 15 (HCFA–2552–96), column 6) then multiplied by total Medicare days (worksheet S–3, part I, line 11 (HCFA–2552–92) or part I, line 15 (HCFA–2552–96), column 4).

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

Step 4. Multiply the unadjusted inpatient routine service cost limitation (the cost limit amount had the SNF not received an exemption, which is normally reported on HCFA–2552–92 or HCFA–2552–96, worksheet D–1, part III, line 78) by 1.5.

Step 5. Compare amount in Step 3. above with the amount in Step 4. above and take the lesser of the two amounts.

Step 6. Add to the amount in Step 4. the program capital related cost (HCFA–2552–92 or HCFA–2552–96, worksheet D–1, part III, line 73).

ii. Part A Ancillary Costs

Step 1. Determine total program inpatient ancillary services (HCFA–2552–92 or HCFA–2552–96, worksheet D–1, part III, line 80).

Step 2. Determine Medicare Ancillary medical education costs—worksheet B, part I (calculate separately each line 37–59), dividing the sum of columns 21 and 24 (approved programs only) by column 27. Multiply the resulting percentage by the corresponding line (lines 37–59) on worksheet D–4 (SNF), column 3. Total the amounts calculated for lines 37–59.

Step 3. Subtract the amount in Step 2. from the amount in Step 1. above.

iii. Part A Cost Equals the Amount in i.Step 6. Plus the Amount in ii.Step 3. Above

c. Medicare low volume Skilled Nursing Facilities electing prospectively determined payment rate (fewer than 1500 Medicare days).

(1) Providers Filing HCFA–2540–S–87.

Step 1. Determine inpatient ancillary services Part A (HCFA–2540–S–87, worksheet E, part A, line 1).

Step 2. Determine inpatient routine PPS amount (HCFA–2540–S–87, worksheet E, part A, line 6).

Step 3. Part A cost equals the amount in Step 1. plus the amount in Step 2. above.

(2) Providers Filing HCFA–2540 or HCFA–2552.

Step 1. Determine the prospective payment amount is used as the routine cost.

Step 2. Follow the steps under a.(1)(ii) if you are a freestanding SNF or b.(1)(ii) if you are a hospital-based SNF to calculate the ancillary costs.

Step 3. Part A cost equals the amount in Step 1. plus the amount in Step 2. above.

d. Providers participating in the multistate nursing home case-mix and quality demonstration—calculation of the prospective payment system rate. For providers that received payment under the RUGs–III demonstration during a cost reporting period that began in calendar year 1997, we will determine their facility-specific per diem rate using the methodology described below. It is possible that some providers participated in the demonstration but did not have a cost reporting period that began in calendar year 1997. For those providers, we will determine their facility-specific per diem rate by using the calculations in (a), (b), or (c) above. As with the facility-specific per diem applicable to other providers, the allowable costs will be subject to change based on the settlement of the cost report used to determine the total payment under the demonstration. In addition, we derive a special market basket inflation factor to adjust the 1997 costs to the midpoint of the rate setting period (July 1, 1998 to September 30, 1999).

Step 1. Determine the aggregate payment during the cost reporting period that began in calendar year 1997—RUGs–III payment plus routine capital costs plus ancillary costs (other than Occupational Therapy, Physical Therapy, and Speech Pathology).

Step 2. Divide the amount in Step 1. by the applicable total inpatient days for the cost reporting period.

Step 3. Adjust the amount in Step 2. by 1.031532 (inflation factor)—Do not use Table 4.F.

The amount in Step 3 is the facility-specific rate that is applicable for the facility's first cost reporting period beginning after July 1, 1998. A separate calculation for Part B services is not required.

e. Base period cost reports that are adjusted for exception amounts or other post settlement adjustments. Intermediaries will calculate a provider's Medicare Part A costs, as described above, using the latest available version of the cost report in the settlement process. Adjustments made in subsequent cost report versions, through the settlement or reopening process, will result in a revision to the facility-specific rate. Examples of these adjustments include exception amounts or other post-settlement adjustments.

B. Determination of the Part B Estimate

HCFA will supply each intermediary with the estimated Part B charges for each provider that it serves. As explained above, the BBA 1997 requires that the facility-specific per diem rates reflect items and services (other than those specifically excluded) for which, prior to July 1, 1998, payment had been made under Part B but furnished to SNF residents during a Part A covered stay. Accordingly, it was necessary to determine the Part B allowable charges (including coinsurance) associated with the SNFs contained in the cost report data base. This was accomplished by matching 100 percent of the Medicare Part B SNF claims associated with Part A covered SNF stays related to the SNF cost reporting periods beginning in the 1995 base year. The matched Part B allowable charges were computed at a facility level by the appropriate cost report cost center (for example, laboratory services, supplies) with the cost report data.

C. Calculation of the Facility-Specific Per Diem Rate

The facility-specific per diem rate is equal to the sum of Medicare Part A costs as determined in section III.A above and the Medicare Part B estimate described in section III.B above.

Example: The rules as shown under b.(2) above will be used in this example.

ABC SNF is a hospital-based SNF which received an exception of $10,000 of which $5,000 was for Medical and Paramedical Education costs in accordance with the rules at § 413.30(f)(4) in its base year. ABC SNF filed its cost report using HCFA–2552–96. ABC's facility-specific per diem rate for its first cost reporting period beginning in the transition period is calculated as follows:

Step 1. ABC SNF reported program routine service costs for comparison to the cost limits on worksheet D–1, part III, line 76 of $200,000.

Step 2. Total (all patients) routine medical education costs (approved programs) from worksheet B, part I, line 34, the sum of columns 21 and 24 totaled $25,000. Total patient days from worksheet S–3, part I, line 15, column 6 were 5,000 and total Medicare days (worksheet S–3, part I, line 15, column 4) were 1,000. Dividing the total costs of $25,000 by the total days of 5,000 gives you a cost per day of $5.00. Multiply the cost per day by the Medicare days of 1,000, which results in the total Medicare routine medical education cost of $5,000.

Step 3. Subtract the amount in Step 2. ($5,000) from the amount in Step 1. ($200,000) or $195,000 ($195.00 per Medicare day).

Step 4. ABC SNF's inpatient routine service cost limitation amount without any exception amounts is $180,000, the amount with all exception amounts including the $5,000 exception amount for medical and paramedical education costs from worksheet D–1, part III, line 78 is $190,000 ($180,000 plus $10,000). Subtract the exception amount for medical and paramedical education of $5,000 to equal $185,000.

Step 5. Determine the lesser amount in Step 3. and Step 4. above—$185,000.

Step 6. Add the program capital-related cost of $20,000 from worksheet D–1, part III, line 73 to the amount in Step 5 above to equal $205,000.

Step 7. ABC SNF has total program inpatient ancillary services costs on

worksheet D–1, part III, line 80 of $350,000.

Step 8. Determine Medicare ancillary medical education costs (approved programs) from worksheet B, part I, lines 37–59. Calculating each line (separately calculate each line) by taking the sum of columns 21 and 24 and dividing by column 27 (approved programs only). Multiply this percentage by the corresponding line (lines 37–59) on worksheet D–4 (SNF), column 3. Totaling the amounts calculated for lines 37–59 ABC SNF had Medicare ancillary medical education costs of $35,000.

Step 9. Subtract amount in Step 8 ($35,000) from line 7 ($350,000) or $315,000.

Step 10. Determine the estimated Part B amount supplied by HCFA for ABC. Assume, for this example, that this amount is $50,000.

Step 11. Add amounts in Step 6 ($205,000), Step 9 ($315,000), and Step 10 ($50,000) to determine the facility-specific per diem rate of $570.00 ($570,000 divided by 1,000 Medicare days).

D. Computation of the Skilled Nursing Facility Prospective Payment System Rate During the Transition

For the first three cost reporting periods beginning on or after July 1, 1998 (transition period), an SNF's payment under the PPS is the sum of a percentage of the facility-specific per diem rate and a percentage of the Federal per diem rate. Under section 1888(e)(2)(C) of the Act, for the first cost reporting period in the transition period, the SNF payment will be the sum of 75 percent of the facility-specific per diem rate and 25 percent of the Federal per diem rate. For the second cost reporting period, the SNF payment will be the sum of 50 percent of the facility-specific per diem rate and 50 percent of the Federal per diem rate. For the third cost reporting period, the SNF payment will be the sum of 25 percent of the facility-specific per diem rate and 75 percent of the Federal per diem rate. For all subsequent cost reporting periods beginning after the transition period, the SNF payment will be equal to 100 percent of the Federal per diem rate. See the example below.

Example of computation of adjusted PPS rates and SNF payment:

Using the ABC SNF described in this section, the following shows the adjustments made to the facility-specific per diem rate and the Federal per diem rate to compute the provider's actual per diem PPS payment in the transition period. ABC's 12-month cost reporting period begins July 1, 1998.

Step 1.

Compute:

Facility-specific per diem rate		$570.00
Market Basket Adjustment (Table 4.F)	×	1.05149
Adjusted facility-specific rate	....	$599.35

Step 2.

Compute Federal per diem rate:

SNF ABC from above is located in State College, PA with a wage index of 0.9635.

RUG group	Labor portion*	Wage index	Adjusted labor	Nonlabor portion*	Adjusted rate	Medicare days	Payment
RVC	$224.74	0.9635	$216.54	$71.41	$287.95	50	$14,398
RHC	206.06	.9635	198.54	65.47	264.01	100	26,401
Total						150	40,799

*From Table 2.G.

Step 3.

Apply transition period percentages:

Facility-specific per diem rate $599.35×150 days=	$89,903
Times transition percentage (75 percent)	×.75
Actual facility-specific PPS payment	$67,427
Federal PPS payment	$40,799
Times transition percentage (25 percent)	×.25
Actual Federal PPS payment	$10,200

Step 4.

Compute total PPS payment

ABC's total PPS payment ($67,427+$10,200)	$77,627

IV. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires the Secretary to establish an SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. Accordingly, as described below, we have developed an SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses.

A. Rebasing and Revising of the Skilled Nursing Facility Market Basket

1. Background

Effective for cost reporting periods beginning on or after October 1, 1979, we developed and adopted a routine SNF input price index, that is, the SNF market basket using data from 1977 as the base year.

Although ''market basket'' technically describes the mix of goods and services needed to produce SNF care, this term is also commonly used to denote the input price index that includes both weights (mix of goods and services) and price factors. Accordingly, the term ''market basket'' used in this rule refers to the SNF input price index.

The 1977-based routine SNF market basket was for routine costs (ancillary services and capital-related costs were excluded). The percentage change in the 1977-based routine market basket reflects the average change in the price of a fixed set of goods and services purchased by SNFs to furnish routine services. We first used the market basket to adjust SNF cost limits to reflect the average increase in the prices of the goods and services used to furnish routine reasonable costs for SNF care. This approach linked the increase in the cost limits to the efficient utilization of resources. For background information, see the August 31, 1979 **Federal Register** (44 FR 51542).

For purposes of SNF PPS, the total cost SNF market basket is a fixed-weight (Laspeyres type) price index constructed in three steps. First, a base period is selected and total base period expenditure for cost shares is estimated for mutually exclusive and exhaustive spending categories. Total costs for routine services, ancillary costs, and capital-related costs are used. These proportions are called ''cost'' or ''expenditure'' weights. The second step essential for developing an input price index is to match each expenditure category to a price/wage variable, called a price proxy. These price proxy variables are drawn from publicly

available statistical series published on a consistent schedule, preferably at least quarterly. In the final step, the price level for each spending category is multiplied by the expenditure weight for that category. The sum of these products (that is, weights multiplied by proxy index levels) for all cost categories yields the composite index level in the market basket for a given quarter or year. Repeating the third step for other quarters and years produces a time series of market basket index levels. Dividing one index level by an earlier index level produces rates of growth in the input price index.

The market basket is described as a fixed-weight index because it answers the question of how much more or less it would cost, at a later time, to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent or prior to the base period are, by design, not considered.

To implement section 1888(e)(5)(A) of the Act, it is necessary to revise and rebase the routine cost market basket so the cost weights and price proxies reflect the mix of goods and services that SNFs purchase for all costs (routine, ancillary, and capital-related) encompassed by SNF PPS. The current SNF routine cost weights (excluding ancillary costs and capital-related costs) are from calendar year 1977. To the extent feasible, the data used to revise and rebase the SNF market basket are from fiscal year 1992. If data from an earlier period supplement fiscal year 1992 data, they have been aged forward for price changes.

2. Rebasing and Revising the Skilled Nursing Facility Market Basket

The terms ''rebasing'' and ''revising,'' while often used interchangeably, actually denote different activities. Rebasing means moving the base year for the structure of costs of an input price index (for example, for this rule, we have moved the base year cost structure from calendar year 1977 to fiscal year 1992). Revising means changing data sources, cost categories, and/or price proxies used in the input price index.

To implement section 1888(e)(5)(A) of the Act, we are rebasing and revising the routine SNF market basket (excluding ancillary and capital-related costs) to reflect 1992 total cost data (routine, ancillary, and capital-related), the latest available relatively complete data on the structure of SNF costs; and to modify certain variables used as the price proxies for some of the cost categories.

In developing the revised market basket, we reviewed SNF expenditure data for the market basket cost categories. We reviewed Medicare Cost Reports for PPS–9 for each freestanding SNF that had Medicare expenses greater than 1 percent of total expenses. PPS–9 cost reports are those with cost reporting periods beginning after September 30, 1991 and before October 1, 1992. Data on SNF expenditures for six major expense categories (wages and salaries, employee benefits, contract labor, pharmaceuticals, capital-related, and a residual ''all other'') were edited and tabulated. After totals for these main cost categories were calculated, we then determined the proportion of total costs that each category represented. The proportions represent the revised and rebased major market basket weights for total costs including routine, ancillary, and capital-related costs.

Relative weights within the six categories were derived using U.S. Department of Commerce data for the nursing home industry. Relative cost shares from the Bureau of the Census' 1992 Asset and Expenditure Survey and the Bureau of Economic Analysis' (BEA) 1992 Input-Output Tables were used to disaggregate and allocate costs within the six categories from the 1992 SNF Medicare Cost Reports. The BEA Input-Output database, which is updated at 5-year intervals, was most recently described in the Survey of Current Business, ''Benchmark Input-Output Accounts for the U.S. Economy, 1992'' (November 1997).

We developed the capital-related portion of the rebased and revised SNF PPS market basket using the same overall methodology used to develop the hospital PPS capital input price index. The methodology for hospitals is described in full detail in the May 31, 1996 (61 FR 27466) and the August 30, 1996 (61 FR 46196) **Federal Register** publications. The strength of this HCFA methodology is that it reflects the vintage nature of capital, which is the acquisition and use of capital over time. Price levels are determined for capital acquired in current and prior years and vintage-weighted based on historical capital acquisition patterns. These vintage-weighted price changes reflect the price changes associated with the capital acquisition process.

Because there are fewer data on capital-related costs for the SNF industry than for the hospital industry, we developed a methodology that makes the maximum use of the existing SNF data. We have developed a framework that integrates existing SNF capital data with related data sources and assumptions. We determined that reasonable changes in the capital-related assumptions have little impact on the overall SNF market basket (routine costs, capital-related costs, and ancillary costs). We also compared the price changes from the capital-related component of the SNF market basket to the price changes in the hospital PPS capital input price index and other price indexes. The comparison showed that the changes in the different indexes were reasonable in relation to changes with the SNF capital-related component. A detailed explanation of how both the cost category weights and the vintage weights were determined, which price proxies were chosen, the effect of using different assumptions, and a comparison of capital-related components of the rebased SNF PPS market basket to other price indexes is given in the Appendix.

Our work resulted in 21 separate categories for the rebased and revised total market basket. The 1977-based routine cost SNF market basket had 12 separate cost categories. Detailed descriptions of each cost category and respective price proxy in the 1992-based market basket are provided in the Appendix to this rule. The six major categories for the revised and rebased cost categories and weights derived from SNF Medicare Cost Reports are summarized in Table 4.A below.

TABLE 4.A—1992 SKILLED NURSING FACILITY MARKET BASKET MAJOR COST CATEGORIES AND WEIGHTS FROM MEDICARE COST REPORTS

Cost categories	1992-based skilled nursing facility market basket weights (percent)
Wages and Salaries	47.805
Employee Benefits	10.023
Contract Labor	12.852
Pharmaceuticals	2.531
Capital-related Costs	9.777
All Other Costs	17.012
Total Costs	100.000

After the 21 cost weights for the revised and rebased SNF market basket were developed, we selected the most appropriate wage and price proxies currently available to monitor the rate of increase for each expenditure category. With three exceptions (all for the Capital-Related Expenses cost category), the wage and price proxies are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

- Employment Cost Indexes—Employment Cost Indexes (ECIs)

measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are not affected by shifts in occupation or industry mix. ECIs were not available when we developed the calendar year 1977-based routine SNF market basket. ECIs are superior to Average Hourly Earnings (AHEs) as price proxies for input price indexes for two reasons: (1) they measure pure price change, and (2) they are available by occupational groups, not just by industry.

• Consumer Price Indexes—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by consumers. CPIs were only used when the purchases were similar to those of retail consumers rather than purchases at the wholesale level, or if no appropriate Producer Price Index (PPI) were available.

• Producer Price Indexes—PPIs are used to measure price changes for goods sold in other than retail markets. For example, a PPI for movable equipment was used, rather than a CPI for equipment.

The contract labor weight of 12.852 was reallocated to (1) wages and salaries, (2) employee benefits, and (3) the all other expenses cost category so that the same price proxies that were used for direct labor and nonlabor costs could be applied to contract costs. The rebased and revised cost categories, weights, and price proxies for the 1992-based SNF market basket are listed in Table 4.B below.

TABLE 4.B—1992-BASED COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Cost category	1992-based market basket weight	Price proxy
Operating Expenses	90.223	
Compensation	67.059	
Wages and Salaries	54.262	ECI for Wages and Salaries for Private Nursing Homes
Employee benefits	12.797	ECI for Benefits for Private Nursing Homes
Nonmedical professional fees	1.916	ECI for Compensation for Private Professional, Technical and Specialty workers
Utilities	2.500	
Electricity	1.626	PPI for Commercial Electric Power
Fuels, nonhighway	0.332	PPI for Commercial Natural Gas
Water and sewerage	0.542	CPI-U for Water and Sewerage
Other Expenses	18.747	
Other Products	10.964	
Pharmaceuticals	2.531	PPI for Prescription Drugs
Food	3.353	
Food, wholesale purchase	2.577	PPI for Processed Foods
Food, retail purchase	0.776	CPI-U for Food Away From Home
Chemicals	0.720	PPI for Industrial Chemicals
Rubber and plastics	1.529	PPI for Rubber and Plastic Products
Paper products	1.005	PPI for Converted Paper and Paperboard
Miscellaneous products	1.826	PPI for Finished Goods
Other Services	7.783	
Telephone Services	0.385	CPI-U for Telephone Services
Labor-intensive Services	3.686	ECI for Compensation for Private Service Occupations
Non labor-intensive services	3.713	CPI-U for All Items
Capital-related Expenses	9.777	
Total Depreciation	5.915	
Building & Fixed Equipment	4.118	Boeckh Institutional Construction Index
Movable Equipment	1.797	PPI for Machinery & Equipment
Total Interest	3.189	
Government & Nonprofit SNFs	1.658	Average Yield Municipal Bonds (Bond Buyer Index-20 bonds)
For-Profit SNFs	1.531	Average Yield Moody's AAA Bonds
Other Capital-related Expenses	0.674	CPI-U for Residential Rent
Total	* 100.000	

* may not add due to rounding

In the 1992-based total costs market basket, the labor-related share is 75.888 percent, while the non-labor-related share is 24.112 percent. The labor-related share for the 1977-based routine cost market basket (81.2 percent) included wages and salaries, employee benefits, health services, business services, and miscellaneous costs, while the labor-related share of the 1992 total cost market basket (75.888 percent) includes wages and salaries, employee benefits, professional fees, labor-intensive services, and a 33 percent share of capital-related expenses as shown on Table 4.C below. The share of labor-related costs in 1992 reflects the change from only routine costs to total costs (routine, ancillary, and capital-related) and the changing mix of SNF services between 1977 and 1992.

The labor-related share for capital-related expenses was determined to be 33 percent of capital-related expenses, or 3.227 percent of the total PPS SNF market basket. This share was estimated from a statistical analysis of individual SNF Medicare Cost Reports for 1993 since nearly all reports from this year were settled. The statistical analysis was necessary because the proportion of capital-related expenses related to local area wage costs cannot be directly determined from the SNF capital-related market basket as it can for operating and ancillary costs.

We performed regression analysis with capital-related costs per day in SNFs as the dependent variable and relevant explanatory variables for size, complexity, efficiency, age of capital, and local wage variation. To account for

these factors, we used number of beds, case-mix indexes, occupancy rate, ownership, age of assets, length of stay, FTEs per bed, and the wage index values based on hospital wage index (wages and employee benefits) as independent variables. The regression statistics showed each variable was statistically significant and an adjusted r-square that was acceptable given the large number of observations. The independent variable most relevant for our purpose is the wage index values based on hospital wage data, since this index is being used to adjust payments under SNF PPS for geographic variation in local labor costs. The regressions use log transformations for the dependent and independent variables, hence the coefficients can be interpreted as elasticities. The coefficient for the wage index value was 0.33 with a t-value of 4.3. The interpretation of this coefficient as an elasticity is that a 10 percent increase in the wage index value leads to a 3.3 percent increase in capital-related costs per day. This coefficient is equivalent to the portion of capital-related expenses in the SNF market basket that are considered to be labor-related. Multiplying the 0.33 by the capital-related share of 9.777 yields a labor-related share for capital of 3.227 percent of the total SNF market basket.

Conceptually it seems appropriate that capital-related expenses would vary less with local wages than would operating expenses for SNFs. Operating expenses for SNFs are determined in large part from the labor inputs for relatively low-skilled employees that are tightly linked to local wage levels in local labor markets. Wages, salaries, and benefits constitute a majority of the operating costs of providing SNF services; the labor-related share of operating expenses is 80.6 percent. For capital-related expenses, however, annual costs in the current year are for capital purchased over time. Capital-related expenses are determined in some proportion by local area costs (such as construction worker wages and building materials costs) that are reflected in the price of the capital asset. However, many other inputs that determine capital costs are not related to local area wage costs, such as equipment prices and interest rates. We found a similar lower share for capital-related expenses in hospitals.

We also conducted regression analyses with operating and total costs per day for SNFs as the dependent variable. The findings of our analysis of SNF operating and total costs per day are consistent with the PPS SNF market basket weights and structure. For operating costs per day, the regression analysis yielded a coefficient nearly the same as the operating labor-related share from the SNF market basket. The regression of total costs per day yielded a coefficient of 0.74 percent, nearly the same as the total labor-related share (operating and capital-related) from the SNF market basket. We also conducted a similar regression analysis on hospital costs per case and determined the results to be consistent with the PPS hospital market basket.

Approaching the labor-related share several different ways validated the appropriateness of using regression analysis. Therefore, we are using this analysis in determining the labor-related share for PPS SNF capital-related expenses.

TABLE 4.C—1992-BASED LABOR-RELATED SHARE

Cost category	1992-based market basket weight
Wages and Salaries	54.262
Employee Benefits	12.797
Nonmedical Professional Fees	1.916
Labor-intensive Services	3.686
Capital-related	3.227
Total	75.888

All price proxies for the rebased SNF market basket are listed in Table 4.B and summarized in the Appendix to this rule. A comparison of the yearly historical percent changes from 1994 through 1996 for the current 1977-based routine costs market basket and the 1992-based total cost market basket is shown below in Table 4.D.

TABLE 4.D—COMPARISON OF THE 1977-BASED SKILLED NURSING FACILITY ROUTINE COSTS MARKET BASKET AND THE 1992-BASED SKILLED NURSING FACILITY TOTAL COSTS MARKET BASKET, PERCENT CHANGES, 1994–1996*

Fiscal years beginning October 1	Skilled Nursing Facility Routine Market Basket, CY 1977 base	Skilled nursing facility total cost market basket, FY 1992 base
Historical:		
October 1993, FY 1994	3.6	3.2
October 1994, FY 1995	2.8	3.0
October 1995, FY 1996	2.6	2.7

TABLE 4.D—COMPARISON OF THE 1977-BASED SKILLED NURSING FACILITY ROUTINE COSTS MARKET BASKET AND THE 1992-BASED SKILLED NURSING FACILITY TOTAL COSTS MARKET BASKET, PERCENT CHANGES, 1994–1996*—Continued

Fiscal years beginning October 1	Skilled Nursing Facility Routine Market Basket, CY 1977 base	Skilled nursing facility total cost market basket, FY 1992 base
Historical Average: 1994–1996	3.0	3.0

*Note: The 1992 total cost market basket is measuring a different cost concept than the 1977 routine cost market basket. Differences between the two indexes are expected.

Source: Standard & Poor's DRI HCC, 4th QTR, 1997; @USSIM/TREND25YR1197 @CISSIM/CONTROL974.

Released by HCFA, OACT, National Health Statistics Group.

Note that the historical average rate of growth for 1994 through 1996 for the SNF 1992-based total cost market basket is equal to that of the 1977-based routine market basket. We believe that the 1992-based SNF total cost market basket provides a more current measure of the annual increases in total cost care than the 1977-based SNF market basket because: (1) the cost structure includes routine, ancillary, and capital-related costs, not just routine cost, (2) the cost structure reflects the structure of costs for the most recent year for which there are relatively complete data, and (3) superior new wage-price variables have been incorporated into the 1992-based index. The forecasted rates of growth used to compute the projected SNF market basket percentages, described in the next section, are shown below in Table 4.E.

TABLE 4.E—SKILLED NURSING FACILITY TOTAL COST MARKET BASKET, FORECASTED CHANGE, 1997–2000

Fiscal years beginning October 1	Skilled Nursing facility total cost market basket
October 1996, FY 1997	2.4
October 1997, FY 1998	2.8
October 1998, FY 1999	3.0
October 1999, FY 2000	3.1
Forecasted Average: 1997–2000	2.8

Source: Standard & Poor's DRI HCC, 4th QTR, 1997; @USSIM/TREND25YR1197 @CISSIM/CONTROL974.

Released by HCFA, OACT, National Health Statistics Group.

We are considering a mechanism to adjust future SNF PPS rates for forecast errors. The forecasted SNF total cost market basket changes shown in Table 4.E are based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming rate setting period. In any given year, there may be unanticipated price fluctuations that may result in differences between the actual increases in prices faced by SNFs and the forecast used in calculating the update factors. We are reviewing the analytical framework for updating the standard Federal rate under the hospital PPS to account for forecast errors. If this framework is chosen to update the SNF PPS rate, an adjustment would be made only if the forecasted market basket percentage change for any year differs from the actual percentage change by 0.25 percentage points or more. There would be a 2-year lag between the forecast and the measurement of the forecast error. Thus, for example, we would adjust for an error in forecasting the 1997 market basket percentage used to compute the PPS rates effective with this interim final rule through an adjustment to the fiscal year 1999 update to the SNF PPS rates.

B. Use of the Skilled Nursing Facility Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index, described in the previous section, from the midpoint of the prior fiscal year (or period) to the midpoint of the fiscal year (or other period) involved. The facility-specific portion and Federal portion of the SNF PPS rates effective with this rule are based on cost reporting periods beginning in Federal fiscal year 1995 (base year). The percentage increases in the SNF market basket index will be used to compute the update factors to reflect cost increases occurring between the cost reporting periods represented in the base year and the midpoint of the fiscal year (or other period). We used the Standard & Poor's DRI CC, 4th quarter 1997 historical and forecasted percentage increases of the revised and rebased SNF market basket index for routine, ancillary, and capital-related expenses, described in the previous section, to compute the update factors. The update factors, as described below, will be used to adjust the base year costs for computing the facility-specific portion and Federal portion of the SNF PPS rates.

1. Facility-Specific Rate Update Factor

Under section 1888(e)(3)(D)(i) of the Act, for the facility-specific portion of the SNF PPS rate, we will update a facility's base year costs up to the facility's first cost reporting period beginning on or after July 1, 1998 and before October 1, 1999 (initial period) by the SNF market basket percentage, reduced by one percentage point. We took the following steps to develop the 12-month cost reporting period facility-specific rate update factors shown in Table 4.F.

Step 1. Determine the cumulative growth from the average market basket level for each 12-month cost report period to the average market basket level for its corresponding 12-month period beginning on or after July 1, 1998.

Step 2. From the cumulative growth in Step 1, determine the average annual rate of growth for the period from each beginning 12-month period's average market basket index level to its corresponding 12-month period beginning on or after July 1, 1998.

Step 3. Subtract 1.0 percentage point from each average annual rate of growth calculated in Step 2.

Step 4. Determine what the revised cumulative growth for each 12-month's period average index level would have been, using the revised average annual rates of growth from Step 3. The resulting update factors are shown in Table 4.F.

TABLE 4.F—UPDATE FACTORS[1] FOR FACILITY-SPECIFIC PORTION OF THE SNF PPS RATES—ADJUST TO 12-MONTH COST REPORTING PERIODS BEGINNING ON OR AFTER JULY 1, 1998 AND BEFORE OCTOBER 1, 1999 [(INITIAL PERIOD) FROM COST REPORTING PERIODS BEGINNING IN FY 1995 (BASE YEAR)]

If 12-month cost reporting period in initial period begins	Adjust from 12-month cost reporting period in base year that begins	Using update factor of
July 1, 1998	July 1, 1995	1.05149
August 1, 1998	August 1, 1995	1.05197
September 1, 1998	September 1, 1995	1.05253
October 1, 1998	October 1, 1994	1.07116
November 1, 1998	November 1, 1994	1.07125
December 1, 1998	December 1, 1994	1.07126
January 1, 1999	January 1, 1995	1.07143
February 1, 1999	February 1, 1995	1.07176
March 1, 1999	March 1, 1995	1.07226
April 1, 1999	April 1,1995	1.07270
May 1, 1999	May 1, 1995	1.07308
June 1, 1999	June 1, 1995	1.07340
July 1, 1999	July 1, 1995	1.07381
August 1, 1999	August 1, 1995	1.07428
September 1, 1999	September 1, 1995	1.07484

[1] *Source:* Standard & Poor's DRI, 4th Qtr 1997; @USSIM/TREND25YR1197@CISSIM/CONTROL974

A 12-month cost reporting period that begins on July 1, August 1, or September 1 will have two cost reporting periods within the initial period. Table 4.F provides update factors for these three beginning dates for 1998 and 1999. The 1998 cost reporting period is considered the first cost reporting period for the purposes of applying the facility-specific percentage in the transition period. The 1999 cost reporting period, for the same provider, is considered the second cost reporting period for the purposes of applying the facility-specific percentage in the transition period. The transition period percentages are presented elsewhere in this rule.

SNFs may have cost reporting periods that are fewer than 12 months in duration (short period). This may occur, for example, when a provider enters the Medicare program after its selected fiscal year has already begun, or when a provider experiences a change of ownership before the end of the cost reporting period. Since short periods affect a small number of providers, relative to the total number of SNFs, and the facility-specific portion of the SNF PPS rate is subject to a transition period, we do not believe consideration of computing a ''short period specific'' update factor is warranted. Accordingly, we will apply the following rules to short periods.

a. Short period in base year. First, select the later short period in the base year for the affected provider. Second, if necessary, adjust the beginning or end of the short period as follows. Short periods may not necessarily begin on the first of the month or end on the last day of the month. In order to simplify the process of determining the short period update factor, if the short period begins before the 16th of the month, it will be adjusted to a beginning date of the 1st of that month. If the short period begins on or after the 16th of the month, it will be adjusted to the beginning of the next month. Also, if the short period ends before the 16th of the month, it will be adjusted to the end of the preceding month, or, if the short period ends on or after the 16th of the month, it will be adjusted to the end of that month. Third, determine the midpoint of the short period. Fourth, use the following midpoint guidelines to determine which 12-month update factor to use from Table 4.F.

If the midpoint of short period falls between	Use factor for this 12-month period
March 16, 1995–April 15, 1995	October 1994–September 1995
April 16, 1995–May 15, 1995	November 1994–October 1995
May 16, 1995–June 15, 1995	December 1994–November 1995
June 16, 1995–July 15, 1995	January 1995–December 1995
July 16, 1995–August 15, 1995	February 1995–January 1996
August 16, 1995–September 15, 1995	March 1995–February 1996
September 16, 1995–October 15, 1995	April 1995–March 1996
October 16, 1995–November 15, 1995	May 1995–April 1996
November 16, 1995–December 15, 1995	June 1995–May 1996
December 16, 1995–January 15, 1996	July 1995–June 1996
January 16, 1996–February 15, 1996	August 1995–July 1996
February 16, 1996–March 15, 1996	September 1995–August 1996

b. Short period in initial period. Providers with short periods that begin on or after July 1, 1998 and before October 1, 1999 (initial period) should use the instructions above to adjust the beginning date of the short period and then use the 12-month factor that corresponds to the beginning date of the ''adjusted to period'' in Table 4.F. The first short period in the initial period is considered the first cost reporting period for the purposes of applying the facility-specific percentage in the transition period. Each subsequent short period, for the same provider, of any duration is considered the second or third cost reporting period for the purposes of applying the facility-specific percentage in the transition period. The transition period percentages are presented elsewhere in this rule.

c. Short period between base year and initial period. A provider may experience a change of ownership or may receive proper approval to change its cost reporting period between the base year cost reporting period and the initial period. If this occurs, the base year cost reporting period may begin on a date that is different than that of the initial period. In these instances, use the beginning date of the initial period to determine the 12-month factor that corresponds to the beginning date of the ''adjusted to period'' in Table 4.F.

2. Federal Rate Update Factor

To develop the Federal rates, we updated each facility's base year costs up to the midpoint of the initial period by the SNF market basket percentages, reduced by one percentage point. We developed the Federal rate adjustment factors using the following methodology:

Step 1. Determine the cumulative growth from the average market basket level for each 12-month cost reporting period to the average market basket level for the 15-month common period.

Step 2. From the cumulative growth in Step 1., determine the average annual rate of growth for the period from each beginning 12-month period's average market basket index level to the average market basket index level of the ending 15-month common period.

Step 3. Subtract 1.0 percentage point from each average annual rate of growth calculated in Step 2.

Step 4. Determine what the revised cumulative growth for each period's average index level would have been, using the revised average annual rates of growth from Step 3.

Step 5. Apply the revised cumulative percentage growth to the average market basket index level for the beginning cost reporting period, which yields revised 15-month average index levels for the common ending period.

Step 6. Using the revised 15-month average index levels determined in Step 5, calculate the ratio of each revised average index level to the original average common period index level.

Step 7. To determine the revised factors to apply to SNF cost reporting periods beginning between October 1, 1994 and September 30, 1995, multiply each factor for adjusting cost reports to the common period by the ratios determined in Step 6. This yields revised factors that reflect an average annual rate equal to the SNF market basket percentage minus 1 percentage point.

These revised update factors were used to compute the Federal portion of the SNF PPS rate shown in Tables 2.A and 2.B.

V. Consolidated Billing

A. Background of the Skilled Nursing Facility Consolidated Billing Provision

Section 4432(b) of the BBA 1997 amended the Social Security Act to establish a requirement for SNF Consolidated Billing, effective for items and services furnished on or after July 1, 1998. SNF Consolidated Billing is a comprehensive billing requirement (similar to the one that has been in effect for inpatient hospital services for well over a decade), under which the SNF itself is responsible for billing Medicare for virtually all of the services that its residents receive. SNF Consolidated Billing is necessary for a number of reasons.

Historically, an SNF could choose to furnish services to its residents either directly with its own resources, or under an ''arrangement'' with an outside source; in either instance, the SNF itself was responsible for submitting the bill for the service to its Medicare fiscal intermediary (FI). However, the SNF has also had the additional option of ''unbundling'' a service altogether; that is, permitting an outside supplier to furnish the service directly to an SNF resident and to submit a bill independently to the carrier under Part B, in lieu of any actual involvement by the SNF itself. The ability on the part of suppliers to submit separate bills directly to the carrier for these unbundled services has been extremely problematic in several ways.

First, it has created a potential for duplicate billing. For example, an SNF might include a particular service in its bill to the FI under Part A at the same time that an outside supplier is improperly submitting a Part B claim to the carrier for the identical service. Unless the Medicare contractors detect this inappropriate duplication in billing, the program ultimately pays twice for the same service.

Further, even in instances where only the supplier bills for the service, the practice of unbundling has resulted in additional out-of-pocket liability for the beneficiary. Under Part A, an SNF resident's only financial liability during a covered stay is for the SNF coinsurance that begins after the 20th day of the stay. The SNF coinsurance amount is set at a flat rate per day (which, by law, represents ⅛ of the current inpatient hospital deductible amount), and this amount does not vary with the number of services that the resident actually receives from one day to the next. This means that even if the SNF furnishes some additional services on a given day, the resident's daily coinsurance amount under Part A does not increase. However, if the SNF decides instead to unbundle those services to an outside supplier which then bills the carrier under Part B, this causes the resident to incur an additional out-of-pocket liability for any unmet deductible under Part B, as well as for Part B's 20 percent coinsurance.

Finally, along with the potential for duplicate billing and for subjecting the beneficiary to needless expense, unbundling has raised quality of care and program integrity concerns for SNF residents—including those who are not in a covered Part A stay—by dispersing the responsibility for providing resident care among a myriad of outside suppliers. This fragmentation in the provision and billing of services has diminished the SNF's own capacity to oversee, coordinate, and account for the total package of care that its residents receive, and has rendered the SNF less able to guard against inappropriate billing practices and utilization.

For years, HCFA pursued legislative proposals to prohibit the practice of unbundling in SNFs, but without success. As with inpatient hospital services, the event that finally brought about a comprehensive billing requirement for SNF services was the creation of a PPS for SNFs. In order to have a prospective payment that includes all of the medically necessary services that an SNF resident receives, it is essential to tie all of those services into a single facility package, by prohibiting unbundling. Otherwise, the Medicare program would once again be faced with potentially paying twice for the same service—once to the SNF under the Part A prospective payment, and again to an outside supplier under Part B.

B. Skilled Nursing Facility Consolidated Billing Legislation

Under the SNF Consolidated Billing requirement established by section 4432(b) of the BBA 1997, the SNF itself has the Medicare billing responsibility for virtually all of the Medicare-covered services that its residents receive. The following is a discussion of the specific provisions of the legislation.

1. Specific Provisions of the Legislation

- Section 4432(b)(1) of the BBA 1997 adds a new paragraph (18) to section 1862(a) of the Act, which prohibits Medicare coverage of services furnished to an SNF resident (other than those services that are specifically excluded from the SNF Consolidated Billing requirement) unless they are furnished or arranged for by the SNF itself.
- Section 4432(b)(2) of the BBA 1997 adds a new paragraph (E) to section 1842(b)(6) of the Act, which specifies that, for any such services that are covered under Part B, Medicare makes payment to the SNF rather than to the beneficiary.
- Section 4432(b)(3) of the BBA 1997 adds to section 1888(e) of the Act a new paragraph (9), which requires that the payment amount for Part B services furnished to an SNF resident shall be the amount prescribed in the otherwise applicable fee schedule, and a new paragraph (10), which requires the SNF's Part B bills to identify all items and services through a uniform coding system to be specified by the Secretary. Under this authority, we are specifying the HCFA Common Procedure Coding System (HCPCS) as the coding system to be used. The HCPCS coding requirement is intended to enable the Medicare contractor to identify individual items and services more readily on the claim; this, in turn, will help enable the contractor to limit the amounts it pays the SNF to any applicable Part B fee schedule amounts in accordance with section 1888(e)(9) of the Act.
- Section 4432(b)(4) of the BBA 1997 adds a new paragraph (t) to section 1842 of the Act, which requires physicians to include the SNF's Medicare provider number on bills for physician services furnished to SNF residents that are separately billable to the Part B carrier (see discussion in section V.B.2. below).
- Section 4432(b)(5) of the BBA 1997 includes a series of conforming amendments. The SNF Consolidated Billing provision requires an SNF to furnish virtually all services to its residents, either directly or under ''arrangements'' with an outside source in which the SNF itself bills Medicare. Accordingly, section 4432(b)(5)(D) amends section 1861(h) of the Act to expand the scope of SNF services that Part A can cover under the extended care benefit to include services furnished under arrangements between the SNF and an outside source, as discussed in section VI. below. Section 4432(b)(5)(F) adds a new clause (ii) to section 1866(a)(1)(H) of the Act to make compliance with the SNF Consolidated Billing provision a specific requirement under the terms of an SNF's Medicare provider agreement.

2. Types of Services That Are Subject to the Provision

Like the SNF PPS itself, SNF Consolidated Billing applies comprehensively to the ''covered skilled nursing facility services'' described in section 1888(e)(2)(A)(i) of the Act when furnished to SNF residents, except for those services that appear on a short list of exclusions described in section 1888(e)(2)(A)(ii) of the Act. However, in practical terms, the SNF Consolidated Billing and PPS provisions encompass slightly different sets of services, since the SNF PPS includes a few individual services that are not subject to the Consolidated Billing provision. This is because the SNF PPS encompasses the entire range of Part A extended care services that are coverable under section 1861(h) of the Act when furnished or arranged for by the SNF itself, including an extremely small number of such services (for example, dialysis services) that section 1888(e)(2)(A)(ii) of the Act specifically identifies as alternatively being billable separately under Part B.

Similarly, the Consolidated Billing provision encompasses a small number of services that are not coverable under Part A or includable in the PPS payment, even though furnished or arranged for by the SNF itself during a covered Part A stay. This is because the services included in the SNF PPS payment are, by definition, limited to the range of diagnostic and therapeutic services that are coverable under the Part A extended care benefit, while the Consolidated Billing provision encompasses not only those types of services, but also certain preventive and screening services that are not considered diagnostic or therapeutic in nature and, thus, are coverable only under Part B. (See the portion of section 1861(h) of the Act following paragraph (7), which limits the scope of coverage under the Part A extended care benefit to those ''diagnostic and therapeutic'' services that are coverable under the inpatient hospital benefit, and section 1862(a)(1) of the Act, which describes preventive services to avoid the occurrence of a medical condition altogether (paragraph (B)) and screening services to detect the presence of a medical condition while it is still in an asymptomatic state (paragraph (F)) as being separate and distinct categories from services to diagnose or treat a condition that has already manifested itself (paragraph (A)). Thus, for example, if an SNF resident receives a vaccination for pneumococcal pneumonia or hepatitis B in the course of a covered Part A stay, this would not represent a diagnostic or therapeutic service that could be covered under the Part A extended care benefit, but a preventive service that is coverable only as one of the ''medical and other health services'' included under Part B (see section 1861(s)(10) of the Act). Accordingly, while the SNF's Part A PPS payment would not include this service, the Consolidated Billing provision would still require the SNF itself to submit the bill for the service to Part B.

The statutory list of excluded services in section 1888(e)(2)(A)(ii) of the Act consists of a number of specific service categories. These include several types of practitioner services that are exempt from the Consolidated Billing requirement and, thus, are still to be billed separately to the Part B carrier. These exempt practitioner services include the following:

- Physicians' services furnished to individual SNF residents (section 4432(b)(4) of the BBA 1997 requires such bills to include the SNF's Medicare provider number).
- Physician assistants working under a physician's supervision.
- Nurse practitioners and clinical nurse specialists working in collaboration with a physician.
- Certified nurse-midwives.
- Qualified psychologists.
- Certified registered nurse anesthetists.

In addition to these exempt categories of practitioner services, section 1888(e)(2)(A)(ii) of the Act also excludes the following types of services:

- Home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies as described in section 1861(s)(2)(F) of the Act;
- Erythropoietin (EPO) for certain dialysis patients as described in section 1861(s)(2)(O) of the Act, subject to methods and standards established by the Secretary in regulations for its safe and effective use (see §§ 405.2163(g) and (h)); and
- For services furnished during 1998 only: The transportation costs of electrocardiogram equipment for electrocardiogram test services (HCPCS Code R0076) furnished during 1998. This reflects section 4559 of the BBA 1997, which temporarily restores separate Part B payment for the transportation of portable electrocardiogram equipment used in furnishing tests during 1998.

Further, we note that hospice care (as defined in section 1861(dd) of the Act) is not subject to Consolidated Billing when an SNF resident elects to receive care under the Medicare hospice benefit, since the hospice (rather than the SNF) assumes the overall responsibility for those care needs relating to the beneficiary's terminal condition, while the SNF itself retains responsibility only for those aspects of the beneficiary's care needs that are not related to the terminal condition (see further discussion in section V.B.4. below). In addition, as discussed in section V.B.4. below, we are clarifying that in terms of ambulance services, the Consolidated Billing provision applies only to ambulance transportation furnished *during* the SNF stay, and not to an ambulance trip that occurs at either the beginning or end of the stay.

With regard to the services of physicians and other practitioners, even though the SNF Consolidated Billing requirement generally does not apply to the specific types of practitioners listed above, it does apply to certain particular subcategories of their services, which must be billed by and paid to the SNF. Section 1888(e)(2)(A)(ii) of the Act specifies that physical, occupational, and speech-language therapy services furnished to SNF residents are subject to Consolidated Billing and, therefore, must be billed by the SNF itself, regardless of whether these services are furnished by (or under the supervision of) a physician or other health care professional. In effect, this statutory provision converts the coverage of what would otherwise be practitioner services into provider (that is, SNF) services. Thus, those practitioner services that fall within the categories of physical, occupational, or speech language therapy services must be billed by the SNF to its FI, and the practitioner cannot submit a separate bill to the Part B carrier. (We note that the Physicians' Current Procedural Terminology (CPT) coding used on physician and other practitioner bills enables the Part B carrier to identify those services that are physical, occupational, and speech-language therapy services.)

Further, with respect to physicians' services, we are providing—consistent with the longstanding policy under the bundling requirement for inpatient hospital services—that the SNF Consolidated Billing provision excludes only those particular physicians' services that meet the criteria described in § 415.102(a) for payment on a fee schedule basis. Essentially, these are services (ordinarily requiring performance by a physician) that the physician personally furnishes to an individual beneficiary, which contribute directly to that beneficiary's diagnosis or treatment and, in the case of radiology or laboratory services, meet the additional requirements specified in §§ 415.120 and 415.130, respectively. By contrast, this exclusion of the types of physicians' services described in § 415.102(a) does not extend to more generalized physician functions that typically occur in the provider setting (such as quality control activities), which are performed not for an individual beneficiary but for the overall benefit of the provider's entire patient population, and are considered a provider cost under §§ 415.55 and 415.60.

In addition, the Consolidated Billing requirement does not exempt those types of nonphysician services that would otherwise be billed to the Part B carrier in conjunction with related physician services and paid under a single, global fee. For example, payment for diagnostic radiology services is sometimes made through a global fee that includes both a technical component (for the diagnostic test itself) and a professional component (for the physician's interpretation of the test). However, under Consolidated Billing,

when such services are furnished to an SNF resident, only the professional (physician) component is billed separately as a physician's service, while the technical (nonphysician) component must be billed by the SNF itself.

Also, while the SNF Consolidated Billing provision does not apply to the professional services that a physician or other exempt practitioner performs personally, it does apply to those services that are furnished to an SNF resident by someone other than the practitioner, as an incident to the practitioner's professional service. This position is consistent with the approach that has long been taken under the hospital bundling requirement, as well as with section 1888(e)(2)(A)(ii) of the Act, which specifically identifies ''physicians'' services'' themselves as the service category that is excluded from SNF Consolidated Billing. Physicians' services, in turn, are covered by Part B under section 1861(s)(1) of the Act and are defined in section 1861(q) as being performed by a physician, while ''incident to'' services are covered under a separate statutory authority (section 1861(s)(2)(A) of the Act) and are, by definition, not performed by a physician. Similarly, for the other types of practitioner services that are exempt from the SNF Consolidated Billing requirement, we are specifying that this exemption applies only to the professional services that the practitioner performs personally, and that services furnished by others as an incident to the practitioner's professional service are themselves subject to the Consolidated Billing requirement.

We believe that to do otherwise with regard to these ''incident to'' services would effectively create a loophole through which a potentially broad and diverse array of services could be unbundled, merely by virtue of being furnished under the general auspices of such practitioners. This, in turn, would ultimately defeat the very purpose of the SNF Consolidated Billing provision—that is, to make the SNF itself responsible for billing Medicare for essentially all of its residents' services, other than those identified in a small number of narrow and specifically delimited exclusions. Further, as noted above, both the Consolidated Billing and SNF PPS provisions employ the same statutory list of excluded services. Thus, the approach we are adopting with regard to the limited range of services that qualify for exclusion is essential not only to safeguard the integrity of the Consolidated Billing requirement, but also that of the SNF PPS itself.

Finally, we note that laboratory services are subject to the SNF Consolidated Billing requirement. Thus, when an outside laboratory performs tests for SNF residents, the Medicare billing must be done by the SNF itself rather than by the outside laboratory. However, it will be necessary for the Congress to make a conforming change in section 1833(h)(5)(A) of the Act, in order to resolve a technical inconsistency in the text of that provision. The current wording of that section of the Act generally allows Part B to make payment for clinical diagnostic laboratory tests only to the person or entity that actually performs (or supervises the performance of) the test. This provision already contains a specific exception at section 1833(h)(5)(A)(iii) of the Act that permits a hospital to receive Part B payment for laboratory services that the hospital obtains under arrangements made with an outside laboratory. As mentioned previously, hospitals have long had a comprehensive Medicare billing requirement, which served as a model for the one now being established for SNFs. Accordingly, we believe that the BBA 1997's lack of a conforming change that explicitly extends the payment provision's existing hospital exception to SNFs is merely an inadvertent oversight, and we plan to pursue a technical amendment to make an appropriate conforming change in the text of section 1833(h)(5)(A) of the Act.

3. Facilities That Are Subject to the Provision

In terms of facilities (as explained in the following discussion of SNF ''resident'' status), the Consolidated Billing requirement applies to Medicare-participating SNFs, including distinct part SNFs. Consolidated Billing does not apply to a nursing home that has no Medicare certification whatsoever, such as a nursing home that does not participate at all in either the Medicare or Medicaid programs, or a nursing home that exclusively participates only in the Medicaid program as a nursing facility (NF). However, Consolidated Billing does apply to services furnished to residents in any nursing home of which a distinct part is a Medicare-participating SNF. This means that if any portion of a nursing home has Medicare SNF certification, Consolidated Billing applies to the entire nursing home. (This avoids creating a perverse incentive for SNFs to set aside a nonparticipating section in which they could otherwise circumvent the Consolidated Billing requirement for those residents who are not in a covered Part A stay.)

Thus, when a nursing home limits its Medicare participation as an SNF to only a distinct part of the overall institution—

- In terms of program payment, Part A coverage under the extended care benefit is limited to the portion of the nursing home that actually participates in Medicare as an SNF; and
- In terms of Medicare billing responsibility, the Consolidated Billing requirement applies to the entire nursing home.

We note that if the surrounding institution that houses a Medicare distinct part SNF includes an entity other than a nursing home (that is, a hospital, or a domiciliary or ''board and care'' home), then the Consolidated Billing requirement would not apply to that entity, but would apply only to the nursing home itself (including the nursing home's participating distinct part SNF along with any nonparticipating remainder).

4. Skilled Nursing Facility ''Resident'' Status for Purposes of This Provision

For purposes of determining program payment in the specific context of the Part A extended care benefit, section 1861(h) of the Act limits coverage to those beneficiaries who reside in an SNF, which section 1819(a) of the Act defines as an institution (or a distinct part of an institution) that is actually certified as meeting the SNF requirements for participation. However, in excluding Medicare coverage for unbundled services furnished to SNF residents, section 4432(b)(1) of the BBA 1997 further specifies that this provision applies to services furnished to any beneficiary who ''* * * is a resident of a skilled nursing facility or of a part of a facility that includes a skilled nursing facility (as determined under regulations) * * * .'' This statutory language establishes that, for purposes of the SNF Consolidated Billing provision, the Congress intended:

- That the definition of an SNF resident should include not only those beneficiaries who reside in the certified area of a nursing home, but also (as discussed in the preceding section) those who reside in the nonparticipating portion of any nursing home that also includes a Medicare-certified distinct part SNF; and
- To grant the Secretary the specific authority to define the concept of ''services furnished to SNF residents'' further in regulations.

Accordingly, for purposes of the SNF Consolidated Billing provision, we are

defining an SNF ''resident'' in the regulations as including beneficiaries who reside in Medicare-certified SNFs, as well as those beneficiaries who reside anywhere within a nursing home if that nursing home includes a distinct part that is a Medicare-certified SNF.

We note that the SNF Consolidated Billing legislation defines the scope of this provision in terms of a comprehensive package of services furnished to an SNF resident. For example, in terms of ambulance services, the initial ambulance trip that first brings a beneficiary to the SNF would not be subject to the Consolidated Billing provision (since the beneficiary, at that point, has not yet been admitted to the SNF as a resident). Similarly, an ambulance trip that occurs at the end of an SNF stay, in connection with one of the events that (as discussed below) ends a beneficiary's status as an SNF resident for Consolidated Billing purposes, would not be subject to the Consolidated Billing provision. By contrast, ambulance transportation furnished *during* an SNF stay is subject to the SNF Consolidated Billing provision.

As noted above, the Consolidated Billing requirement is intended to encompass a comprehensive package of services furnished to an SNF resident. Accordingly, we believe that it is necessary to prevent a facility from being able to circumvent this requirement and unbundle particular services that would otherwise be an integral part of the package, merely by temporarily discontinuing a beneficiary's status as a ''resident'' of the SNF just long enough to receive the services (for example, by briefly sending the beneficiary offsite to receive them as a hospital or clinic outpatient), and immediately thereafter reinstating the beneficiary's status as an SNF ''resident.'' Therefore, we are providing that a beneficiary's departure from the facility does not automatically end his or her status as an SNF ''resident'' for Consolidated Billing purposes. Rather, the beneficiary's status as an SNF resident in this context would end when one of the following events occurs—

- The beneficiary is admitted as an inpatient to a Medicare-participating hospital or critical access hospital (CAH, formerly referred to as a rural primary care hospital (RPCH)) or as a resident to another SNF;
- The beneficiary receives services, under a plan of care, from a Medicare-participating home health agency;
- The beneficiary receives outpatient services from a Medicare-participating hospital or CAH (but only with respect to those services that are not furnished pursuant to the resident assessment or the comprehensive care plan required under § 483.20); or
- The beneficiary is formally discharged or otherwise departs from the SNF (for example, on a leave of absence), unless readmitted to that or another SNF within 24 consecutive hours. This means that the facility's responsibilities under the Consolidated Billing provision (including its responsibility to furnish or make arrangements for needed care and services) remain in effect until the beneficiary's status as an SNF ''resident'' ends due to the occurrence of one of the events described above.

We are providing that, for purposes of determining the applicability of the SNF Consolidated Billing requirement, a beneficiary's status as an SNF resident ends at the point when the beneficiary is admitted as an inpatient to a participating hospital or CAH, or as a resident to another SNF, even if the beneficiary subsequently returns to the original SNF within 24 hours of departure. This is because these settings all represent situations in which another provider has assumed the ongoing responsibility for the beneficiary's comprehensive care needs. For the same reason, we are including the receipt of services from a participating home health agency under a plan of care as another event that would end a beneficiary's status as an SNF ''resident'' for Consolidated Billing purposes. We note that these situations are distinct, however, from one in which a terminally ill SNF resident elects to receive care under the Medicare hospice benefit, since a hospice assumes responsibility only for those care needs that relate to the beneficiary's terminal condition, while the SNF itself remains responsible for any care needs that are unrelated to the terminal condition. This is equally true whether an SNF resident receives the hospice care while still in the SNF or during a temporary absence from the facility. Accordingly, an SNF resident's election to receive care under the Medicare hospice benefit would not result in a blanket exclusion of all services furnished to that resident from the Consolidated Billing requirement; rather, as discussed previously in section V.B.2., only the specific aspects of such a resident's care that are actually provided under the hospice benefit are excluded from the Consolidated Billing provision, while care that is unrelated to the resident's terminal condition remains subject to the provision.

Similarly, when an SNF resident receives outpatient services at a hospital, the hospital does not necessarily assume any ongoing responsibility for the resident's comprehensive care needs beyond the outpatient visit itself, which often may represent nothing more than a single, isolated encounter. We do not believe that such an event, when followed shortly thereafter by the resident's return to the SNF, should serve to relieve the SNF categorically of any Medicare billing responsibility for services furnished during the outpatient visit, especially with respect to those types of services that SNFs would ordinarily include within the comprehensive package of care furnished to a resident (such as physical, occupational, and speech-language therapy, or types of medical supplies and diagnostic tests that are routinely furnished or arranged for by SNFs).

At the same time, however, we recognize that there are certain types of intensive diagnostic or invasive procedures that are specific to the hospital setting and that are well beyond the normal scope of SNF services. Further, we note that Medicare's longstanding comprehensive billing or ''bundling'' requirement for inpatient hospital services under section 1862(a)(14) of the Act was subsequently expanded to apply to outpatient hospital services as well, and that section 4523 of the BBA 1997 provides for the establishment of a PPS for these outpatient hospital services. Thus, when an SNF resident is sent to a hospital to receive outpatient services, it is necessary to delineate the respective areas of responsibility for the SNF under the Consolidated Billing provision, and for the hospital under the outpatient bundling provision, with regard to these services.

Accordingly, we are providing that in situations where a beneficiary receives outpatient services from a Medicare-participating hospital or CAH while temporarily absent from the SNF, the beneficiary continues to be considered an SNF resident specifically with regard to those services that are furnished pursuant to the comprehensive care plan required under the regulations at § 483.20(d), which is developed to address the resident's care needs identified in the comprehensive assessment under § 483.20(b). Such services are, therefore, subject to the SNF Consolidated Billing provision, while those other services that, under commonly accepted standards of medical practice, lie exclusively within the purview of hospitals rather than SNFs, are not subject to SNF Consolidated Billing, but are instead bundled to the hospital (for example,

cardiac catheterization, CT scans, magnetic resonance imaging, ambulatory surgery involving the use of an operating room). We believe that it is appropriate to specify the resident's comprehensive care plan as the basis for defining the extent of the SNF's responsibility in this situation, since it is this same resident assessment and care planning process that provides the basis for establishing SNF coverage and determining the actual level of Part A payment under the SNF PPS. In effect, this defines the SNF's responsibility in terms of the scope of services included under the extended care benefit, as explained below. This same scope of services would effectively define the extent of the SNF's responsibility with regard to a beneficiary who has resided exclusively in the institution's nonparticipating portion which, under the law, is subject to the SNF Consolidated Billing provision but not to the SNF requirements for participation regarding resident assessment and care planning.

As indicated in § 483.20(d)(1), the resident assessment must thoroughly identify the resident's medical, nursing, and mental and psychosocial needs, and the plan of care must describe in a comprehensive manner the services that the SNF itself assumes the responsibility to furnish, or make arrangements for, in order to address these needs. However,the comprehensive care plan does not typically address emergency services (which, by their nature, cannot be anticipated and planned in advance) or those types of intensive diagnostic or invasive procedures that, as discussed previously, appropriately lie within the purview of hospitals rather than SNFs. By contrast, the care plan must address the beneficiary's need for the broad categories of services that section 1861(h) of the Act identifies as being included within the scope of the extended care benefit, such as nursing care and associated room and board (sections 1861(h)(1) and (2) of the Act); physical, occupational, and speech-language therapy (section 1861(h)(3) of the Act); medical social services (section 1861(h)(4) of the Act); drugs, biologicals, supplies, appliances, and equipment that represent an ordinary part of the facility's inpatient care and treatment (section 1861(h)(5) of the Act); and services that an SNF furnishes through its transfer agreement hospital (section 1861(h)(6) of the Act).

As amended by the BBA 1997, section 1861(h)(7) of the Act also includes coverage of other types of services that SNFs generally provide, either directly or under arrangements with outside sources. As discussed in section VI. below with regard to the conforming revisions in regulations at § 409.27, longstanding administrative policy has also included within this category most of the medical and other health services described in section 1861(s) of the Act, with certain exceptions. For example, physician services (section 1861(s)(1) of the Act) cannot be regarded as services that are ''generally provided'' by SNFs, since they are not within the scope of the inpatient hospital benefit (see section 1861(b)(4) of the Act) and, accordingly, are also not within the scope of the extended care benefit (see section 1861(h) of the Act following paragraph (7)). In addition, as discussed previously in section V.B.2., preventive services such as vaccines for pneumococcal pneumonia or hepatitis B (section 1861(s)(10) of the Act) and screening services such as screening mammographies or pap smears (sections 1861(s)(13) and (14) of the Act, respectively) are not within the scope of the extended care benefit, since they are not considered reasonable and necessary for the diagnosis or treatment of a condition that has already manifested itself. Finally, the extended care benefit does not include the types of acute or emergent services discussed above as being exclusively within the purview of hospitals rather than SNFs, since these are types of services that SNFs themselves do not generally provide, either directly or under arrangements.

We specifically invite comments on the treatment of outpatient hospital services furnished to SNF residents under the SNF Consolidated Billing provision, including other possible ways to exempt those particular outpatient hospital procedures that are clearly beyond the scope of SNF services while preserving the integrity of the SNF service package itself. We also note that further refinements in this policy may eventually become necessary, in order to ensure consistency with the new outpatient hospital PPS as its specific characteristics are developed.

In addition, effective January 1, 1999, section 4541 of the BBA 1997 imposes an annual per beneficiary limit of $1,500 on all outpatient physical therapy services (including speech-language therapy services), and imposes a similar limit on all outpatient occupational therapy services, but specifically excludes services furnished by a hospital's outpatient department from each of these annual limits. We note that this exclusion of hospital outpatient department services does not apply to services furnished to a beneficiary who is an SNF resident for Consolidated Billing purposes. For an SNF resident who is not in a covered stay and has reached the annual $1,500 limit, this avoids creating a perverse incentive to have a hospital outpatient department furnish therapy services that the resident could appropriately receive from the SNF itself. We will specifically address this point in the regulations that we are currently developing to implement section 4541 of the BBA 1997.

Another event that would generally end a beneficiary's ''resident'' status for SNF Consolidated Billing purposes would be the beneficiary's formal discharge from the SNF, or a departure from the SNF without a formal discharge (for example, for a trial visit home on a leave of absence), unless followed within 24 consecutive hours by a readmission to that or another SNF. We are using a 24-hour timeframe for readmission following any discharge or other departure from the SNF because we believe that this duration should generally be sufficient to preclude situations in which the beneficiary is temporarily sent outside the SNF for only a brief period to receive a service offsite (for example, through an outpatient visit to a hospital or clinic), merely to circumvent the SNF Consolidated Billing requirement. Further, as indicated above, we believe that in most situations where a beneficiary with comprehensive care needs is absent from the SNF for 24 consecutive hours, another provider will have already assumed the ongoing responsibility for those comprehensive care needs by that point in time.

In addition, we note that section 1886(a)(4) of the Act includes a preadmission ''payment window'' provision for hospitals, under which certain Part B services furnished by a hospital or by an entity wholly owned or operated by the hospital within 3 days (or, for non-PPS hospitals, within 1 day) before an inpatient admission to that hospital are included in the Medicare Part A payment for the hospital admission itself (see §§ 412.2(c)(5) (for PPS hospitals) and 413.40(c)(2) (for non-PPS hospitals)). Further, section 1833(d) of the Act prohibits payment under Part B for any services for which Part A can make payment. Thus, if a hospital inpatient has spent a portion of the preadmission period as a resident of an SNF that is wholly owned or operated by the admitting hospital, this would preclude coverage (and SNF billing) under Part B for diagnostic services and other admission-related services received as an SNF resident during the

preadmission period, since those services would be included in the hospital's Part A payment for the subsequent inpatient admission.

5. Effects of This Provision

For those services that are subject to the SNF Consolidated Billing requirement, Medicare will no longer permit ''unbundling'' (that is, Medicare billing by any entity other than the SNF itself). Rather, the SNF itself will have to furnish the services—either directly, or under arrangements with an outside supplier in which the SNF itself (rather than the supplier) bills Medicare. Section 1861(w)(1) of the Act defines ''arrangements'' as those in which the SNF's receipt of Medicare payment for a beneficiary's covered service discharges the liability of the beneficiary or any other person to pay for the service. Further, longstanding manual instructions at MIM–3, § 3007 and § 206 of the Medicare SNF Manual provide that in making such arrangements, an SNF should not act merely as a billing conduit, but should also exercise professional responsibility over the arranged-for services. However, the requirement for the SNF to furnish under ''arrangements'' any services that it obtains from an outside supplier does not mandate the SNF itself to meet the applicable supplier standards for that service, but merely to select an outside supplier that meets them. For example, when an SNF bills for ambulance services furnished to its residents under arrangements with an outside supplier, this does not make the SNF itself responsible for meeting the ambulance regulations' standards regarding vehicles and vehicle staffing (see § 410.40(a)), but merely for selecting an outside supplier that itself meets these standards. Similarly, under the requirements for participation at § 483.75(k)(1)(ii), if an SNF elects to provide portable x-ray services under arrangements with an outside supplier, the SNF is responsible only for selecting a portable x-ray supplier that itself meets the applicable Medicare conditions for coverage (see subpart C of part 486); under § 483.75(k)(1)(i), an SNF must itself meet the applicable provider standards for diagnostic radiology services (at § 482.26) only if the SNF elects to provide such services directly with its own resources.

When the SNF furnishes services under an arrangement with an outside supplier, the outside supplier must look to the SNF instead of to Medicare Part B for payment, and the terms of the supplier's payment by the SNF are established exclusively through contractual agreements negotiated between the two parties themselves, rather than being prescribed for them by the Medicare program. For a resident in a covered Part A stay, all services furnished by the SNF (either directly, or under arrangements with an outside supplier) are included in the SNF's Part A bill. For a resident who is not in a covered Part A stay (Part A benefits exhausted, posthospital or level of care requirements not met, etc.), the SNF itself submits all bills to Part B.

We note that while new section 1888(e)(9) of the Act provides that the amount of Part B payment shall be the amount provided under the applicable fee schedule for an SNF's services—including those services provided under arrangements with an outside supplier—the law is silent with regard to how much (if any) of this fee schedule amount the SNF itself can retain when it pays the supplier. If an outside supplier agrees to furnish services to the SNF for less than the applicable fee schedule amount, we are concerned that allowing the SNF to retain the difference for each service billed to Part B is likely to create a financial incentive for the SNF to provide unnecessary services. The approach that we favor as a means of solving this problem would be to request legislation to limit the SNF's Part B payment to the lower of the applicable fee schedule amount or the amount that the supplier actually charges the SNF. Another option—which we did not select—would be to require that the SNF pay to the supplier the entire fee schedule payment amount, less a reasonable charge for administration. We specifically invite comments on the extent to which this problem may arise and on the advisability of pursuing our suggested legislative approach or other approaches.

While the SNF Consolidated Billing requirement prohibits Medicare billing by any entity other than the SNF, we note that this does not preclude an SNF from engaging the services of an outside entity to assist the SNF in performing the specific tasks involved in actually completing and sending in the bill itself. This practice, known as ''contract billing,'' is permissible as long as the billing takes place under the SNF's Medicare provider number, and the SNF itself remains the legally responsible billing party. However, an SNF is precluded from relinquishing or reassigning to any other party the actual legal responsibility for and control over a claim. This reflects the Medicare law's general prohibitions with regard to the reassignment of claims at sections 1815(c) and 1842(b)(6) of the Act and regulations at subpart F of part 424, as well as the specific prohibitions on reassignment of provider claims discussed in the manual instructions at MIM–3, §§ 3488ff.

The changes introduced by the Consolidated Billing provision will bring about a number of significant program improvements. First, this requirement provides an essential foundation for the new Part A SNF PPS, by bundling into a single facility package those services that the PPS payment is intended to capture. Second, it spares beneficiaries who are in covered Part A stays from incurring out-of-pocket liability for Part B deductibles and coinsurance. Third, it eliminates the potential for duplicative billings for the same service to the FI by the SNF and to the carrier by an outside supplier. Fourth, this requirement will help promote greater quality of care, by enhancing the SNF's capacity to meet its existing responsibility to oversee and coordinate the entire package of care that each of its residents receives. Finally, by making the SNF itself more directly accountable for this overall package of care and services, the Consolidated Billing requirement may help restrain certain inappropriate billing practices, while at the same time helping to ensure that each resident actually receives those services for which there is a legitimate medical need.

C. Effective Date for Consolidated Billing

Unlike the SNF PPS itself, the effective date of the Consolidated Billing requirement is not tied to the start of the individual SNF's first cost reporting period that begins on or after July 1, 1998. Rather, the Consolidated Billing provision is effective for services furnished on or after July 1, 1998. We note that in April 1998, HCFA issued Program Memorandum (PM) No. AB–98–18, which contains operational instructions for Medicare contractors on the implementation of consolidated billing. The PM provides that, for individual facilities that lack the capability to perform consolidated billing as of the July 1 effective date, the SNF must begin consolidated billing with respect to items and services furnished on or after the earlier of (1) January 1, 1999 or (2) the date the facility comes under the PPS.

VI. Changes in the Regulations

As discussed below, we are making a number of revisions in the regulations in order to implement both the prospective payment system and the SNF Consolidated Billing provision and

its conforming statutory changes. First, we are revising the regulations in 42 CFR part 410, subpart I, which deal with payment of benefits under Part B, in order to implement section 1842(b)(6)(E) of the Act, as amended by section 4432(b)(2) of the BBA 1997. Specifically, we are adding a new paragraph (b)(14) to § 410.150, which specifies that for those services subject to the SNF Consolidated Billing requirement, Medicare makes Part B payment to the SNF rather than to the beneficiary. We are also making certain conforming changes to provisions in part 410, subpart B, which describe Part B coverage of individual medical and other health services, such as outpatient hospital services (§ 410.27(a)(1)(i)), hospital or CAH diagnostic tests (§ 410.28(a)(1)), diagnostic tests (§ 410.32(e)), and ambulance services (§ 410.40(b)).

In addition, we are revising the regulations in part 411, subpart A, which deal with exclusions from Medicare coverage, in order to implement section 1862(a)(18) of the Act, as amended by section 4432(b)(1) of the BBA 1997. Specifically, we are adding a new paragraph (p)(1) to § 411.15, which excludes from coverage any service furnished to an SNF resident (other than those individual services listed in new paragraph (p)(2) of this section) by an entity other than the SNF itself. In addition, a new paragraph (p)(3) will set out the definition of an SNF ''resident'' for purposes of this provision, as discussed previously in section V.B.4.

We are revising the regulations in part 413, which deal with Medicare payment to providers of services. Section 413.1 establishes that providers are generally paid on the basis of reasonable cost, and then sets out several specific exceptions to this general principle. Currently, the only exception for SNFs is at § 413.1(g), with regard to the existing Part A PPS under section 1888(d) of the Act, which applies exclusively to low volume SNFs. However, under sections 4432(a) and (b)(5)(H) of the BBA 1997, the existing SNF Part A payment methodologies (that is, on a reasonable cost basis, or under a PPS established specifically for low volume SNFs) will be superseded by the new PPS for SNFs generally, effective with cost reporting periods beginning on or after July 1, 1998. Accordingly, we are revising § 413.1(g) as follows, to reflect the BBA 1997 provisions for a general SNF PPS, as well as its related conforming changes. In paragraph (g)(1), we clarify that the previous SNF payment methodology (that is, either on a reasonable cost basis or under the low volume SNF PPS) is effective only for those cost reporting periods beginning before July 1, 1998. In paragraph (g)(2)(i), we provide that effective with cost reporting periods beginning on or after July 1, 1998, payment for services furnished during a covered Part A stay will be made in accordance with the new SNF PPS under section 1888(e) of the Act, as implemented by regulations in the new subpart J of part 413. This new subpart will set forth the regulatory framework of the new PPS. It specifically discusses the scope and basis of the PPS rates as well as the methodology for computing them. It also describes the transition phase of the PPS and related rules.

In paragraph (g)(2)(ii), we implement section 1888(e)(9) of the Act (as amended by section 4432(b)(3) of the BBA 1997), which provides that the payment amount for services that are not furnished during a covered Part A stay shall be the amount provided under the otherwise applicable Part B fee schedule. Unlike the new Part A PPS for SNFs, the effective date for the Part B fee schedule provision is not tied to the beginning of an individual SNF's cost reporting period, but rather, is effective for all services furnished on or after July 1, 1998. Consequently, we note that there is a potential overlap between this provision and the reasonable cost provision described in paragraph (g)(1), during the period of time running from July 1, 1998, until the conclusion of an individual SNF's last cost reporting period beginning prior to that date. Accordingly, we are revising the beginning of paragraph (g)(1), to clarify that Part B payment during that period of time is made according to the new fee schedule provision rather than the previous payment methodology. Finally, we are implementing a conforming change in section 4432(b)(5)(A) of the BBA 1997 by revising paragraph (b)(4) of § 483.20, to indicate that the frequency of resident assessments specified in that section of the regulations is subject to the timeframes prescribed under the SNF PPS in new subpart J of part 413.

We are revising the portion of part 424 dealing with the prescribed certification and recertification (§ 424.20) that the requirements for a covered SNF level of care are met, along with that portion of part 409 that sets out the level of care requirements themselves (at § 409.30), to reflect the use of the RUG–III groups, as discussed previously in section II.D. of this preamble. We are also revising certain portions of part 424 that deal with claims for payment. Specifically, we are revising § 424.32(a)(2) to require the inclusion of an SNF's Medicare provider number on claims for physician services furnished to an SNF resident. We are also adding to § 424.32(a) the requirement for an SNF to include HCPCS coding on its Part B claims.

We are also revising the regulations in part 489, subpart B (which deal with the basic requirements of Medicare provider agreements), in order to implement section 1866(a)(1)(H)(ii) of the Act, as amended by section 4432(b)(5)(F) of the BBA 1997. Specifically, we are adding a new paragraph (s) to § 489.20, which will require a participating SNF, under the terms of its provider agreement, to furnish all services that are subject to the Consolidated Billing provision, either directly or under an arrangement with an outside source in which the SNF itself bills Medicare.

In addition, we are making a number of conforming changes in part 409, subpart C of the regulations, as discussed below. Section 1861(h) of the Act describes coverage of ''extended care'' (that is, Part A SNF) services. In addition to the specific service categories set out in paragraphs (1) through (6) of section 1861(h), paragraph (7) provides for coverage of other services that are generally provided in this setting. Prior to the BBA 1997, coverage of services ''generally provided by'' SNFs under this statutory authority required not only for a particular service to be ''generally provided'' (that is, for the provision of that type of service to be the prevailing practice among SNFs nationwide), but also for the service to be provided directly ''by'' the SNF itself. However, section 4432(b)(5)(D) of the BBA 1997 has now expanded section 1861(h)(7) of the Act to include coverage of services that are generally provided ''under arrangements . . . made by'' SNFs with outside sources. As a result, the extended care benefit now covers the full range of services that SNFs generally provide, either directly or under arrangements with outside sources. For example, the services of respiratory therapists have until now been specifically coverable as extended care services only when provided directly by those therapists who are employees of the SNF's transfer agreement hospital under section 1861(h)(6) of the Act. Since these are services that SNFs historically have ''generally provided'' (albeit in the limited context of the transfer agreement hospital provision), we are now revising the regulations at § 409.27 to permit coverage of respiratory therapy services under amended section 1861(h)(7) of the Act when provided under an arrangement between the SNF and a

respiratory therapist, regardless of whether the therapist is employed by the SNF's transfer agreement hospital.

We are also revising this section of the regulations to incorporate longstanding manual instructions in MIM–3, § 3133.9.A and in § 230.10.A. of the SNF Manual, which specify that the medical and other health services identified in section 1861(s) of the Act are considered to be generally furnished by SNFs and, therefore, coverable under the Part A extended care benefit. We specify that such coverage would be subject to any applicable limitations or exclusions. For example, the Part A extended care benefit cannot include coverage of those services (such as physician services) that are not within the scope of the inpatient hospital benefit. As discussed previously in section V.B.2., the preventive and screening procedures specified in section 1861(s) of the Act are not coverable as extended care services, since they are not considered to be reasonable and necessary for diagnosing or treating a condition that has already manifested itself. Finally, coverage under this provision does not include specific types of services (such as the intensive or emergency types of hospital services discussed previously in section V.B.4.) that SNFs themselves do not generally provide, either directly or under arrangements.

In addition to specifically revising the regulations at § 409.27 to reflect the recent BBA 1997 amendment of section 1861(h)(7) of the Act, we are also taking this opportunity to revise the overall organization of subpart C of part 409 so that it more accurately reflects the format of its statutory authority, section 1861(h) of the Act. As a result, we are making the following revisions in this subpart:

- We are renumbering the provisions in § 409.20(a) to conform more closely to the numbering used in the corresponding statutory authority at section 1861(h) of the Act.
- A new § 409.21, entitled ''Nursing care,'' corresponds to section 1861(h)(1) of the Act, which authorizes coverage under the extended care benefit of nursing care provided by or under the supervision of a registered professional nurse. This new section also includes a more direct statement of the policy with regard to coverage of private duty nurses in SNFs, which until now has been reflected in § 409.20(b)(1) when read in combination with § 409.12(b).
- A new § 409.24, entitled ''Medical social services,'' corresponds to section 1861(h)(4) of the Act, which authorizes coverage under the extended care benefit of medical social services. This new section incorporates the services described in longstanding manual instructions at § 3133.4 of MIM–3 and § 230.4 of the Medicare SNF Manual, and which also appear (in the context of Comprehensive Outpatient Rehabilitation Facility (CORF) services) in existing regulations at § 410.100(h) of this chapter.
- The material previously contained in §§ 409.24 (''Drugs and biologicals'') and 409.25 (''Supplies, appliances, and equipment'') is combined into a new § 409.25, entitled ''Drugs, biologicals, supplies, appliances, and equipment,'' which corresponds to section 1861(h)(5) of the Act.
- The material previously contained in §§ 409.26 (''Services furnished by an intern or a resident-in-training'') and 409.27 (''Other diagnostic or therapeutic services'') is combined into a new § 409.26, entitled ''Transfer agreement hospital services,'' which corresponds to section 1861(h)(6) of the Act. We are also clarifying that the references in this context to an institution that has a swing-bed approval apply specifically to those services that the institution furnishes to its own SNF-level inpatients under its swing bed approval.
- A new § 409.27, entitled ''Other services generally provided by (or under arrangements made by) SNFs,'' corresponds to section 1861(h)(7) of the Act, as amended by section 4432(b)(5)(D) of the BBA 1997. We are also including a conforming change in the section heading and text of § 409.20(b)(2).

Further, in view of the previously discussed statutory change to allow Part A coverage of the full range of services that SNFs generally provide, either directly or under arrangements with outside sources, we are making a conforming change to the long-term care facility requirements for participation at § 483.75(h) of this chapter. Previously, § 483.75(h) provided for the furnishing of any services by outside sources under either an ''arrangement'' (which, by definition, makes the facility itself responsible for billing the program) or an ''agreement'' (which does not necessarily mandate this result). We are now revising this provision so that it more accurately reflects the statutory authority at section 1819(b)(4)(A) of the Act, as well as revised section 1861(h)(7). Section 1819(b)(4)(A) of the Act, which specifies the range of services that a nursing home must furnish in order to participate in the Medicare program as an SNF, allows for ''agreements'' only with respect to dental services (for which virtually no coverage exists under the Medicare program), and provides that all other required services must be furnished either directly by the SNF itself or under ''arrangements'' with an outside source in which the SNF itself bills Medicare.

Finally, as discussed in section II.D., we are making certain specific modifications in the existing SNF level of care criteria contained in part 409, subpart D. Further, we are also adding to subpart F of part 409 a new administrative presumption with regard to the ending of a benefit period in an SNF, at § 409.60(c)(2).

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VIII. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule. We find that the circumstances surrounding this rule make it impracticable to pursue a process of notice-and-comment rulemaking before the provisions of this rule take effect.

The BBA 1997 was enacted on August 5, 1997. As discussed earlier in this rule, the effective date for the SNF PPS is for cost reporting periods beginning on or after July 1, 1998. In addition, section 4432(a) of the BBA 1997 requires publication of the prospective payment rates prior to May 1, 1998. The resulting timeframe allowed HCFA 9 months to complete the process of development and review of the regulations to implement the PPS and related changes. The immense scope of SNF PPS development combined with this limited time period made it impracticable to conduct notice-and-comment rulemaking before the statutory effective date of the PPS. In addition to the normal length of time needed to develop and review a

regulation of this magnitude, the time schedule associated with the completion of development of a number of critical components of the PPS made it impossible to complete the calculation of the payment rates in time to promulgate a notice of proposed rulemaking. For example, the national case-mix indices and SNF market basket index, set forth earlier in this rule, had to be developed. As discussed earlier, these indices are an essential element of the case-mix payment and rate setting methodology. In addition, these indices are essential for standardizing and updating the Federal payment rates as required by the BBA 1997. Also, the redesign and validation of the MEDPAR analog, development of the Part B estimate included in the PPS rates, and research related to application of the case-mix adjustment to certain ancillary services (for example, drugs, laboratory services, medical supplies) were important components of the rate setting methodology, which required much time to develop.

We believe it evident that HCFA could not compute payment rates and complete the numerous components of the PPS and Consolidated Billing requirements that are described in this rule until immediately prior to the publication date required by statute and, therefore, it was impracticable to complete notice-and-comment rule making before May 1. Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim final basis. We are providing a 60-day comment period for public comment.

Effect of the Contract with America Advancement Act, Pub. L. 104–121

This rule has been determined to be a major rule as defined in Title 5, United States Code, section 804(2). Ordinarily, under 5 U.S.C. 801, as added by section 251 of Pub. L. 104–121, major rule shall take effect 60 days after the later of (1) the date a report on the rule is submitted to the Congress or (2) the date the rule is published in the **Federal Register**. However, section 808(2) of Title 5, United States Code, provides that, notwithstanding 5 U.S.C. 801, a major rule shall take effect at such time as the Federal agency promulgating the rule determines if for good cause the agency finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. As indicated above, for good cause we find that it was impracticable to complete notice and comment procedures before publication of this rule. Accordingly, pursuant to 5 U.S.C. 808(2), these regulations are effective on July 1, 1998.

IX. Regulatory Impact Statement

We have examined the impacts of this interim final rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995, and the Regulatory Flexibility Act (RFA) (Public Law 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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). The payment changes set forth in this interim final rule due to the BBA 1997 will result in projected savings for fiscal years 1999 through 2002 in excess of $100 million per year. Because the projected savings resulting from this interim final rule are expected to exceed $100 million, it is considered a major rule.

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This interim final rule does not mandate any requirements for State, local, or tribal governments. We believe the private sector costs of this rule fall below these thresholds, as well.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and governmental agencies. Most SNFs and suppliers are considered small entities, either by nonprofit status or by having revenues of $5 million or less annually. Intermediaries and carriers are not considered to be small entities.

A. Background

This interim final rule sets forth a schedule of prospectively determined per diem rates to be used for payments under the Medicare program as well as a Consolidated Billing requirement. Section 1888(e)(4)(H) of the Act requires that the Secretary establish and publish prospectively determined per diem rates at least 60 days prior to the beginning of the period to which such rates are to be applied.

As required under section 1888(e)(4)(H), this interim final rule sets forth the first schedule of unadjusted Federal per diem rates, to be used for payment beginning July 1, 1998.

While section 1888(e) specifies the base year and certain other components of computing the payment rates, the statute does allow us broad authority in the establishment of several key elements of the system, and HCFA had some opportunity to consider alternatives for these elements. These include the case-mix methodology (including the assessment schedule), market basket index, wage index, and urban/rural distinction used in the development and/or adjustment of the Federal rates. In addition, the incorporation of the case mix methodology into the coverage requirements involved discretion on HCFA's part. Most of these elements, and the alternatives that were considered, were discussed in detail earlier in the preamble of this rule. Several that may warrant some additional discussion include the case mix system and associated assessment schedule.

Regarding the case mix system, as we have noted in the background portion of the preamble, we are aware of a variety of case-mix systems used by various States in the administration of their Medicaid payment systems for nursing homes. However, due to the different range of covered services furnished by Medicaid nursing homes and differences in approaches taken by the unique State systems, none of these case-mix systems met our needs. As a classification and weighting system, the only case-mix system that was suited for the Medicare patient population is the RUG-III methodology we are implementing as part of this PPS.

With regard to the assessment schedule, the schedule adopted in this rule was the result of analysis of information from our Multistate Nursing Home Case-Mix and Quality Demonstration. In developing this schedule, we weighed the need for the payment system to capture changes in patient condition against the burden on SNFs and their staffs. The resulting schedule is designed to balance these competing considerations.

B. Impact of This Interim Final Rule

Below, the impact of this rule is discussed in terms of its fiscal impact on the budget and in terms of its impact on providers and suppliers. The estimated fiscal impact of this rule is discussed first.

1. Budgetary Impact

The effect of this rule is that the rates will result in estimated 5-year annual savings ranging from $30 million to $4.28 billion, as shown in Table IX.1 below. (It should also be noted that Table IX.1 shows the impact for FYs 2000 through 2002 even though an update to this rule will go out effective October 1, 1999 (and every subsequent fiscal year) that will set forth a new schedule of rates to be used for FY 2000. These numbers are shown to provide a full picture of the impact of this new payment system once it is fully phased in to 100 percent of the Federal rate.) These savings include both the savings to Medicare fee-for-service and managed care payments. The managed care savings make up approximately 25 percent of the total savings.

This table takes into account the behaviors that we believe SNFs will engage in order to minimize any perceived adverse effects of section 4432 of the BBA 1997 on their payments. We believe these behavioral offsets might include an increase in the number of covered days and an increase in the average case-mix for each facility. We believe that, on average, these behavioral offsets will result in a 45 percent reduction in the effects these rates might otherwise have on an individual SNF.

TABLE IX.1—SAVINGS TO THE MEDICARE PROGRAM

[In millions of dollars]

(A)		(B)	(C)	(D)	(E)	(F)
FY	Transition	Inflation	Other	Part A	Part B	Total
1998	0	30	−20	10	20	30
1999	90	1500	−70	1520	60	1580
2000	240	2880	−80	3040	60	3100
2001	410	3480	−80	3810	70	3880
2002	610	3690	−90	4210	70	4280

Column (A) shows the savings from the transition to the Federal rate. This reflects the effect of eliminating exceptions and limiting exemptions as required by the Act and discussed earlier in this rule. This was estimated by calculating the effect for a sample of SNFs which had exceptions and exemptions and extrapolating the results to the entire SNF industry. It also reflects the effect of applying a lower weight to the higher per diem costs of hospital-based SNFs in computing the Federal rates as required by the Act as amended by the BBA 1997 and described earlier in this rule. Column (B) shows the savings from using the statutorily determined update factor, which will result in lower payment increases than allowed under the current cost-based system. These payment increases under the cost-based system were computed using historical trends of these increases and projecting a continuation of those trends into the future. As can be seen from the table, most of the savings are the result of this provision. As noted, this component of the rate setting methodology is required by statute and does not allow for our consideration of any alternatives. Column (C) shows the cost of shifting the Consolidated Billing piece into Part A of Medicare. Column (D) shows the total savings to Part A of Medicare. It is column (A) plus column (B) plus column (C). Column (E) shows the total savings to Part B of Medicare resulting from the Consolidated Billing provisions. The sum of column (E) and Column (C) represents the impact of the Consolidated Billing provision on the Part B coinsurance. Column (F) is the total savings from this rule and is column (D) plus column (E).

2. Impact on Providers and Suppliers

Table IX.2 below shows the number of facilities projected to experience a decrease in Medicare SNF payments under the new prospective payment rates and the percentage change for the type of facility.

TABLE IX.2—IMPACT ON SNFS BY TYPE

Type of SNF	(A) Total number of SNFs	(B) Number of SNFs with lower payment	(C) Estimated average percentage reduction in payments
MSA Freestanding	5617	5568	17
MSA Hospital Based	683	676	19
Non-MSA Freestanding	2204	2185	17
Non-MSA Hospital Based	533	529	18
Total	9037	8958	17

Specifically, column (A) of the table shows the total number of SNFs in the data base for FY 1995 cost reporting periods. Column (B) shows the number of SNFs whose payment rate for cost reporting periods beginning July 1, 1998 would be lower than the payment they would have received under the former cost-based methodology for cost reporting periods beginning July 1, 1998. We estimated the payments received under the new system based on a facility level case-mix score developed using the case-mix indices and the MEDPAR analog described earlier in this rule. We estimated the payments received under the former system by using the same average inflation factor from the 1995 data for each facility. Column (C) shows the expected reduction in payments between the two payment methodologies on a percentage basis.

The results listed in Table IX.2 should be viewed with caution and as illustrative of broad groupings of SNFs. The effects of these provisions on

individual SNFs are unknown. As stated previously, in developing these estimates, we assumed each facility would increase costs at the national average rate. This national average increase includes the higher costs of new facilities entering the program. Therefore this increase is slightly higher than the true amount for existing facilities. We do, however, expect total payments to SNFs to decrease compared to payments that would have occurred under the former cost-based methodology. The effects of this decrease in payments to any individual SNF will depend on that SNF's ability to operate under the new payment methodology and on the proportion of its revenues that comes from the Medicare program.

Under the RFA, an economic impact is significant if the annual total costs or revenues of a substantial number of entities will increase or decrease by at least 3 percent. Medicare payments generally do not account for a high proportion of SNF revenue (about 10 percent on average) and this rule reduces those payments by approximately 17 percent on average. Therefore, total revenues for SNFs will be reduced by about 1.7 percent. As stated above we are unable to determine the effects on individual SNFs and therefore are unable to determine if the new SNF per diem rates will result in a substantial number of SNFs experiencing significant decreases in their total revenues.

We do not expect suppliers of items and services to SNFs to be significantly affected economically by the Consolidated Billing provisions. Total Medicare reimbursement to suppliers is about $4 billion each year. As shown in Table IX.1, column (E), the reimbursement for these items and services is about $60 million each year. Therefore, Consolidated Billing related to the services provided to patients in Part A SNF stays should have a minimal impact on suppliers, generally. The majority of ancillary services are provided directly by SNFs or under arrangements with suppliers and are, therefore, already billed to Medicare by the SNFs. While there is a possibility that, for those services now being consolidated, a sizeable number of these suppliers would likely be reimbursed at rates lower than the rates at which they were reimbursed under the previous system, this is highly dependent on the reaction each individual supplier has to the new payment system.

In addition, with regard to Consolidated Billing related to services provided to SNF patients who are not in a covered Part A stay, to the extent that these services have been necessary in the past, they will still be required and provided to these patients by suppliers. Accordingly, it is anticipated that the total impact on suppliers will be minimal. However, determining the effect on individual suppliers is not possible due to a lack of data. Therefore we are not able to determine if these new SNF per diem rates will result in a substantial number of suppliers experiencing significant decreases in their total revenues.

Our experience with the inpatient hospital PPS has been that providers will now have incentives to provide the most cost efficient care possible while still providing the level of care necessary for the patient. The SNF PPS system provides some of the same incentives as does the hospital DRG/PPS system, and many of the changes that have taken place in the inpatient hospital system can be expected for these providers.

C. 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 have not prepared a rural impact statement since we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

X. Collection of Information Requirements

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget

Pursuant to sections 3506(c)(2)(A) and 3507(j) of the Paperwork Reduction Act of 1995 (PRA), the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) a request for emergency review. We are requesting an emergency review because the collection of information described below is needed prior to the expiration of the time limits under OMB's regulations at 5 CFR, Part 1320. The Agency cannot reasonably comply with the normal clearance procedures because of the statutory requirement, as set forth in section 4432 of the BBA 1997, to implement these requirements on July 1, 1998.

HCFA is requesting OMB review and approval of this collection within 11 working days, with a 180-day approval period. Written comments from the public will be accepted and considered if received by the individuals designated below, within 10 working days of publication of this regulation in the **Federal Register**. During this 180-day period, HCFA will pursue OMB clearance of this collection under 5 CFR 1320.5.

In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

Section 413.343 Resident Assessment Data

SNFs are required to submit the resident assessment data as described at § 483.20 of this chapter in the manner necessary to administer the payment rate methodology described in § 413.337. Pursuant to sections 4204(b) and 4214(d) of OBRA 1987, the current requirements related to the submission and retention of resident assessment data are not subject to the PRA, but it has been determined that the new requirement to maintain performance of patient assessment data for the 5th, 30th, and 60th days following admission, necessary to administer the payment rate methodology described in § 413.337, is subject to the PRA. The burden associated with this requirement is the time required to maintain MDS data submitted electronically to a State agency or an agent of the State. We do not believe there is any additional burden associated with the transmission of the data itself, since the supplemental data will be submitted as part of the routine monthly transfer of provider MDS data.

There are an estimated 17,000 facilities that will be required to maintain the minimum data set. It is estimated that it will require 5 minutes per facility, per month, to electronically store the additional MDS data for a total annual burden of 1 hour per facility.

Section 424.32 Basic Requirements For All Claims

The requirements of this section, currently approved under OMB number 0938–0008, are being modified to require that a claim for services furnished to an SNF resident under § 411.15(p)(2)(i) of this chapter must also include the SNF's Medicare provider number and a Part B claim filed by an SNF must include appropriate HCPCS coding.

The burden associated with these requirements is the time required to include the two data elements, as necessary, on a Medicare claim. Given that the burden is minimal and is captured during the completion of a HCFA–1500 common claim form, approved under OMB number 0938–0008, we are assigning 1 token-hour for the annual burden per facility associated with these new requirements. We will include these requirements as part of the supporting requirements for the HCFA–1500, when we resubmit the HCFA–1500 to OMB for reapproval.

We have submitted a copy of this rule to OMB for its review of the information collection requirements above. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, and HCFA regulation identifier HCFA–1913, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

As noted above, comments on these information collection and record keeping requirements must be mailed and/or faxed to the designee referenced below, within 10 working days of publication of this collection in the **Federal Register**:

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; *Attn:* John Burke HCFA–1913; *Fax Number:* (410) 786–1415

And,

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; *Fax Number:* (202) 395–6974 or (202) 395–5167.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, 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 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

A. Part 409 is amended as set forth below:

1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (U.S.C. 1302 and 1895hh).

Subpart C—Posthospital SNF Care

2. In § 409.20, the introductory text to paragraph (a) is revised, paragraphs (a)(6) and (a)(7) are revised, paragraph (a)(8) is removed, and paragraph (b)(2) is revised to read as follows:

§ 409.20 Coverage of services.

(a) *Included services.* Subject to the conditions and limitations set forth in this subpart and subpart D of this part, ''posthospital SNF care'' means the following services furnished to an inpatient of a participating SNF, or of a participating hospital or critical access hospital (CAH) that has a swing-bed approval.

* * * * *

(6) Services furnished by a hospital with which the SNF has a transfer agreement in effect under § 483.75(n) of this chapter; and

(7) Other services that are generally provided by (or under arrangements made by) SNFs.

(b) *Excluded services*—

* * * * *

(2) *Services not generally provided by (or under arrangements made by) SNFs.* Except as specifically listed in §§ 409.21 through 409.27, only those services generally provided by (or under arrangements made by) SNFs are considered as posthospital SNF care. For example, a type of medical or surgical procedure that is ordinarily performed only on an inpatient basis in a hospital is not included as ''posthospital SNF care,'' because such procedures are not generally provided by (or under arrangements made by) SNFs.

* * * * *

3. A new § 409.21 is added to read as follows:

§ 409.21 Nursing care.

(a) *Basic rule.* Medicare pays for nursing care as posthospital SNF care when provided by or under the supervision of a registered professional nurse.

(b) *Exception.* Medicare does not pay for the services of a private duty nurse or attendant. An individual is not considered to be a private duty nurse or attendant if he or she is an SNF employee at the time the services are furnished.

4. Section 409.24 is revised to read as follows:

§ 409.24 Medical social services.

Medicare pays for medical social services as posthospital SNF care, including—

(a) Assessment of the social and emotional factors related to the beneficiary's illness, need for care, response to treatment, and adjustment to care in the facility;

(b) Case work services to assist in resolving social or emotional problems that may have an adverse effect on the beneficiary's ability to respond to treatment; and

(c) Assessment of the relationship of the beneficiary's medical and nursing requirements to his or her home situation, financial resources, and the community resources available upon discharge from facility care.

5. Section 409.25 is revised to read as follows:

§ 409.25 Drugs, biologicals, supplies, appliances, and equipment.

(a) *Drugs and biologicals.* Except as specified in paragraph (b) of this section, Medicare pays for drugs and biologicals as posthospital SNF care only if—

(1) They represent a cost to the facility;

(2) They are ordinarily furnished by the facility for the care and treatment of inpatients; and

(3) They are furnished to an inpatient for use in the facility.

(b) *Exception.* Medicare pays for a limited supply of drugs for use outside the facility if it is medically necessary to facilitate the beneficiary's departure from the facility and required until he or she can obtain a continuing supply.

(c) *Supplies, appliances, and equipment.* Except as specified in paragraph (d) of this section, Medicare pays for supplies, appliances, and equipment as posthospital SNF care only if they are—

(1) Ordinarily furnished by the facility to inpatients; and

(2) Furnished to inpatients for use in the facility.

(d) *Exception.* Medicare pays for items to be used after the individual leaves the facility if—

(1) The item is one that the beneficiary must continue to use after leaving, such as a leg brace; or

(2) The item is necessary to permit or facilitate the beneficiary's departure from the facility and is required until he or she can obtain a continuing supply, for example, sterile dressings.

6. Section 409.26 is revised to read as follows:

§ 409.26 Transfer agreement hospital services.

(a) *Services furnished by an intern or a resident-in-training.* Medicare pays for medical services that are furnished by an intern or a resident-in-training (under a hospital teaching program approved in accordance with the provisions of § 409.15) as posthospital SNF care, if the intern or resident is in—

(1) A participating hospital with which the SNF has in effect an agreement under § 483.75(n) of this chapter for the transfer of patients and exchange of medical records; or

(2) A hospital that has a swing-bed approval, and is furnishing services to an SNF-level inpatient of that hospital.

(b) *Other diagnostic or therapeutic services.* Medicare pays for other diagnostic or therapeutic services as posthospital SNF care if they are provided—

(1) By a participating hospital with which the SNF has in effect a transfer agreement as described in paragraph (a)(1) of this section; or

(2) By a hospital or a CAH that has a swing-bed approval, to its own SNF-level inpatient.

7. Section 409.27 is revised to read as follows:

§ 409.27 Other services generally provided by (or under arrangements made by) SNFs.

In addition to those services specified in §§ 409.21 through 409.26, Medicare pays as posthospital SNF care for such other diagnostic and therapeutic services as are generally provided by (or under arrangements made by) SNFs, including—

(a) Medical and other health services as described in subpart B of part 410 of this chapter, subject to any applicable limitations or exclusions contained in that subpart or in § 409.20(b); and

(b) Respiratory therapy services prescribed by a physician for the assessment, diagnostic evaluation, treatment, management, and monitoring of patients with deficiencies and abnormalities of cardiopulmonary function.

Subpart D—Requirements for Coverage of Posthospital SNF Care

8. In § 409.30, the introductory text is revised to read as follows:

§ 409.30 Basic requirements.

Posthospital SNF care, including SNF-type care furnished in a hospital or CAH that has a swing-bed approval, is covered only if the beneficiary meets the requirements of this section and only for days when he or she needs and receives care of the level described in § 409.31. A beneficiary in an SNF is also considered to meet the requirements of this section and of § 409.31 when assigned to one of the Resource Utilization Groups that is designated (in the annual publication of Federal prospective payment rates described in § 413.345 of this chapter) as representing the required level of care.

9. In § 409.33, paragraph (a) is removed, and paragraphs (b), (c), and (d) are redesignated as paragraphs (a), (b), and (c), respectively; and newly redesignated paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 409.33 Examples of skilled nursing and rehabilitation services.

(a) *Services that qualify as skilled nursing services.* (1) Intravenous or intramuscular injections and intravenous feeding.

(2) Enteral feeding that comprises at least 26 per cent of daily calorie requirements and provides at least 501 milliliters of fluid per day.

* * * * *

Subpart F—Scope of Hospital Insurance Benefits

10. In § 409.60, the heading of paragraph (c) is republished, paragraphs (c)(2)(i) through (c)(2)(iii) are redesignated as paragraphs (c)(2)(ii) through (c)(2)(iv), respectively, and a new paragraph (c)(2)(i) is added to read as follows:

§ 409.60 Benefit periods.

* * * * *

(c) *Presumptions.*

* * * * *

(2) * * *

(i) To have met the skilled level of care requirements during any period for which the beneficiary was assigned to one of the Resource Utilization Groups designated as representing the required level of care, as provided in § 409.30.

* * * * *

Part 410—Supplementary Medical Insurance (SMI) Benefits

B. Part 410 is amended as set forth below:

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 1395(hh)), unless otherwise indicated.

Subpart B—Medical and Other Health Services

2. In § 410.27, paragraph (a)(1)(i) is revised to read as follows:

§ 410.27 Outpatient hospital services and supplies incident to physicians' services: Conditions.

(a) * * *

(1) * * *

(i) By or under arrangements made by a participating hospital, except in the case of an SNF resident as provided in § 411.15(p) of this chapter; and

* * * * *

3. In § 410.28, paragraph (a)(1) is revised to read as follows:

§ 410.28 Hospital or CAH diagnostic services furnished to outpatients: Conditions.

(a) * * *

(1) They are furnished by or under arrangements made by a participating hospital or participating CAH, except in the case of an SNF resident as provided in § 411.15(p) of this chapter.

* * * * *

4. In § 410.32, the introductory text to paragraph (e) is republished, and a new

paragraph (e)(7) is added to read as follows:

§ 410.32 Diagnostic X-ray texts, diagnostic laboratory tests, and other diagnostic tests: Conditions.

* * * * *

(e) *Diagnostic laboratory tests.* Medicare Part B pays for covered diagnostic laboratory tests that are furnished by any of the following:

* * * * *

(7) An SNF to its resident under § 411.15(p) of this chapter, either directly (in accordance with § 483.75(k)(1)(i) of this chapter) or under an arrangement (as defined in § 409.3 of this chapter) with another entity described in this paragraph.

5. In § 410.40, the introductory text to paragraph (b) is republished, paragraphs (b)(2) and (b)(3)(ii) are revised, and a new paragraph (b)(4) is added to read as follows:

§ 410.40 Ambulance services: Limitations.

* * * * *

(b) *Limits on coverage of ambulance transportation.* Medicare Part B pays for ambulance transportation only if—

* * * * *

(2) Medicare Part A payment is not available for the service;

(3) * * *

(ii) The transportation is furnished by an ambulance service with which the hospital does not have an arrangement (as defined in § 409.3 of this chapter), and the hospital has a waiver (in accordance with § 489.23 of this chapter) under which Medicare Part B payment may be made to the ambulance service; and

(4) In the case of an SNF resident (as defined in § 411.15(p)(3) of this chapter), the transportation is furnished by, or under arrangements made by, the SNF.

* * * * *

Subpart I—Payment of SMI Benefits

6. In § 410.150, the heading of paragraph (a) is republished, paragraph (a)(2) is revised, the introductory text to paragraph (b) is republished, and a new paragraph (b)(14) is added to read as follows:

§ 410.150 To whom payment is made.

(a) *General rules.*

* * * * *

(2) The services specified in paragraphs (b)(5) through (b)(14) of this section must be furnished by a facility that has in effect a provider agreement or other appropriate agreement to participate in Medicare.

(b) *Specific rules.* Subject to the conditions set forth in paragraph (a) of this section, Medicare Part B pays as follows:

* * * * *

(14) To an SNF for services (other than those described in § 411.15(p)(2) of this chapter) that are furnished to a resident (as defined in § 411.15(p)(3) of this chapter) of the SNF.

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

C. Part 411 is amended as set forth below:

1. The authority citation for part 411 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 Exclusions and Exclusion of Particular Services

2. In § 411.15, the introductory text is republished; in the heading to paragraph (m) of this section, the word ''furnished'' is added before the word ''to''; and a new paragraph (p) is added to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

* * * * *

(p) *Services furnished to SNF residents.* (1) *Basic rule.* Except as provided in paragraph (p)(2) of this section, any service furnished to a resident of an SNF by an entity other than the SNF, unless the SNF has an arrangement (as defined in § 409.3 of this chapter) with that entity to furnish that particular service to the SNF's residents. Services subject to exclusion under this paragraph include, but are not limited to—

(i) Any physical, occupational, or speech-language therapy services regardless of whether or not the services are furnished by, or under the supervision of, a physician or other health care professional; and

(ii) Services furnished as an incident to the professional services of a physician or other health care professional specified in paragraph (p)(2) of this section.

(2) *Exceptions.* The following services are not excluded from coverage:

(i) Physicians' services that meet the criteria of § 415.102(a) of this chapter for payment on a fee schedule basis, provided that the claim for payment includes the SNF's Medicare provider number in accordance with § 424.32(a)(2) of this chapter.

(ii) Services performed under a physician's supervision by a physician assistant who meets the applicable definition in section 1861(aa)(5) of the Act.

(iii) Services performed by a nurse practitioner or clinical nurse specialist who meets the applicable definition in section 1861(aa)(5) of the Act and is working in collaboration (as defined in section 1861(aa)(6) of the Act) with a physician.

(iv) Services performed by a certified nurse-midwife, as defined in section 1861(gg) of the Act.

(v) Services performed by a qualified psychologist, as defined in section 1861(ii) of the Act.

(vi) Services performed by a certified registered nurse anesthetist, as defined in section 1861(bb) of the Act.

(vii) Dialysis services and supplies, as defined in section 1861(s)(2)(F) of the Act.

(viii) Erythropoietin (EPO) for dialysis patients, as defined in section 1861(s)(2)(O) of the Act.

(ix) Hospice care, as defined in section 1861(dd) of the Act.

(x) An ambulance trip that initially conveys an individual to the SNF to be admitted as a resident, or that conveys an individual from the SNF in connection with one of the circumstances specified in paragraphs (p)(3)(i) through (p)(3)(iv) of this section as ending the individual's status as an SNF resident.

(xi) *For services furnished during 1998 only.* The transportation costs of electrocardiogram equipment for electrocardiogram test services (HCPCS code R0076).

(3) *SNF resident defined.* For purposes of this paragraph, a beneficiary who is admitted to a Medicare-participating SNF (or to the nonparticipating portion of a nursing home of which a distinct part is a Medicare-participating SNF) is considered to be a resident of the SNF, regardless of whether Part A covers the stay. Whenever such a beneficiary leaves the facility, the beneficiary's status as an SNF resident for purposes of this paragraph (along with the SNF's responsibility to furnish or make arrangements for the services described in paragraph (p)(1) of this section) ends when one of the following events occurs—

(i) The beneficiary is admitted as an inpatient to a Medicare-participating hospital or CAH, or as a resident to another SNF;

(ii) The beneficiary receives services from a Medicare-participating home health agency under a plan of care;

(iii) The beneficiary receives outpatient services from a Medicare-participating hospital or CAH (but only

with respect to those services that are not furnished pursuant to the comprehensive care plan required under § 483.20 of this chapter); or

(iv) The beneficiary is formally discharged (or otherwise departs) from the SNF, unless the beneficiary is readmitted (or returns) to that or another SNF within 24 consecutive hours.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

D. Part 413 is amended as set forth below:

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

Subpart A—Introduction and General Rules

2. In § 413.1, paragraph (g) is revised to read as follows:

§ 413.1 Introduction.

* * * * *

(g) *Payment for services furnished in SNFs.* (1) Except as specified in paragraph (g)(2)(ii) of this section, the amount paid for services furnished in cost reporting periods beginning before July 1, 1998, is determined on a reasonable cost basis or, where applicable, in accordance with the prospectively determined payment rates for low-volume SNFs established under section 1888(d) of the Act, as set forth in subpart I of this part.

(2) The amount paid for services (other than those described in § 411.15(p)(2) of this chapter)—

(i) That are furnished in cost reporting periods beginning on or after July 1, 1998, to a resident who is in a covered Part A stay, is determined in accordance with the prospectively determined payment rates for SNFs established under section 1888(e) of the Act, as set forth in subpart J of this part.

(ii) That are furnished on or after July 1, 1998, to a resident who is not in a covered Part A stay, is determined in accordance with any applicable Part B fee schedule or, for a particular item or service to which no fee schedule applies, by using the existing payment methodology utilized under Part B for such item or service.

3. The heading for subpart I of part 413 is revised to read as follows:

Subpart I—Prospectively Determined Payment Rates for Low-Volume Skilled Nursing Facilities, for Cost Reporting Periods Beginning Prior to July 1, 1998

4. A new subpart J, consisting of §§ 413.330, 413.333, 413.335, 413.337, 413.340, 413.343, 413.345, and 413.348, is added to part 413 to read as follows:

Subpart J—Prospective Payment for Skilled Nursing Facilities

Sec.
413.330 Basis and scope.
413.333 Definitions.
413.335 Basis of payment.
413.337 Methodology for calculating the prospective payment rates.
413.340 Transition period.
413.343 Resident assessment data.
413.345 Publication of Federal prospective payment rates.
413.348 Limitation on review.

Subpart J—Prospective Payment for Skilled Nursing Facilities

§ 413.330 Basis and scope.

(a) *Basis.* This subpart implements section 1888(e) of the Act, which provides for the implementation of a prospective payment system for SNFs for cost reporting periods beginning on or after July 1, 1998.

(b) *Scope.* This subpart sets forth the framework for the prospective payment system for SNFs, including the methodology used for the development of payment rates and associated adjustments, the application of a transition phase, and related rules.

§ 413.333 Definitions.

As used in this subpart—

Case-mix index means a scale that measures the relative difference in resource intensity among different groups in the resident classification system.

Market basket index means an index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered skilled nursing services.

Resident classification system means a system for classifying SNF residents into mutually exclusive groups based on clinical, functional, and resource-based criteria. For purposes of this subpart, this term refers to the current version of the Resource Utilization Groups, as set out in the annual publication of Federal prospective payment rates described in § 413.345.

Rural area means any area outside of an urban area.

Urban area means a metropolitan statistical area (MSA) or New England County Metropolitan Area (NECMA), as defined by the Office of Management and Budget, or a New England county deemed to be an urban area, as listed in § 412.62(f)(1)(ii)(B) of this chapter.

§ 413.335 Basis of payment.

(a) *Method of payment.* Under the prospective payment system, SNFs receive a per diem payment of a predetermined rate for inpatient services furnished to Medicare beneficiaries. The per diem payments are made on the basis of the Federal payment rate described in § 413.337 and, during a transition period, on the basis of a blend of the Federal rate and the facility-specific rate described in § 413.340. These per diem payment rates are determined according to the methodology described in § 413.337 and § 413.340.

(b) *Payment in full.* The payment rates represent payment in full (subject to applicable coinsurance as described in subpart G of part 409 of this chapter) for all costs (routine, ancillary, and capital-related) associated with furnishing inpatient SNF services to Medicare beneficiaries other than costs associated with operating approved educational activities as described in § 413.85.

§ 413.337 Methodology for calculating the prospective payment rates.

(a) *Data used.* (1) To calculate the prospective payment rates, HCFA uses—

(i) Medicare data on allowable costs from freestanding and hospital-based SNFs for cost reporting periods beginning in fiscal year 1995. SNFs that received ''new provider'' exemptions under § 413.30(e)(2) are excluded from the data base used to compute the Federal payment rates. In addition, allowable costs related to exceptions payments under § 413.30(f) are excluded from the data base used to compute the Federal payment rates;

(ii) An appropriate wage index to adjust for area wage differences;

(iii) The most recent projections of increases in the costs from the SNF market basket index;

(iv) Resident assessment and other data that account for the relative resource utilization of different resident types; and

(v) Medicare Part B SNF claims data reflecting amounts payable under Part B for covered SNF services (other than those services described in § 411.15(p)(2) of this chapter) furnished during SNF cost reporting periods beginning in fiscal year 1995 to individuals who were residents of SNFs and receiving Part A covered services.

(b) *Methodology for calculating the per diem Federal payment rates.* (1) *Determining SNF costs.* In calculating the initial unadjusted Federal rates

applicable for services provided during the period beginning July 1, 1998 through September 30, 1999, HCFA determines each SNF's costs by summing its allowable costs for the cost reporting period beginning in fiscal year 1995 and its estimate of Part B payments (described in paragraphs (a)(1)(i) and (a)(1)(v) of this section).

(2) *Use of market basket index.* The SNF market basket index is used to adjust the SNF cost data to reflect cost increases occurring between cost reporting periods represented in the data and the initial period (beginning July 1, 1998 and ending September 30, 1999) to which the payment rates apply. For each year, the cost data are updated by a factor equivalent to the annual market basket index percentage minus 1 percentage point.

(3) *Calculation of the per diem cost.* For each SNF, the per diem cost is computed by dividing the cost data for each SNF by the corresponding number of Medicare days.

(4) *Standardization of data for variation in area wage levels and case-mix.* The cost data described in paragraph (b)(2) of this section are standardized to remove the effects of geographic variation in wage levels and facility variation in case-mix. The cost data are standardized for geographic variation in wage levels using the wage index. The cost data are standardized for facility variation in case-mix using the case-mix indices and other data that indicate facility case-mix.

(5) *Calculation of unadjusted Federal payment rates.* HCFA calculates the national per diem unadjusted payment rates by urban and rural classification in the following manner:

(i) By computing the average per diem standardized cost of freestanding SNFs weighted by Medicare days.

(ii) By computing the average per diem standardized cost of freestanding and hospital-based SNFs combined weighted by Medicare days.

(iii) By computing the average of the amounts determined under paragraphs (b)(5)(i) and (b)(5)(ii) of this section.

(c) *Calculation of adjusted Federal payment rates for case-mix and area wage levels.* The Federal rate is adjusted to account for facility case-mix using a resident classification system and associated case-mix indices that account for the relative resource utilization of different patient types. This classification system utilizes the resident assessment instrument completed by SNFs as described at § 483.20 of this chapter, according to the assessment schedule described in § 413.343(b). The Federal rate is also adjusted to account for geographic differences in area wage levels using an appropriate wage index.

(d) *Annual updates of Federal unadjusted payment rates.* HCFA updates the unadjusted Federal payment rates on a fiscal year basis.

(1) For fiscal years 2000 through 2002, the unadjusted Federal rate is equal to the rate for the previous period or fiscal year increased by a factor equal to the SNF market basket index percentage minus 1 percentage point.

(2) For subsequent fiscal years, the unadjusted Federal rate is equal to the rate for the previous fiscal year increased by the applicable SNF market basket index amount.

§ 413.340 Transition period.

(a) *Duration of transition period and proportions for the blended transition rate.* Beginning with an SNF's first cost reporting period beginning on or after July 1, 1998, there is a transition period covering three cost reporting periods. During this transition phase, SNFs receive a payment rate comprising a blend of the adjusted Federal rate and a facility-specific rate. For the first cost reporting period beginning on or after July 1, 1998, payment is based on 75 percent of the facility-specific rate and 25 percent of the Federal rate. For the subsequent cost reporting period, the rate is comprised of 50 percent of the facility-specific rate and 50 percent of the Federal rate. In the final cost reporting period of the transition, the rate is comprised of 25 percent of the facility-specific rate and 75 percent of the Federal rate. For all subsequent cost reporting periods, payment is based entirely on the Federal rate.

(b) *Calculation of facility-specific rate for the first cost reporting period.* The facility-specific rate is computed based on the SNF's Medicare allowable costs from its fiscal year 1995 cost report plus an estimate of the amounts payable under Part B for covered SNF services (other than those services described in § 411.15(p)(2) of this chapter) furnished during fiscal year 1995 to individuals who were residents of SNFs and receiving Part A covered services. Allowable costs associated with exceptions, as described in § 413.30(f), are included in the calculation of the facility-specific rate. Allowable costs associated with exemptions, as described in § 413.30(e)(2), are included in the calculation of the facility-specific rate but only to the extent that they do not exceed 150 percent of the routine cost limit. Low Medicare volume SNFs that were paid a prospectively determined rate under § 413.300 for their cost reporting period beginning in fiscal year 1995 will utilize that rate as the basis for the allowable costs of routine (operating and capital-related) expenses in determining the facility-specific rate. Each SNF's allowable costs are updated to the first cost reporting period to which the payment rates apply using annual factors equal to the SNF market basket percentage minus 1 percentage point.

(c) *SNFs participating in the Multistate Nursing Home Case-Mix and Quality Demonstration.* SNFs that participated in the Multistate Nursing Home Case-Mix and Quality Demonstration in a cost reporting period that began in calendar year 1997 will utilize their allowable costs from that cost reporting period, including prospective payment amounts determined under the demonstration payment methodology.

(d) *Update of facility-specific rates for subsequent cost reporting periods.* The facility-specific rate for a cost reporting period that is subsequent to the first cost reporting period is equal to the facility-specific rate for the first cost reporting period (described in paragraph (a) of this section) updated by the market basket index.

(1) For a subsequent cost reporting period beginning in fiscal years 1998 and 1999, the facility-specific rate is equal to the facility-specific rate for the previous cost reporting period updated by the applicable market basket index percentage minus one percentage point.

(2) For a subsequent cost reporting period beginning in fiscal year 2000, the facility-specific rate is equal to the facility-specific rate for the previous cost reporting period updated by the applicable market basket index percentage.

(e) *SNFs excluded from the transition period.* SNFs that received their first payment from Medicare, under present or previous ownership, on or after October 1, 1995, are excluded from the transition period, and payment is made according to the Federal rates only.

§ 413.343 Resident assessment data.

(a) *Submission of resident assessment data.* SNFs are required to submit the resident assessment data described at § 483.20 of this chapter in the manner necessary to administer the payment rate methodology described in § 413.337. This provision includes the frequency, scope, and number of assessments required.

(b) *Assessment schedule.* In accordance with the methodology described in § 413.337(c) related to the adjustment of the Federal rates for case-mix, SNFs must submit assessments according to an assessment schedule. This schedule must include

performance of patient assessments on the 5th, 14th, 30th, 60th, and 90th days following admission and such other assessments that are necessary to account for changes in patient care needs.

(c) *Noncompliance with assessment schedule.* HCFA pays a default rate for the Federal rate when a SNF fails to comply with the assessment schedule in paragraph (b) of this section. The default rate is paid for the days of a patient's care for which the SNF is not in compliance with the assessment schedule.

§ 413.345 Publication of Federal prospective payment rates.

HCFA publishes information pertaining to each update of the Federal payment rates in the **Federal Register**. This information includes the standardized Federal rates, the resident classification system that provides the basis for case-mix adjustment (including the designation of those specific Resource Utilization Groups under the resident classification system that represent the required SNF level of care, as provided in § 409.30 of this chapter), and the wage index. This information is published before May 1 for the fiscal year 1998 and before August 1 for the fiscal years 1999 and after.

§ 413.348 Limitation on review.

Judicial or administrative review under sections 1869 or 1878 of the Act or otherwise is prohibited with regard to the establishment of the Federal rates. This prohibition includes the methodology used in the computation of the Federal standardized payment rates, the case-mix methodology, and the development and application of the wage index. This prohibition on judicial and administrative review also extends to the methodology used to establish the facility-specific rates but not to determinations related to reasonable cost in the fiscal year 1995 cost reporting period used as the basis for these rates.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

E. Part 424 is amended as set forth below:

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (U.S.C. 1302 and 1895hh).

Subpart A—General Provisions

2. In § 424.3, the following definition is added, in alphabetical order, to read as follows:

§ 424.3 Definitions.

* * * * *

HCPCS means HCFA Common Procedure Coding System.

* * * * *

Subpart B—Certification and Plan of Treatment Requirements

3. In § 424.20, the introductory text and paragraph (a) are revised to read as follows:

§ 424.20 Requirements for posthospital SNF care.

Medicare Part A pays for posthospital SNF care furnished by an SNF, or a hospital or CAH with a swing-bed approval, only if the certification and recertification for services are consistent with the content of paragraph (a) or (c) of this section, as appropriate.

(a) *Content of certification*—(1) *General requirements.* Posthospital SNF care is or was required because—

(i) The individual needs or needed on a daily basis skilled nursing care (furnished directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services that, as a practical matter, can only be provided in an SNF or a swing-bed hospital on an inpatient basis, and the SNF care is or was needed for a condition for which the individual received inpatient care in a participating hospital or a qualified hospital, as defined in § 409.3 of this chapter; or

(ii) The individual has been correctly assigned to one of the Resource Utilization Groups designated as representing the required level of care, as provided in § 409.30 of this chapter.

* * * * *

4. In § 424.32, the introductory text to paragraph (a) is republished, paragraph (a)(2) is revised, and a new paragraph (a)(5) is added, to read as follows:

§ 424.32 Basic requirements for all claims.

(a) A claim must meet the following requirements:

* * * * *

(2) A claim for physician services must include appropriate diagnostic coding using ICD–9–CM and, for services furnished to an SNF resident under § 411.15(p)(2)(i) of this chapter, must also include the SNF's Medicare provider number.

* * * * *

(5) A Part B claim filed by an SNF must include appropriate HCPCS coding.

* * * * *

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

F. Part 483 is amended as set forth below:

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Requirements for Long Term Care Facilities

2. In § 483.20, paragraph (b)(4) is revised to read as follows:

§ 483.20 Resident assessment.

* * * * *

(b) *Comprehensive assessments.*

* * * * *

(4) *Frequency.* Subject to the timeframes prescribed in § 413.343(b) of this chapter, assessments must be conducted—

(i) No later than 14 days after the date of admission;

(ii) Promptly after a significant change in the resident's physical or mental condition; and

(iii) In no case, less often than once every 12 months.

* * * * *

3. In § 483.75, paragraph (h)(1) is revised to read as follows:

§ 483.75 Administration.

* * * * *

(h) *Use of outside resources.* (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under an arrangement described in section 1861(w) of the Act or (with respect to services furnished to NF residents and dental services furnished to SNF residents) an agreement described in paragraph (h)(2) of this section.

* * * * *

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

G. Part 489 is amended to read as follows:

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Essentials of Provider Agreements

2. In § 489.20, the introductory text is republished, and a new paragraph (s) is added to read as follows:

§ 489.20 Basic commitments.

The provider agrees to the following:

* * * * *

(s) In the case of an SNF, either to furnish directly or make arrangements (as defined in § 409.3 of this chapter) for all Medicare-covered services furnished to a resident (as defined in § 411.15(p)(3) of this chapter) of the SNF, except the following:

(1) Physicians' services that meet the criteria of § 415.102(a) of this chapter for payment on a fee schedule basis.

(2) Services performed under a physician's supervision by a physician assistant who meets the applicable definition in section 1861(aa)(5) of the Act.

(3) Services performed by a nurse practitioner or clinical nurse specialist who meets the applicable definition in section 1861(aa)(5) of the Act and is working in collaboration (as defined in section 1861(aa)(6) of the Act) with a physician.

(4) Services performed by a certified nurse-midwife, as defined in section 1861(gg) of the Act.

(5) Services performed by a qualified psychologist, as defined in section 1861(ii) of the Act.

(6) Services performed by a certified registered nurse anesthetist, as defined in section 1861(bb) of the Act.

(7) Dialysis services and supplies, as defined in section 1861(s)(2)(F) of the Act.

(8) Erythropoietin (EPO) for dialysis patients, as defined in section 1861(s)(2)(O) of the Act.

(9) Hospice care, as defined in section 1861(dd) of the Act.

(10) An ambulance trip that initially conveys an individual to the SNF to be admitted as a resident, or that conveys an individual from the SNF in connection with one of the circumstances specified in § 411.15(p)(3)(i) through (p)(3)(iv) of this chapter as ending the individual's status as an SNF resident.

(11) *For services furnished during 1998 only.* The transportation costs of electrocardiogram equipment for electrocardiogram test services (HCPCS code R0076).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 22, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: April 28, 1998.

Donna E. Shalala,

Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix A—Technical Features of the 1992 Skilled Nursing Facility Total Cost Market Basket Index

As discussed in the preamble of this rule, we are revising and rebasing the SNF market basket. This appendix describes the technical aspects of the 1992-based index that we are implementing in this rule. We present this description of the market basket in three steps:

- A synopsis of the structural differences between the 1977- and the 1992-based market baskets.
- A description of the methodology used to develop the cost category weights in the 1992-based market basket.
- A description of the data sources used to measure price change for each component of the 1992-based market basket, making note of the differences from the price proxies used in the 1977-based market basket.

I. Synopsis of Structural Changes Adopted in the Revised and Rebased 1992 Skilled Nursing Facility Total Cost Market Basket

Four major structural differences exist between the current 1977-based and the 1992-based SNF market baskets.

- The 1992-based market basket has total costs (routine, ancillary, and capital-related) whereas the 1977-based market basket had only routine costs.
- More recent SNF cost data are used in the revised and rebased SNF market basket.

The 1977-based market basket contained cost shares that were derived from 1977 National Center for Health Statistics data. The 1992-based market basket uses data from the PPS–9 Medicare Cost Reports for freestanding SNFs with Medicare expenses greater than 1 percent of total expenses for five major categories of cost. PPS–9 cost reports have cost reporting periods beginning after September 30, 1991 and before October 1, 1992. Cost allocations with the six major cost categories use two Department of Commerce data sources, the 1992 Asset and Expenditure Survey, Bureau of the Census, Economics and Statistics Administration, and the 1992 Bureau of Economic Analysis Input-Output Tables.

- Some cost categories have been disaggregated and some cost categories have been combined. These category changes reflect the availability of data in the cost reports, the Asset and Expenditure Survey, and the Input-Output Tables. The cost categories for Fuel Oil, Coal, etc. and Natural Gas have been combined into Fuels, Nonhighway. The Supplies category has been disaggregated into several subcategories: Paper, Rubber and Plastics, and Chemicals. The 1977-based Miscellaneous Costs cost category was disaggregated into Miscellaneous Products and Other Services, which was then further disaggregated into Telephone, Labor-intensive Services, and Non Labor-intensive Services. The Capital-related Expenses major cost category was added, and then disaggregated into five subcategories, including Depreciation expenses for Building and Fixed Equipment and for Movable Equipment, Interest expenses for Government and Nonprofit SNFs and for For-profit SNFs, and Other Capital-related expenses.
- Some new price proxies have been incorporated in the revised and rebased market basket.

II. Methodology for Developing the Cost Category Weights

Cost category weights for the 1992-based market basket were developed in two stages. First, base weights for six main categories (wages and salaries, employee benefits, contract labor, pharmaceuticals, capital-related expenses, and a residual all other) were derived from the SNF Medicare Cost Reports described above. The residual ''all other'' cost category was divided into subcategories, using U.S. Department of Commerce data sources for the nursing home industry. Relationships from the 1992 Input-Output Tables were used to allocate the ''all other'' cost category.

Below we describe the source of the six main category weights and their subcategories in the 1992-based market basket.

- Wages and Salaries: The wages and salaries cost category is one of the six base weights derived from using 1992 SNF Medicare Cost Reports.
- Employee Benefits: The ratio used in the employee benefits cost category is derived from 1993 SNF Medicare cost reports. The 1993 cost reports contained information from which to derive the ratio of employee benefits to wages and salaries that was not available in the 1992 SNF cost reports.
- Pharmaceuticals: The ratio used in the pharmaceuticals cost category was derived from 1993 SNF Medicare cost reports. The 1993 cost reports contained information from which to derive the ratio of pharmaceuticals costs to that cost that was not available in the 1992 cost reports.
- Capital-related: The weight for the overall capital-related expenses cost category was derived using 1992 SNF Medicare Cost Reports. The subcategory and vintage weights within the overall capital-related expenses were derived using additional data sources. The methodology for deriving these weights is described below.

In determining the subcategory weights, we used a combination of information from the 1992 and 1993 SNF Medicare Cost Reports, the 1992 Census Asset and Expenditure Survey, and the 1992 hospital Medicare Cost Reports. We estimated the depreciation expense share of capital-related expenses, including the distribution between building and fixed equipment and movable equipment, from the 1992 Asset and Expenditure Survey. Depreciation expenses cannot be disaggregated from the Medicare Cost Reports due to multiple reporting methods. From these calculations, depreciation expenses, not including

depreciation expenses implicit from leases, were estimated to be 50.7 percent of total capital-related expenditures in 1992.

The interest expense share of capital-related expenses was derived from a special file of the 1993 SNF Medicare Cost Reports. Interest expenses are not identifiable in the 1992 SNF Medicare Cost Reports and not reported in the 1992 Asset and Expenditure Survey. We determined the split between for-profit interest expense and not-for profit interest expense based on the distribution of long-term debt outstanding by type of SNF (for-profit or not-for-profit) from the 1992 SNF Medicare Cost Reports. Interest expense, not including interest expenses from leases, was estimated to be 27.3 percent of total capital-related expenditures in 1992.

A small category, other capital-related expenses (insurance, taxes, other), was calculated using a ratio from the 1992 hospital Medicare Cost Reports. We determined the ratio of other capital-related expenses to book values for hospital depreciable assets by type of hospital control (for-profit, not-for-profit, and government) from the 1992 hospital Medicare Cost Reports. We then applied this ratio by type of SNF control to the book values of SNF depreciable assets from the 1992 SNF Medicare Cost Reports to determine other capital-related expenses for SNFs. This methodology assumes that by type of control, hospitals and SNFs have the same proportion of other capital-related expenses to depreciable assets. This assumption was necessary since other capital-related expenses not including leases were not directly available from the SNF Medicare Cost Reports. Other capital-related expenses, not including other capital-related expenses implicit from leases, were estimated to be 4.5 percent of total capital-related expenditures in 1992.

Consistent with the methodology from the hospital PPS capital input price index, we calculated lease expenses as a residual by subtracting depreciation, interest, and other capital-related expenses from total capital-related expenses. We then assumed that roughly 10 percent of lease expenses were overhead, the same assumption used in the hospital PPS capital input price index, and included them in the other capital-related expense category. The remaining 90 percent of lease expenses were distributed across the depreciation (61.5 percent = 50.7/82.5), interest (33.1 percent = 27.3/82.5), and other capital-related expenses (5.4 percent = 4.5/82.5) categories using the shares determined by the methodology described above. The amount of lease expenses applied to the depreciation subcategories, building and fixed equipment (93.9 percent) and movable equipment (6.1 percent), were determined using the 1992 Asset and Expenditure Survey distribution of lease expenses. The table below shows the final capital-related expense distribution, including expenses from leases, in the SNF PPS market basket:

	SNF capital-related expenses*	SNF capital-related expenses**
Total	100.0	9.8
Depreciation	60.5	5.9
Building and Fixed Equipment.	42.1	4.1
Movable Equipment	18.4	1.8
Interest	32.6	3.2
Other capital-related expense	6.9	0.7

*As a percent of total capital-related expenses.
**As percent of total SNF expenses.

As explained in the Rebasing and Revising the SNF market basket section of the preamble, the HCFA methodology for determining the price change of capital-related expenses accounts for the vintage nature of capital, which is the acquisition and use of capital over time. In order to capture this vintage nature, the price proxies must be vintage-weighted. The determination of these vintage weights occurs in two steps. First, we must determine the expected life of capital and debt instruments in SNFs. Second, we must identify the proportion of expenditures within a cost category that are attributable to each year over the life of capital assets in that category, or the vintage weights. Each of these steps is explained in detail below.

The expected life of capital must be determined for both building and fixed equipment and movable equipment. The expected life for each of these cost categories is determined by dividing end of year book value amounts by annual depreciation expenses for SNFs from the 1992 Asset and Expenditure Survey. This calculation produced an expected life of 23 years for building and fixed equipment and 10 years for movable equipment. Implicit in this calculation is the assumption that all book values are currently depreciable. In the absence of data on capital debt instruments held by SNFs, the expected life of capital debt instruments is assumed to be 22 years for both for-profit and not-for-profit debt instruments, the same as for the hospital PPS capital input price index.

Given the expected life of capital and debt instruments as determined from the methodology above, we must determine the proportion of capital expenditures attributable to each year of the expected life by cost category. These proportions represent the vintage weights. We were not able to find historical time-series of capital expenditures by SNFs. Therefore, we approximated the capital expenditure patterns of SNFs over time using alternative SNF data sources. For building and fixed equipment, we used the stock of beds in nursing homes from the HCFA's National Health Accounts for 1962 through 1991. We then used the change in the stock of beds each year to approximate building and fixed equipment purchases for that year. This procedure assumes that bed growth reflects the growth in capital-related costs in SNFs for building and fixed equipment. We believe this assumption is reasonable since the number of beds reflects the size of the SNF, and as the SNF adds beds, it also adds fixed capital.

For movable equipment, we used available SNF data to capture the changes in intensity of SNF services that would cause SNFs to purchase movable equipment. We estimated the change in intensity as the trend in the ratio of non-therapy ancillary costs to routine costs from the 1989 through 1993 SNF Medicare Cost Reports. We estimated this ratio for 1962 through 1988 using regression analysis. The time series of non-therapy ancillary costs to routine costs for SNFs measures changes in intensity in SNF services, which are assumed to be associated with movable equipment purchase patterns. The assumption here is that as non-therapy ancillary costs increase compared with routine costs, the SNF caseload is more complex and would require more movable equipment. Again, the lack of direct movable equipment purchase data for SNFs over time required us to use alternative SNF data sources. The resulting two time series, determined from beds and the ratio of non-therapy ancillary to routine costs, reflect real capital purchases of building and fixed equipment and movable equipment over time, respectively.

To obtain nominal purchases, which are used to determine the vintage weights for interest, we converted the two real capital purchase series from 1963 through 1991 determined above to nominal capital purchase series using their respective price proxies (Boeckh institutional construction index and PPI for machinery and equipment). We then combined the two nominal series into one nominal capital purchase series for 1963 through 1991. Nominal capital purchases are needed for interest vintage weights to capture the value of the debt instrument.

Once these capital purchase time series were created for 1963 through 1991, we averaged different periods to obtain an average capital purchase pattern over time. For building and fixed equipment we

averaged seven 23-year periods, for movable equipment we averaged twenty 10-year periods, and for interest we averaged eight 22-year periods. The vintage weight for a given year is calculated by dividing the capital purchase amount in any given year by the total amount of purchases during the expected life of the equipment or debt instrument. For example, for the 23-year period of 1963 through 1985 for building and fixed equipment, the vintage weight for year 1 is calculated by dividing the real annual capital purchase amount of building and fixed equipment in 1963 into the total amount of real annual capital purchases of building and fixed equipment over the entire 1963 through 1985 period. We performed this calculation for each year in the 23-year period, and for each of the seven 23-year periods. We then calculated an average of the seven 23-year periods. The resulting vintage weights for each of these cost categories are shown in Table A–1 below:

Appendix Table A–1—Vintage Weights for SNF PPS Capital-Related Price Proxies

Year	Building and fixed equipment	Movable equipment	Interest
1	0.059	0.089	0.038
2	0.078	0.093	0.046
3	0.086	0.096	0.046
4	0.079	0.101	0.047
5	0.074	0.104	0.051
6	0.071	0.104	0.054
7	0.073	0.104	0.060
8	0.075	0.114	0.064
9	0.064	0.101	0.062
10	0.056	0.097	0.055
11	0.052	.....	0.056
12	0.048	.....	0.056
13	0.041	.....	0.055
14	0.034	.....	0.050
15	0.026	.....	0.042
16	0.019	.....	0.044
17	0.017	.....	0.039
18	0.016	.....	0.036
19	0.013	.....	0.025
20	0.004	.....	0.027
21	0.003	.....	0.023
22	0.005	.....	0.026
23	0.009	.....	.....
Total	1.000	1.000	1.000

Sources: 1992 SNF Medicare Cost Reports; HCFA, National Health Accounts.

Note: Totals may not sum to 1.000 due to rounding.

In developing the capital-related expenses portion of the SNF input price index, we considered numerous alternatives for developing the cost category and vintage weights. Our analysis showed that using any of these alternatives would have a minimal impact on the capital-related expense portion of the SNF index. Since the capital-related expense share of the total SNF market basket is just 9.777 percent, these minimal differences have no effect on the total SNF market basket percent change.

We compared the price change in the capital-related expense component to changes in other relevant price indexes to evaluate our methodology. The table below shows the four-quarter moving-average percent change in the SNF PPS capital-related expense component, the hospital PPS capital input price index, the Boeckh institutional construction index, and the CPI-all items for FY 1992 to FY 1997. Since the two HCFA capital indexes include an adjustment for interest rates that have been declining in recent years, the capital-related expense component of the SNF PPS market basket appears to be within a reasonable range of the other price indexes.

APPENDIX TABLE A–2—PERCENT CHANGE IN HCFA CAPITAL-RELATED EXPENSE SHARE OF SNF PPS INPUT PRICE INDEX COMPARED TO OTHER PRICE INDEXES

	HCFA capital-related expense share of SNF PPS input price index	HCFA hospital PPS capital input price index	Boeckh institutional construction index	CPI—all items
FY92	2.4	1.5	2.6	3.0
FY93	2.0	1.1	2.4	3.0
FY94	1.8	1.1	2.8	2.6
FY95	1.8	1.3	3.1	2.8
FY96	1.6	1.0	2.3	2.8
FY97	1.4	0.9	2.4	2.7

• Contract labor: The weight for the contract labor cost category was derived using 1992 Medicare Cost Reports. It was then distributed among the wages and salaries, employee benefits, and ''all other'' cost categories, so that contract costs will have the same price proxies as direct cost categories.

• All Other: Subcategory weights for the All Other category were derived using information from a U.S. Department of Commerce data source. The 1992 Input-

Output Tables were used to apportion all other costs within the SNF Medicare Cost Reports.

III. Price Proxies Used To Measure Cost Category Growth

• Wages and Salaries: For measuring price growth in the wages and salaries cost component of the 1992-based market basket, the percentage change in the ECI for wages and salaries for private nursing homes is used. This is a revision from the 1977-based market basket, in which the AHE for Nursing and Personal Care Facilities was used to measure the percentage change in wages and salaries. The ECI for wages and salaries for private nursing homes is a fixed-weight index that measures the rate of change in employee wage rates per hour worked. It measures pure price change and is not affected by shifts among occupations. The previous measure, AHE, confounds changes in the proportion of different occupations with changes in earnings levels for a given occupation.

• Employee Benefits: For measuring price growth in the 1992-based market basket, the percentage change in the ECI for benefits for private nursing homes is used. This is a revision from the 1977-based market basket, in which the BEA Supplement to Wages and Salaries per employee (BLS) was used to measure this component. The ECI for benefits for private nursing homes is also a fixed-weight index that measures pure price change and is not affected by shifts in occupation. In contrast to the ECI, the BEA Supplement to Wages and Salaries per employee (BLS) is not specific to the nursing home industry and is not as conceptually sound for our purpose.

• All Other Expenses:

+ Nonmedical professional fees: The ECI for compensation for Private Industry Professional, Technical, and Specialty Workers is used to measure price changes in nonmedical professional fees. This is a revision from the 1977-based index in which the cost of nonmedical professional fees was not specifically measured.

+ Electricity: For measuring price change in the Electricity cost category, the PPI for Commercial Electric Power is used. This is a revision from the 1977-based index in which the Implicit Price Deflator-Electricity (PCE) was used.

+ Fuels, nonhighway: For measuring price change in the Fuels, Nonhighway cost category, the PPI for Commercial Natural Gas is used. This is a revision from the 1977-based market basket, in which the Implicit Price Deflator-Fuel Oil (PCE) and the Implicit Price Deflator-Natural Gas (PCE) were used for separate cost categories.

+ Water and Sewerage: For measuring price change in the Water and Sewerage cost category, the CPI–U (Consumer Price Index for All Urban Consumers) for Water and Sewerage is used. The same price proxy was used in the 1977-based index.

+ Food-wholesale purchases: For measuring price change in the Food-wholesale purchases cost category, the PPI for Processed Foods is used. The same price proxy was used in the 1977-based index.

+ Food-retail purchases: For measuring price change in the Food-retail purchases cost category, the CPI–U for Food Away From Home is used. This is a change from the 1977-based index, when the CPI–U for Food and Beverages was used, and reflects the use of contract food service by some SNFs.

+ Pharmaceuticals: For measuring price change in the Pharmaceuticals cost category, the PPI for Prescription Drugs is used. The same price proxy was used for this cost category in the 1977-based index.

+ Chemicals: For measuring price change in the Chemicals cost category, the PPI for Industrial Chemicals is used. This is a revision from the 1977-based index, in which the cost of chemicals was not specifically measured.

+ Rubber and Plastics: For measuring price change in the Rubber and Plastics cost category, the PPI for Rubber and Plastic Products is used. This too is a revision from the 1977-based index, in which the cost of rubber and plastic products was not specifically measured.

+ Paper Products: For measuring price change in the Paper Products cost category, the PPI for Converted Paper and Paperboard is used. The cost of paper products was not specifically measured in the 1977-based index.

+ Miscellaneous Products: For measuring price change in the Miscellaneous Products cost category, the PPI for Finished Goods is used. The cost of miscellaneous products was not specifically measured in the 1977-based index.

+ Telephone Services: The percentage change in the price of Telephone service as measured by the CPI-U is applied to this component. This is a revision from the 1977-based index, in which the cost of telephone services was not specifically measured.

+ Labor-intensive Services: For measuring price change in the Labor-intensive Services cost category, the ECI for Compensation for Private Service Occupations is used. The cost of Labor-intensive Services was not specifically measured in the 1977-based index.

+Non Labor-intensive Services: For measuring price change in the Non Labor-intensive Services cost category, the CPI-U for All Items is used. The 1977-based index did not specifically measure the cost of Non Labor-intensive Services.

• Capital-related: All capital-related expense categories are new cost categories in the revised SNF market basket. The price proxies chosen are the same as those used for the hospital PPS capital input price index described in the August 30, 1996 **Federal Register** (61 FR 46326). The price proxies for the SNF capital-related expenses are described below:

+ Depreciation—Building and Fixed Equipment: The Boeckh Institutional Construction Index for unit prices of fixed assets.

+ Depreciation—Movable Equipment: The PPI for Machinery and Equipment.

+ Interest—Government and Nonprofit SNFs: The Average Yield for Municipal Bonds from the Bond Buyer Index of 20 bonds. HCFA input price indexes, including this rebased SNF index, are concerned with the rate of change in the price proxy and not the level of the price proxy. While SNFs may face different interest rate levels than hospitals, the rate of change in most interest rates is not significantly different. Our research on this issue regarding hospitals has been presented in the August 30, 1996 **Federal Register** (61 FR 46201).

+ Interest—For-profit SNFs: The Average Yield for Moody's AAA Corporate Bonds. Again, the rebased SNF index focuses on the rate of change in this interest rate and not the level of the interest rate.

+ Other Capital-related Expenses: The CPI-U for Residential Rent.

Appendix Table A–3—A Comparison of Price Proxies Used in the 1992-Based and 1977-Based Skilled Nursing Facility Market Baskets

Cost category	1992-based price proxy	1977-based price proxy
Wages and Salaries	ECI for Wages and Salaries for Private Nursing Homes.	AHE—Private Nursing and Personal Care Facilities
Employee Benefits	ECI for Benefits for Private Nursing Homes	BEA Supplement to Wages and Salaries per worker (BLS)
Nonmedical professional fees	ECI for Compensation for Private Professional and Technical Workers.	n/a
Electricity	PPI for Commercial Electric Power	Implicit Price Deflator—Electricity (PCE)
Fuels	PPI for Commercial Natural Gas	Implicit Price Deflator—Fuel Oil (PCE) and Implicit Price Deflator—Natural Gas (PCE)
Water and sewerage	CPI-U for Water and Sewerage	CPI-U for Water and Sewerage
Food—Wholesale purchases	PPI—Processed Foods	PPI—Processed Foods
Food—Retail purchases	CPI-U—Food Away From Home	CPI-U—Food and Beverages
Pharmaceuticals	PPI for Prescription Drugs	PPI—Prescription Drugs

Appendix Table A–3—A Comparison of Price Proxies Used in the 1992-Based and 1977-Based Skilled Nursing Facility Market Baskets—Continued

Cost category	1992-based price proxy	1977-based price proxy
Chemicals	PPI for Industrial Chemicals	n/a
Rubber and plastics	PPI for Rubber and Plastic Products	n/a
Paper products	PPI for Converted Paper and Paperboard	n/a
Miscellaneous products	PPI for Finished Goods	n/a
Telephone services	CPI-U for Telephone Services	n/a
Labor-intensive services	ECI for Compensation for Private Service Occupations.	n/a
Non labor-intensive services	CPI-U for All Items	n/a
Depreciation: Building and Fixed Equipment.	Boeckh Institutional Construction Index	n/a
Depreciation: Movable Equipment	PPI for Machinery and Equipment	n/a
Interest: Government and Nonprofit SNFs.	Average Yield Municipal Bonds (Bond Buyer Index-20 bonds).	n/a
Interest: For-profit SNFs	Average Yield Moody's AAA Bonds	n/a
Other Capital-related Expenses	CPI-U for Residential Rent	n/a

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Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 410 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 410, 412, 413, 415, and 485

[HCFA–1878–F, formerly BPD–878]

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.

SUMMARY: This final rule responds to public comments received on those portions of a final rule with comment period published in the **Federal Register** on August 29, 1997, that revised the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes resulting from the Balanced Budget Act (BBA) of 1997, Public Law 105–33. This rule also addresses public comments on other BBA changes relating to cost limits for hospitals and hospital units excluded from the prospective payment systems as well as direct graduate medical education payments that were included in the August 29, 1997 document. Generally, these BBA changes were applicable to hospital discharges occurring on or after October 1, 1997.

EFFECTIVE DATE: This final rule is effective on June 11, 1998.

FOR FURTHER INFORMATION CONTACT:

Nancy Edwards, (410) 786–4531, Operating Prospective Payment and Wage Index Issues

Tzvi Hefter, (410) 786–4487, Capital Prospective Payment, Excluded Hospitals Critical Access Hospitals, and Graduate Medical Education Issues

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SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Under section 1886(d) of the Social Security Act (the Act), payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) is based on prospectively-set rates. Under this system, which was established effective with hospital cost reporting periods beginning on or after October 1, 1983, 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 use 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.

The prospectively set rates and methodologies are updated annually as required by law or as new legislation is enacted.

B. Summary of the Provisions of the August 29, 1997 Final Rule with Comment Period Resulting from the Balanced Budget Act of 1997

On August 29, 1997, we published a final rule with comment period in the **Federal Register** (62 FR 45966) setting forth statutorily required changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs, which were effective for discharges occurring on or after October 1, 1997. This final rule with comment period followed a proposed rule published in the **Federal Register** on June 2, 1997 (62 FR 29902) that set forth proposed updates and changes. Following issuance of the June 2, 1997 proposed rule, the Balanced Budget Act (BBA) of 1997, Public Law 105–33, was enacted on August 5, 1997. This new law made major changes to the hospital prospective payment systems, effective October 1, 1997. Therefore, a major part of the August 29, 1997 final rule with comment period incorporated changes made by the BBA. Because the BBA was enacted after we had issued the June 2 proposed rule and because most of the BBA changes were effective October 1, 1997, we issued the August 29, 1997 document as a final rule with comment period.

The BBA made major changes that affected Medicare payments for inpatient hospital services under the prospective payment systems, and the cost limits applicable to excluded hospitals and hospital units as well as payment for the direct costs of graduate medical education. The provisions of the BBA that we implemented in the August 29, 1997 final rule with comment period related to the following:

- The hospital operating payment update factor. (Sections 4401(a) and (b))
- The hospital capital rate reduction. (Section 4402)
- Reductions in payments to disproportionate share hospitals. (Section 4403)
- Elimination of payment of indirect medical education (IME) and disproportionate share adjustment on outlier payments. (Section 4405)
- Base payment rate to Puerto Rico hospitals. (Section 4406)
- Special reclassification of Stanly County, North Carolina for purposes of the prospective payment system. (Section 4408)
- New guidelines for geographic reclassification of certain hospitals for Federal fiscal year 1998 and subsequent fiscal years. (Sections 4409 and 4410(c))
- Floor on area wage index. (Sections 4410(a) and (b))
- Revision of the IME formula, limitations on full-time equivalent residents, and payment to teaching hospitals for IME costs associated with Medicare managed care discharges. (Sections 4621(a), 4621(b), and 4622)
- Classification of rural referral centers (RRC) for FY 1998 and

subsequent fiscal years. (Section 4202(b))

- Special treatment of Medicare-dependent, small rural hospitals (MDHs). (Section 4204)
- Reinstatement of the add-on payment for blood clotting factor for inpatient beneficiaries with hemophilia. (Section 4452)
- Counting residents for direct graduate medical education. (Section 4623)
- Payments to managed care plans for graduate medical education. (Section 4624)
- Payment to nonhospital providers for the direct costs of medical education incurred in the operation of an approved medical residency training program. (Section 4625)
- Payment for combined medical residency training programs. (Section 4627)
- Payment update for excluded hospitals and hospital units. (Section 4411)
- Reductions in capital payment amounts for certain excluded hospitals and hospital units. (Section 4412)
- Rebasing target amounts for excluded hospitals. (Section 4413)
- Cap on target amounts for excluded hospitals and hospital units (psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals) for FYs 1998 through 2002. (Section 4414)
- Bonus and relief payments to excluded hospitals and hospital units. (Section 4415)
- Change in payment and target amount for new providers. (Sections 4416 and 4419)
- Treatment of certain long-term care hospitals. (Sections 4417(a) and 4417(b))
- Exclusion of certain cancer hospitals from the prospective payment system. (Section 4418)
- Establishment of a new ''Medicare Rural Hospital Flexibility Program'' to replace the existing Essential Access Community Hospital/Rural Primary Care Hospital (EACH/RPCH) program that operates in seven States. (Section 4201)
- Beginning with the FY 1999 update, a change in the publication dates for the DRG prospective payment rate methodology and the recommended hospital prospective payment updates 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 was moved from October 1 to September 1. Because the FY 1999 applications were due on October 1, 1997, we shortened the deadlines for decisionmaking by the Medicare Geographic Classification Review Board (MGCRB), so that a final decision for all applications is made by June 15, 1998. (Section 4644(c))

II. Summary of the BBA Provisions and Discussion of Public Comments

A. General

We received a total of 180 pieces of correspondence containing public comments on the BBA changes addressed in the August 29, 1997 final rule with comment period. Below we discuss the BBA provisions, the changes we made to implement these provisions, the public comments received on each provision, and our response to the public comments.

B. Hospital Operating Payment Update Factor

1. General Provision

The BBA made several revisions to the applicable percentage change (the update factor) to the Federal rates for prospective payment hospitals. Section 4401(a)(1) of the BBA 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 was set at 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. 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.

In the August 29 final rule with comment period, we made necessary changes to § 412.63 of our regulations.

Comment: One commenter asserted that while the 0 percent update of the prospective payment rates for FY 1998 is consistent with the requirements of section 4401(a)(2) of the BBA, it is inappropriate given circumstances in the real world.

Response: As the commenter noted, HCFA is required by statute to implement the 0 percent update to the prospective payment rates for FY 1998. We believe that the 0 percent update is appropriate for the reasons discussed in both our update recommendation in the June 2 proposed rule (62 FR 30035) and our responses to comments on that recommendation in the August 29 final rule with comment period (62 FR 46139).

2. Special Update for Certain Nonteaching, Nondisproportionate Share Hospitals that do not Qualify as MDHs

Section 4401(b) of the BBA provided 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 an 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 was increased by 0.5 percentage points and, for FY 1999, the applicable percentage increase will be increased by 0.3 percentage points. Based on current statutory provisions, 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.

In accordance with section 4401(b)(2) of the BBA, in determining whether a hospital qualifies for the special payment for a given cost reporting period, we looked 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 to 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. Using the latest cost reporting data, we identified 17 States that met the criteria

set forth in section 4401(b)(2): Alaska, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maine, Missouri, New Hampshire, New Jersey, Ohio, Puerto Rica, Rhode Island, Vermont, and Wisconsin. The fiscal intermediaries will make interim payment to hospitals in these 17 designated States, beginning with discharges occurring on or after October 1, 1997, based on the higher standardized amount during the fiscal year. However, as noted above, the final decision as to a hospital's qualification for the additional payment is determined based on whether the hospital has a negative operating prospective payment margin during its FY 1998 or FY 1999 cost reporting period. Therefore, the final determination will be made at cost report settlement.

In the August 29 final rule with comment period, we added a new § 412.107 to the regulations and revised § 412.90 to implement this provision.

Comment: Two hospital associations commented that any hospital identified by its fiscal intermediary as likely to qualify for an update of 0.5 percentage points under the temporary special payment provision of section 4401(b) of the BBA should be given the option of declining the higher interim payments. The commenters were concerned that some hospitals that receive the additional money on an interim basis might have difficulty paying back the funds should the intermediary determine at cost report settlement that the hospital does not qualify for the update.

Response: If a hospital that has been identified as eligible for the higher interim payment believes that ultimately it may not qualify for the higher update and wishes to decline the higher interim payments, it should notify its intermediary.

C. Hospital Capital Rate Reduction

Section 4402 of the BBA 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 0.8432 (59 FR 45416), which is equivalent to a 15.68 percent ((1.0–0.8432) * 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). In accordance with the broad authority conferred in section 1886(g) of the Act, to implement a capital prospective payment system, we extended the reduction to the capital rates to the Puerto Rico capital rates and incorporated it in § 412.374(a).

Under the statute, the additional 2.1 percent reduction applies to discharges occurring ''*before* September 30, 2002''. This provision would have required us to calculate special rates that would be in effect for only one day. Because we believed that the Congress intended to apply the reduction to discharges occurring *through* September 30, 2002, we indicated in the August 29 final rule with comment period that 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 assumed this technical error would be corrected, we used 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 (0.1568 and 0.021) from 1 (1 − 0.1568 − 0.021 =0.8222). We then applied 0.8222 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 (0.8432) divided by the adjustment with the 2.1 percent cut (0.8222). (0.8432/0.8222=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 the August 29 final rule with comment period, we revised two sections of the capital prospective payment system regulations to implement these statutory requirements. Specifically, we revised §§ 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.

Comment: One commenter noted that as a result of the high capital rate paid in FY 1997, many hold-harmless hospitals switched from being paid based on a blend of their old and new capital to being paid based on 100 percent of the Federal rate, because the Federal rate was higher than their old and new capital payment would have been. The commenter also stated that when Congress reduced the capital rate as part of the provisions of the BBA, many hospitals' payments would have been higher had they been allowed to return to their previous old capital and new capital payment methodology. The commenter suggested deleting the requirement at § 412.344(b) that once a hospital is paid based on 100 percent of the Federal rate, it cannot return to payments based on a blend of its old and new capital costs. The commenter also noted that when the Federal capital rate was reduced under the provisions of OBRA 1993, fiscal intermediaries were given specific authority to redetermine each hospital's payment methodology.

Response: In section 13501(a)(3) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66), Congress reduced the Federal capital rate and not the hospital-specific rate. Hospital payment methodology redeterminations were expressly provided for in that section of the statute. However, in 1997, when Congress reduced both the hospital-specific rate and the Federal capital rate as part of the BBA, hospital payment methodology redeterminations were not provided for by the legislation and we do not believe that it would be appropriate to provide for redeterminations by regulation. In addition, we do not believe it would be appropriate to allow hospitals to return to payment based on their ratio of old and new capital once they have been paid based on 100 percent of the Federal rate. We are in the seventh year of the 10 year transition to a fully prospective capital payment system. By October 1, 2002, all hospitals will be paid based on 100 percent of the Federal rate. It would not be appropriate to allow hospitals to return to cost-based payment this point in the transition.

D. Disproportionate Share Hospital (DSH) Payments

Section 4403(a) of the BBA reduced the payment for hospitals that treat a disproportionately large number of low-income patients. The payment a hospital would otherwise receive under the disproportionate share formula is reduced 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. In the August 29 final rule with comment period, we added a new paragraph (e) to § 412.106 to implement this provision.

Comment: One commenter asked that we clarify the applicability of the provisions of section 4403(a) of the BBA, which relate to disproportionate share operating payments, to the prospective payment system for capital related costs. Specifically, the commenter requested that we verify that the phased-in 5 percent reduction of operating DSH payments does not apply to capital DSH payments. The commenter also asked us to codify our decision as to the applicability of this provision in the appropriate section of the capital regulations governing DSH.

Response: The commenter is correct. Section 4403 amended section 1886(d)(5)(F) of the Act to reduce the amount otherwise payable for operating DSH. The capital DSH adjustment set forth at § 412.320 references the operating DSH definition of low income patients at § 412.106(b) and uses the definition of the disproportionate patient percentage at § 412.106(c)(2), but section 4403 does not affect capital DSH payments. In response to the commenter's request that we codify in the regulations the applicability of the BBA operating provisions to capital payments, we do not believe that it is necessary to do so. The capital regulations that are affected will be automatically included by their reference to the appropriate section of the operating regulations. The capital regulations that are not affected (regarding the reduction to DSH payments need not be revised.

E. Outlier Payments

Section 4405 of the BBA amended sections 1886(d)(5)(B)(i)(I) and (d)(5)(F)(ii)(I) of the Act to provide that, in determining the payment for hospitals that receive indirect medical education or disproportionate share payments, 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 the BBA 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, in the August 29 final rule with comment period, we revised 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 to delete § 412.80(c). Conforming changes were made to § 412.105(a) (IME adjustment) and § 412.106(a)(2) (DSH adjustment). We also made a corresponding change to the capital cost outlier methodology. We received two comments on this provision, both of which concurred with HCFA's interpretation of section 4405 of the BBA.

F. Payment Rate for Puerto Rico Hospitals

1. Operating Payment Rate

Section 4406 of the BBA 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 (compared to a blend of 75 and 25 percent, respectively, prior to enactment of the BBA). In the August 29 final rule with comment period, we revised § 412.204 of the regulations to conform with this amendment.

2. Capital Payment Rate

Under the broad authority of section 1886(g) of the Act, in the August 29 final rule with comment period, we revised the calculation of capital payments to Puerto Rico to parallel the change that was 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.

We did not receive any public comments on either of these provisions.

G. Special County Designation

In the August 29 final rule with comment period, the Secretary exercised the authority granted to her by section 4408 of the BBA to include Stanly County in the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina MSA for purposes of the prospective payment system. This change was reflected in the final wage index included in that document.

We did not receive any public comments on this provision.

H. Changes to the Medicare Geographic Classification Review Board (MGCRB) Guidelines and Timeframes

Various provisions of the BBA addressed 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 when the MGCRB and the Secretary must make decisions on those applications.

1. Revised Application and MGCRB Timeframes

Prior to the enactment of the BBA, a hospital had to 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 had 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 had up to 90 days to issue a final decision (July 15). The July 15 deadline allowed the final geographic reclassification decisions to be incorporated in the wage index and payment rates that were published in the final rule (on or about September 1).

Sections 4644(a)(1) and (b)(1) of the BBA amended section 1886(d)(6) and (e) of the Act to provide that the prospective payment system final rule setting the payment rates for years beginning with FY 1999 must be published by August 1. Because this change in publication date would conflict with the timetable for geographic reclassification decisions, section 4644(c) of the BBA amended section 1886(d)(10)(C)(ii) of the Act to require a hospital, beginning with applications filed for reclassification for FY 2000, to submit its 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). Under this timetable, the amount of time the MGCRB and the Administrator have to make decisions will not change from the existing schedule.

In addition, because applications filed for reclassification effective in FY 1999 were not due until October 1, 1997, section 4644(c)(2) required 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.

In the August 29 final rule with comment period, we revised §§ 412.256 and 412.274 to implement the change in the application deadline.

2. Alternative Wage Index Reclassification Guidelines for Individual Hospitals

Effective for FY 1998 reclassification, sections 4409 and 4410 of the BBA required the Secretary to establish alternative wage index guidelines for geographic reclassification for certain disproportionately large hospitals. 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 the BBA required 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. Because the application and decisionmaking processes for FY 1998 reclassification were already completed, we had to provide special guidelines for hospitals to apply for reclassification under these provisions for FY 1998.

A hospital seeking reclassification for FY 1998 under either section 4409 or 4410(c) had to submit its application to the MGCRB (7 copies) by September 15, 1997. If the MGCRB rendered a favorable decision on a hospital's application, the hospital was reclassified for purposes of the wage index for FY 1998 as if that decision had been made under the usual guidelines and timetable.

We also extended the existing appeal rights for decisions on requests for reclassification to decisions made under sections 4409 and 4410. Therefore, for such appeals, in the August 29 final rule with comment period, we incorporated the existing appeals and review process (including the timetables for a hospital to request review and for the Administrator to complete review) even though that process was not finalized until after the beginning of the fiscal year. We revised the regulations at § 412.230(e) to implement section 4409. However, because the provision of section 4410(c) applied for only one year, we did not revise the codified regulations text to reflect that provision.

3. Reclassification for Rural Referral Centers and the Disproportionate Share Adjustment

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.

Section 4202 of the BBA prohibits the MGCRB from rejecting a hospital's request for reclassification on the basis of any comparison between the hospital's own 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. In the August 29 final rule with comment period, we revised § 412.230(a)(3) to implement this provision.

Section 4203 of the BBA provided 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 the BBA, the MGCRB will consider the application under section 1886(d)(10)(C)(i) of the Act from 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. 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 1999 must have submitted 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 the BBA is effective for the 30-month period beginning on the date of enactment. Accordingly, hospitals may seek reclassification for purposes of DSH for FY 1999, FY 2000, and FY 2001. In the August 29 final rule with comment period, we revised § 412.230(a)(5)(ii) of the regulations to implement this provision.

Comment: One commenter questioned the effective date of sections 4202 and 4203 of the BBA, which exempt RRCs from the 108 percent criterion in applying for wage index reclassification and allow a hospital to reclassify to another area for purposes of the disproportionate share adjustment even if the standardized amount of both areas is the same, respectively. The commenter asserted that the conference report accompanying the statute clearly states that the effective date of these provisions is ''enactment'' of the BBA, that is, August 5, 1997. Therefore, the commenter believes that hospitals should have been allowed to apply to the MGCRB and reclassify under these provisions for FY 1998 reclassifications, which were effective beginning October 1, 1997. The August 29 final rule with comment period limited the effect of these provisions to reclassifications beginning in FY 1999.

Response: We agree that the provisions of sections 4202 and 4203 of the BBA are effective August 5, 1997. However, the statutory language contains no

directive to apply these provisions to hospital reclassifications effective for FY 1998 (compare sections 4409 and 4410(c) of the BBA, both of which specifically stated that their provisions were effective for FY 1998 reclassifications). Section 4202 amends section 1886(d)(10)(D) of the Act to provide that the MGCRB ''may not reject the application'' of a hospital on the basis of a comparison specified in the statute. Accordingly, if the MGCRB considers an application on or after August 5, 1997, it will not reject the application on the basis specified in the statute. Section 4202 does not require the MGCRB to re-evaluate applications that the MGCRB rejected before August 5, 1997.

Similarly, section 4203 provides that, for the 30-month period beginning on August 5, 1997, the MGCRB ''shall consider'' a hospital's application for reclassification for purposes of DSH payments. Accordingly, if a hospital submits an application to be reclassified for purposes of DSH on or after August 5, 1997, the MGCRB will consider the application. Generally, the deadline for FY 1998 reclassifications was October 1, 1996. Section 4203, unlike other provisions of the BBA, does not require the MGCRB to grant reclassifications for FY 1998 notwithstanding this deadline.

Thus, hospitals may apply for reclassification under the provisions of sections 4202 and 4203 after August 5, 1997. The first such applications would be those for FY 1999 reclassification beginning on October 1, 1998, which were due by October 1, 1997. We note that, although the provisions of section 4202 are permanent, section 4203 is effective for 30 months and applies only to those reclassifications effective for FY 1999, 2000, and 2001.

I. Floor on Area Wage Index

As provided by section 4410(a) of the BBA, 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 affected 128 hospitals in 32 MSAs. 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 did not receive any public comments on this provision.

J. Indirect Medical Education (IME) Adjustment

1. Operating IME Adjustment

In the August 29 final rule with comment period, we revised our regulations to incorporate the provisions of section 4621 of the BBA, which amended section 1886(d)(5)(B) of the Act in several ways. First, it gradually reduces the current level of the IME adjustment (approximately a 7.7 percent increase for every 10 percent increase in the resident-to-bed ratio) over the next several years according to the following schedule: 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 require 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 counted by the hospital during its most recent cost reporting period ending on or before December 31, 1996. Furthermore, section 1886(d)(5)(B)(vi)(I) provides that 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).

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), section 1886(d)(5)(B)(vi)(II) provides that ''the total number of full-time equivalent residents for payment purposes shall equal the average of the actual full-time equivalent resident 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, this provision ''shall be applied using the average for such period and the preceding cost reporting period.'' For purposes of this provision, section 1886(d)(5)(B)(vii) requires the Secretary to make appropriate modifications in the event of a cost reporting period other than 12 months.

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 such 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). Finally, ''(t)he Secretary may require any entity that operates a medical residency training program . . . to submit to the Secretary such additional information as the Secretary considers necessary to carry out such (limits).'' We revised the regulations at § 413.86(g)(6) to comply with these directions for both the indirect and direct GME FTE counts.

Finally, section 4621(b)(2) amended section 1886(d)(5)(B)(iv) of the Act 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 setting. Therefore, in the August 29 final rule with comment period, we revised § 412.105(g)(1)(ii)(C), which allowed hospitals to include the time residents spent in patient care activities in nonhospital settings, for purposes of IME. The eligibility criteria for this 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). For IME purposes, we intend to rely upon the same criteria as are applied for the direct GME to identify eligible situations under this new provision.

In the August 29 final rule with comment period, we revised § 412.105 to reflect these changes, and issued instructions to fiscal intermediaries to implement these changes prior to October 1, 1997. In response to our discussion of the changes enacted by the BBA, we received numerous comments seeking clarification on many of these issues.

Comment: Several commenters noted a discrepancy in the preamble of the August 29 document concerning the effective date of the cap on allopathic and osteopathic FTEs: In the preamble summary of the BBA changes at 62 FR 45968, the effective date of the provision is stated as ''cost reporting periods beginning on or after October 1, 1997.'' In the full discussion of the provision in the preamble at 62 FR 46003, the provision is made effective for ''discharges on or after October 1, 1997.''

Response: The effective date for applying the cap on allopathic and osteopathic FTEs, as set forth in section

1886(d)(5)(B)(v) of the Act, is for ''discharges on or after October 1, 1997.'' This effective date citation in the preamble summary at 62 FR 45968 was a typographic error.

Comment: Commenters noted that the requirements set forth in section 1886(h)(4)(H) of the Act concerning special rules for applying the FTE limits for direct graduate medical education for new programs and affiliated groups also apply to IME payments. The commenters requested that they be added to the regulations at § 412.105.

Response: The commenters are correct. Under section 1886(d)(5)(B)(viii) of the Act, as added by section 4621(b)(1) of the BBA, rules similar to the rules set forth at section 1886(h)(4)(H) of the Act apply for purposes of implementing: the cap on resident FTEs; the cap on the resident-to-bed ratio; and the 3-year rolling average resident count. We are revising § 412.105(f)(1)(vi) and (vii) accordingly.

The count of residents in accordance with the rules for special circumstances (new programs and affiliated groups) under section 1886(d)(5)(B)(viii) of the Act is described in sections II.N.3 and 4 of this final rule. We note that this section of the Act applies only to the limits set forth in sections 1886(d)(5)(B)(v) and (vi) of the Act.

Comment: Several commenters objected to our interpretation of the language of section 1886(d)(5)(B)(vi) of the Act, which describes the cap on the resident-to-bed ratio. In the August 29 final rule with comment period, we stated that this is a cap on the total resident FTE count including dental and podiatry residents. The commenters believe the Congress intended that dental and podiatry residents should be exempt from this cap in addition to their exemption from the cap established for resident FTEs. In support of their interpretation, the commenters noted the reference to the FTE cap in establishing the cap on the ratio (section 1886(d)(5)(B)(vi) of the Act). One commenter stated that including dental and podiatry residents in the FTE calculation before applying the ratio cap leads to a nonsensical result since the Congress established a cap on allopathic and osteopathic residents but explicitly did not include dental and podiatry residents under this cap.

Another commenter supported applying the cap to total FTEs, including dentists and podiatrists. This commenter noted that the ratio could increase after a one-year lag to reflect additional dental or podiatry residents.

Response: Section 1886(d)(5)(B)(vi) of the Act, as amended by the BBA, establishes a cap on the value of ''r,'' which is defined in section 1886(d)(5)(B)(ii) of the Act as ''the ratio of the hospital's full-time equivalent interns and residents to beds.'' The IME formula defined in this section of the Act explicitly includes the value 'r' in the IME calculation. Therefore, 'r' has a very precise and significant value.

Section 1886(d)(5)(B)(v) of the Act (as amended) states that ''the total number of full-time equivalent interns and residents in the fields of allopathic and osteopathic medicine'' may not exceed the number of such residents in either a hospital or nonhospital setting with respect to the hospital's most recent cost reporting period ending on or before December 31, 1996. This section sets a cap on a subset (allopathic and osteopathic medical residents) of the total number of residents. The numerator of the ratio is the total number of residents including the effect of the cap; the Congress did not provide that 'r' would be computed using only a subset of residents. In fact, one could argue that under such an interpretation, there would be no explicit methodology in the Act for including dental and podiatry residents in the IME calculation. The reference in section 1886(d)(5)(B)(vi)(I) of the Act to ''the limit under clause (v)'' means that the numerator includes the effect of the cap on allopathic and osteopathic residents, not that the numerator is limited to those residents. Thus, the statutory language requires that we apply the cap on the ratio after including all residents, dental and podiatry as well as allopathic and osteopathic, in the calculation of the numerator.

Comment: Other commenters believe that it is inappropriate not to allow exceptions to the ratio cap when hospitals are voluntarily closing inpatient beds. In addition, commenters requested that the cap be adjusted to include the residents' time spent in nonprovider settings.

Response: Section 4621 of the BBA addresses the application of the cap, specific situations where special rules are appropriate, and the allowance of residents' time spent in nonprovider settings. In addition, we note that the ratio could increase after a one-year delay for legitimate changes in either the numerator or the denominator. That is, the ratio is capped based on its value during the prior cost reporting period. An increase in the ratio thereby establishes a higher cap for the following cost reporting period.

Comment: One commenter requested clarification of the term ''the prior cost reporting period'' as used in the preamble of the final rule with comment period when describing the application of the cap on the ratio of residents-to-beds (62 FR 46003).

Response: The phrase ''prior cost reporting period'' refers to the immediately preceding period. A hospital's cost reporting period beginning July 1, 1998 would have its ratio capped at the value of its ratio for its cost reporting period ending June 30, 1998. In determining a hospital's resident-to-bed ratio for a cost reporting period that begins before October 1, 1997 (the effective date of the cap on allopathic and osteopathic FTEs) and ends after that date, the ratio for that period will reflect a prorated resident FTE count. That is, the numerator is determined through averaging the uncapped and capped FTE amounts based on the number of months in the cost reporting period before and after October 1, 1997. This FTE count will also be used to determine the rolling average amount for subsequent years.

Comment: Commenters requested an explanation of how the ratio cap would be determined under the special rules implemented pursuant to section 1886(d)(5)(B)(viii) of the Act (that is, the new program and affiliated group provisions).

Response: The ratio is first determined by calculating the resident FTE count taking into account all of the relevant limitations and applicable rolling averages, and the denominator in the ratio is the hospital's available bed count during the current cost reporting period. If this results in a ratio in excess of the previous cost reporting period's ratio, the hospital's IME adjustment is based on the ratio from the previous cost reporting period.

Special rules apply for the special circumstances at section 1886(d)(5)(B)(viii) of the Act. In the event that the application of section 1886(d)(5)(B)(viii) results in a higher resident-to-bed ratio for a hospital compared to its most recently completed cost reporting period, the special rule will be applicable only for the portion of the higher ratio due to the increase in residents. In such instances, the ratio during the prior cost reporting period is similarly applicable, but it is adjusted for the additional residents allowed by the special circumstances rule. In practice, this is accomplished by adding the additional residents to the resident FTE count used in the prior cost reporting period's resident-to-bed ratio. It should be noted that this adjustment is the result of a special rule for applying the cap on 'r' for new programs and affiliated groups as set forth in section 1886(d)(5)(B)(viii) of the Act. Therefore, no adjustment to the ratio is made for an increase in dental

or podiatry residents during the cost reporting period in which an increase occurs.

In the case of recognized affiliation arrangements, each hospital will be paid on the basis of its individual resident-to-bed ratio. Under such an arrangement, the ratio is the number of residents counted by the hospital in accordance with the special FTE counting rules for these arrangements, over the hospital's bed count during the current cost reporting period. As described above, the ratio may increase during a particular cost reporting period due to an increase in the number of residents allowed under the special affiliation arrangement. Any such exemption from the ratio cap will be limited to the increase in residents and will not reflect changes in hospital bed size.

Comment: Commenters were concerned about the language establishing the resident FTE cap (section 1886(d)(5)(B)(v) of the Act) that the number of allopathic and osteopathic residents may not exceed ''the number of such full-time equivalent interns and residents in the hospital'' during the most recent cost reporting period ending on or before December 31, 1996. The commenters believed that this disadvantages the programs that have already been training residents in nonprovider settings. Commenters suggested that we support the effort to delete the phrase ''in the hospital'' from this section.

Response: As is indicated by the comments, residents in nonhospital settings during the most recent cost reporting period ending on or before December 31, 1996, are excluded by the Act from the determination of the allopathic and osteopathic cap. Furthermore, although we recognize that many of these arrangements that were in existence during 1996 reflected the demand for more primary care physicians, we would note that the purpose of allowing hospitals to count this time in the future is to create an incentive for even more primary care training. In that regard, hospitals that had previously established residency training in nonhospital settings did so in response to the existing incentives at that time.

Comment: Several commenters suggested that the reduction in the IME adjustment factor (from approximately a 7.7 percent increase for every 10 percent increase in the ratio of residents to beds to 7.0 percent for discharges during FY 1998, and gradually reducing further for 3 years beyond that) places a disproportionate share of the cost-cutting burden on teaching hospitals, especially academic medical centers.

Response: The reduction to the IME adjustment factor is set forth in the statute. However, given the gradual reduction in the factor and the recent very high Medicare operating margins for teaching hospitals (especially major teaching hospitals), we disagree that the reductions to the IME adjustment unfairly burden these hospitals. We note that HCFA and the Prospective Payment Assessment Commission (ProPAC) have both supported a reduction in the IME adjustment for several years based on our analysis of the indirect effect of graduate medical education programs on total hospital costs.

2. Capital IME Adjustment

Comment: One commenter asked us to clarify whether the following conclusions are correct in applying the IME provisions of the BBA to the capital prospective payment system:

(1) The cap on the number of residents training in the fields of allopathic and osteopathic medicine for purposes of computing the operating IME adjustment *does* pertain to the capital IME adjustment;

(2) The rolling average resident count for purposes of computing the operating IME adjustment *does* pertain to the capital IME adjustment; and

(3) The cap on the ratio of interns and residents to beds for purposes of computing the operating IME adjustment *does not* pertain to the ratio of interns and residents to the average daily census for purposes of computing the capital IME adjustment.

As with the DSH provisions, the commenter also asked us to codify our policy on the applicability of these operating provisions in the appropriate sections of the capital regulations governing the IME adjustment.

Response: Cap on Number of Residents in Allopathic and Osteopathic Medicine—The regulations at § 412.322 describe the capital IME adjustment. Section 412.322(a)(1) provides that the hospital's number of full-time equivalent (FTE) residents is determined in accordance with § 412.105(f) of the operating regulation. Since the BBA provisions affected § 412.105(f)(iv) by capping the number of allopathic and osteopathic interns and residents at the number of interns and residents reported on a hospital's cost report for the period ending December 31, 1996, the capital IME intern and resident count for allopathic and osteopathic residents is also capped automatically.

Rolling Average Resident Count—The BBA provision implementing a rolling average resident count (section 4623) is also included in § 412.105(f) of the operating IME regulations. Since the capital IME regulations reference the operating IME regulation at § 412.105(f), the capital IME FTE count is affected by the rolling average resident count as well.

Cap on Ratio of Interns to Beds—The cap on the number of interns and residents to beds (section 4621) does not have an impact on the capital IME payments because we use the ratio of hospital FTEs to average daily census to determine the capital IME adjustment factor.

In response to the commenter's request that we codify in the regulations the applicability of these BBA operating IME provisions to capital payments, we do not believe that it is necessary to do so. The capital regulations that are affected (regarding the cap on the number of residents in allopathic and osteopathic medicine, and the rolling average resident count) will be automatically included by their reference to the appropriate section of the operating regulations. The capital regulations that are not affected (regarding the cap on the ratio of interns to beds) need not be revised.

It has come to our attention that there has also been some question raised about the applicability of sections 4001 and 4622 of the BBA—Payment to Hospitals of Indirect Medical Education Costs for Medicare+Choice Enrollees to capital IME payments. Section 4001 of the BBA instructs the Secretary to exclude from the Medicare+Choice capitation rate payment adjustments for the indirect costs of medical education under section 1886(d)(5)(B) of the Act. Section 4622 of the BBA provides for payments to teaching hospitals for discharges associated with Medicare managed care beneficiaries for portions of cost reporting periods beginning on or after January 1, 1998.

Section 4001 of the BBA refers only to the indirect costs of medical education as defined in section 1886(d)(5)(B) of the Act. This section refers to operating IME payments and not capital IME payments, which were established by regulation. Thus, section 4001 affects only operating IME payments.

K. Rural Referral Centers

Based on section 1886(d)(5)(C)(i) of the Act and the Conference Committee Report accompanying Public Law 98–21 (the original legislation implementing the prospective payment system), 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 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 (OMB) 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 the BBA 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.

In the August 29 final rule with comment period, we reinstated rural referral center status for all hospitals that lost the status due to triennial review or MGCRB reclassification regardless of whether it was classified as an RRC during FY 1991. We did not reinstate rural referral center status to hospitals in areas redesignated as urban by OMB because they are no longer *rural* hospitals. We also did not reinstate the status of the six hospitals that voluntarily requested termination of their RRC status. However, we would allow any of these six hospitals to requalify if they so desire.

In addition, we terminated the requirement for triennial reviews of referral center status. Thus, §§ 412.96(f) and (g) (1) and (2) were deleted in the August 29 final rule with comment period. 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.

Finally, we eliminated our policy that terminated RRC status for any hospital that is reclassified as urban by the MGCRB.

Comment: One commenter expressed agreement with our decision to reinstate hospitals that lost their RRC status as a result of failure to meet triennial review requirements or due to MGCRB reclassification to an urban area for purposes of the standardized amount. The commenter further commended HCFA for terminating triennial reviews and eliminating the policy that a hospital loses its RRC status if it is reclassified as urban by the MGCRB. However, the commenter disagreed with our decision to not restore the RRC status of hospitals that are in areas redesignated as urban by OMB. The commenter believes that this policy unfairly disadvantages those hospitals when applying for reclassification for the wage index. That is, they will be unable to reclassify under the special provisions of section 1886(d)(10)(D)(iii) of the Act as amended by section 4202(a) of the BBA if they meet all requirements except the 108 percent rule.

Response: 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 year.'' (Emphasis added.) Hospitals located in areas redesignated as urban by OMB are no longer physically located in a rural area. Designation by OMB of an area to urban status means that any hospital located in that area becomes urban for all purposes and thus could no longer qualify as rural referral centers. In reinstating referral center status, section 4202(b) of the BBA did not revise the qualifying criteria for these hospitals. Thus, we believe that our decision to not reinstate hospitals located in urban areas as rural referral centers is appropriate.

We note, however, that these hospitals are not precluded from taking advantage of the provisions of section 1886(d)(10)(D)(iii) of the Act, which state that the MGCRB is prohibited from rejecting a hospital's application for reclassification on the basis of any comparison between its hourly wage and the average hourly wage of the hospitals in the area in which the hospital is located if the hospital ''has *ever* been classified by the Secretary as a rural referral center.'' (Emphasis added.) This means that the hospital need not currently be classified as an RRC in order to take advantage of this provision.

L. Medicare-Dependent Small, Rural Hospitals

Section 4204 of the BBA 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. The statute provides that 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.

Section 13501(e)(1) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 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 the BBA 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. Since classification as an MDH is not optional, we reinstated all qualifying hospitals as of October 1, 1997.

In the August 29 final rule with comment period, we revised §§ 412.90 and 412.108 to reflect the reinstatement of the MDH special payment.

Section 4204(a)(3) of the BBA permits those hospitals that qualify as an MDH and 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.

Comment: Three commenters support the reinstatement of the special payment for MDHs. However, the commenters recommended that HCFA establish a process for identifying those hospitals that did not qualify previously but now meet the criteria for classification as an MDH.

Response: Since section 4204 of the BBA did not revise the criteria for classification as an MDH, it is unlikely that there will be new hospitals that qualify except for those hospitals that met all of the original criteria except bed size.

We have instructed our fiscal intermediaries to review their records to determine if there are any hospitals that did not meet the criteria in 1994 and that do now; for example, a hospital that had more than 100 beds in 1994 and now has 100 or fewer beds. In addition, as discussed in the August 29, 1997 final rule (62 FR 46000), at the time of a hospital's year-end cost report settlement, the fiscal intermediary will determine if the hospital met the criteria to qualify as an MDH.

Although the fiscal intermediaries are making every effort to identify and notify all affected hospitals, any hospital that believes it meets the criteria for MDH status but has not received notification should contact its fiscal intermediary.

M. Reinstatement of the Add-On Payment for Blood Clotting Factor for Hemophilia Inpatients

Section 4452 of the BBA 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 (which was previously in effect from June 19, 1990 through September 30, 1994) and who are hospital inpatients for discharges occurring on or after October 1, 1997. The payment is based on a predetermined price per unit of clotting factor multiplied by the number of units provided.

In our August 29, 1997 final rule with comment period, we stated that we would calculate the add-on payment for FY 1998 using the same methodology we have used in the past (62 FR 46002). Thus, we established 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 set 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, we established the following prices per unit of factor for discharges occurring on or after October 1, 1997:

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

In the August 29 final rule with comment period, we solicited comments on the appropriateness of the add-on payment amount and suggestions for the best methodology to calculate this amount.

Comment: We received five comments on this issue. The commenters indicated that the payment add-ons for blood clotting factors were appropriate with the exception of the payment amount under HCPCS code J7194, Factor IX (complex). The commenters asserted that ''purified'' Factor IX products (that is, products that contained Factor IX only) constituted a distinctly different and much more costly group of products than Factor IX (complex); thus, it was inappropriate to group all ''Factor IX'' products together under one HCPCS code. They recommended that HCFA either allow the purified Factor IX products to be billed under HCPCS code J7196 (Other hemophilia clotting factors) or establish a separate HCPCS code (or codes) for the purified Factor IX products.

Response: We agree that there is a need for further distinctions among the Factor IX products. Therefore, as suggested by the commenters, we are establishing the following two new HCPCS billing codes for purified Factor IX products:

Q0160 Factor IX (antihemophilic factor, purified, nonrecombinant)	$0.93
Q0161 Factor IX (antihemophilic factor, purified, recombinant)	1.00

(Note that ''Q-codes'' are national temporary HCPCS codes that HCFA establishes unilaterally. We will request approval for permanent HCPCS codes at the next session of the national HCPCS panel.)

We will issue instructions to Medicare hospitals and fiscal intermediaries stating that payment should be made under these codes for all applicable discharges occurring on or after the effective date of this rule (that is, June 11, 1998). As discussed in the August 29 document, payment will be made for blood clotting factor only if there is an ICD–9–CM diagnosis code for hemophilia included on the bill.

N. Counting Residents for Direct Graduate Medical Education

1. Limit on the Count of Residents

Section 4623 of the BBA added 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.

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. We expect to amend the Medicare cost report in light of all of the provisions of the BBA addressing indirect and direct GME payments. We believe that the data, for the most recent cost reporting periods ending on or before December 31, 1996, necessary to implement the indirect and direct GME provisions is already available to fiscal intermediaries through the intern and resident information system.

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. In the August 29 final rule with comment period, we revised § 413.86(g)(4) accordingly.

Comment: We received comments that many hospitals received approval from the Accreditation Council on Graduate Medical Education (ACGME) to expand existing medical residency training programs prior to enactment of the BBA. The additional residents associated with these program expansions may not have been included in the hospital's most recent cost reporting period ending on or before December 31, 1996. Some commenters felt that it was not the intent of the Congress to ''unduly burden residency programs and hospitals by putting into effect regulations which retroactively punish programs attempting to expand.'' These commenters stated that even if it was Congressional intent to halt program expansion, programs serving rural and rural underserved areas should be exempt. Some commenters urged that the cap be adjusted to allow for situations where documented expansion plans were approved by national credentialing bodies or state regulatory agencies prior to August 5, 1997, or where hospitals made commitments to residents for the 1997/1998 academic year. Other commenters stated that HCFA should allow all residents training before August 5, 1997, to be included in hospital FTE caps. One commenter suggested that HCFA consider the number of approved slots rather than the actual number of residents on December 31, 1996, for purposes of calculating the FTE cap. This commenter did not believe that Congress intended to punish well-established programs that happened to have an open slot on a particular date, nor to force programs with significant activity in the training of rural physicians to reduce their number of residency slots. Some commenters recognized that the statute requires the Secretary to establish hospital specific FTE caps from the hospitals' most recent cost reporting period ending on or before December 31, 1996, even in situations where hospitals made commitments to training additional residents after their cost reporting period ending during 1996 and before the enactment of the BBA. The commenters urged HCFA to recommend a statutory change to the 1996 cost report year provision to ameliorate the retrospective nature of this provision.

Response: Under sections 1886(d)(5)(B)(v) and 1886(h)(4)(F), as amended by the BBA, the number of a hospital's residents in allopathic medicine and osteopathic medicine may not exceed the number of such residents for the hospital's most recent cost reporting period ending on or before December 31, 1996. The limit applies to discharges occurring on or after October 1, 1997, for indirect medical education and to cost reporting periods beginning on or after October 1, 1997, for direct GME. Thus, for an individual hospital, the amount of Medicare payment for direct and indirect GME is limited by the number of residents in a base year specified by the statute.

Many of the comments we received indicated that hospitals made commitments to expand existing residency programs between their most recent cost reporting periods ending on or before December 31, 1996, and their first cost reporting period in which the caps apply. As a result, the hospital may have more residents in its current cost reporting period than its FTE cap. If we adjusted the caps for these hospitals we would effectively give them a base year contrary to the one specified by the statute.

Similarly, establishing FTE caps based on the number of residents training on August 5, 1997 or in the 1997–1998 program year would be inconsistent with the statutory base year. In response to the comment that we establish FTE caps based on approved slots rather than the actual number of residents in training, the statute specifically establishes that the cap equals the number of allopathic and osteopathic FTE residents (before the application of the initial residency period weighting factors) in the hospital's most recent cost reporting period ending on or before December 31, 1996. The Conference Report for the BBA states that ''the conference agreement provides for a 'cap' or limit on the number of residents that may be reimbursed by the Secretary, on a national and a facility level.''

Section 1886(h)(5)(H) states that the Secretary shall give special consideration to facilities that meet the needs of underserved areas but only in the context of prescribing rules for medical residency training programs created on or after January 1, 1995. Thus, we disagree with these commenters that hospitals that meet the needs of rural underserved areas should be exempt from the FTE caps.

Comment: We received several comments on the need for flexibility in the FTE caps. These comments stated that an institution-specific cap does not allow training to move from one hospital to another even if those sites become undesirable. One commenter suggested that a hospital's FTE resident count should be allowed to increase if the residents are moved from another teaching hospital because that hospital no longer provides a desirable training site. Another commenter stated that program sponsors are responsible for ensuring that residency program sites meet accreditation requirements, and that a program sponsor is required to move residency slots if an affiliated hospital cannot or does not want to continue to support residency program changes. These commenters noted that if the sponsor of a residency program moves residents from one hospital to another, the receiving hospital will not be paid for those residents above its cap even though there is no net growth in the number of residents. These commenters requested that the regulations be modified to allow a hospital's FTE cap to increase if the residents are moved from one teaching hospital to another by the program sponsor if there is no net growth in residency slots. One comment proposed setting the cap at the number of residents included in an institution's sponsored programs as an alternative to the unweighted cap based on the time a resident works at a facility. Rotating residents would be counted outside the

cap since the increase in FTEs at one institution due to rotations is balanced by a decrease in the FTEs at the originating institution. One commenter stated that since hospitals now ''own'' residency slots, program sponsors are put at a disadvantage in negotiating with affiliated hospitals for reimbursement of resident salaries and faculty supervision costs, and an affiliated hospital may choose to ''sell its residency slots to the highest bidder.''

Response: The statute does not prohibit program sponsors from restructuring a residency training program or resident rotation schedules. Sections 1886(d)(5)(B)(v) and 1886(h)(4)(F) only provide for hospital-specific FTE caps for purposes of determining Medicare payment for indirect and direct GME. We believe the concerns of these commenters may be addressed by our rules for affiliated groups, which permit hospitals to elect to apply the caps on an aggregate basis. As discussed later, if two or more hospitals are members of the same affiliated group, they can, by mutual agreement, adjust each respective hospital's FTE cap under an aggregate FTE cap. Absent this mutual agreement, we do not believe it is appropriate for the Secretary to establish rules that allow adjustments to hospital-specific FTE caps based on unilateral decisions by the residency training program director.

With regard to the comment that the hospital's FTE caps should be based on the hospital's sponsored programs, sections 1886(d)(5)(B)(v) and 1886(h)(4)(F) specifically limit the hospital's FTEs for determining Medicare payment to the number included in the hospital's most recent cost reporting period ending on or before December 31, 1996. We would further note that medical residency training programs may also be sponsored by medical schools. If we were to adopt this commenter's suggestion that the FTE cap be equal to the number of residents in a hospital's sponsored programs, residents in programs sponsored by medical schools would not be included in any hospital's FTE cap.

We recognize the concern of the commenter who stated that the FTE caps may result in changes in financial relationships between program sponsors and affiliated training sites to the disadvantage of program sponsors. If, indeed, program sponsors are at a disadvantage in negotiating financial arrangements, it is a result of the BBA statutory requirement that Medicare payment for direct and indirect GME be limited by hospital specific FTE caps and not a result of any regulations promulgated by the Secretary.

Comment: One commenter stated that because of osteopathic medicine's commitment to primary care and work in underserved communities, HCFA should create an exemption to the residency cap for osteopathic residency programs. Other commenters stated concerns about the adequacy of postgraduate medical education training positions for osteopathic medicine residents. One commenter stated that the osteopathic medical profession is currently 3,000–3,500 positions in deficit, based on the postdoctoral needs of all students who are currently and will register in colleges of osteopathic medicine over the next 3 years. The commenter argues that, since the allopathic positions total approximately 143 percent of U.S. allopathic medical graduates, a similar restriction on U.S. osteopathic positions does not seem warranted. This commenter stated that a mechanism should be permitted to allow the osteopathic profession the flexibility to enhance osteopathic training positions by approximately 3,000–4,000 positions. Another commenter noted that osteopathic physicians serve disproportionately in rural areas and appear to fulfill physician workforce objectives, which represents an additional justification for maintaining osteopathic residency slots. One commenter noted that it is important that a GME FTE cap not adversely affect training osteopathic surgical subspecialty physicians. According to this commenter, osteopathic medical graduates do not have access to allopathic surgical subspecialty programs.

Response: Section 1886(h)(4)(F) provides for a cap on the total number of FTE residents in a hospital's ''approved medical residency training programs in the fields of allopathic and osteopathic medicine.'' The statutory limit on the number of residents paid for by Medicare specifically encompasses residents in osteopathic medicine.

Comment: Several commenters asked about application of the cap for hospitals that merged after December 31, 1996 but before the BBA, where only one hospital maintains its provider number and participation agreement. Another commenter stated that the law and regulations do not address application of the resident cap for hospital mergers and acquisitions. These commenters do not believe that it was the intent of the BBA to eliminate funding for residents when hospitals merge. Another commenter stated that applying the limits based on cost reports ending on or before December 31, 1996, does not allow for the long-term plans of providers attempting to reduce medical education costs and consolidate programs. The commenters recommended that HCFA interpret the BBA provisions to allow hospitals that merged after the base year to include the count of both hospitals. Some commenters suggested that another approach would be to redefine an affiliated group to include hospitals that merged after the December 31, 1996, cost reporting period. Another commenter stated that where there is a merger involving two hospitals, the merged cap should reflect a 12-month cost reporting period. This commenter suggested we amend the regulations specifically to ensure that the FTE cap is based on the equivalent of a 12-month cost report in the context of a merger.

Response: We agree with the commenters that when there is a merger, the cap for the hospital should reflect the base year FTE counts for the hospitals that merged. This is consistent with the principle of limiting payments based on the base year specified in the statute. Also, in implementing the COBRA 1985 provision establishing a hospital-specific per resident amount in the situation of a merger, we have calculated the revised per resident amount for the merged hospital using an FTE weighted average of each of the respective hospital's per resident amount which is part of the merger. We believe that it would be appropriate to address the FTE caps using the same principle. For purposes of this final rule, where two or more or more hospitals merge after each hospital's cost reporting period ending during FY 1996, the merged hospital's FTE cap will be an aggregation of the FTE cap for each hospital participating in the merger. We are modifying § 413.86(g)(6) to reflect this change.

With regard to the comment that we modify the regulations to ensure that the FTE caps are applied on the basis of a 12-month cost reporting period specifically in the context of mergers and acquisitions, the existing regulations state that the fiscal intermediary may make appropriate modifications to apply the FTE cap based on the equivalent of a 12-month cost reporting period. We do not believe that additional regulatory revisions are warranted.

Comment: Several commenters argued that we should adjust the caps when a hospital began training additional residents after its cost reporting period ending during 1996 because another hospital closed or discontinued its

teaching programs during the July 1996-June 1997 residency year. One commenter stated that there should be a mechanism for allowing FTE positions from merged or closed osteopathic residency programs to be used by other programs. One commenter suggested that we allow an adjustment to the FTE cap if the hospital met the following criteria: (1) During the July 1996-June 1997 residency year the hospital assumed additional medical residents from a hospital that was closing or discontinuing its training programs; (2) The hospital added the residents with the intent of allowing them to complete their education program; and (3) The hospital that closed does not seek reimbursement for the residents. If a hospital meets these three criteria, this commenter stated that it should have an unweighted FTE count which equals its unweighted FTE count for its most recent cost reporting period ending on or before December 31, 1996, adjusted for the additional residents added from residency programs at the closed hospital.

Response: Similar to the situation of a merger, we agree that, when a hospital takes on residents because another hospital closes or discontinues its program, a temporary adjustment to the cap is appropriate and consistent with the base year system. In these situations, residents may have partially completed a medical residency training program and would be unable to complete their training without a residency position at another hospital. We believe that it is appropriate to allow temporary adjustments to the FTE caps for a hospital that provides residency positions to medical residents who have partially completed a residency training program at a hospital which closed.

For purposes of this final rule, we will allow for temporary adjustments to a hospital's FTE cap to reflect residents affected by a hospital closure. That is, we will allow an adjustment to a hospital's FTE cap if the hospital meets the following criteria: (1) During the July 1996-June 1997 residency year the hospital assumed additional medical residents from a hospital that was closing; (2) The hospital added the residents with the intent of allowing them to complete their education program; and (3) The hospital that closed does not seek reimbursement for the residents. As stated above, this adjustment will be temporary to allow Medicare payment for those residents from the closed hospital. After this period, the hospital's cap will be based solely on the statutory base year. Hospitals seeking an adjustment for this situation must document to their intermediary that an adjustment is warranted for this purpose and the length of time that the adjustment is needed.

Comment: One commenter stated that an appeals process must be established for providers to present cases when they believe their particular medical education programs have been unfairly penalized.

Response: Since the direct and indirect medical education FTE counts are used in determining hospital payments on the basis of a cost reporting period and the hospital has appeal rights on the settlement of the cost report under 42 CFR Part 405, we do not believe that a new appeals process needs to be established.

2. Counting Residents Based on a 3-Year Average

Section 1886(h)(4)(G)(iii) of the Act, as added by section 4623 of the BBA, 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. In the August 29 final rule with comment period, we revised § 413.86(g)(5) accordingly.

For cost reporting periods beginning on or after October 1, 1997, we indicated in the August 29 final rule with comment period how we would determine direct GME payments.

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), in the August 29 final rule with comment period we established 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 weighted FTE count for residents in allopathic and osteopathic medicine to the hospital's unweighted number of FTE residents without application of the cap for the cost reporting period at issue.
- Multiply the ratio determined above by the hospital's FTE cap. 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.

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. In the August 29 final rule with comment period, we revised § 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.

Comment: Some commenters stated that application of the 3-year rolling average rule penalizes hospitals that participate in an affiliated group and increase residents under an aggregate FTE cap. We received comments stating that the 3-year rolling average may penalize hospitals that legitimately qualify for an increase in their FTE count because they established a medical residency training program on or after January 1, 1995. The commenters argue that, in these cases, hospitals should be able to choose to have IME or direct GME payments based on the current year count of FTE residents or the 3-year rolling average. One commenter stated that the rolling average methodology arbitrarily penalizes areas of the country undergoing substantial growth.

Response: Section 1886(h)(4)(H)(i) states that ''the Secretary shall, consistent with the principles of subparagraphs (F) and (G), prescribe rules for the application'' of the FTE caps and the 3-year rolling average in the case of medical residency programs established after January 1, 1995. We agree with these commenters that FTE

residents participating in new medical residency training programs should be included in the direct and indirect GME FTE counts after application of the 3-year averaging methodology. Accordingly, we are revising § 413.86(g)(5) to determine a hospital's 3-year average FTE count prior to adding residents participating in new medical residency training programs consistent with section 1886(h)(4)(H)(i). However, section 1886(h)(4)(H)(ii) states that ''the Secretary may prescribe rules which allow institutions which are members of the same affiliated group (as defined by the Secretary) to elect to apply the limitation of subparagraph (F) on an aggregate basis.'' Since the statute provides that the Secretary's rules regarding affiliated groups should only apply to the FTE cap, we believe the 3-year rolling average should be applied for affiliated groups. That is, we will apply the 3-year rolling average for hospitals that are part of an affiliated group, subject to application of the aggregate cap.

Comment: We received some comments asking HCFA to clarify that dental and podiatric residents are not included in the rolling average resident count. Several other commenters suggested that we modify the regulations so that dental and podiatric residents are not included in the 3-year averaging of FTE counts. The commenters asserted that the intent of the provision was that the count of dental and podiatric positions be made separately.

Response: Although the FTE caps established under sections 1886(d)(5)(B)(v) and (h)(4)(F) are limited to residents in allopathic and osteopathic medicine, there is no similar limitation in section 1886(d)(5)(B)(vi) and (h)(4)(G) when determining indirect and direct GME payments based on a 3-year average. These provisions state that the Secretary shall determine payment based on an ''average of the actual full-time equivalent resident count for the cost reporting period and the preceding two cost reporting periods.'' There is no statutory distinction between dental, podiatric and other residents in determining payment based on the 3-year averaging rules.

Comment: One commenter stated that capping FTEs for individual cost reporting periods in calculating the 3-year average is not the intention of the statute. This commenter stated that capping the FTEs in the individual years depreciates the FTE count for that year, misrepresenting the total number of FTEs during that year. This commenter recommended that in calculating the 3-year rolling average, the gross number of FTEs should be used in the calculation.

Response: Section 1886(h)(4)(G), as added by the BBA, provides that the computation of the rolling average is ''subject to the limit described in subparagraph (F)''. The 3-year rolling average must reflect application of the FTE cap.

3. Special Rules for Applying the Direct GME FTE Limit and Rolling Average

Under section 1886(h)(4)(H)(i) of the Act, as added by the BBA, 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 in 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 for the BBA 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, in the August 29 final rule with comment period, we established 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'' would 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. The Secretary has broad authority to prescribe rules for counting residents in new programs, but the Conference Report for the BBA indicates concern that the aggregate number of FTE residents should not increase over current levels. Accordingly, we indicated that we would 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.

Comment: One commenter believed that the Congress intended to create exceptions for circumstances where commitments to begin new training programs had been made prior to enactment of the cap, including situations where programs had begun prior to enactment but were not filled in 1996 and situations where a new facility opens after enactment, and had no residents in the base year.

Response: The regulations published on August 29, 1997 provide for adjustments to hospital FTE caps for hospitals that previously did not participate in GME training and hospitals that established new medical residency training programs on or after January 1, 1995 and on or before the August 5, 1997 enactment of the BBA.

Comment: Some commenters questioned the definition of ''new medical residency training program'' established for purposes of section 1886(h)(4)(H) of the Act. The regulation defines a new program as one that receives initial accreditation on or after July 1, 1995. Several commenters stated that the definition of new program should recognize programs that have not yet received accreditation but are approved GME programs eligible for payment. The commenter suggested that the current definition of ''new medical residency training program'' would not recognize programs leading to an American Board of Medical Specialties certification since they are not accredited by an accreditation body, even though such programs qualify as approved GME programs and are eligible for payment. Some commenters suggested that the new program definition be based on the date the residents begin training rather than the date of an accreditation letter. These commenters noted that the majority of programs starting July 1, 1995, received their accreditation letters prior to January 1, 1995, and would not qualify as new programs. Other commenters believed that a new medical residency program should be determined based on the date a program received approval from the accrediting body. One commenter stated that programs which receive ''provisional accreditation'' should be included in the regulatory definition of a new program. One commenter stated that the new program definition should include programs for which hospitals submitted a formal application before August 5, 1997. The commenter noted that it takes from 8–12 months before accreditation action is taken. Another comment requested clarification that the documentation required under this section (42 CFR 413.86(g)(6)(iv)) related solely to justifying the existence of a new program.

Response: We inadvertently used the date ''July 1, 1995'' when we added § 413.86(g)(7) in the final rule with comment published August 29, 1997. We are correcting the date to January 1, 1995 in this final rule.

As the comments reflect, establishing a newly accredited medical residency training program can be a costly and

time consuming process. We recognize that hospitals that either received accreditation for a new medical residency training program or began training residents in the new program may have expended substantial resources during the accreditation process. We also recognize that hospitals usually do not begin training residents immediately upon receiving an accreditation letter. For these reasons, we believe it is appropriate to consider a medical residency training program to be newly established if the program received initial accreditation or began training residents on or after January 1, 1995. We are modifying the regulation accordingly.

A hospital seeking to qualify as a new program must provide documentation to the intermediary indicating the date a program received accreditation and/or the date the residents begin training for the hospital to receive an adjustment to its FTE cap. We are not allowing programs to be considered newly established based on the date the sponsor began seeking accreditation since the date of an accreditation application is not indicative of a substantial commitment of resources that warrant an adjustment to FTE caps.

Comment: Some commenters requested that the example in the August 29 final rule with comment period at 62 FR 46006, on programs that received direct GME before January 1, 1995, clearly state that dentistry and podiatry positions are not subject to the cap and that hospitals may add new programs in dentistry and podiatry without being subject to the Secretary's rules for establishment of new programs. The commenter would also like the statement on page 46006 that HCFA ''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' modified to indicate that it applies only to allopathic and osteopathic residency positions.

Response: The regulations and preamble published on August 29, 1997, clearly stated that hospitals may include dental and podiatric residents in their FTE counts for purposes of direct and indirect medical education payment without limit, regardless of whether it is an expansion of an existing program or the establishment of a new program. We do not believe modification of the regulation is necessary.

Comment: Several commenters requested clarification about adjustments to the FTE cap for new osteopathic rotating internships. Another commenter suggested that the osteopathic rotating internship should be exempt from the cap as are residents in dentistry and podiatry. One commenter noted that the rules call for counting the number of first year residents in the third year of the residency program. The commenter proposed that a consistent rule for internships would adjust the FTE cap for a new internship program based on the number of internship positions filled in the third year. One commenter expressed concern that our rules should recognize that specialty training in osteopathic medical specialties occurs subsequent to the osteopathic rotating internship in the second postgraduate year and that we should separately make adjustments to the FTE caps for new osteopathic internships and new osteopathic specialty training programs.

Response: The osteopathic rotating internship is the first postgraduate year of training for osteopathic medical graduates and precedes all subsequent specialty training. Since osteopathic rotation internship programs are individually accredited, we are applying the same rules for new osteopathic rotating internships that we apply for all other new medical residency training programs. That is, if a hospital qualifies for an adjustment to its FTE cap for a new osteopathic rotating internship, the adjustment will be equal to the product of the minimum accredited length for the osteopathic rotating internship (that is, one year) and the number of FTEs participating in the internship in its third year of existence. Since osteopathic rotating internships are one year in length, the minimum accredited length is equal to one year.

We will allow adjustments to FTE caps for new osteopathic specialty programs based on the product of the minimum length for the accredited program and the highest number of residents in any program year subsequent to the osteopathic rotating internship (that is, program year 2, program year 3 or program year 4) in the third year of the program's existence. We are applying the same rule for new allopathic training programs (that is, the adjustment for the new medical residency program is based on the highest number of residents in any program year in the third year of the program's existence). The adjustment to the hospital's FTE cap may not exceed the number of accredited resident slots for the new medical residency training program. In response to the comment that the osteopathic rotating internship be exempt from FTE caps, as stated earlier, the FTE caps under sections 1886(d)(5)(B)(v) and (h)(4)(F) specifically encompass residents participating in allopathic and osteopathic training programs.

a. Hospitals with no residents prior to January 1, 1995. Section 1886(h)(4)(H) of the Act allows the Secretary to prescribe special rules for the application of the FTE caps and 3-year averaging for medical residency training programs established on or after January 1, 1995. In the August 29, 1997 final rule with comment period (62 FR 46005), we provided a special rule for application of the FTE resident cap for hospitals which did not participate in GME training prior to January 1, 1995. Under this special rule, we allowed hospitals to establish their FTE cap based on the product of the number of first year residents participating in accredited GME training programs in the third year that the hospital received payment for GME and the minimum accredited length for the type of program.

Comment: Some commenters stated that hospitals that did not receive GME payments prior to January 1, 1995, and subsequently become teaching hospitals by affiliating with an existing training program, should be eligible for GME payments if they incur substantially all of the costs of the resident training and the overall number of residents does not increase. In this situation, the location of settings in which residents receive training changes but there is no net increase in the number of residents. One commenter stated that the limit on resident growth in new hospitals to those from ''newly accredited programs'' severely limits flexibility of moving residents and requires a duplicative administrative burden to start new programs when sharing residents would work just as well. Another commenter asked whether new hospitals may include residents transferred from other hospitals if all parties concur. To ensure that this does not increase the number of resident slots, hospitals transferring residents would have their caps correspondingly reduced. Several commenters asked how the cap would apply to hospitals that decide to become teaching institutions and will have residency programs that will be a mix of new programs and programs currently running in another hospital.

Response: Under § 413.86(g)(4), hospitals that are part of the same affiliated group may elect to apply the FTE cap under section 1886(h)(4)(F) on an aggregate basis. If a hospital that did not receive direct or indirect GME payment prior to January 1, 1995, qualifies to be part of the same affiliated group with another hospital that

participates in residency training, these hospitals can, by mutual agreement, provide for adjustments to each respective hospital's FTE cap under an aggregate cap for the affiliated hospitals.

With regard to application of the cap for hospitals that become teaching institutions on or after January 1, 1995, and on or before August 5, 1997, our policy is that a hospital can receive an adjustment to its FTE cap for a new medical residency training program and can affiliate with hospitals that have existing medical residency training programs. Hospitals in urban areas that participate in medical residency training programs for the first time, after the August 5, 1997 enactment date of the BBA may receive an adjustment only for new medical residency training programs; they cannot affiliate with hospitals that have existing medical residency training programs. We are establishing this policy because of our concern that hospitals with existing medical residency training programs may affiliate with hospitals that establish new medical residency programs solely for the purpose of moving the new residency program to its own hospital and receiving an upward adjustment to its FTE cap under an affiliation agreement.

We will allow hospitals in rural areas that qualify for an adjustment to its FTE cap for new medical residency training programs to affiliate with hospitals in urban areas. However, we will only allow a rural hospital that qualifies for an adjustment to its FTE cap for a new medical residency training program to be a member of the same affiliated group with an urban hospital if the rural hospital provides training for the FTE equivalent of at least one third of the residents participating in the joint programs of the affiliated hospitals. We are allowing these affiliations between rural and urban hospitals to recognize that rural hospitals may not have sufficient patient care utilization to be able to establish a training program within the rural area to meet accreditation standards. However, we remain concerned that there needs to be a sizeable component of training in the rural area for the policy to provide appropriate consideration for hospitals meeting the needs of underserved rural areas. We believe that providing for at least one third of the training in rural area will allow programs which focus on, but are not exclusively limited to training in those areas.

Comment: One commenter argued that there is an inconsistency between the rules for teaching hospitals that had residents prior to January 1, 1995, and nonteaching hospitals that became teaching hospitals between January 1, 1995, and August 5, 1997. Hospitals in the former category may have their limits adjusted upward for all new programs established prior to August 5, 1997, while hospitals in the latter category are allowed an adjustment only for residents in the first program created even though additional programs may have been created prior to August 5, 1997. This commenter recommended that all hospitals be entitled to cap adjustment for programs created before August 5, 1997.

Response: We agree and will establish the FTE cap for a hospital which did not participate in residency training prior to January 1, 1995, based on the product of the minimum length for the type of program and highest number of residents in any program year for all residency programs created in the 3rd year after residents first begin training (§ 413.86(g)(60)(i) and (ii)). This policy addresses adjustments for all new medical residency programs established prior to August 5, 1997.

Comment: One commenter suggested (1) allowing a new hospital 5 years to build its residency programs, and not differentiating between new and established programs, (2) using the 3-year methodology outlined in the rule but not differentiating between new and established programs, or (3) allowing the cap to move with the residents when programs are transferred from one hospital to another. Another commenter suggested that permitting hospitals to transfer residency programs to other hospitals by mutual agreement is necessary to provide cooperating hospitals, or hospitals within networks, the necessary flexibility to determine requirements for a quality training program and how they will meet them.

Response: One of these commenters is suggesting three alternatives for establishing the FTE cap for a new hospital that establishes a medical residency training program. Under the first two options, the commenter is suggesting that we should not distinguish between whether the hospital's resident count is adjusted for new medical residency training programs or previously established programs where some or all of the residents are transferred to the new hospital. As stated earlier, hospitals that did not participate in a medical residency training program prior to August 5, 1997, and establish a new medical residency training program for the first time after the enactment date of BBA will have their FTE caps established in the third year in which they participate in residency training.

We are not allowing hospitals that first participate in medical residency training programs to affiliate with hospitals that already have an established FTE cap because of our concern that hospitals with existing medical residency training programs would affiliate with hospitals that do not currently train residents solely for purposes of establishing a higher FTE cap, which is inconsistent with sections 1886(d)(5)(B)(v) and (h)(4)(F) of the Act. As a result of this concern, we are reluctant to adopt the first two approaches suggested by this commenter for adjusting the FTE cap for a hospital which participates in medical residency training for the first time after August 5, 1997. This commenter has also suggested allowing the FTE cap to move between hospitals when programs are transferred. Hospitals that qualify to be members of the same affiliated group can mutually agree to adjustments in their respective FTE caps.

Comment: One commenter stated that the requirement that all new programs begin at the same time in new hospitals is contradictory to the Accreditation Council on Graduate Medical Education requirement that certain new programs be started in hospitals that already have other programs. Under HCFA's regulations, a new hospital must start all new programs at once in order to receive an adjustment to the FTE cap based on the number of residents participating in all of the hospital's accredited programs in the third year that the hospital participates in training. The commenter suggested that HCFA provide an adequate time period for new hospitals to build complementary residency programs that do not conflict with Accreditation Council on Graduate Medical Education requirements. One commenter stated that basing the resident cap for new residency programs on the first program(s) will inhibit growth of other primary care programs or the introduction of new primary care programs. One commenter stated that nothing in the statute suggests that recognition of new programs should be limited to the first program. This commenter stated that if an internal medicine program is accredited in April 1996 with its first residents in July and a specialty program is developed in 1997 with residents beginning in 1998, the cap should be adjusted to account for the additional residents in the second program. One commenter recommended that the cap for new programs be adjusted based on all programs established in the hospital's first year rather than the first programs simultaneously established. One

commenter suggested that the cap adjustment for new programs in hospitals should be available without a cut-off date. Another commenter recommended allowing hospitals a period of time, no less than 5 years, to establish their GME training programs. One commenter stated that the resident count should be determined in the third year of the program based on the number of residents in either the first, second, or third residency year, whichever is the highest. In addition, the regulations should allow the limits to be adjusted upward for each of the first two years of the program to permit payments for residents present during that period.

Response: We agree that hospitals that establish new medical residency programs will need time to establish complementary residency programs. Additionally, we are concerned that hospitals may be disadvantaged by basing the adjustment on the number of first year residents in the third year of the program's existence. Therefore, we are revising § 413.86(g)(6)(i) to state that the hospital's cap adjustment is based on the product of the minimum accredited length for the specialty program and the highest number of residents training in any program year during the 3rd year of the program's existence. For purposes of determining the FTE cap for hospitals which first participate in GME training on or after January 1, 1995, we will establish the hospital's FTE cap 3 years after the first medical residency program is established. The hospital's cap will reflect an adjustment based on the product of the minimum accredited length for the program and the highest number of residents in any program year for each new medical residency program in existence at the time the cap is established. The hospital's FTE cap may not exceed the number of accredited resident slots available to the hospital.

b. Hospitals with residents rrior to January 1, 1995 not located in rural areas. In the August 29, 1997 final rule with comment period, we also provided a special rule for the application of the FTE cap for hospitals that participated in GME training before January 1, 1995 and established medical residency training programs on or after January 1, 1995. Under this special rule, we allowed hospitals with new medical residency training programs established on or after January 1, 1995 and on or before August 5, 1997 to adjust their FTE caps. The hospital's FTE caps are adjusted for the incremental increase in residents participating in the new medical residency training program which are not reflected in the hospital's cost reporting period ending during calendar year 1996.

Comment: We received comments stating that an adjustment should be made to the FTE cap for programs established prior to January 1, 1995, that had not reached their third year or minimum accredited length for the type of program during the cost reporting period ending on or before December 31, 1996.

Response: Section 1886(h)(4)(H) states that the Secretary shall prescribe rules for application of the FTE cap and 3-year rolling average ''in the case of medical residency training programs established on or after January 1, 1995.'' Our policy of limiting adjustments to FTE caps for medical residency training programs established on or after January 1, 1995 is consistent with this statutory requirement.

Comment: We received comments stating that HCFA should allow adjustments to the FTE cap for new residency programs established on or after August 5, 1997 in hospitals with existing residency programs. Many commenters believed that the August 5, 1997 date was unfair to primary care programs since several new family practice programs were accredited in September 1997 and there are a number of additional programs that will be established in the next 1 to 2 years. According to these commenters, if a public policy goal is to increase the number of primary care physicians, HCFA should allow for adjustments for programs created before September, 1999. One comment stated that urban hospitals will be deterred from opening new, desirable residency programs such as ambulatory care training programs if they cannot receive an adjustment for programs established after August 5, 1997. If HCFA does not allow hospitals in urban areas to create additional programs after August 5, 1997, this commenter suggested that HCFA allow adjustments for primary care programs where the majority of training is in ambulatory care. One commenter requested that the Secretary consider the needs of elderly beneficiaries in rural areas and allow adjustments to a hospital's FTE cap for new medical residency training in geriatric medicine. Another commenter stated that the Secretary should be required to give special consideration to facilities that establish residency training programs on or after January 1, 1995 ''which meet the needs of geriatric populations, including mental health needs of the aged.''

Response: As we have stated earlier, sections 1886(d)(5)(B)(v) and 1886(h)(4)(F) limit the number of allopathic and osteopathic residents that a hospital may include in its FTE count for purposes of indirect and direct GME payments. The Conference Report further states that ''a facility limit on the number of residents was provided, rather than any direction on payments according to specialty of physicians in training, to specifically avoid the involvement by the Secretary in decision making about workforce matters. The Conferees emphatically believe that such decisions should remain within each facility, which is best able to respond to clinical needs and opportunities.''

Since sections 1886(d)(5)(B)(v) and 1886(h)(4)(F) provide for an FTE cap for medical residents in all allopathic and osteopathic specialties and the Conference Report states that the Secretary should not be involved in workforce matters, we disagree with these commenters that we should allow for adjustments to FTE caps for programs that train primary care residents, programs that focus on ambulatory training or geriatric training programs. We believe the statute anticipates that each facility, within its FTE cap, will make decisions about training programs based on the needs of its own institution.

c. Rural underserved areas. Consistent with section 1886(h)(4)(H), we provided a special rule for the application of the FTE cap to give special consideration to hospitals that meet the needs of underserved rural areas. Under this special rule, we provide adjustments to FTE caps for hospitals located in rural areas that established medical residency training programs on or after January 1, 1995. The caps can be adjusted for all programs created on or after January 1, 1995 including programs created after the enactment of BBA. The adjustment to an individual hospital's FTE cap is based on the product of the number of first year residents participating in the newly established program in the program's third year of existence and the minimum accredited length for the program.

Comment: Many commenters recommended that an exception to the FTE caps should be permitted to encourage existing programs to expand to meet the needs of rural, underserved areas. Several commenters also suggested providing an exception to the cap that would allow a geographic area with substantial population growth to expand existing medical residency training programs to hospitals which previously have not participated in residency training. Some commenters suggested that the needs of rural (and other underserved) areas are frequently met by facilities that do not exist within

those areas, but whose graduates subsequently practice there. This commenter requested that HCFA redesignate certain urban MSAs as rural for residency training purposes. One commenter suggested that the designation of programs in underserved areas receiving special consideration might better be phrased as ''programs whose graduates serve underserved areas,'' in order to be consistent with the purpose of this language. Many commenters stated that Congress' intent that special consideration be given to facilities that meet the needs of underserved rural areas was meant to include entire States that have low ''per population'' ratios of both physicians and residents. This commenter suggested that this special rule could be limited to the five States with lowest physician to population ratios.

One commenter stated that without an exception, the FTE cap could have a ''chilling'' effect on urban hospitals sending residents to rural settings. This commenter stated that there have been several recent expansions in family practice residency programs that include a rural training track, with residents located in outlying hospitals, or with satellite programs designed specifically to train residents to work in areas with underserved populations. The commenter suggested that urban hospitals should be eligible for exceptions to the cap if they place residents in rural, underserved areas. One commenter recommended that the FTE cap should be adjusted for urban programs that provide 25 percent of their training in rural areas that are designated as medically underserved areas and/or health professional shortage areas.

Another commenter stated that, given the value of rural training to the needs of underserved populations, HCFA should develop additional exception language for rural training tracks or programs that seek to train residents in working with underserved populations. The commenter recommended that HCFA consider, in designating rural and rural underserved areas, the population served by the program and where the graduates practice upon completion of the program rather than the location of the training of the residents. We received comments indicating that hospitals will be unlikely to benefit from the special rules for hospitals located in rural areas. The commenters believed that it is unlikely that a rural hospital will establish a residency program because the smallest program which may be accredited is for 12 residents. Another commenter stated that the majority of physicians will settle within 100 miles of their residency training location and suggested that programs which serve underserved rural areas should be defined as:

(a) Any residency program with more than 10 health professional shortage areas within 100 miles of the program;

(b) Residencies that have identified themselves prior to August 5, 1997 as having the mission of training rural physicians, and have placed more than 10 percent of residents in the preceding 2 years in rural underserved areas and more than 40 percent in rural areas; or

(c) Residencies within States where greater than 70 percent of the land mass is rural; and

(d) Programs meeting the above qualifications and those located within health professional shortage areas would be disqualified by being in a community of greater than 100,000.

Response: We believe that the Congress enacted sections 1886(d)(5)(B)(v) and 1886(h)(4)(F) because of a concern about the growing supply of physicians in combination with reports that the United States may be training too many physicians for practice in the 21st century. The Conference Report accompanying the BBA states that the ''conference agreement provides for a 'cap' or limit on the number of residents that may be reimbursed by the Secretary, on a national and a facility level.'' At the same time, the Conference Report acknowledged that the FTE caps could create problems in several circumstances. Accordingly, the statute provides for special rules for medical residency programs created on or after January 1, 1995, and directs the Secretary to ''give special consideration to facilities that meet the needs of rural underserved areas.''

Given the hospital specific FTE caps mandated by the statute and the Conference Report language that the number of FTE residents paid for by Medicare should not exceed current levels, we believe our policy with regard to medical residency training programs created on or after January 1, 1995, establishes an appropriate balance between the competing goals of limiting the number of residents in training nationally and making appropriate payments for necessary training. Although we acknowledge that GME programs that provide a component of training in rural areas also include significant training in hospitals located in urban areas, we are concerned about the impact of providing adjustments to the FTE limit for hospitals located in non-rural areas until we have more experience with the current special rules. As we stated above, we will make adjustments to the caps for rural hospitals that establish new medical residency training programs and will allow those hospitals to affiliate with hospitals in nonrural areas. Taken together, these policies allow rural hospitals, in combination with urban hospitals, to establish training programs which can receive Medicare payment for direct and indirect GME. Finally, based on a review of the 1997/1998 *Graduate Medical Education Directory,* we would note that, in limited circumstances, family practice programs of fewer than 12 residents that focus on rural training may be accredited.

Comment: One commenter suggested that many osteopathic training programs are located in underserved, urban areas called Empowerment Zones and that these programs should receive a waiver from the FTE caps. Another commenter recommends that exceptions be permitted for urban hospitals serving underserved populations.

Response: As stated above, sections 1886(d)(5)(B)(v) and 1886(h)(4)(F) cap the number of osteopathic and allopathic physicians a hospital may include in its FTE count. Section 1886(h)(4)(H)(i) requires the Secretary to prescribe special rules for application of the cap and the 3-year rolling average for medical residency training programs created on or after January 1, 1995, and states that the Secretary should give special consideration to hospitals that meet the needs of rural underserved areas in drafting these rules. The statute includes osteopathic medical residency training programs in the FTE caps and the Secretary is directed by the statute to give special preference only to rural underserved areas. Consistent with the statute, we are providing for adjustment to FTE caps for new medical residency training programs created on or after January 1, 1995 and are not providing for the types of adjustments suggested by these commenters.

Comment: Several commenters noted that medicine is constantly evolving, leading to new specialty training programs. According to the commenters, new specialties do not necessarily replace old specialties so absent explicit recognition of new specialties, the cap on resident training will hamper the ability of teaching institutions to implement new training programs without downsizing or eliminating existing programs. The commenters urged HCFA, in consultation with the medical profession, to look at constructive ways to address this issue.

Response: As we have stated earlier, sections 1886(d)(5)(B)(v) and (h)(4)(F) provide for limits on the number of

residents used in determining Medicare payment for indirect and direct GME. It does not preclude hospitals from establishing new medical training programs. Nevertheless, we do acknowledge that Medicare's payments for GME may be important in decisionmaking about training and the FTE caps mandated by the BBA may have an effect on the future developments in GME training. These issues would be appropriate consideration for Congress as well as the Medicare Payment Advisory Commission and the National Bipartisan Commission on the Future of Medicare. Section 4629 of the BBA requires the Medicare Payment Advisory Commission to report on the ''extent Medicare payment policies and other Federal policies regarding teaching hospitals and graduate medical education should be changed.'' Section 4021 of the BBA creates a National Bipartisan Commission on the Future of Medicare which is required to ''make recommendations regarding the financing of graduate medical education.''

Comment: One commenter stated that there are no instructions on how to apply for an exception to the FTE cap.

Response: Hospitals seeking to receive payments under the rules for a new medical residency training program should consult with and provide supporting documentation to their fiscal intermediary.

4. Aggregate Direct GME FTE Limit for Affiliated Institutions

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.

a. Definition of affiliated group. Pursuant to the broad authority conferred by the statute, in the August 29, 1997 final rule with comment period, we established criteria to define ''affiliated group''. We defined ''affiliated group'' as

- Hospitals in the same geographic wage area that rotate residents to other hospitals of the group during the course of the approved program; or
- Hospitals that are not located in the same geographic wage area and are jointly listed as ''major participating institutions'' as that term is used in the *Graduate Medical Education Directory* for one or more programs.

Comment: Some commenters requested that we clarify whether the term geographic wage area included reclassification for purposes of the wage index or the national standardized amounts or both. These commenters have questioned whether ''geographic wage area'' means a metropolitan statistical area (MSA) before the effect of reclassification and some commenters were unsure whether the term geographic wage area included the effect of reclassification for the standardized amount or the wage index or both.

Response: For purposes of defining an affiliated group, we are using the terms ''urban area'' and ''rural area'' before the effect of geographic reclassification under part 412. To avoid further confusion, we are revising § 413.86(b) to use the terms ''urban area'' and ''rural area'' (as those terms are defined in § 412.62(f)) for the purpose of defining an affiliated group. Section 412.62(f) states that an urban area means a metropolitan statistical area or New England County Metropolitan Area as defined by the Executive Office of Management and Budget. A rural area means any area outside of an urban area.

Comment: Some commenters recommended allowing hospitals to be part of an affiliated group if they are located in the same State or located in contiguous geographic wage areas.

Response: We agree with this recommendation and are revising the criteria specified in § 413.86(b) as follows. Specifically, we are revising this section to provide that hospitals in the same urban area or a contiguous urban area may be part of the same affiliated group if the hospitals participate jointly in training residents in at least one training program. If a hospital is located in a rural area, it may affiliate with any hospital in which it jointly participates in training residents in the same rural area or a contiguous area.

Comment: Many commenters disagreed with the limitation of affiliated group to geographic areas. Some commenters stated that hospital systems today are geographically diverse, the wage area distinction is dysfunctional, and the requirement that hospitals be located in the same geographic wage area or jointly listed as major participating institutions in the *Graduate Medical Education Directory* is too limited. These commenters requested that the wage area and joint listing requirements be eliminated.

Response: The criteria we established to determine whether two or more hospitals qualify to be an affiliated group were designed to identify hospitals that have relationships for training residents and to allow those hospitals to continue to have the flexibility to rotate residents under an aggregate FTE cap. By focusing on hospitals that rotate residents within a geographic area and on whether they are recognized for jointly participating in residency training by the accrediting body, we are identifying hospitals that are affiliated for purposes of GME training. We believe that our approach for identifying hospitals that require flexibility under an aggregate FTE cap is reasonable and consistent with section 1886(h)(5)(H) of the Act, which provides the Secretary with authority to define hospitals that are members of the same affiliated group. We believe that the geographic boundary provided by an urban or rural area is an appropriate basis upon which to identify hospitals that share residents for purposes of GME training. We agree, however, that focusing solely on hospitals located within an MSA is limiting and are making the qualifying criteria for being members of the same affiliated group less restrictive. Under this final rule, we are allowing hospitals to be members of the same affiliated group which jointly participate in residency training and are located in the same or a contiguous MSA or the same rural area and a contiguous area.

Comment: One commenter stated that the rules regarding ''major participating institution'' are disadvantageous to residency programs in small towns and relatively small geographic wage areas because the definition of ''major participating institution'' requires that the hospital provide rotations of at least one-sixth of the program length or 6 months. Since rural hospitals are more likely to sponsor shorter rotations, hospitals in rural areas would be much less able to meet the criteria to become part of an affiliated group. The commenter believes this does not meet with Congressional intent to provide special consideration for rural areas.

Response: As discussed above, we are modifying the definition of affiliated group to permit affiliations between hospitals located in rural areas and hospitals located in an area contiguous to the rural area.

Comment: Some commenters recommended allowing entities under common ownership or part of the same ''system'' to be an affiliated group for purposes of aggregating their caps. Another commenter recommended creating an additional ''affiliated group'' definition that would allow aggregation of FTE residents for hospitals under common ownership and operation with one or more medical schools (the program sponsors) provided such

hospitals are within the geographic border of a single state. Another commenter suggested that hospitals that certify they operate as a single health care system should be considered an affiliated group, regardless of the hospitals' geographic locations. These systems functionally operate coordinated and centrally controlled GME programs and often rotate their residents among their various facilities depending on training needs and other considerations.

Response: We agree with the commenters who suggested that hospitals that are under common ownership should be permitted to be part of the same affiliated group regardless of geographic boundaries and are modifying § 413.86(b) accordingly.

Comment: One commenter stated that Medicare's related party principle should be a basis for defining affiliated group because that would allow hospitals to better manage training of residents.

Response: We do not agree that Medicare's related party principle should govern which hospitals qualify to be part of the same affiliated group. The criteria for being part of an affiliated group are intended to identify a relationship among hospitals for sharing residents. The related party principle is used under principles of Medicare cost reimbursement to determine the costs of a related party which may be claimed on a hospital's cost report. Under the related party principle, hospitals may claim costs of a related party which may not be a hospital. For instance, a hospital may include the costs of a related medical school on its cost report. Since the related party principle is used in determining which costs of a related party a hospital is entitled to claim and is not indicative of joint participation in a training program, we do not believe the related party principle is appropriate criteria for determining whether hospitals may be part of the same affiliated group.

Comment: One commenter stated that the ''affiliation'' policy should allow for situations where not all affiliated institutions choose to elect to apply for an aggregate cap.

Response: Hospitals that could qualify to be part of an affiliated group do not have to affiliate. As we describe in more detail below, for purposes of applying an aggregate cap hospitals must affiliate by explicit agreement. If a hospital does not affiliate, that hospital will remain subject to a cap based on its FTE count in its most recent cost reporting period ending on or before December 31, 1996. The aggregate cap will only be applied for hospitals that elect to be part of an affiliated group.

Comment: Other commenters suggested that unrelated hospitals that jointly sponsor programs should be allowed to be part of the same affiliated group.

Response: Under our regulations, common sponsorship will qualify two or more hospitals to be part of the same affiliated group. We are revising § 413.86(b) to clarify that hospitals that are jointly listed for one or more medical residency training programs in the *Graduate Medical Education Directory* as a sponsor, primary clinical site or major participating institution may qualify to be an affiliated group for purposes of an aggregate FTE cap.

Comment: Many commenters stated that program sponsors should be able to make decisions about where training should occur and the hospital FTE caps should be adjusted accordingly. Several commenters stated that hospitals in an affiliated group should be allowed to arrange residencies in the manner that best fits their community. One commenter stated that we should permit adjustments to caps to reflect rotations resulting from restructuring training programs brought about by changes in provider affiliations, giving preference to the sponsoring teaching hospital to subsume residency positions that were previously in affiliated institutions.

Response: Although we agree that program sponsors are likely the best qualified to determine how and where training should occur, we do not believe that it would be appropriate to allow hospital specific adjustments to FTE caps based on unilateral decisions by program sponsors or the hospital which sponsors the training program. In situations where the sponsor of the program is a medical school and not a hospital, we do not believe it would be appropriate to make adjustments to hospital FTE caps based on the decision of an entity that has no relationship to the Medicare program. Furthermore, since medical schools do not provide cost reports or counts of FTE residents to Medicare, we do not believe there would be an appropriate mechanism for making adjustments to hospital FTE caps under the aggregate caps if decisions regarding affiliations and adjustments are not being made by hospitals. We would also note that hospitals may be involved in many medical residency training programs involving different program directors. Making adjustments to hospital caps based on the decisions of multiple people within the hospital would not be administratively feasible. Further, since hospitals may not sponsor all of the programs they participate in, we do not believe that it is appropriate to make downward adjustments in a hospital's FTE cap based on a unilateral decision of another hospital.

Comment: Several commenters noted that the *Graduate Medical Education Directory* does not include osteopathic training programs and requested a reference to an official listing of American Osteopathic Association approved training programs.

Response: We agree with the commenters who suggested that the regulation needs a comparable reference for osteopathic medical residency training programs to the *Graduate Medical Education Directory,* which only lists allopathic training programs. Medical residency programs accredited by the American Osteopathic Association are listed in a publication called *Opportunities, Directory of Osteopathic Postdoctoral Programs.* For purposes of this final rule, if two hospitals are not located in the same MSA or a contiguous MSA, they may qualify to be part of the same affiliated group if the hospitals are jointly listed for one or more programs in *Opportunities* as the sponsor or under the heading ''affiliations and outside rotations'' (413.86(b)).

Comment: One commenter stated that the American Osteopathic Association is requiring all accredited osteopathic GME programs to be part of an osteopathic postdoctoral training institution (OPTI) by July 1, 1999. There are several hospitals that are currently participating in an approved OPTI. The commenter was concerned that the OPTI is a consortium of providers and these consortia would not qualify as an affiliated group. The commenter recommended that HCFA recognize a formally organized osteopathic GME consortia without geographic limit. Further, the commenter stated that any affiliation should be recognized for aggregation purposes even if the hospitals are not in the same geographic wage area.

Response: We have reviewed materials regarding the OPTI concept from the American Osteopathic Association and note that an OPTI may include an ''associate institution'' that provides 6 months or more of training per year and an ''affiliate institution'' where less than 6 months of rotations per year are occurring. Since the OPTI concept is not yet fully implemented, we believe it would be premature to begin recognizing institutions which are part of an OPTI under the definition of affiliated groups for purposes of an aggregate FTE cap. However, we will continue to evaluate whether hospitals

participating in an OPTI could be part of an affiliated group, and we will specifically focus on the duration of rotations among hospitals within the OPTI in making this decision.

Comment: Several commenters stated that accreditation requirements mandated an increase in their hospital's FTE resident count due to the transfer of residents from a Veterans Affairs Medical Center or a Department of Defense facility. These commenters stated that an exception to the FTE cap should be allowed when a hospital's resident count increased in situations where the aggregate count of residents among the affiliated hospitals, including Veterans' Affairs Medical Centers, remains unchanged. Other commenters recommended that HCFA give program sponsors the ability to transfer residents from Veterans Affairs' hospitals to non-Veterans' Affairs hospitals.

Response: Sections 1886(d)(5)(B)(v) and (h)(4)(F) of the Act provide for FTE caps on the basis of a hospital's most recent cost reporting period ending on or before December 31, 1996. Section 1886(h)(4)(H) of the Act allows hospitals that are part of the same affiliated group to apply the FTE cap on an aggregate basis. Veterans' Affairs and Department of Defense hospitals do not have cost reporting periods for Medicare payment purposes and do not provide data on FTE resident counts to Medicare. We believe that hospitals that do not participate in Medicare should not be part of an affiliated group since the statute caps the number of residents based on the number of residents reported by the hospital in its Medicare cost reporting periods. In addition, hospitals that do not participate in Medicare do not submit cost reports to a fiscal intermediary; therefore, we would be unable to apply an aggregate FTE cap to an affiliated group that included these hospitals.

In summary, we are defining an affiliated group as follows:

- Hospitals in the same urban area or in contiguous urban areas which rotate residents to other hospitals of the group during the course of the program year;
- Hospitals located in the same rural area or in contiguous rural and urban areas that rotate residents to other hospitals of the group during the course of the program year; or
- Hospitals that are—

—Jointly listed as the sponsor, primary clinical site or major participating institution as those terms are used in the *Graduate Medical Education Directory* for one or more programs; or

—Jointly listed as the program sponsor or under affiliations and outside rotations in *Opportunities*, the directory of osteopathic graduate medical education programs; or

- Hospitals which are under common ownership.

b. Application of the FTE caps to an affiliated group. In the August 29, 1997 final rule, we addressed application of the FTE cap for hospitals which are members of the same affiliated group. Hospitals which qualify to be part of the same affiliated group may elect to have the individual FTE caps applied on an aggregate basis. This means that we would apply a cap to the group as a whole, and the cap for the group would equal the sum of the individual FTE caps for all hospitals that are part of the affiliated group. Indirect and direct graduate medical education payment would be based on hospital specific FTE counts under an aggregate FTE cap. In the August 29, 1997 final rule with comment period, we stated that the aggregate FTE cap for an affiliated group would be applied on an institution-wide basis. We recognize that hospitals may participate in many different speciality programs and may share residents for one specialty program with one hospital but share residents for a different program with another hospital, but we did not believe it would be administratively feasible to apply the FTE cap on a program by program basis. That is, the aggregate cap under the August 29, 1997 final rule with comment period would be the combined individual caps of each hospital that elects to be part of an affiliated group

Comment: One commenter stated that hospitals may have rotation relationships with a number of different hospitals. According to these commenters, aggregation of resident counts among all hospitals is not practical or feasible. Many commenters suggested that we should permit hospitals to aggregate resident numbers at the program level if the hospitals provide supporting documentation that the aggregate count of residents within the program remains unchanged. One commenter who supported affiliations at the program level stated that HCFA should require hospitals to report FTEs by program sponsor and include a separate count of each program on the Medicare cost report. Hospitals would have multiple FTE caps and would be responsible for reconciling each individual program cap with the intermediary. Several commenters stated that HCFA should allow affiliated hospitals to transfer programs and that each hospital's cap be adjusted based on a joint letter from the affected providers.

Response: As we stated in the August 29, 1997 final rule with comment period, we recognize that many hospitals may share residents for particular specialty programs. We stated that hospital affiliations must be on an institution-wide basis because of our concern about the administrative feasibility of allowing affiliations on a program-by-program basis. Although we continue to have concerns that program specific affiliations may generate enormous complexity in monitoring FTE resident counts for fiscal intermediaries and may impose significant documentation burdens on hospitals, we agree with the commenters that it would be appropriate for Medicare to accommodate agreements between individual hospitals for specific programs. A hospital could have an agreement with one hospital for a particular program and another hospital for a different program. An agreement between two hospitals does not mean only those hospitals are an affiliated group, if those hospitals also have agreements with other hospitals. Rather, the affiliated group includes the original two hospitals that have an agreement and every hospital that has an agreement with any of those hospitals. We will continue to apply the FTE cap on an aggregate basis for institutions that are part of an affiliated group. That is, we will combine the individual caps for each institution that has an agreement to be an affiliated group to verify that the sum total of the resident counts for all institutions does not exceed the aggregate cap. We will make payment to individual hospitals based on hospital specific FTE counts.

Each agreement must specify the adjustment to each hospital's FTE counts from the cost reporting period ending during calendar year 1996 for purposes of applying the aggregate FTE cap for the period of the agreement. The agreements must specify the adjustment to the IME and direct GME FTE counts separately since hospitals are subject to two different FTE counts for each respective cap. Since medical residency training programs generally follow a July 1 to June 30 residency training year, each agreement should specify adjustments to FTE counts on a 12-month basis from July 1 to June 30 of each year. The agreements must be for a minimum of one program year but may be for more than one year. A hospital will be permitted to engage in multiple agreements with different hospitals as illustrated below. For example, hospital A can have an agreement with hospital B for an

internal medicine program and another agreement with hospital C for emergency medicine. Although hospitals B and C do not have an agreement for any program, the affiliated group is A, B, and C, we will apply the cap on an aggregate basis for A, B, and C; that is the FTE resident counts at hospitals A, B, and C can not exceed the sum of the combined caps for the three hospitals.

If the combined FTE counts for hospitals A, B, and C does not exceed the aggregate cap, we will pay each hospital based on its hospital specific FTE count. If the combined FTE counts for hospitals A, B, and C exceed the aggregate cap, we need individual caps for each hospital in order to limit payment to the number of FTEs included under the aggregate FTE cap. In this situation, each hospital will be paid based on its actual FTE up to its individual FTE cap as adjusted per agreements. We will allow each respective institution's individual cap to reflect the adjustment per their individual agreements. However, we are requiring that agreements regarding application of the aggregate cap planned for the year be completed by the beginning of each residency training year (that is, July 1). The hospitals in the affiliated group may adjust the initial FTE counts by June 30 of each residency training year if actual FTE counts for the program year are different than projected in the original agreement.

If a hospital cost report does not correspond with a July 1 to June 30 residency training year, we will prorate the changes specified in the agreement to each hospital's FTE cap on the basis of a cost reporting period. In the example illustrated below, there is an agreement between hospitals A and B to allow hospital A an additional 10 residents that were previously included in hospital B's FTE count. Hospital B also has an agreement with hospital C to allow hospital B an additional five residents previously counted by hospital C. We are also assuming that these agreements are for two years. The aggregate FTE cap for hospitals A, B, and C will be the combined FTE cap for the these hospitals. For instance, if hospital A, B, and C each have an FTE cap of 100 residents, the aggregate cap will be 300 residents. The cap will be applied as follows per the planned changes assuming hospital A has a July 1 to June 30 cost reporting period and hospital B has a October 1 to September 30 cost reporting period and hospital C has a calendar year cost report:

Hospital	Cost reporting period	Planned change in FTE count (for 07/01–06/30)	Planned change for cost reporting period
Hospital A	07/01/98–6/30/99	+10 per agreement with B	+10.00
Hospital B	10/01/97–09/30/98	−10 per agreement with A	−2.50
	10/01/98–9/30/99		−10.00
Hospital B	10/01/97–09/30/98	+5 per agreement with C	+1.25
	10/01/98–09/30/99		+5.00
Hospital B (total)	10/01/97–09/30/98	−5 per total agreements	−1.25
	10/01/98–09/30/99		−5.00
Hospital C	01/01/98–12/31/98	−5 per agreement with B	−2.50
	01/01/99–12/31/99		−5.00

Since the agreements are effective July 1, 1998, the agreements are only in effect for 3 months or 25 percent of the year for hospital B's October 1, 1997 to September 30, 1998 cost report and the FTE reduction for the portion of the residency training year included in that cost report is a net −1.25 FTEs (−2.5 to 1.25) for agreements with hospitals A and C. The agreements are ongoing for the July 1, 1999 to June 30, 2000 residency training year and the adjustment to hospital B's cap is a net −5.0 FTEs for the October 1, 1998 to September 30, 1999 cost reporting period (effectively −3.75 for the October 1, 1998 to June 30, 1999 portion of the cost reporting period included in the residency training year and −1.25 for the July 1, 1999 to September 30, 1999 portion of the cost reporting period included in the residency training year). Similarly, a prorated portion of the FTE reduction for hospital C is included in the January 1, 1998 to December 31, 1998 cost reporting period for the agreement with hospital B. That is, the FTE reduction for the portion of the July 1, 1998 to June 30, 1999 residency training year included in hospital C's calendar year 1998 cost report is −2.5 FTE.

Since the agreement is ongoing for the July 1, 1999 to June 30, 2000 residency training year, there is a −5.0 FTE reduction for the calendar year 1999 cost report (effectively −2.5 for the January 1, 1999 to June 30, 1999 portion of the residency training year included in the cost report and −2.5 FTE for the July 1, 1999 to December 30, 1999 portion of the residency training year included in the cost report). If the group's actual FTE count exceeds the aggregate cap, which equals the combined individual caps for each hospital (hospitals A, B, and C in the example above), we will apply the individual FTE caps as adjusted per agreements. For instance, the combined individual caps for hospitals A, B, and C equals 300 residents. If the total number of residents for the cost reporting periods ending in 1999 for hospitals A, B, and C exceeds 300 residents, we will make payments to each hospital based on the individual cap as adjusted per agreements. Hospital A would be paid with a cap based on 110 residents (100 + 10) for its July 1, 1998 to June 30, 1999 cost reporting period. Hospital B would be paid based on a cap of 95 residents for its October 1, 1998 to September 30, 1999 cost reporting period. Hospital C would be paid based on 95 residents for its January 1, 1999 to December 31, 1999 cost reporting period. Each hospital that exceeds its individual cap after the adjustments per the agreements will be paid based on the methodology described in August 29, 1997 final rule with comment period (62 FR 46004 and 46005) and repeated in the table found in the Appendix to this final rule. That is, we will multiply the hospital's unweighted FTE cap (as adjusted per the agreements) by the ratio of the weighted to unweighted FTE's for the cost reporting period.

Each agreement must also specify the adjustment to each respective hospital cap in the event the agreement terminates, dissolves or, if the agreement is for a specified time period, for residency training years and cost reporting periods subsequent to the period of the agreement for purposes of applying the FTE cap on an aggregate basis. In the absence of an agreement on the FTE caps for each respective institution following the end of the

agreement, each hospital's FTE cap will be the indirect and direct medical education FTE count from each hospital's cost reporting periods ending in 1996 and the cap will not be applied on an aggregate basis. The net effect of adjustments to each hospital's FTE cap for each agreement must total zero on a program basis, as provided for in the above example. That is, if the agreement involves two hospitals, any positive adjustment for one hospital must be offset by a negative adjustment for the other hospital of at least the same amount.

We are allowing individual hospitals to enter into agreements with multiple hospitals, as illustrated above with hospital B. However, we are concerned about the administrative feasibility of monitoring the aggregate FTE caps under these agreements. The situation that concerns us is reconciling adjustments to FTE caps under an aggregate cap when the agreements involve hospitals with different fiscal intermediaries. For instance, in the situation where hospital A and hospital B are serviced by the same fiscal intermediary but hospital C has a different intermediary, hospitals A and B's fiscal intermediary will receive two agreements: one between hospital A and hospital B and one between hospital B and C. Hospital C's fiscal intermediary must receive the agreement between hospitals A and B as well as the agreement between hospitals B and C, for the adjustments to be reconciled in the aggregate. In the absence of the agreement between hospitals B and C, hospital C's fiscal intermediary would be unaware that a downward adjustment to hospital C's cap is required. In the absence of the agreement between hospitals A and B, hospital C's fiscal intermediary would be unable to reconcile the aggregate FTE cap between hospitals A, B, and C.

We believe the only way for aggregate FTE caps to be reconciled based on multiple agreements between hospitals is for each agreement to be sent to each hospital's fiscal intermediary. Attached to each agreement would be copies of other agreements that each hospital which is part of the original agreement has with other hospitals. This would require hospital A and B's fiscal intermediary to receive the agreements between hospitals A and B and hospitals B and C and any other hospitals which have agreements with those hospitals. Thus, if hospitals A, B, and C constitute the affiliated group, hospital A and B's fiscal intermediary would have to receive copies of the agreements between hospitals A and B and hospitals B and C. Hospital C's fiscal intermediary also would have to receive copies of the agreements between hospitals B and C and hospitals A and B. The original and subsequent agreements must include the provider number of each respective institution which is part of the agreement, signatures of each hospital representative, the date of the agreement, and the respective adjustment to each hospital's FTE cap for indirect and direct graduate medical education. Each agreement must indicate that copies are being sent to HCFA. Copies of the original agreement must be sent to: Division of Acute Care, C5–08–27, 7500 Security Boulevard, Baltimore, Maryland 21244. We will consider changes to the process described above if we find a less burdensome approach to reconciling individual FTE caps under aggregate caps.

We are establishing this process for application of an aggregate FTE cap pursuant to section 1886(h)(4)(H) of the Act, which states that the ''Secretary may prescribe rules which allow institutions which are members of the same affiliated group (as defined by the Secretary) to elect to apply'' the FTE caps on an aggregate basis. The statute provides the Secretary with broad authority to define what is an affiliated group and how to apply the FTE caps to members of that group and we are establishing the process described above under this broad authority. Our policy provides a mechanism to make payments to individual hospitals under an overall cap that is consistent with the caps of the individual hospitals included in the affiliated group. As we have stated earlier, although we have concerns about the ability to reconcile multiple agreements, we are providing this policy to allow hospitals that jointly participate in training the flexibility to change arrangements for training residents.

Comment: Some commenters stated that hospitals will not have incentives to form affiliated groups if one hospital will have to relinquish its FTEs included in its cap to another hospital. These commenters recommended that HCFA, through the aggregation rules, give program sponsors the ability to aggregate and then transfer residency positions between participating hospitals. Another commenter suggested that we consider allowing hospitals to aggregate FTEs at the level of the sponsoring institution. One commenter stated that medical schools that are not part of academic medical centers are at a particular disadvantage in assuring that they will be able to move their residents among affiliates.

Response: As we have stated previously, sections 1886(d)(5)(B)(v) and (h)(4)(F) of the Act limit the number of FTEs that hospitals can count for Medicare payment for indirect and direct GME, respectively. While Congress did extend authority to the Secretary to develop rules that allow hospitals that are part of the same affiliated groups to elect to apply the FTE cap on an aggregate basis, section 1886(h)(4)(H)(ii) of the Act states that ''institutions which are members of the same affiliated group'' may ''elect to apply the limitation of subparagraph (F) on an aggregate basis''. Since Medicare makes payment to hospitals and subparagraph (F) provides for the FTE cap on the basis of hospital cost reporting periods, we do not believe it would be appropriate to allow program sponsors that, as stated above, may or may not be hospitals to make decisions about hospital FTE caps for purposes of Medicare payment. Furthermore, participation in an affiliated group is voluntary. Even in situations where the program sponsor is a hospital, we believe it would be inappropriate to allow one hospital to make a decision about the application of individual FTE caps under an aggregate FTE cap, without the second hospital's agreement.

We recognize that hospitals may be reluctant to agree to lower individual FTE caps under an aggregate cap. However, the aggregate limit is a voluntary provision. Affiliation is an option that hospitals may ''elect,'' in accordance with rules established by the Secretary, to allow for the movement of residents among participating hospitals under an aggregate FTE cap.

Comment: One commenter stated that the IME resident-to-bed ratio and the FTE resident caps should be applied in the aggregate for institutions that are members of an affiliated group. The commenter believed that the application of the cap, as proposed, will have ''the unintended affect of discouraging multi-hospital and ambulatory site program configurations''. The commenter noted that there is no provision in the regulation which would allow an adjustment to the IME FTE and resident-to-bed ratio cap for affiliated groups.

Response: We agree that § 412.105 should reference § 413.86(g)(4) for purposes of applying the IME FTE cap on an aggregate basis. Section 412.105 should also be modified to reference § 413.86(g)(6) for purposes of adjusting the IME FTE cap for new medical residency training programs. We are including these references in § 412.105. However, we disagree that the intern and resident-to-bed ratio for an affiliated

group should be determined in the aggregate. Section 1886(h)(4)(H) of the Act gives the Secretary the authority to develop rules that allow affiliated hospitals to elect to apply the FTE caps on an aggregate basis. The statute applies the affiliation provision solely to the FTE cap.

Comment: One commenter requested that HCFA further clarify the aggregate adjustment to the caps for affiliated programs. The commenter asked how the aggregate cap would be calculated for an institution that has several GME programs but is affiliated with another institution for only one program. The commenter requested that HCFA provide several examples of aggregate limit calculations. One commenter asked whether, in determining the aggregate FTE resident count, affiliated hospitals will pool their total unweighted FTE count from their respective cost reports ending on or before December 31, 1996.

Response: We have provided more detailed information above on the application of the FTE caps for hospitals that are members of the same affiliated group.

Comment: Several commenters recommended that an adjustment be made for hospitals that jointly participated in a residency training program prior to December 31, 1996 and subsequently ended the arrangement. If a hospital ended a joint training agreement, the sponsor will have to find another training site but may not be able to find an alternative unless the FTEs of the previously affiliated hospital can be counted by the new hospital that affiliates with the sponsor. Similarly, one commenter suggested that a group of hospitals that is ''legally'' affiliated should be allowed to include the base year FTEs of all member hospitals in application of the cap, even if those hospitals are no longer involved in resident training and the programs are moved to other hospitals in the group. Another commenter stated that HCFA should apply both institutional and aggregate caps using a flexible methodology that recognizes changes in hospital clinical and teaching affiliations. This commenter stated that the application of the resident cap should be governed by a methodology that ensures fair and equitable treatment of providers whose resident counts change as a consequence of disaffiliation or other major programmatic changes. One commenter recommended that hospitals that disaffiliate have the option of determining the distribution of resident counts among each of the hospitals so long as the aggregate limit is not exceeded. If hospitals cannot reach an agreement, limits could be based on their respective base year resident counts.

Response: Hospitals that no longer have a relationship for training residents do not meet the criteria for being members of the same affiliated group even if those hospitals jointly participated in residency training in the past. The criteria for being members of the same affiliated group are intended to recognize that hospitals which have relationships for training residents need flexibility in those arrangements under an aggregate FTE cap. If hospitals no longer have a relationship for training residents, we do not believe there is a need for this same flexibility. We recognize there are situations where the sponsor of a training program terminated its relationship for training residents with a hospital after 1996 and, as a result, there may be fewer FTE residents that may be counted for indirect and direct graduate medical education payment purposes. However, this is a direct result of the Balanced Budget Act which specifically required FTE caps to be based on 1996 FTE counts.

Comment: One commenter requested instructions on how hospitals should apply to be part of an affiliated group.

Response: As stated above, hospitals seeking to receive payments as an affiliated group must provide agreements specifying adjustments to FTE caps by July 1 of each year for the contemporaneous residency training year.

In summary, we will apply the FTE caps for an affiliated group as follows:

- Hospitals that qualify to be members of the same affiliated group for the current residency training year and elect an aggregate cap must provide an agreement to the fiscal intermediary and HCFA specifying the planned changes to individual hospital counts under an aggregate FTE cap by July 1 for the contemporaneous (or subsequent) residency training year.
- Each agreement must be for a minimum of one year and may specify the adjustment to each respective hospital cap under an aggregate cap in the event the agreement terminates, dissolves or, if the agreement is for a specified time period, for residency training years and cost reporting periods subsequent to the period of the agreement. In the absence of an agreement on the FTE caps for each respective institution following the end of the agreement, each hospital's FTE cap will be the IME and direct GME FTE count from each hospital's cost reporting periods ending in 1996.
- Each agreement must specify that any positive adjustment for one hospital must be offset by a negative adjustment for the other hospital of at least the same amount.
- The original agreements must be signed and dated by representatives of each respective hospital that is a party to the agreement and that agreement must be provided to the hospital's fiscal intermediary with a copy to the HCFA. Copies of agreements that each hospital which is part of the original agreement has with other hospitals must also be attached.
- Hospitals that provided an earlier agreement for planned changes in hospital FTE counts may provide a subsequent agreement on June 30 of each year modifying the agreement for applying the individual hospital caps under an aggregate FTE cap.

If the combined FTE counts for the individual hospitals that are members of the same affiliated group do not exceed the aggregate cap, we will pay each hospital based on its hospital specific FTE count. If the combined FTE counts for the individual hospitals that are members of the same affiliated group do not exceed the aggregate cap, we will pay each hospital based on its FTE cap as adjusted per agreements.

O. Payment to Managed Care Plans for Graduate Medical Education

Section 4624 of the BBA amended section 1886(h)(3) of the Act to provide a 5-year phase-in of payments to teaching hospitals for GME 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 in all areas of the hospital (and nonhospital settings 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, the ratio of the total number of inpatient bed days that are attributable to Medicare managed care enrollees to total inpatient days, and an 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.

In the August 29 final rule with comment period, we revised § 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.

Section 4001 of the BBA 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. The BBA also added section 1853(a)(3)(B) of the Act to require the Secretary to collect data necessary from managed care organizations to implement this provision.

Comment: One commenter supported using teaching hospitals, not managed care plans, as the source of statistics for indirect and direct GME payments for Medicare managed care beneficiaries. This commenter also supported including payments for Medicare managed care beneficiaries in periodic interim payments (PIP) made to hospitals because of the current lengthy delays in receiving payments from managed care organizations. Another commenter supported careful implementation of this provision and expressed particular concern about identifying and verifying managed care patients days and discharges. One commenter stated that HCFA should use data from ''no pay'' claims from hospitals to make GME payments for Medicare managed care beneficiaries. This commenter had strong concerns that an alternate claims submission and reporting mechanism which relies upon managed care entities to submit DRG and related patient information is fraught with potential problems which will likely affect data integrity and cash flow. One commenter suggested that HCFA utilize the expertise available in the hospital field to develop an administratively simple and low-cost mechanism to make GME payments to hospitals for Medicare managed care patients.

Response: As we stated in the final rule with comment published on August 29, 1997, section 4001 of the BBA 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. Section 1853(a)(3)(B) requires the Secretary to collect the necessary data to implement the provision. Under section 4622 and 4624 of the BBA, teaching hospitals may receive indirect and direct GME payments associated with Medicare+Choice discharges. Since publication of the final rule with comment on August 29, 1997, we have consulted with hospitals, managed care plans, and fiscal intermediaries for purposes of developing a process to implement these provisions.

We anticipate teaching hospitals will need to submit claims associated with Medicare+Choice discharges to the fiscal intermediaries for purposes of receiving indirect and direct medical education payments. When the claims are processed, the fiscal intermediaries will make the IME payment associated with a Medicare+Choice discharge directly to the teaching hospital. Teaching hospitals will also be required to submit bills associated with Medicare+Choice organizations to the managed care plans. The inpatient encounter data from these bills will be submitted by the managed care plans to HCFA for purposes of implementing the risk adjustment methodology. The fiscal intermediaries should revise interim payments to reflect the Medicare direct GME payment associated with Medicare+Choice discharges. However, until the fiscal intermediaries have more experience with paying hospitals for direct GME associated with Medicare+Choice discharges, we believe the fiscal intermediaries will have limited data upon which to base interim payment. We are making adjustments to the Medicare cost report to allow for settlement of the cost report reflective of direct GME payment associated with Medicare+Choice discharges.

P. Payment to Nonhospital Providers

Under section 4625 of the BBA, 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 invited comments on how to implement this provision, particularly on how to determine appropriate payment for ambulatory sites.

We recently published a proposed rule to implement section 4625 of the BBA.

Q. Payment for Combined Medical Residency Training Programs

1. Initial Residency Period

Under § 413.86(g)(2) residents within an initial residency period are weighted as 1.0 FTE for purposes of the direct GME payment. 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 the BBA amended section 1886(h)(5)(G) of the Act to require that for combined programs consisting only of primary care training, the initial residency period 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 added one year to the initial residency period for combined primary care and obstetrics and gynecology programs. In the August 29 final rule with comment period, we amended § 413.86(g)(1) to implement the provisions of section 1886(h)(5)(G).

Comment: One commenter sponsors a dual program in Family Practice/ Osteopathic Manipulative Medicine and noted that it was not recognized in the regulations as a combined primary care residency program that is eligible for an additional year in the initial residency period limit under the special rule for combined primary care medical residency programs.

Response: Section 1886(h)(5)(H) defines primary care resident to mean 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. Since osteopathic manipulative medicine is not included in the definition of a primary care resident, the special rule for primary care combined programs does not apply.

2. Effective Dates

Comment: One commenter stated that the effective dates for IME and direct GME are inconsistent; one is ''effective for discharges on or after October 1, 1997'' while the other is for ''cost reporting periods on or after October 1, 1997''.

Response: We have received a number of questions regarding the effective dates for the provisions of the BBA related to GME. Section 4621(b) of the BBA, which amended section 1886(d)(5)(B)(v)of the Act to establish the FTE cap for the indirect medical education adjustment, is effective for discharges occurring on or after October 1, 1997. The cap on the intern and resident to bed ratio mandated by section 1886(d)(5)(B)(vi) (as amended by section 4621(b) of the BBA) is effective beginning with the hospital's first cost reporting period occurring on or after October 1, 1997. Section 4623 of the BBA establishes the FTE cap for direct graduate medical education and is effective beginning with a hospital's first cost reporting period beginning on or after October 1, 1997.

3. Accrediting Body Reference

Comment: One commenter recommended that we revise our regulations to indicate that the accrediting body for dental residencies is the Commission on Dental Accreditation rather than the Council on Dental Education.

Response: We are amending § 415.152 to reflect this comment.

R. Special Categories of Excluded Hospitals (§ 412.23)

Section 4417(b) of the BBA 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. We revised § 412.23(e) to implement this provision.

Section 4418 of the BBA 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. In the August 29 final rule with comment period, we revised the regulations at § 412.23(f) to incorporate this provision.

We received no public comments on these revisions.

S. Payment of Hospitals and Units Excluded from the Prospective Payment System (§ 413.40)

The BBA significantly altered the payment provisions for excluded hospitals and units. Prior to the passage of the BBA, 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. We received 19 comments on our implementation of the BBA provisions for PPS-excluded hospitals and units. Below we discuss the statutory and regulatory provisions (see 62 FR 46016 through 46020), as well as our comments and responses.

1. Rate-of-Increase Percentages for Excluded Hospitals and Units (§ 413.40(c) and (g))

Section 4411 of the BBA amended section 1886(b)(3)(B) of the Act regarding the rate-of-increase percentages to be applied to target amounts. 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.

Comment: One commenter requested that we clarify the data needed to calculate the applicable rate-of-increase percentages under section 4411(b).

Response: Under section 1886(b)(3)(B)(vi) of the Social Security Act, as added by section 4411 of the BBA, the update factor for a given cost reporting period is determined by comparing the hospital's allowable costs ''for the most recent cost reporting period for which information is available'' to the hospital's target amount ''for such cost reporting period.'' In the August 29, 1997 final rule with comment period, we provided four examples of the calculation of the applicable rate-of-increase percentages for cost reporting periods beginning in FY 1999. These examples reflect the information necessary to compute the applicable rate-of-increase percentages. The fiscal intermediary will compute the applicable rate-of-increase before the beginning of each cost reporting period, using the most recent cost report data.

2. Request for a new base period (§ 413.40(b))

Sections 4413(a) and 4413(b) of the BBA 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).

Comment: One commenter argued that, if an excluded hospital or unit does not request a new base period under the new statutory payment methodologies of sections 4413(a) and (b), the hospital should nevertheless be permitted to obtain a new base period at any time pursuant to the previously published regulation at § 413.40(i) and to receive

payments under the payment methodology of the new statutory provision. Another commenter asserted a hospital should be allowed to choose the five cost reporting periods for calculating a rebased FY 1998 target amount per discharge, in order to reflect expected cost report reopenings.

Response: Under sections 4413(a) and (b) of BBA, an excluded hospital or unit may elect rebasing and receive a revised target amount for the hospital's 12-month cost reporting period beginning during FY 1998 (October 1, 1997 through September 30, 1998). As indicated in the August 29 final rule with comment period, this is a one time option (for FY 1998 only). If a hospital does not elect rebasing for the cost reporting period beginning during fiscal year 1998, it cannot elect rebasing at a later date for a later cost reporting period.

With regard to the suggestion of the commenter that we allow hospitals to choose which cost reports to use to calculate a rebased target amount, the statute requires the Secretary to use the five ''most recent settled cost reports as of the date of enactment'' of the BBA (August 5, 1997).

Comment: Three commenters believe that the timeframe for requesting a new base period under section 4413 is unduly short, arguing that the required information is difficult to obtain. One commenter suggested the timeframe be extended to 90 days after the beginning of the cost reporting period beginning in FY 1998.

Response: In the August 29 final rule with comment period, we stated that a hospital that elects rebasing 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 believe that this is a reasonable timeframe for a hospital to elect rebasing. The information required for an election includes the hospital's name, provider number, cost reporting period, and the cost per case from the hospital's five most recent settled cost reports. All of this information should be readily available to the hospital.

A hospital's target amount for a cost reporting period should be established before the beginning of the cost reporting period, so that, among other things, the hospital can appropriately structure its costs within the target amount. Due to the extremely short timeframe between the enactment of the BBA and the beginning of FY 1998, we established a special rule to address hospitals whose cost reporting periods begin early in FY 1998. As noted above, we believe our timeframes are reasonable and that is not necessary or appropriate to extend the timeframes.

Comment: One commenter asked that we further clarify the calculation of the disproportionate share percentage to determine whether a long-term care hospital is eligible for rebasing under section 4413(b) of the BBA.

Response: Under the statute, a long-term care hospital may elect rebasing under section 4413(b) of the BBA if, among other things, ''the hospital would have a disproportionate patient percentage of at least 70 percent (as determined by the Secretary under subsection (d)(5)(F)(vi)) if the hospital were a subsection (d) hospital.'' As stated both in the preamble of the final rule (62 FR 46018) and at § 413.40(v) of the regulation text (62 FR 46032), the calculation of the disproportionate patient percentage is addressed at § 412.106 of the Medicare regulations. Fiscal intermediaries are familiar with the calculation of the disproportionate patient percentage and can assist a long-term care hospital if necessary.

3. Limitation on the Target Amount for Excluded Hospitals and Units (§ 413.40(c))

Section 4414 of the BBA 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 statute directs the Secretary to calculate ''the 75th percentile of target amounts'' for three classes of hospitals—psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals—for ''cost reporting periods ending during fiscal year 1996.''

Similarly, section 4416 of the BBA (discussed further below) establishes a new statutory payment methodology for new excluded hospitals. To determine payments for a new excluded hospital, the statute directs the Secretary to calculate ''110 percent of the national median of target amounts for hospitals in the same class as the hospital for cost reporting periods ending during fiscal year 1996.'' The amount calculated in section 4416 is updated and adjusted for differences in area wage levels, and the resulting figure is a limit on payments for the new hospital or unit.

Thus, sections 4414 and 4416 both direct the Secretary to examine target amounts for three classes of hospitals for cost reporting periods ending during FY 1996. However, section 4416, unlike section 4414, requires that the calculation applicable to new hospitals reflect an adjustment for differences in area wage levels.

The 75th percentile of the target amounts for cost reporting periods ending during fiscal year 1996, as updated by the market basket up to FY 1998 (as corrected in a correction notice published March 6, 1998 (63 FR 11148)) are as follows:

(1) Psychiatric hospitals and units: $10,534
(2) Rehabilitation hospitals and units: $19,104
(3) Long-term care hospitals: $37,688

In the August 29, 1997 final rule with comment period, we stated that if a hospital has a target amount that is capped at the 75th percentile, the hospital would not be granted an exception payment as governed by §§ 413.40(a) and (g) 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 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 and are unaffected by the 75th percentile cap.

Comment: One commenter suggested that § 413.40(c)(4)(iii) of the regulations be modified to clarify that in the case of a psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital, the target amount for FYs 1998 through 2002 is equal to the lower of—

- The hospital specific target amount (the net allowable costs in a base period increased by the update factor for the subject period); or
- 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 for the subject period.

Response: We agree with the commenter and are modifying § 413.40(c)(4)(iii) to incorporate this clarification.

Comment: Five commenters argued that section 4414 requires the Secretary to estimate, but not implement, caps using the 75th percentile of the target amounts for psychiatric and rehabilitation hospitals or units, and long-term care hospitals. One commenter asserted that the Secretary should have waited for additional legislation to implement caps on the target amounts and then independently determine whether to implement in light of the impacts of other provisions of the BBA.

Response: The title of section 4414 of the BBA is ''Cap on the TEFRA limits.'' The Conference Report indicates that

the provision limits, or caps, target amounts for hospitals excluded from PPS. The statute requires us to calculate a cap for cost reporting periods beginning during fiscal year 1998, and requires updates to the caps for cost reporting periods beginning during fiscal years 1999 through 2002. We do not believe the Congress intended that we calculate these numbers but not apply them as a cap. Moreover, since the statute requires us to calculate a cap for cost reporting periods beginning during fiscal year 1998, we do not believe the application of the caps should be delayed until subsequent years.

Comment: Two commenters believe the payment caps on target amounts for rehabilitation hospitals and units and long-term care hospitals under section 4414 and section 4416 are not correct because separate caps were not established within each class of excluded hospital (in particular rehabilitation and long-term care hospitals) to reflect hospitals specializing in the treatment of high cost patients, such as a rehabilitation unit which specializes in treating Medicare patients with spinal cord injuries.

Response: Section 4414 provides that, ''In the case of a hospital or unit that is within a class of hospital described in clause (iv), the Secretary shall estimate the 75th percentile of the target amounts *for such hospitals within such class* * * *.'' Similarly, section 4416 provides that ''in the case of a hospital or unit that is within a class described in subparagraph (B) which first receives payments under this section on or after October 1, 1997,'' the amount of payment is based in part on ''110 percent of the national median of the target amount *for hospitals in the same class as the hospital* * * *.'' Both statutory provisions list three classes of hospitals and indicate that each ''shall be treated as a separate class of hospitals.'' We believe the best reading of the statutory language is that we calculate the caps for each class of hospital as a whole. If a hospital chooses to subspecialize in high cost patients, it will need to consider the impacts the caps on the target amounts will have on its reimbursement.

Comment: Four commenters believed the caps on the target amounts that were calculated under section 4414 are not correct because discharge weighting and wage adjustments were not applied to the FY 1996 target amounts in determining the 75th percentile caps on the target amounts.

Response: The statute directs the Secretary to ''estimate the 75th percentile of the target amounts'' for three classes of hospitals. Section 4414 does not direct the Secretary to estimate the 75th percentile of discharge-weighted target amounts.

Several commenters contended that we should implement a wage adjustment in applying the caps for individual hospitals. Under such a wage adjustment, the hospitals within a class of hospitals would be capped at different numbers, reflecting different wage adjustments for different geographic areas. Implementation of a wage adjustment would adversely affect some hospitals. In the August 29 final rule with comment period, we calculated the caps without wage adjustments. We continue to believe that our methodology for establishing the caps reflects the best interpretation of the statute. As discussed below, we believe that the statutory language, the statutory scheme, and the legislative history, viewed together, strongly argue against making a wage adjustment in applying the TEFRA caps.

Section 1886(b)(3)(H)(i) of the Act, as added by section 4414 of the BBA, states that, ''In the case of a hospital or unit that is within a class of hospital described in clause (iv), the Secretary shall estimate the 75th percentile *of the target amounts for such hospitals within such class for cost reporting periods ending during fiscal year 1996*.'' (Emphasis added.) Clause (iv), in turn, lists three classes of hospitals and indicates that each ''shall be treated as a separate class of hospital.'' Thus, the statute directs the Secretary to examine target amounts in a prior period and to calculate a single number—the 75th percentile of those target amounts—for each of three classes of hospitals.

Pursuant to this mandate, we examined the best available data to identify hospitals within each class of hospitals for the cost report period ending during fiscal year 1996, to identify those hospitals that were actually subject to a target amount for the cost reporting period ending during fiscal year 1996, and to determine the target amounts for those hospitals. We then calculated the 75th percentile of those target amounts for each class. Thus, we did exactly what the statute directs us to do.

The statutory language directs the Secretary to calculate the 75th percentile of target amounts, but it does not explicitly direct or even authorize the Secretary to make adjustments to that number after the number is calculated. Contrary to the belief of some commenters, our decision not to implement a wage adjustment is not based solely on the fact that the statute does not explicitly require one. We agree that the absence of an explicit instruction, in and of itself, does not necessarily mean that the Secretary cannot implement a wage adjustment. However, congressional ''silence'' on this issue must be construed in light of the statutory scheme and the legislative history, as well as policy considerations.

Two aspects of the statutory scheme argue against making a wage adjustment in applying the caps. First, as discussed above, section 4414 requires us to calculate a separate number for each class of hospitals. Congress has established a scheme which directs us to recognize differences across types of hospitals, but does not direct us to recognize differences in wages. If we were to calculate numbers as directed by Congress, and then adjust those numbers for factors that the Congress did not address, we would arguably undermine the scheme established by the Congress.

In addition to the ''scheme'' of section 4414 itself, one should also consider section 4414 in light of the other statutory provisions. Several commenters have pointed out that in several other statutory provisions the Congress did explicitly require a wage adjustment. We agree that this is significant, but unlike the commenters we believe it argues *against* making a wage adjustment in this context. We concluded that, because the Congress explicitly requires wage adjustments in some contexts, congressional failure to require a wage adjustment in this context reflects a judgment by the Congress that the agency should not make one here.

In addition to the statutory text and scheme, the legislative history also supports a single cap applied to all hospitals within each class of hospitals. The Conference Report indicates that, under the House Bill, a target amount for a PPS-exempt hospital ''could not be greater than the 90th percentile of the target amounts for cost reporting periods beginning during that fiscal year.'' This language indicates that all hospitals within a class would be capped at a single number (the 90th percentile). The Conference Report indicates that the Senate Amendment contained a similar provision ''except that the target amount could not be greater than the 75th percentile of the target amount for each class of hospitals.'' Again, this language indicates that all hospitals within a given class would be capped at the same number (in this case, the 75th percentile rather than the 90th percentile).

The Conference Report then indicates that ''[t]he conference agreement includes the House bill, with

amendments. The Secretary would be required to estimate the 75th percentile of the target amounts for each category of hospitals * * *.'' There is no reference anywhere in the Conference Report to a wage adjustment to the TEFRA caps.

Thus, we believe the statutory text, the statutory scheme, and the legislative history all support a cap that is not adjusted for wages. None of these factors by itself is necessarily dispositive, but taken together, we believe the best interpretation of the statute is that we should not make a wage adjustment.

While from a broad policy perspective a wage adjustment might be appropriate, policy considerations do not dictate a wage adjustment. While a wage adjustment might be preferable policy, the lack of a wage adjustment is not unreasonable. Congress could reasonably have made a judgment that all hospitals within a class should be subject to the same cap, whether for administrative ease, budgetary considerations, or some other reason.

Some commenters argue that failure to make a wage adjustment is inconsistent with other Medicare payment policies. But a payment *cap* is different from a payment *rate*. A payment cap does not affect every hospital, only hospitals that are above the cap. Therefore, a wage adjustment is less imperative in this context. And one could reasonably conclude that the Congress made a judgment that the 75th percentile reflects a reasonable cap regardless of geographic area. Although we believe implementation of the cap without a wage adjustment represents the best reading of the statute, we believe that accounting for area wage differences is an appropriate policy and would support a hospital sponsored legislative change. We would work with Congress to develop such a policy and its ramifications.

Taking into consideration the statutory language, the statutory scheme, and the legislative history, we believe the best reading of the statute enacted by the Congress is that we should calculate a single number for hospitals within each class and not apply a wage adjustment. We believe that, in any event, the Secretary's policy is consistent with the statute and is reasonable.

Comment: Three commenters objected to the data we used to calculate the caps on the target amounts for long-term care hospitals under section 4414. Six commenters objected to the data we used to calculate 110 percent of the national median of target amounts for long-term care hospitals under section 4416. The commenters asserted that the data set used to compute the cap incorrectly excluded hospitals, incorrectly included hospitals, and reflected inaccurate 1996 target amounts for Medicare certified long-term care hospitals. One commenter recommended that the caps on target amounts for long-term care hospitals be recalculated from ''time to time'' to reverify the data.

Response: As explained in the final rule with comment period (62 FR 46018), we developed the caps on the target amounts using the best available data to identify hospitals in each class that were subject to a target amount and to determine the target amounts for those hospitals. We verified the data to the extent possible during the extraordinarily short timeframe between the enactment of the BBA (August 5, 1997) and the required publication date of the final rule (August 29, 1997).

The commenters contended that the data we used to calculate the caps was faulty. First, they argue that we incorrectly excluded 20 hospitals that were subject to a target amount in 1996 from the calculation of the new hospital cap. We have determined that this argument is largely erroneous. In fact, 16 of these 20 hospitals were new hospitals in their exemption period during 1996; these hospitals were exempt from the target amount system and were not subject to a target amount in their cost reporting period ending during FY 1996. The statute directs us to calculate the 75th percentile ''of target amounts,'' so these hospitals were correctly excluded from the calculation.

Of the remaining four hospitals, two hospitals became PPS hospitals during or after FY 1996 but did have a target amount for the cost reporting period ending in FY 1996. When we were developing the August 29, 1997 rule, we believed that the two remaining hospitals were in their exemption period during FY 1996, but in light of the comments, we have determined that these hospitals were subject to a target amount during their cost reporting period ending during FY 1996. As discussed further below, we are revising the caps (prospectively) to reflect the target amounts for these four hospitals.

The commenters also asserted that the Secretary has the discretion to include an additional 15 target amounts for long-term care hospitals that were in their exemption period for the cost reporting period during FY 1996. The commenters argue that the cost reporting period ending during FY 1996 serves as the base period for these hospitals and thus the Secretary should include the data for these hospitals in the 110 percent of the median calculation. Based on the comments, we reexamined these hospitals and confirmed that these 15 hospitals were in their exemption period for the cost reporting period ending during FY 1996. If a hospital was within its exemption period, it was not subject to a target amount for the cost reporting period ending in FY 1996, whether or not that period was ultimately used as the hospital's base period for calculating the target amount for future years. Since the statute directs us to examine ''target amounts,'' the data for these hospitals were properly excluded from the calculations.

The commenters also contended that we inappropriately included hospitals with an average length of stay of less than 25 days in the 110 percent of the median calculation. Under the statute, a hospital may be excluded as a long-term hospital if its average length of stay is greater than 25 days. Under our implementing regulations, a hospital qualifies to be paid as a long-term care hospital for a given cost reporting period if its average length of stay for a prior period is greater than 25 days. Therefore, a hospital may be classified as a long-term care hospital for a given cost reporting period even if its average length of stay for that period ultimately turns out to be less than 25 days.

The hospitals cited by the commenters were classified as long-term care hospitals for the cost reporting period ending during FY 1996, and were paid under the target amount methodology. Accordingly, these hospitals were properly included in the calculations.

Thus, the commenter's assertions regarding our data were largely erroneous. Nevertheless, in light of the information that is now available to us, including information in the public comments, we are revising the calculations. We are revising the 110 percent of the median calculation to include the target amounts for the two hospitals described earlier that converted to PPS after the cost reporting ending during FY 1996, and the target amounts for the two hospitals that we originally believed to be in the exemption period in FY 1996. The target amounts for these hospitals appropriately should be included in the 110 percent of the median and 75th percentile calculation. The addition of these data did not change the 75th percentile calculation. We are also including the target amounts for three hospitals which were previously excluded because of a lack of wage index data. The target amounts for these three hospitals were already included in the 75th percentile calculation because

a lack of wage index data did not impact the calculation of the 75th percentile cap.

As a result of these revisions, the updated 110 percent of the national median target amounts for new long-term care hospitals is $21,494 for FY 1998. The labor-related share is $15,380 and non labor-related share $6,114.

We are applying these revised caps prospectively. For a new long-term care hospital whose cost reporting period began prior to the effective date of this final rule, the revised calculations would apply to the portion of the cost reporting period that occurs after the revision becomes effective. We note that these revised caps shall be the basis for the caps applicable for future cost reporting periods.

We are making a one-time mid-year revision to the caps because of the extraordinary circumstances presented by the timing of the enactment of the BBA. We do not agree with the commenter who argued that the caps on target amounts for long-term care hospitals should be recalculated from ''time to time'' in order to reverify the data. The statute provides that the cap in a future year shall be determined by taking the cap for the previous year and applying an update factor.

Comment: One commenter disagreed with the elimination of exception payments for a hospital with a target amount that was capped.

Response: Section 4414 of the BBA establishes a cap, that is, a limit, on the target amounts for rehabilitation hospitals and units, psychiatric hospitals and units, and long-term care hospitals. Generally, we believe it would be anomalous to set a cap on a hospital's target amount and then grant the hospital an exception so that it could receive payments above the cap.

4. Bonus and Relief Payments (§ 413.40(d))

a. Bonus payments. Section 4415 of the BBA 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 a 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 the BBA amended section 1886(b)(2) of the Act to provide for ''continuous improvement bonus payments'' for hospitals that meet certain criteria.

b. Relief payments. Section 4415 of the BBA 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 equal the ceiling. If a hospital's costs are greater than 110 percent of the ceiling, payment will equal 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 the BBA does not provide relief for costs that are within 110 percent of the ceiling, we made 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 received no public comments on this corresponding change.

5. New Excluded Hospitals and Units (§ 413.40(f))

With the enactment of sections 4416 and 4419 of the BBA, which amended section 1886(b)(4) of the Act and added section 1886(b)(7) of the Act, Congress established a new framework for payments for new excluded providers. First, section 4419(a) amended section 1886(b)(4)(A)(i) of the Act, to eliminate ''exemptions'' for all classes of excluded entities except children's hospitals. Second, section 4416 added a new section 1886(b)(7) of the Act to establish a new statutory payment methodology for psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals which first receives payments on or after October 1, 1997. For these hospitals, the amount of payment for each of the first two cost reporting periods 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 to the first cost reporting period and adjusted for differences in area wage levels. The target amount for the 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.

Comment: One commenter requested clarification as to whether the 6-month qualification period, during which a long-term care hospital demonstrates an average length of stay of greater than 25 days, will be included as part of the 2-year exemption period for new excluded hospitals under section 4419.

Response: As explained in the August 29 final rule with comment period (62 FR 46019), section 4419 eliminates the 2-year exemption period for all classes of excluded hospitals except children's hospitals. Thus, effective October 1, 1997, we will no longer grant an exemption for new long-term care hospitals. If a hospital qualifies as a new-long term care hospital, the statutory payment methodology under section 4416 applies for the hospital's first two years as a long-term care hospital. A hospital is not classified as a long-term care hospital during the 6-month qualification period.

Comment: Two commenters suggested that § 413.40(f) of the regulations be modified to state that the new statutory payment methodology of section 4416 does not apply to a hospital or unit that changes the basis of its exclusion (for example, from long-term care to rehabilitation) on or after October 1, 1997. One commenter, a long-term care hospital chain, objected to our policy and asserted that we had engaged in retroactive rulemaking and incorrect statutory interpretation because an existing PPS hospital that is acquired and recertified as a long-term care hospital on or after October 1, 1997 will now be subject to lower new long-term care hospital caps.

Response: Section 1886(b)(7) of the Act, as amended by section 4416 of the BBA, applies ''in the case of a hospital or unit that is within a class of hospital described in subparagraph (B) which first receives payments on or after October 1, 1997.'' Thus, the statutory payment methodology of section 4416 of the BBA applies if two conditions are met: (1) the hospital or unit is within one of the classes of hospitals specified in the statute (psychiatric, rehabilitation, long-term care), and (2) the hospital ''first receives payments on or after October 1, 1997.'' We believe these two conditions should be read together. That is, section 4416 applies if the hospital first receives payments on or after October 1, 1997 *as a hospital within one of the excluded classes.*

Thus, if a hospital first receives payments on or after October 1, 1997 as a PPS-excluded hospital in one of the specified classes (psychiatric, rehabilitation, or long-term care), then it is subject to the statutory payment methodology for new excluded hospitals under section 1886(b)(7) of the Act. The methodology for new excluded hospitals applies if a hospital received payments as a PPS hospital before October 1, 1997 and became excluded on or after October 1, 1997. If a hospital received payments as a PPS-excluded hospital in one of the classes before October 1, 1997, the hospital would be subject to the cap for non-new hospitals under section 1886(b)(3)(H) of the Act, as added by section 4414 of the BBA.

6a. Grandfathering of Certain Hospitals-Within-Hospitals

Section 4417 of the BBA specifies that a hospital that was classified by the Secretary on or before September 30, 1995 as an excluded long-term 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. While this provision is specific to long-term care hospitals, we believe the considerations underlying the legislation also apply to other types of hospitals-within-hospitals. Therefore, as explained in the preamble to the August 29, 1997 interim final rule with comment period (62 FR 46014), we revised our regulations applicable to prospective payment system exclusions of ''hospitals within hospitals'' to implement section 4417 (a)(1) of the BBA, by specifying that if a hospital was excluded from the prospective payment system on or before September 30, 1995, the criteria applicable to hospitals within hospitals do not apply to it (see § 412.22(f)). We also noted that in light of this revision, we were withdrawing our earlier proposal to include a specific provision for State-owned hospitals-within-hospitals. That provision, described in the June 2, 1997 proposed rule (62 FR 29902), was designed to allow continued exclusion of State-owned facilities that had been operated for many years as hospitals-within-hospitals but had not been able to restructure themselves because of the requirements of State law.

Since publication of the August 29, 1997 final rule with comment period, some hospital managers and representatives have asked whether § 412.22(f) applies only to hospitals that were and were also organized as hospitals-within-hospitals on or before September 30, 1995, or to any hospitals that may have been excluded from the prospective payment system on or before that date.

We wish to clarify that the rule is a grandfathering provision that applies only to those hospitals that were excluded from the prospective payment system on or before September 30, 1995, and were also organized as hospitals-within-hospitals on or before that date. Hospitals that were PPS-excluded on or before September 30, 1995, but were not excluded as hospitals-within-hospitals at that time, do not qualify for exclusion under section 4417(a). If they choose to reorganize themselves in ways that result in application of the hospital-within-a-hospital criteria, they will have to meet these criteria to preserve their prospective payment system exclusion status. We are making changes in § 412.22(f) to clarify this point.

6b. Capital Payments for Excluded Hospitals and Units (§ 413.40(j))

Section 4412 of the BBA 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 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.

Comment: One commenter suggested that § 413.40(j) of the regulations be modified to state that the 15-percent reduction for capital-related costs required by section 4412 of the BBA does not apply to capital-related costs for outpatient services.

Response: We agree with the commenter and are modifying § 413.40(j).

7. Report on Adjustment Payments to the Ceiling (§ 413.40(g))

Section 4419(b) of the BBA amended section 1886(b)(4) of the Act to require 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. We will publish this report in the annual rulemaking documents for the hospital inpatient prospective payment systems.

T. Limited-Service Rural Hospital Program

Prior to the BBA, the statute authorized a seven State Essential Access Community Hospital (EACH) and Rural Primary Care Hospitals (RPCH) program. RPCHs were limited-service rural hospitals that provided outpatient and short-term inpatient hospital care on an urgent or emergency basis and then released patients or transferred them to an EACH or other acute care hospital.

Montana also has a separate, limited service hospital program called the Medical Assistance Facility (MAF), that has been in operation since 1988 and operates under a demonstration waiver from HCFA. These limited service hospitals are reimbursed for providing treatment to Medicare beneficiaries even though they are not required to meet all requirements applicable to hospitals. A total of 12 MAFs have been licensed and certified.

The BBA replaced the EACH/RPCH program with the Medicare Rural Hospital Flexibility Program (MRHFP).

The MRHFP is available in any State that chooses to set up such a program and provides 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 (CAHs).

To be eligible as a CAH, a facility must be a rural public or nonprofit hospital located in a State that has established a MRHFP, and must be either located more than a 35-mile drive from any other hospital or CAH or certified by the State as being a necessary provider of health care services to residents in the area. 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 BBA also defined 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 with at least one other member 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.

Under the BBA, no new EACH designations will be made, but rural hospitals designated as EACHs under previous statutory provisions may continue to be paid as sole community

hospitals. The previous payment provisions applicable to RPCHs are repealed, and the statute instead provides that CAHs will be paid on a reasonable cost basis for their inpatient and outpatient services. The statute 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.

The BBA also provided 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.

To allow the changes made by the enactment of the BBA to be implemented by the statutory effective date of October 1, 1997, we published the August 29, 1997 final rule with comment period that retained the provisions of then existing RPCH regulations, except where the BBA clearly required us to make a change. In the August 29 final rule with comment period, we described in detail the substantive changes that we made to parts 409, 410, 412, 413, and 485 to implement the section 4201 amendments (62 FR 46008). We also made nomenclature changes to reflect the statutory change from RPCHs to CAHs.

In the August 29 final rule with comment period, we discussed in detail the process for review and acceptance of State assurances from States interested in establishing a MRHFP (62 FR 46009). Specifically, we described the assurances and information that must be included in a State's application. We solicited comments on whether the information and assurances were sufficient, or whether other information or assurances are needed.

Section 1820(k) of the Act, as in effect prior to the enactment of the BBA, explicitly authorized States with EACH programs to designate facilities in adjacent States as EACHs or RPCHs if certain conditions were met. Section 4201 of BBA revoked that authority. Therefore, a facility can be designated as a CAH only by a State in which it is located. We revised § 485.606 to remove any reference to this authority.

Section 1820(f)(1)(B) of the Act, as in effect prior to the enactment of the BBA, explicitly allowed, under certain circumstances, States with EACH programs to designate facilities as RPCHs even though the facilities had closed and were no longer functioning as hospitals at the time they applied for RPCH status. The BBA removed that authority so there is now no basis on which a closed facility can be designated as a CAH. We revised § 485.612 to reflect this change.

We received 33 letters of comment. We summarize the comments and give our responses below.

1. State Rural Health Care Plan Review and Approval

Comment: One commenter stated that in view of differences between the various States that may set up a MRHFP, HCFA should not impose common standards or criteria on all State plans or, if some common standards are needed, should give States advance notice of the standards and how they will be applied. Other commenters stated that the regulations regarding the development of State rural health plans should allow States maximum flexibility in the development of CAHs in rural areas of the State. Specifically, the commenters suggested that the reference to ''certain requirements'' for the State rural health care plan be clarified. The commenters believed that States should be given maximum flexibility within a defined format to plan for their rural heath care access needs. Also, since the creation of a State rural health care plan is reflective of the needs of the health care recipients in a given State, the commenters believed it would be appropriate to give the regional offices authority to approve these State plans. Another commenter stated the CAHs need to be designed to permit as much flexibility as possible and to allow linkages with other programs to maximize their abilities to serve the frontier areas of the individual state. The State rural health care plan must address the unique needs and conditions of the particular rural settings within their boundaries.

Response: We recognize that the factors limiting access to care can vary from State to State, and even from one rural area to another within a State. To account for this diversity, we agree that States should be allowed as much flexibility as possible to tailor plans to meet the unique needs of their residents and the conditions of the particular rural setting, including the needs of those living in frontier areas. We also agree that CAHs within a State be given as much flexibility as possible. At the same time, however, the BBA requires that all State rural health care plans meet certain minimum requirements.

Regarding State responsibilities, the statute specifies that the rural health care plan must provide for the creation of one or more rural health networks, promote regionalization of rural health services in the State, and improve access to hospital and other health services for rural residents of the State. In addition, the statute requires the State to develop the 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. We intend to impose the common standards for State rural health care plans only to the extent that they are mandated by statute. If HCFA develops any additional common standards for the State rural health care plan beyond those mandated by the current statute to ensure that the new legislation is administered in a fair and predictable way, those requirements would be communicated through regulation. Regarding regional office approval, we agree that the regional offices should have authority to approve the State rural health care plans, and have issued instructions that allow them to do this. We do, of course, expect that the regional offices will consult with HCFA's central office on any issues having national policy significance.

Comment: Other commenters stated that given their experience under the RPCH program, they recommend greater emphasis on the creation and maintenance of a rural health network. They suggested that the MRHFP will be better served by more fully defining network requirements and mandating network membership for CAHs. Another commenter noted that the financial incentives used for network formation benefit Medicare beneficiaries. They stated that their rural health network has been extremely helpful as an enhancement to the care they can provide. One commenter suggested that there needs to be a better definition of the network described in the regulations, regarding the actual functions of the network.

Response: We support the creation of rural health networks as envisioned in the legislation. However, the legislation does not preclude an otherwise eligible hospital from becoming a CAH solely because it is not a network member. In view of this, we do not believe it would be appropriate at this point to mandate network membership. We also note that section 1820(d) of the Act defines ''rural health network'' and does not explicitly authorize the imposition of any additional requirements on networks. In view of these considerations, at this point, we have decided not to mandate network membership for CAHs or

impose further requirements on networks.

Comment: Given the fragile and unstable financial condition of small rural hospitals, a lengthy process for reviewing and approving State rural health care plans is untenable. Several commenters suggested that HCFA should set a 30 or 60 day time limit for review and approval of State rural health care plans, and allow States to proceed to designate and certify facilities as CAHs based on assurances in a draft rural health plan, as long as the State pledges to complete the plan in a timely fashion. Another commenter did not specify a timeframe for action, but emphasized that HCFA should act quickly on State rural health care plans and that all requests for additional information should be reasonable in scope, with consistency among regional offices as to the type and extent of additional information requested.

Response: We agree that State rural health care plans should be reviewed and approved as quickly as possible, and that requests for additional information should be reasonable and specific, so that the approval process is not unduly delayed. However, we do not believe a self-imposed deadline would be useful to help achieve an expedited approval process. States are free to designate facilities under a draft plan, but no facility will be assigned a CAH provider number and give a provider agreement until the State rural health care plan has been approved and the CAH is certified as meeting all the requirements following an initial survey by the State agency.

Comment: Because changes in their circumstances may affect rural hospitals' interest in participating in the MRHFP, any list of facilities that the State has designated or plans to designate as CAHs will not be static, but will change frequently. Commenters suggested that instead of requiring the State to submit such a list, HCFA should simply ask for a description of the process for State designation, and of the criteria used to select hospitals for designation.

Response: We recognize that there may be frequent changes in any list of facilities that the State plans to designate, and agree that it is important for the State to describe its selection process and criteria clearly. However, we continue to believe a list of current and prospective designees is useful in developing an overall view of the State program.

Comment: Some commenters stated that HCFA should allow States great flexibility in making ''necessary provider'' certifications, and in defining key terms such as ''mountainous terrain'' or ''secondary roads.'' The commenter recommended that States be allowed to perform these functions without special waivers or centralized review. One commenter asked that we refer to States as ''designating'' rather than certifying necessary providers. Another commenter stated that the statute gives States broad authority to designate facilities as CAHs, even if they do not meet statutory requirements such as distance. Still another commenter suggested that necessary provider status be dependent solely on State designation with no Federal oversight. However, one commenter took the opposite view, stating that it is important that HCFA provide clear implementation instructions that allow providers and HCFA staff to know whether the criteria are met. This commenter believed that unless such criteria are developed and issued, there could be confusion as to what constitutes mountainous terrain or secondary roads.

Response: We agree that States should have great flexibility in making these certifications and in determining how to apply the distance requirements in making State designations. However, consistent implementation of the statute requires that the regional office also exercise oversight over these functions through the State rural health care plan approval process, and by ensuring that hospitals are given CAH status by the Secretary only if they meet applicable statute and regulations. To emphasize the importance of complying with applicable statute and regulations, we are revising § 485.606(b)(1) to specify that facilities (other than grandfathered facilities) will be recognized as CAHs by HCFA only after they have been surveyed and found to meet applicable requirements.

We are also revising the section heading for § 485.606 and the paragraph for § 485.606(b) to refer to ''certification'' rather than designation by HCFA. This change in terminology is being made for consistency with section 1820(e) of the Act which also refers to certification by the Secretary.

Regarding the terms used to describe State findings of necessary provider status, we will continue to refer to hospitals ''certified'' by the State as necessary providers because that is the term used in the statute (section 1820(c)(2)(B)(i)(II) of the Act) and because designation is used in another context to denote a finding by the State that the hospital meets all requirements to be a CAH under its plan, not merely the location requirements (sections 1820(b)(2) and (c)(1) and (2) of the Act).

2. Criteria for Designation as a CAH

Comment: One commenter stated that the existence of the 35-mile restriction fails to recognize the value of providing services even when certain rural providers are within 35 miles of another hospital, and that it fails to take into account the significantly greater population density of these rural areas and the importance of maintaining service for an older and poorer population where no significant transportation systems are in place. The commenter encouraged HCFA to reconsider its policy encouraging such limits as the 35-mile and rather encourage overall implementation of CAH status for many rural hospitals in the country. Commenters also noted that in some States there are no hospitals located more than 35 miles from others, and recommended that the regulations be revised to allow States to develop alternative mileage criteria for State designations.

Response: The statute at section 1820(c)(2)(B)(i)(I) of the Act specifically includes the requirement that a hospital seeking CAH status be more than 35 miles (or, in mountainous areas or those with only secondary roads, 15 miles) from the nearest other hospital or CAH, and HCFA does not have the authority to allow States to substitute another standard. However, the statute also authorizes States to designate otherwise eligible facilities that do not meet the standard as CAHs if the State finds the facility is a ''necessary provider''. We believe this provision allows States adequate flexibility to deal with specific situations in which access is limited even though the prospective CAH is within 35 miles of another hospital.

Comment: One commenter was concerned about the location requirements at § 485.610(b)(4) which provide that a CAH must be located more than a 35-mile drive from a hospital or another CAH or the CAH must be certified by the State as being a necessary provider of health care services to residents in the area. The commenter interpreted this provision to mean that either the quantified criteria fit a particular situation or it is left to the State to determine the appropriateness of the necessary provider situation. The commenter also stated that the second means of establishing CAH eligibility is not a waiver of the first standard; it simply stands apart from the mileage criteria.

Response: As stated previously, section 1820(c)(2)(B)(i)(I) of the Act includes a general requirement that a hospital seeking CAH status be more than 35 miles (or, in mountainous areas

or those with only secondary roads, 15 miles) from the nearest hospital or CAH. Section 1820(c)(2)(B)(i)(II) provides an exception to that general requirement for a hospital that is certified by the State as a necessary provider of health care services to residents in the area. We do not agree with the commenter's view that the provision for ''necessary provider'' certification somehow stands apart from the basic requirement. On the contrary, it clearly is set up as an alternative method of qualifying for a facility which cannot meet the basic mileage rule. In this context, we also wish to clarify that the necessary provider certification must be specific to each hospital, and that we would not accept a blanket statement, unsupported by any other information, to the effect that a State considers all hospitals it has designated as CAHs to be ''necessary providers.'' We would expect that State criteria for making the ''necessary provider'' certification will be defined in the State rural health care plan. The States can make the designation of necessary provider of health care services to residents of an area, however, this is just one of several criteria the facility must satisfy to qualify as a CAH. The assertion that these other criteria have been met is subject to Secretarial review and approval. Section 1820(b)(3) makes it clear that the Secretary may require, as part of the application process, ''other information and assurances.'' As to the ''necessary provider'' determination, the Secretary may require the State to submit the information that formed the basis of the State's determination.

Comment: One commenter suggested that the regulations be clarified to allow a State's ''necessary provider'' certification as an alternative to the distance criteria. The commenter believed that State criteria should be related to community needs and access issues, and State criteria should be outlined in the State rural health care plan.

Response: While we agree that the State should outline its criteria in its plan, the regulations at § 486.610(b)(4) already provide for certification by the State of a ''necessary provider'' in place of the distance requirement and we believe no further clarification is necessary.

Comment: One commenter stated that a per-stay limitation on the length of inpatient stay, such as the 96-hour limit imposed under the MRHFP, may be more restrictive than the average length of stay rule applicable to RPCHs. The commenter noted that PROs are authorized to waive the per-stay limit for particular cases, but suggested that obtaining such waivers would be burdensome for both the facility and the PRO and therefore should be used only rarely. Therefore, the commenter indicated an interest in seeking a legislative change to return to a rule based on a facility-wide average length of stay, saying that such a limit would allow CAHs greater flexibility to serve patients.

Response: Because a change in the statute would be needed to authorize use of a length-of-stay limit based on facility averages, we have not revised the regulations based on this comment. We will, of course, consider the commenter's views in deciding whether to support any proposed amendments to the provisions imposing a per-stay limit.

Comment: One commenter noted that the definition of ''rural'' used under both the RPCH and MRHFP regulations, which is the same definition used for other Medicare payment purposes, considers each individual county to be either ''urban'' or ''rural'' in its entirety. The commenter pointed out that there are some large counties that encompass both densely populated urban areas and very small, remote rural areas. Another commenter expressed the view that the statute should be changed to allow use of a definition that recognizes some areas of such counties as being ''rural,'' and asked that we support such a change. Another commenter simply asked that the implementing regulation at § 485.610(b)(2) be changed to reflect this type of situation.

Response: We agree that a change in the statute would be needed to authorize such a definition, since section 1820(c)(2)(B)(i) of the Act mandates use of the ''rural'' definition in section 1886(d)(2)(D) of the Act. Thus we did not revise the regulations based on these comments.

Comment: One commenter stated that in order to extend acute care services to areas that have not previously had access to these services, facilities other than hospitals should be considered eligible for designation as critical access hospitals. The commenter suggested that Congress intended that this be done so that extremely remote areas, such as some parts of Alaska, would have access to hospital-level services for the first time through the MRHFP.

Response: We do not agree that the intent of the legislation as enacted was to expand acute care capacity into new areas. On the contrary, we believe it is intended to preserve existing acute care capacity by encouraging appropriate downsizing and reduction in the scope of services in order to use the remaining capacity in the most efficient manner. Furthermore, we note that section 1820(c)(2)(B)(i) of the Act, specifies that a State may designate a facility as a CAH only if the facility is a hospital. In view of the specificity of the statute on this point, we do not believe that either the States or HCFA have discretion to designate nonhospital facilities as CAHs.

3. Grandfathering/Transition Issues

Comment: One commenter asked that we clarify the statutory language that would allow RPCHs to be grandfathered as CAHs. A commenter suggested that the regulations be revised to grandfather all existing RPCHs as CAHs immediately, and all MAFs as CAHs effective October 1, 1998, following the phaseout of the MAF program. Another commenter suggested that existing RPCHs be grandfathered as CAHs without regard to whether they are otherwise eligible for State designation. Another commenter expressed concern regarding the interpretation of the term ''otherwise eligible''; the intent being that RPCH facilities that do not meet all the new requirements will not be grandfathered in. They believe that automatic designation of all existing MAFs and RPCHs as CAHs is the only approach that reflects the common meaning of the term ''grandfathering.'' One commenter believed all existing RPCH facilities must be grandfathered and be consistent with the current rules that were in effect when the facility was designated as such.

Response: Under section 1820(h) of the Act, grandfathering is available only to MAFs operating in Montana and to RPCHs designated as such by the Secretary under section 1820 prior to enactment of the BBA (August 5, 1997), if they are otherwise eligible for designation by the State under section 1820(c). We have no authority to extend grandfathering to other facilities that do not meet these requirements. Moreover, when a State represents that a facility should qualify as a grandfathered CAH, HCFA may request data to support that representation pursuant to section 1820(b)(3) of the Act.

Comment: One commenter suggested that some special provision be made for facilities that were designated as RPCHs under previous legislation, but cannot meet the 35-mile distance criterion imposed by the new legislation. The commenter noted that such facilities will likely be designated as CAHs under the new legislation, and suggested that they continue to be treated as RPCHs at least until the State has submitted a rural health care plan under the new MRHFP.

Response: As noted in previous responses, the statute has provided

States with the authority to certify facilities as ''necessary providers'' if the 35-mile criterion is not met. However, for a RPCH to be treated as a CAH (assuming it meets the other statutory requirements) in lieu of the 35 mile criterion, it will need to be certified by the State as being a necessary provider of health care services to residents in its area by the beginning of its next cost reporting period. However, section 1820(h) of the Act allows grandfathering of a MAF or RPCH only if the facility or hospital is otherwise eligible and we intend to implement this provision of the statute.

4. Payment Issues

Comment: Under the EACH/RPCH program, EACHs participating in the program received sole community status as an incentive for participating as a member of a EACH/RPCH network. One commenter pointed out that while the regulations allow for the continuation of enhanced reimbursement to EACHs, there is no such enhanced payment to acute care facilities serving as resources to CAH facilities. The commenter recommended sole community reimbursement to those acute care hospitals that will assist CAHs.

Response: Section 4201(c)(4) of the BBA authorized the continuation of payment for those hospitals who had participated as EACHs in the EACH/RPCH program and, thus, were designated sole community hospitals. The regulations reflect this statutory provision. However, we have no statutory authority to adopt the commenter's recommendation of allowing sole community status for those hospitals assisting the CAHs under the MRHFP.

Comment: One commenter stated that the amendments made by the BBA do not necessarily eliminate the all-inclusive payment option for outpatient services that was explicitly provided for under prior law (section 1834(g)(1)(B) of the Act, as in effect before enactment of the BBA). The commenter noted that section 1834(g) of the Act was amended to provide for payment of the reasonable cost of the CAH in providing the outpatient services, and suggested that the all-inclusive rate method, as a cost-based method, would be permitted by the new legislation. Commenters also argued that the all-inclusive rate method furthers one of the goals of the BBA, in that it encourages the development of integrated rural health networks. Thus, the commenter recommended that the regulations be revised to again make the all-inclusive rate method available for outpatient services. Another commenter also recommended that the all-inclusive rate option be made available to critical access hospitals or, as an alternative, that the RPCHs that had elected the all-inclusive method continue to be paid under that method at least until October 1, 1998.

One commenter stated that some facilities that had operated provider-based rural health clinics in the past closed those clinics and instead elected payment under the all-inclusive rate option, thereby benefiting by being able to claim payment at levels of cost higher than would be permitted under the physician fee schedule. The commenter stated that such facilities may choose to reopen their rural health clinics if they are not allowed to continue to claim payment under the all-inclusive rate method. The commenter suggested that reopening the facilities as RHCs would entail considerable administrative expense for the facility and suggested that this could be avoided if the all-inclusive option were retained. One commenter stated that because of the all-inclusive method they have been able to enter into legally binding contracts with health professionals to provide skilled medical services. To interrupt these contracts (by discontinuing the all-inclusive method) could result in the discontinuation of these services to their patients and could prove financially detrimental to the well-being of the hospital.

Other commenters also expressed concern regarding the elimination of the all-inclusive method. Of these commenters, one stated that this method enabled small rural hospitals to recruit and retain physicians because they could integrate the physician and hospital payments. Another stated that this method simplified the billing process because, by combining the professional portion of an encounter with the technical service, time and paperwork are reduced. Several commenters stated that elimination of the all-inclusive method will have significant financial implications, prevent some hospitals who would otherwise benefit from the program from participating, and many rural patients will lose access to specialists because this option strengthened the ability to recruit traveling physician clinics. Another commenter stated that the all-inclusive-rate method should be reinstated or, at a minimum, a professional fee should be included in the facility cost structure for CAHs.

Response: We reviewed the commenters' concerns carefully, but we do not agree that we have discretion to retain the all-inclusive rate option. Under Medicare, physician services to hospital patients are not paid through the hospital, but are billed separately to the Medicare carrier and paid for under the physician fee schedule (sections 1832(a)(1), 1861(s)(1), and 1842 of the Act). Facility services are billed to the Medicare intermediary. Previous law (specifically, section 1834(g)(1)(B) of the Act, as in effect before the enactment of the BBA), explicitly authorized an exception to this practice, in that it permitted RPCHs to elect to be paid for services to outpatients under an all-inclusive rate method, described in that section, which reflects the costs of both facility and physician services.

The BBA amended section 1834(g) of the Act to eliminate the RPCH payment methods, including the all-inclusive rate option. Under the statute, as amended, the option of paying for physician services to hospital patients through payment to the CAH for its costs no longer exists. On the contrary, CAHs are to be paid for their reasonable costs of facility services. Physician services will be billed separately to the Medicare Part B carrier, and payment will be made under the physician fee schedule. We also considered the proposal that RPCHs that had elected to be paid for outpatient services under the all-inclusive rate method be allowed to continue receiving payment under that method until October 1, 1998. At this time, we are allowing existing RPCHs that are to be grandfathered as CAHs to continue to receive payment under the all-inclusive payment until each facility's first cost reporting period beginning after October 1, 1997. However, since the statute made no provision for extension of this payment methodology for CAHs, this payment methodology will be eliminated at the end of the period stated above. Continuation of previous payment methods for MAFs through September 30, 1998, is possible because section 4201(c)(6) of the BBA explicitly authorizes such a transition period for them. However, there is no similar provision for RPCHs.

Regarding RHC conversions, we do not accept the commenter's claim that eliminating the all-inclusive payment method will force hospitals to set up RHCs. Physicians who provide services to outpatients of CAHs are entitled to bill for these services on the same *basis* as if they *had been* furnished in a hospital outpatient department.

We agree that one major goal of the legislation is to foster networking and appropriate integration of services. However, we believe that integration of services through improved coordination, sharing of patient information, and other clinical measures does not require that physician billing

and facility billing be integrated, nor that such financial integration necessarily encourages clinical integration.

Comment: Several commenters requested that HCFA clarify that coinsurance amounts for CAH services are to be determined based on the hospital's charges, as is the case for full-service hospitals and most other providers.

Response: We agree and have made appropriate revisions to § 410.152(k) in these final rules.

Comment: The principle of lesser of cost or charges was not applied to RPCH payment determinations under previous statutory provisions. Commenters recommended that HCFA clarify that this principle also does not apply in determining the amount of payment for CAH services.

Response: We agree and have made revisions to §§ 413.13(c)(2) and 413.70 to specify that this principle does not apply to CAH payment determinations.

Comment: One commenter stated that some CAHs may need to use locum tenens (temporary substitute) physicians to maintain the availability of emergency services on a 24-hour basis. The commenter recommended that the regulations be revised to state that costs of locum tenens physicians are allowable.

Response: As is the case for full-service hospitals, standby costs of emergency room physicians who are present at the emergency room are allowable costs and will, to the extent they are reasonable in amount, be taken into account in computing Medicare payment. However, Medicare does not recognize costs of ''on-call'' physicians as allowable costs of operating a CAH.

Comment: One commenter asked for clarification as to which specific reasonable cost payment principles will be applied in determining payment to CAHs. Specifically the commenter asked whether, for inpatient services, CAHs would be subject to the principles of lesser of cost or charges, ceilings on the rate of hospital cost increases, limits on payment for services of physical, occupational, and other therapy services furnished under arrangements, reasonable compensation equivalent (RCE) limits on payments for services of physicians to providers, and the SNF routine nursing service cost limits. With respect to outpatient services, the commenter asked whether payment would be subject to the principles of lesser of cost or charges, reasonable compensation equivalent (RCE) limits on payments for services of physicians to providers, the 5.8 percent operating cost reduction, the capital cost reduction, blended payment amounts for ASC, radiology, and other diagnostic services, and the fee schedule for clinical laboratory tests.

Response: We plan to apply the limits on physical, occupational, speech, and other therapy services furnished under arrangements in determining the reasonableness of costs of both inpatient and outpatient services. We do not plan to apply the principles of lesser of cost or charges; ceilings on the rate of hospital cost increases; any type of reductions of operating or capital costs under § 413.24 or § 413.130(j)(7); the blended payment amounts for ambulatory surgical centers (ASC) services, radiology, and other diagnostic services; or the clinical laboratory fee schedule. We do not plan to apply RCE limits on payments of physicians to providers. However, we note that the costs of these services will be subject to both the prudent buyer principle (section 2103 of the Medicare Provider Reimbursement Manual) and the requirement that costs not be ''substantially out of line'' with those of other, similar institutions (§ 413.9(c)(2)). Intermediaries are authorized to examine all claimed costs to make sure they are not substantially out of line. An intermediary might in this respect refer to the RCE limits as one guide as to what may be reasonable in a given case. We have not specified that the SNF routine cost limits do not apply to CAHs, since this is self-evident.

Comment: One commenter suggested that, to ensure that payment policies are applied uniformly in all States and to make it easier for critical access hospitals to have questions answered and problems resolved, a single national intermediary should be designated to handle all CAH payment.

Response: In the case of both hospitals and CAHs, the intermediary for a particular facility is determined by the location of the facility. In general, each facility is serviced by a nonprofit or commercial insurance plan that also administers other health insurance programs for facilities in the State, and is familiar with characteristics of health care delivery systems in that State. Therefore, use of the existing intermediaries to make payment to CAHs should help contribute to an orderly transition to the new program, since the intermediary servicing a facility as a CAH would also have serviced it as a hospital or RPCH and would be fully familiar with the facility's operation and cost characteristics. However, we agree that use of a single national intermediary (or regional intermediaries) would appear to have some advantages in terms of ensuring that payment is made uniformly and consistently. We will consider this suggestion further and evaluate the feasibility of a single national intermediary at some time in the future.

5. Other Issues

Comment: One commenter stated that both the RPCH and CAH regulations allow facilities to close at times when there are no inpatients, as long as the emergency services requirements in § 485.618 are met. The commenter stated that existing regulations allow emergency services to be provided through a triage and on-call system, while anti-dumping requirements under section 1867 of the Act require that all patients coming to the emergency room be seen by a physician or midlevel practitioner. The commenter stated that compliance with the provisions of section 1867 of the Act will increase a CAH's cost of operating an outpatient department and suggested that retention of the all-inclusive rate is needed to meet the added cost.

Response: The emergency services requirements for CAHs are exactly the same as they were for RPCHs, as are the section 1867 provisions on examination and treatment for emergency medical conditions and women in labor (as implemented under §§ 489.20(q) and 489.24). Except for the change in terminology from RCPH to ''critical access hospital'', the regulations at § 485.618 were not changed in any way. With respect to personnel, these regulations provide (in paragraph (d)) that there must, on a 24-hour a day basis, be a practitioner with training and experience in emergency care on call and immediately available by telephone or radio contact, and available on site within 30 minutes. The practitioner referred to may be an M.D. or D.O, a physician assistant, or a nurse practitioner. Within this minimum staffing requirement, the CAH is obligated by the regulations at § 489.24 to provide an appropriate medical screening examination and, if necessary, stabilizing treatment to any person who comes to the emergency room and requests examination or treatment, or has such a request made on his or her behalf. As noted in § 489.24, these services need only be provided within the capability of the CAH's emergency department. Thus, the transition to CAH status should not generate any additional costs for the facility.

Comment: One commenter stated that Congress clearly intended to allow CAHs to maintain swing beds, and suggested that restricting CAH swing-bed agreements to those facilities that

had such agreements as full-service hospitals or as RPCHs would be unfair to other hospitals and former RPCHs, and could limit access to skilled nursing services for Medicare patients. Therefore, the commenter suggested that we revise the regulations to make it clear that hospitals or RPCHs that do not have swing-bed agreements at the time they become CAHs are free to enter into those agreements later, if they meet the requirements in § 485.645.

Response: We agree and have revised § 485.645(a)(1) to eliminate the requirement that a facility have had a hospital swing-bed agreement when it applied for CAH designation.

Comment: One commenter recommended that, for purposes of waiving the 96-hour length of stay restriction under § 482.620(b), we provide that peer review organizations (PROs) should have discretion to base decisions only on clinical judgment of specific cases, without having to follow guidelines imposed by HCFA. One commenter also states that the 96 hours length of stay should be an average of 96 hours.

Response: We agree that PROs will necessarily have to make case-specific clinical judgements to implement this waiver provision, and do not plan to release any guidelines to them in the near future. However, further experience with the program may indicate a need for centralized guidelines to ensure that the waiver provision is implemented uniformly in all States, and if such guidelines are needed they will be issued. As to an average of 96 hours length of stay, the statute is clear that the longest stay permitted will be a 96-hour period, that is, the 96-hour limit will be applied on a per-stay basis rather than to the facility-wide average length of stay. Consequently, we made no changes in the regulations based on this comment.

Comment: One commenter stated that revised § 485.612 (''Compliance with hospital requirements at time of application'') would effectively eliminate participation in the CAH program by hospitals that are licensed but not certified. The commenter believed the intent of Congress was to limit CAH candidates to only hospitals in full compliance with the Medicare/Medicaid conditions of participation at the time of application.

Response: We agree, the MRHFP was established through changes to the Medicare law and its purpose is to preserve access to services by Medicare beneficiaries. Hospitals that do not participate in Medicare cannot be paid for nonemergency services to Medicare patients, and thus do not serve as a source of care for most Medicare services. In view of this, we do not believe there is any basis for making CAH designations available to these hospitals. This approach is consistent with previous RPCH policy and with the statutory requirement that only hospitals be designated as CAHs.

Comment: One commenter stated that it would serve the Medicare program well to permit CAHs more flexibility in the realm of surgery. As a RPCH, they performed only ambulatory type surgeries, while as an acute care hospital they performed several types of low complexity general surgeries. These low complexity cases were done safely, economically, and close to home. They believe that this flexibility would serve to enhance their ability in emergency cases.

Response: Under previous statute and regulations (section 1820(f)(1)(F)(ii) and 42 CFR 485.614(b)(3)), RPCHs were restricted to certain types of inpatient surgical and other services requiring general anesthesia, except in emergency cases where the attending physician certified that the risk of transfer to a hospital outweighed the benefits of the transfer. This restriction was removed by the BBA, and § 485.614 was also removed in the August 29, 1997 final rule with comment period. Of course, CAHs are still required to comply with any State licensure laws affecting their scope of services.

Comment: One commenter stated that CAH legislation requires credentialing and quality assurance review to be done by another facility. Currently, many providers that might seek CAH designation do their own credentialing and quality assurance review. The commenter believes that requiring outside performance of these functions would be unreasonable and would recommend some type of grandfathering of these responsibilities.

Response: The commenter correctly notes that the statute requires that a network CAH's credentialing and quality assurance review be done by an outside entity. We have amended § 485.603(c) to reflect this and require all network CAHs to have an agreement for credentialing and quality assurance with at least one hospital that is a network member, one PRO or equivalent entity, or one other appropriate and qualified entity identified in the State rural health care plan. We have also made a conforming change and have revised § 485.641(b)(4) to allow the same three options for the review of the quality and appropriateness of the diagnosis and treatment furnished by doctors of medicine or osteopathy at the CAH. We recognize that where a facility is located in an extremely remote area, performance review and credentialing by an outside entity can present practical problems. On the other hand, given the small numbers of practitioners furnishing services in a CAH, it may be difficult or impossible to achieve objective in-house review. The majority of CAHs have a limited number of staff and resources to accomplish credentialing and quality assurance in an efficient and effective manner. Assistance from a knowledgeable source outside the facility will enable the CAH to be more efficient in the utilization of their immediate resources. We encourage CAHs to develop strategies for electronic sharing of patient records and other data related to practitioner performance and quality assurance.

Comment: One commenter noted that the statutory provision authorizing grandfathering of essential access community hospitals (EACHs) required only that the hospitals have been designated by the Secretary as EACHs under the statute in effect on September 30, 1997 (section 1886(d)(5)(D) of the Act, as amended by section 4201(c)(4) of the BBA). In this commenter's view the revised regulations at § 412.109(a) are more restrictive, in that they would require the hospital, to retain its EACH status, to comply with the terms, conditions, and limitations that were applicable when HCFA designated the hospital as an EACH. The commenter noted that the definition of ''network'' under the new legislation differs from the regulatory criteria for EACH designation that were in effect before October 1, 1997, in that previously regulations required the EACH to provide emergency and medical backup services to RPCHs participating in the network of which it is a member as well as to other RPCHs throughout its service area, while the new statutory definition of a ''network'' does not include a specific requirement for emergency and medical backup services. The commenter stated that an EACH should not lose its EACH designation solely because it changes its network agreements to conform to the new statutory requirements.

Response: This commenter is correct in noting that the network definition under the current statute differs from the EACH designation criteria previously in effect. We agree that network agreements entered into after the effective date of the new provision (October 1, 1997) should reflect current statutory requirements. However, it does not necessarily follow that a hospital should be able to change the terms of its agreements made under a previous statutory provision, while maintaining

an advantageous level of payment available under that same previous statutory provision. Thus, if a hospital designated as an EACH under prior statute wants to retain its sole community hospital status, it will have to abide by the agreements it made in order to obtain its EACH designation. If the hospital wants to scale down its responsibilities to the level required by current statute for an acute care hospital that is a network member, it is free to do so but will no longer be able to claim sole community hospital status. The hospital clearly will not be permitted to scale down its obligations but continue to be paid as if it were assuming those responsibilities.

Comment: Two commenters asserted that managed care involvement should be allowed with recognition and protection for low volume. They recommended that Medicare+Choice plans should allow for CAH participation.

Response: There is no prohibition on the use of CAH services under managed care or Medicare+Choice. However, we have no authority to mandate the level of payment by these plans to the CAHs.

Comment: Two commenters recommended that CAHs be allowed to link formally with other Federal programs such as Rural Health Clinics, Public Health, and emergency medical service.

Response: Under the new legislation, a new MRHFP was established. Under this program, States are encouraged to set up rural health networks. These networks are defined as an organization consisting of at least one CAH and at least one full-service hospital. As to the CAH linking with other types of organizations, there is no statutory prohibition against a State establishing these linkages under its rural health care plan, and there is nothing in the regulations that precludes CAHs from participating in other Federal programs. Each program would be required to independently meet the applicable Federal regulations. A CAH that participates in any additional Federal programs would be responsible for compliance with all the Medicare CAH requirements and any other program requirements in which it participates.

Comment: Communities with CAHs should receive an exception to the EMS restrictions, since they do not have the funds to provide quality EMS service.

Response: We do not believe our emergency medical service requirements are complicated or complex requirements. Rather, in our development of the original conditions of participation, we attempted to be flexible and sympathetic to the need of these facilities. We do not believe we can be any more flexible and remain within the confines of the statute.

Comment: Several commenters requested additional funding to support survey and certification activities. They believe that Federal grant funding should be used to support survey and certification activities, combined CAH and hospital surveys should be allowed, and States should recognize CAH participation in EMS and trauma planning.

Response: Congress did not authorize an appropriation of additional funds to survey critical access hospitals. CAH initial surveys will be scheduled and conducted by the State survey agencies in accordance with national priorities which reflect statutorily mandated workload requirements and budget realities. Federal grant funding is not authorized to support survey and certification activities. In addition, CAH and hospital surveys would not be combined, as these providers are statutorily and categorically different entities and subject to separate requirements. We do not see the added value of attempting to combine hospital and CAH surveys. Regarding the comment that States should recognize CAH participation in EMS and trauma planning, we believe this comment is addressed to the States rather than to HCFA in implementation of the MRHFP.

Comment: Some commenters recommended that HCFA take action to increase understanding of the Medicare Rural Hospital Flexibility Program and simplify its implementation.

Response: We agree, and have attempted to provide interim guidance wherever possible to clarify the requirements of the Medicare Rural Hospital Flexibility Program legislation. For example, we recently provided our regional offices with guidance on implementing the requirement that a hospital seeking CAH designation provide not more than 15 (or, in the case of a swing-bed facility, 25) acute care inpatient beds. Because of the specificity of the law on this point, a State rural health care plan would not be approvable unless it specified that potential CAHs would provide not more than the allowed number of acute care inpatient beds, and a hospital that provided more than the allowed number of beds would not be eligible for State designation as a CAH, and could not be certified by the Secretary as a CAH. CAHs are, as limited-service facilities, subject to less rigorous standards than full-service hospitals and it is important to ensure that they are truly low-volume, short-stay facilities as envisioned in the statute. However, this does not mean that each hospital seeking CAH designation must necessarily reduce its State licensure to the 15 or 25-bed level. It does mean the hospital must reduce its number of Medicare certified beds to the allowed level (15 or 25 beds) and that it has to actually provide no more than the number of inpatient acute beds for which it is Medicare-certified, or risk termination of its Medicare participation agreement and loss of all Medicare revenue. Since the CAH designation is related to how the facility is certified for participation under the Medicare program, we believe the use of Medicare certified beds is appropriate. Further, the use of Medicare certified beds is consistent with the policies on hospital and CAH swing-beds (see §§ 482.66 and 485.645).

We note that for cost reporting and certain payment provisions (for example, Medicare-dependent hospitals and the indirect medical education adjustment), a facility's bed size is based on the average number of beds available and maintained over the cost reporting period. We do not believe it would be appropriate to use this measure of bed size for purposes of CAH certification. First, it is based on an average number of beds that are available over the cost reporting period. The statute establishes an absolute limit on the number of beds that may be provided at any point in time during the cost reporting period. Secondly, this measure can only determine bed size retrospectively and is not useful as a prospectively applicable measure of compliance with the limits on beds provided by CAHs.

Comment: Two commenters suggested that CAHs and their communities that have been given incentives to provide services in underserved areas (HPSAs or MUAs) should be allowed to keep those incentives after the need for them has passed, so the practitioners recruited through the incentives do not leave, leading to new shortages.

Response: With regard to the commenters' concern regarding previously given incentives, such incentives were not granted by us, and therefore; we have no authority to permit the continuance of such incentives. The MRHFP was established to assist such rural hospitals that may need the support of other facilities by setting up networks with agreements with full service facilities concerning transportation and communications, not as an incentive for recruitment of practitioners.

III. Provisions of the Final Rule

In summary, in this final rule, we are making changes to the following regulations in 42 CFR as described in the preceding portions of this preamble:

- Section 410.152
- Section 412.105
- Section 413.13
- Section 413.40
- Section 413.70
- Section 413.86
- Section 415.152
- Section 485.603
- Section 485.641
- Section 485.645

Technical Corrections

- Regarding the Medicare geographic classifications, we are making two technical changes:

—In § 412.230, paragraph (e)(3), the phrase ''If a hospital is a rural referral center,'' is revised to read ''If a hospital was ever a rural referral center''.

—In § 412.256, paragraph (a)(2), the phrase ''the month preceding'' is revised to read ''the 13-month period preceding''.

- In regard to inpatient hospital capital costs, we are making a cross-reference change in § 412.322(a)(1) to change the phrase ''under § 412.105(g)'' to read ''under § 412.105(f)''.

IV. Impact Statement

We have examined the impact of this final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 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 Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief for small businesses, unless we certify that the regulation would not have a significant economic impact on a substantial number of small entities. 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 of less annually.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a final 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 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the prospective payment system, we classify these hospitals as urban hospitals. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

In the August 29, 1997 final rule with comment period, we discussed in detail the impact of the provisions of the BBA (62 FR 46115). We stated that several provisions of the statute made significant changes in inpatient hospital payments for the operating and capital prospective payment systems during FY 1998. The major portion of this final rule merely responds to comments on the August 29 final rule with comment period and makes clarifying changes. However it does make a few policy changes that have an impact on hospitals as follows:

1. Graduate Medical Education

Section 4623 of the BBA established a limitation on the number of residents that a hospital can receive Medicare direct and indirect medical education payments. This final rule will provide hospitals with more opportunities to receive adjustments to the FTE caps for GME for medical residency programs established on or after January 1, 1995. While this may result in Medicare paying for more residents than under the policies announced in the August 29, 1997 final rule with comment period, we anticipate this impact will be modest. In addition, hospitals that are members of the same affiliated group will also have more flexibility relative to the August 29, 1997 final rule with comment period under an aggregate FTE cap. We believe that these changes will have a minimal (if any) financial impact on the Medicare program.

2. Excluded Hospitals and Units

a. Limitations on the Target Amount

In accordance with section 4416 of the BBA, we calculated a cap on the TEFRA target amounts for new PPS-excluded hospitals. This cap is set at 110 percent of the median target amount for each type of hospital. We have recalculated the 110 percent of the median target amount for new long-term care hospitals, based on a review of the data. As a result the limit will be revised from $18,947 to $21,494. Therefore, fewer new long-term care hospitals will be adversely affected by the cap. Although we do not know the precise financial impact of this change, we estimate that any additional costs to the Medicare program will be small given the small number of long-term care hospitals that could potentially be affected.

b. Critical Access Hospitals—Credentialing and Quality Assurance

We are requiring all CAHs to have an agreement for credentialing and quality assurance with at least one hospital that is a network member, one PRO or equivalent entity, or one other appropriate and qualified entity identified in the State rural health care plan. For facilities located in an extremely remote area, performance review and credentialing by an outside entity can present practical problems. However, given the small numbers of practitioners furnishing services in a CAH, it may be difficult or impossible to achieve objective in-house review. Therefore, making the requirements consistent will allow the providers more flexibility in selecting an entity to perform the credentialing and quality assurance functions. We believe that this requirement would not present an additional financial burden to the provider.

c. Critical Access Hospitals—Swing-Bed Agreements

Previously, swing-bed agreements were restricted to those facilities that had hospital swing-bed agreements at the time of their becoming a CAH. However, due to comments received, we have changed the regulations to clarify that hospitals or rural primary care hospitals that do not have swing-bed agreements at the time they become CAHs may enter into such agreements at a later time if they meet the swing-bed requirements. This change will increase the number of CAHs that may qualify for swing-bed agreements, and thus may lead to additional utilization of SNF-level services and higher costs. However, at this time, we are unable to estimate the number of facilities that will request participation in the swing-bed program, or estimate whether or not utilization and costs will increase.

For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has

fewer than 50 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this final rule will 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 final rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

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 415

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as set forth below:

A. Part 410 is amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

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 1395(hh)), unless otherwise indicated.

Subpart I—Payment of SMI Benefits

§ 410.152 [Amended]

2. In § 410.152, paragraph (k), second sentence, the phrase ''coinsurance amounts, as described in § 413.70(b)(3) of this chapter'' is revised to read ''coinsurance amounts with Part B coinsurance being calculated as 20 percent of the customary (in so far as reasonable) charges of the CAH for the services''.

B. Part 412 is amended as set forth below:

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 B—Hospital Services Subject to and Excluded From the Prospective Payment System for Inpatient Operating Costs and Inpatient Capital-Related Costs

2. In § 412.22, paragraph (f) is revised to read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(f) *Application for certain hospitals.* If a hospital was excluded from the prospective payment systems under the provisions of this section on or before September 30, 1995, and at that time occupied space in a building also used by another hospital, or in one or more buildings located on the same campus as buildings used by another hospital, the criteria in paragraph (e) of this section do not apply to the hospital.

* * * * *

Subpart G—Special Treatment of Certain Facilities Under the Prospective Payment System for Inpatient Operating Costs

3. In § 412.105, the last sentence of paragraph (a)(1) is revised, the parenthetical phrase in the last sentence of paragraph (f)(1)(v) is revised, and new paragraphs (f)(1)(vi) and (vii) are added to read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(a) * * *

(1) * * * Except for the special circumstances for affiliated groups and new programs described in paragraphs (f)(1)(vi) and (f)(1)(vii) 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.

* * * * *

(f) * * *

(1) * * *

(v) * * * (subject to the requirements set forth in paragraphs (f)(1)(ii)(C) and (f)(1)(iv) of this section) * * *

(vi) Hospitals that are part of the same affiliated group (as described in § 413.86(b)) may elect to apply the limit at paragraph (f)(1)(iv) of this section on an aggregate basis.

(vii) If a hospital establishes a new medical residency training program, the hospital's FTE cap may be adjusted in accordance with the provisions of § 413.86(g)(6)(i) through (iv).

* * * * *

Subpart L—The Medicare Geographic Classification Review Board

§ 412.230 [Amended]

4. In § 412.230, paragraph (e)(3), the phrase ''If a hospital is a rural referral center,'' is revised to read ''If a hospital was ever a rural referral center''.

§ 412.256 [Amended]

5. In § 412.256, paragraph (a)(2), the phrase ''the month preceding'' is revised to read ''the 13-month period preceding''.

Subpart M—Prospective Payment System for Inpatient Hospital Capital Costs

§ 412.322 [Amended]

6. In § 412.322(a)(1), the phrase ''under § 412.105(g)'' is revised to read ''under § 412.105(f)''.

C. Part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

Subpart A—Introduction and General Rules

2. In section 413.13, a new paragraph (c)(2)(iv) is added to read as follows:

§ 413.13 Amount of payment if customary charges for services furnished are less than reasonable costs.

* * * * *

(c) * * *

(2) * * *

(iv) *Critical access hospital (CAH) services.* The lesser of costs or charges principle does not apply in determining payment for inpatient or outpatient services furnished by a CAH under § 413.70.

* * * * *

Subpart C—Limits on Cost Reimbursement

3. Section 413.40 paragraphs (c)(4)(iii) and (j) are revised to read as follows.

§ 413.40 Ceiling on the rate-of-increase in hospital inpatient costs.

* * * * *

(c) * * *

(4) * * *

(iii) In the case of a psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital, the target amount is the lower of—

(A) The hospital-specific target amount (the net allowable costs in a base period increased by the applicable update factors); or

(B) One of the following for the applicable cost reporting period—

(*1*) 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.

(*2*) For cost reporting periods beginning during fiscal years 1999 through 2002, the amount determined under paragraph (c)(4)(iii)(B)(*1*) of this section, increased by the market basket percentage up through the subject period, subject to the provisions of paragraph (c)(4)(iv) of this section.

* * * * *

(j) *Reduction to capital-related costs.* For psychiatric hospital and units, rehabilitation hospitals and units, and long-term care hospitals, the amount otherwise payable for capital-related costs for hospital inpatient services is reduced by 15 percent for portions of cost reporting periods occurring on or after October 1, 1997 through September 30, 2002.

Subpart E—Payments to Providers

4. Section 413.70 is revised to read as follows:

§ 413.70 Payment for services of a CAH.

(a) Except as provided in paragraph (b) of this section, 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.

(b) The following payment principles are excluded when determining payment for CAH inpatient and outpatient services:

(1) For inpatient services—

(i) Lesser of cost or charges;

(ii) Ceilings on hospital operating costs; and

(iii) Reasonable compensation equivalent (RCE) limits for physician services to providers;

(2) For outpatient services—

(i) Lesser of costs or charges;

(ii) RCE limits;

(iii) Any type of reduction to operating or capital costs under § 413.124 or § 413.130(j)(7) of this part;

(iv) Blended payment amounts for ASC, radiology, and other diagnostic services; and

(v) Clinical laboratory fee schedule.

Subpart F—Specific Categories of Costs

5. In § 413.86, the definition of ''affiliated group in paragraph (b) is revised, paragraph (g)(5) is amended by adding new sentences at the end of the paragraph, and paragraphs (g)(6)(i), (g)(6)(ii), and (g)(7) are revised to read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(b) * * *

Affiliated group means—

(1) Two or more hospitals located in the same urban or rural area (as those terms are defined in § 412.62(f) of this subchapter) or in contiguous areas if individual residents work at each of the hospitals during the course of the program; or

(2) If the hospitals are not located in the same or a contiguous urban or rural area, the hospitals are jointly listed—

(i) As the sponsor, primary clinical site or major participating institution for one or more of the programs as these terms are used in *Graduate Medical Education Directory, 1997–1998;* or

(ii) As the sponsor or under ''affiliations and outside rotations'' for one or more programs in operation in *Opportunities, Directory of Osteopathic Postdoctoral Education Programs.*

(3) The hospitals are under common ownership.

* * * * *

(g) *Determining the weighted number of FTE residents.* * * *

* * * * *

(5) * * * If a hospital qualifies for an adjustment to the limit established under paragraph (g)(4) of this section for new medical residency programs created under paragraph (g)(6) of this section, the count of residents participating in new medical residency training programs above the number included in the hospital's FTE count for the cost reporting period ending during calendar year 1996 is added after applying the averaging rules in this paragraph for a period of years. Residents participating in new medical residency training programs are included in the hospital's FTE count before applying the averaging rules after the period of years has expired. For purposes of this paragraph, the period of years equals the minimum accredited length for the type of program. The period of years begins when the first resident begins training.

(6) * * *

(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 highest number of residents in any program year during the third year of the first program's existence for all new residency training programs and the number of years in which residents are expected to complete the programs based on the minimum accredited length for the type of program. For these hospitals the cap will only be adjusted for the programs established on or after January 1, 1995. Except for rural hospitals, the cap will not be revised for new programs established after the 3 years. Only rural hospitals that qualify for an adjustment to its FTE cap under this paragraph are permitted to be part of the same affiliated group for purposes of an aggregate FTE limit.

(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 on or before August 5, 1997. Adjustments to the hospital's FTE resident limit for the new program are based on the product of the highest number of residents in any program 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.

* * * * *

(7) For purposes of paragraph (g) of this section, a new medical residency training program means a medical residency that receives initial accreditation by the appropriate accrediting body or begins training residents on or after January 1, 1995.

* * * * *

D. Part 415 is amended as set forth below:

PART 415—SERVICES FURNISHED BY PHYSICIANS IN PROVIDERS, SUPERVISING PHYSICIANS IN TEACHING SETTINGS, AND RESIDENTS IN CERTAIN SETTINGS

1. The authority citation for Part 415 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart D—Physician Services in Teaching Settings

§ 415.152 [Amended]

2. In § 415.152, under the definition of ''approved graduate medical education (GME)'', the phrase ''Council on Dental Education of the American Dental Association'' is revised to read ''Commission on Dental Accreditation of the American Dental Association'.

E. 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).

Subpart F—Conditions of Participation: Critical Access Hospitals (CAHs)

2. Section 485.603 is amended by revising paragraph (c) to read as follows:

§ 485.603 Rural health network.

* * * * *

(c) Each CAH has an agreement with respect to credentialing and quality assurance with at least—

(1) One hospital that is a member of the network when applicable;

(2) One PRO or equivalent entity; or

(3) One other appropriate and qualified entity identified in the State rural health care plan.

3. In 485.606, the section heading, the heading and introductory text of paragraph (b), and paragraph (b)(1) are revised to read as follows:

§ 485.606 Designation and Certification of CAHs

* * * * *

(b) Criteria for HCFA certification. HCFA certifies a facility as a CAH if—

(1) The facility is designated as a CAH by the State in which it is located and has been surveyed by the State survey agency or by HCFA and found to meet all conditions of participation in this Part and all other applicable requirements for participation in Part 489 of this chapter.

* * * * *

4. In § 485.641 the introductory text of paragraph (b) is republished and paragraph (b)(4) is revised to read as follows:

§ 485.641 Condition of participation: Periodic evaluation and quality assurance review.

* * * * *

(b) *Standard: Quality assurance.* The CAH has an effective quality assurance program to evaluate the quality and appropriateness of the diagnosis and treatment furnished in the CAH and of the treatment outcomes. The program requires that—

* * * * *

(4) The quality and appropriateness of the diagnosis and treatment furnished by doctors of medicine or osteopathy at the CAH are evaluated by—

(i) One hospital that is a member of the network, when applicable;

(ii) One PRO or equivalent entity; or

(iii) One other appropriate and qualified entity identified in the State rural health care plan; and

* * * * *

5. Section 485.645 is 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 provided post-hospital SNF care, as specified in § 409.30 of this chapter, and to be paid for SNF-level services, in accordance with paragraph (c) of this section.

(a) *Eligibility.* A CAH must meet the following eligibility requirements:

(1) The facility has been certified as a CAH by HCFA under § 485.606(b) of this subpart; and

(2) The facility provides not more than 25 inpatient beds, and the number of beds used at any time for acute care inpatient services does not exceed 15 beds. Any bed of a unit of the facility that is licensed as distinct-part SNF at the time the facility applies to the State for designation as a CAH is not counted under paragraph (a) of this section.

(b) *Facilities participating as rural primary care hospitals (RPCHs) on September 30, 1997.* These facilities must meet the following requirements:

(1) Notwithstanding paragraph (a) of this section, a CAH that participated in Medicare as a 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.

(2) A CAH that was granted swing-bed approval under paragraph (b)(1) of this section may request that its application to be a CAH and swing-bed provider be reevaluated under paragraph (a) 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 (b)(1) of this section and may not request reinstatement under paragraph (b)(1) of this section.

(c) *Payment.* Payment for inpatient RPCH 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. Payment for post-hospital SNF-level of care services is made in accordance with the payment provisions in § 413.114 of this chapter.

(d) *SNF services.* The CAH is substantially in compliance with the following SNF requirements contained in subpart B of part 483 of this chapter:

(1) Residents rights (§ 483.10(b)(3) through (b)(6), (d) (e), (h), (i), (j)(1)(vii) and (viii), (l), and (m) of this chapter).

(2) Admission, transfer, and discharge rights (§ 483.12(a) of this chapter).

(3) Resident behavior and facility practices (§ 483.13 of this chapter).

(4) Patient activities (§ 483.15(f) of this chapter), except that the services may be directed either by a qualified professional meeting the requirements of § 485.15(f)(2), or by an individual on the facility staff who is designated as the activities director and who serves in consultation with a therapeutic recreation specialist, occupational therapist, or other professional with experience or education in recreational therapy.

(5) Social services (§ 483.15(g) of this chapter).

(6) Comprehensive assessment, comprehensive care plan, and discharge planning (§ 483.20(b), (d), and (e) of this chapter).

(7) Specialized rehabilitative services (§ 483.45 of this chapter).

(8) Dental services (§ 483.55 of this chapter).

(9) Nutrition (§ 483.25(i) of this chapter).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: April 24, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: May 1, 1998.

Donna E. Shalala,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix: Illustration of Determination of GME Payment

HOSPITAL COST REPORTING PERIOD ENDING 12/31/96

Type of FTE	Number of FTEs
Unweighted	[1] 100

HOSPITAL COST REPORTING PERIOD ENDING 12/31/96—Continued

Type of FTE	Number of FTEs
Weighted	[1] 90

[1] Allopathic and Osteopathic Residents.

HOSPITAL COST REPORTING PERIOD BEGINNING 1/12/97

Type of FTE	Number of FTEs
Unweighted	[1] 110
Weighted	[1] 100
Adjusted Weighted	[2] 100.00
Dentists and Podiatrists	5.00
Total	105.00

[1] Allopathic and Osteopathic Residents.
[2] Since the FTE cap does not apply until 01/01/98 the adjusted weighted FTEs are equal to the weighted FTEs.

HOSPITAL COST REPORTING PERIOD BEGINNING 1/12/98

Type of FTE	Number of FTEs
Unweighted	[1] 110
Weighted	[1] 100
Adjusted Weighted	[2] 90.91
Dentists and Podiatrists	5.00
Total	95.91

[1] Allopathic and Osteopathic Residents.
[2] The adjusted weighted=((Current year's Weighted FTEs/Current year's Unweighted FTEs) * FTE cap)=((100/110) * 100).

HOSPITAL COST REPORTING PERIOD BEGINNING 1/12/99

Type of FTE	Number of FTEs
Unweighted	[1] 90
Weighted	[1] 90
Adjusted weighted	90
Dentists and podiatrists	5.00
Total	95.00

[1] Allopathic and Osteopathic Residents.

DETERMINATION OF PAYMENTS FOR HOSPITAL COST REPORTING PERIOD BEGINNING 1/12/99

Type of resident	Per resident amount	FTEs	Total resident amount
Primary Care	$50,000	80.00	$4,000,000
Other	47,000	15.00	705,000
		95.00	4,705,000

Total resident amount	Total number of FTEs	Average per resident amount
$4,705,000	95.00	[1] $49,526

Total # of FTEs (for 01/01/97)	Total # of FTEs (for 01/01/98)	Total # of FTEs (for 01/01/99)	3-year average FTEs
105.00	95.91	95.00	[2] 98.64

Average per resident amount	3-Year average FTEs	Aggregate approved amount
$49,526	98.64	[3] $4,885,096

Aggregate approved amount	Medicare patient load	Direct GME payment
$4,885,096	0.5	[4] $2,442,548

[1] The Average Per Resident Amount = (Total Resident Amount/Total number of FTEs).
[2] The 3-Year Average = (the sum of the Total number of FTEs for 3 cost reporting periods/3).
[3] The Aggregate Amount = (Average Per Resident Amount * 3-year Average FTEs).
[4] The Direct GME Payment = (Aggregate Approved Amount * Medicare Patient Load).

[FR Doc. 98–12231 Filed 5–8–98; 8:45 am]

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federal register

Tuesday
May 12, 1998

Part IV

Department of the Interior

Minerals Management Service

30 CFR Parts 202, et al.

Royalties on Gas, Gas Analysis Reports, Oil and Gas Production Measurement, Surface Commingling, and Security; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 216, and 250

RIN 1010–AC23

Royalties on Gas, Gas Analysis Reports, Oil and Gas Production Measurement, Surface Commingling, and Security

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This final rule amends MMS's regulations governing oil and gas operations in the Outer Continental Shelf (OCS) to update production measurement, surface commingling, and security requirements. It also amends the standards for reporting and paying royalties on gas. MMS needs this rule to implement a system to verify that gas sales are reported accurately.

EFFECTIVE DATES: July 13, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, Engineering and Research Branch, at (703) 787–1147.

SUPPLEMENTARY INFORMATION: On February 26, 1997, MMS published the proposed rule for 30 CFR part 250, Subpart L in the **Federal Register** (62 FR 8665). During the 90-day comment period that ended on May 27, 1997, MMS received comments from five organizations.

Similarly, on April 4, 1997, MMS published the proposed rule for 30 CFR parts 202 and 216 (62 FR 16121). During the 30-day comment period that ended on May 5, 1997, MMS did not receive any formal comments. This final rule combines both of these proposed rules. We have combined RIN numbers 1010–AB97 and 1010–AC23 and we are now using the most recent RIN 1010–AC23 for this rule. The rule is necessary to:

- Reflect current industry technology,
- Form the basis for a gas verification system (GVS), and
- Require tracking of gas lost or used on the lease.

The Response to Comments section discusses the comments that MMS received from the proposed rule on oil and gas production measurement, surface commingling, and security. We appreciate the suggestions and comments that we received.

Response to Comments

Section 250.181 Definitions

MMS received comments to revise the following definitions to make them clearer or to align them with industry use and standards. In many cases, we agreed and made the appropriate changes to the definition.

- *Allocation meter*—We revised the definition to make it clearer, but we did not align it with the standard industry definition because the term carries a different meaning for purposes of this subpart.
- *British Thermal Unit (Btu)*—We revised the definition to align it with text book use, but we did not add a requirement to use Gas Processors Association (GPA) standards to calculate the ideal heating value at this time. We are further analyzing the GPA standards.
- *Calibration*—We revised the definition for clarity. We also added a phrase to show that, in this subpart, calibration includes testing (verifying) and correcting (if necessary) a measuring device.
- *Fractional analysis*—We changed ''fractional'' to ''compositional'' analysis for clarity. However, we rejected the recommendation in the comments to state that it is always on a gas analysis report, because the compositional analyses may not be on that report.
- *Gas lost*—One commenter suggested that we define this term. We agree, and have added it to the final rule. Gas lost is gas that is neither sold nor used on the lease or unit nor used internally by the producer.
- *Gas allocation meter*—We deleted the definition because it is covered under the definition of allocation meter.
- *Gas meter*—We received a comment suggesting that we delete the term gas meter because it is not necessary. We agree and deleted it accordingly.
- *Gas processing plant and gas processing plant statement*—We revised the definitions for clarity. We received a comment to the effect that the inlet stream is not always measured for volume and quality and that the statement may be a large document. We will work with industry to get the information that we need in the most convenient format. Also, we do not expect to need more than a few gas processing plant statements per year. We are accounting for the cost in the information collection report.
- *Gas royalty meter malfunction*—We revised the definition for clarity.
- *Gas volume statement*—We revised the definition for clarity. We agree with comments to the effect that the owner of the meter is not always the transporter of the gas. We therefore eliminated the descriptive statement that the owner of the gas meter prepares the document.
- *Inventory tank*—We added the definition for inventory tank because we use it in this subpart.
- *Liquid hydrocarbon*—We revised the definition for clarity. Contrary to the suggestion of one commenter, we did not define liquid hydrocarbons as hydrocarbons that always pass through lease facilities, because the processing plants are sometimes located onshore and not on an OCS lease.
- *Natural gas*—We revised the definition of natural gas for clarity.
- *Operating meter*—We revised the definition to clarify that the term includes only royalty and allocation meters.
- *Pressure base and temperature base*—We revised the definitions to require that these bases be used for reporting quality as well as volume.
- *Prove*—We revised the definition to agree with industry standards.
- *Retrograde condensate*—We revised the definition to agree with industry standards and added the term ''pipeline'' condensate here and throughout this subpart.
- *Royalty meter*—We revised the definition for clarity and accuracy.
- *Royalty tank*—We added this definition because it was cited under § 250.182(l) and not previously defined.
- *You or your*—We changed the word ''contractor'' in this definition to ''lessees' representative'' because much of the work in this subpart is performed by the lessees' representative.

Section 250.182 Liquid Hydrocarbon Measurement

- *(b)(1)(i)—We received a comment to add turbine meters in addition to the positive displacement meters referenced in the proposed rule. We also received a comment that coriolis meters might be used. We agree. We have therefore made more general requirements.*
- *(b)(1)(v)—We added that a sediment and water monitor must be located upstream of the divert valve to recognize this common industry practice.*
- *(b)(4)(i)*—We received a comment suggesting that we reference the industry standards for sampling. We agree and we revised the language accordingly.
- *(b)(4)(iii)*—We received a comment to be more specific about the sample probe location. We agree and made the suggested changes.
- *(c)*—We distinguished the requirements for run tickets that result from royalty meters from the requirements for run tickets pertaining to royalty tanks because they should be

treated slightly differently. We also reorganized this paragraph in order of importance.

• *(d)(4)*—We added a statement that allows for provings on a schedule that is different than monthly if the Regional Supervisor approves. This allows for unique situations that may occur.

• *(e)(1)*—We received a suggestion to require that the master meter be proved at several different rates to allow for the development of a meter factor curve. We realize that industry sometimes does this, and we will continue to evaluate this suggestion. We may address this, as well as technology advances, in a future rulemaking on gas measurement after the GVS is implemented.

• *(h)(1)*—We received a comment to change this phrase to the passive voice. MMS did not adopt this recommendation because we are trying to write in the active voice to clarify who must meet the requirement. We also received a comment to list the decimal value and the percentage for the differences in proof runs. We did not adopt this recommendation throughout because, in some cases, the output is an absolute number and in other cases the calculation leads to a percentage. We therefore, kept them separate.

• *(h)(2)*—We received a comment to change the language on the master meter proof runs to conform with industry standards. We have adopted the recommendation.

• *(i)(1)(i)*—We received a comment to add the term ''inspect'' before adjusting a meter to conform with industry standards. We agree, and we revised the language.

• *(i)(2)(iii)*—We changed the location of reporting unregistered production from the proving report to the run ticket because this is standard practice.

• *(k)(1)*—We agree with a comment to add the modifier ''proportional to flow'' to clarify the meaning of taking a sample continuously. Therefore, we revised the language.

• *(k)(6)*—We received a comment that adjusting and reproving the meter (if a meter factor differs from a previous meter factor by a specified percentage) is an accounting adjustment and not a physical one. The comment is not accurate. This provision refers to a physical adjustment of the meter.

• *(k)(7) and (k)(8)*—We received a comment to combine these statements. We have not combined them because another commenter recommended that we recognize that turbine meters cannot be adjusted. Combining the statements would not properly list the requirements for turbine meters. Also, paragraph (k)(8) discusses the required procedure when the meter factor differs by seven percent or more, in contrast to paragraph (k)(7)'s applicability to a meter factor difference of between two and seven percent. However, we have clarified the language to more precisely delineate the differences.

• *(k)(9)*—We added clarification that MMS may witness allocation meter provings. While this is not a change in policy, there seemed to be some question in the comments regarding whether MMS may witness allocation meter provings in addition to royalty meter provings.

• *(l)*—We separated tank facilities into ''royalty'' and ''inventory'' tank facilities because they should be treated differently.

Section 250.183 Gas Measurement

• *(b)*—We received a comment recommending that we include ''operators'' with ''lessees'' as parties who must meet this section's requirements. We agree. However, since the term '' you'' or ''your'' expressly includes operators and other lessee's representatives, this objective is accomplished by using the term ''you,'' which we have done throughout the final rule.

• *(b)(2)*—We received a comment to add the term ''verifiable'' instead of the word ''complete'' before ''measurement.'' We agree, and we modified the language.

• *(b)(3)*—We received a comment to add the phrase that measurement components ''should demonstrate consistent levels of accuracy throughout the system'' instead of ''compatible with their connected systems.'' We added the phrase with the exception of the ''should.'' MMS regulations are replacing forms of ''shall'' with ''must.''

• *(b)(4)*—We received comments saying that real time data should be displayed at the flow computer only. We agree, and we eliminated the phrase in the second sentence and referenced the industry standards.

• *(b)(5)*—We received comments saying that using on-line chromatographic analyzers is not necessary and not an industry practice because spot samples are sometimes taken. We agree, and we modified the language to reflect this. However, we did not restrict it to royalty sales meters because, like the current requirements on gas measurement, this also applies to allocation meters. However, less than 10 percent of the approved meters are allocation meters. Also, because MMS does not want to burden industry with additional sampling requirements, we changed the requirement from ''monthly'' to at least ''every 6 months'' to correspond with current industry practice.

• *(b)(6)*—MMS may need to see the gas quality information gathered from sampling; therefore, we added a reporting requirement on gas sampling information that is already available to the lessee. However, we anticipate that we will only occasionally request the information.

• *(b)(7)*—We added that the standard conditions for reporting gross heating value reflect the same degree of water saturation as in the gas volume to agree with Royalty Management regulations. We understand that this is standard industry practice.

• *(b)(8)*—We received a comment that we need to clarify that we will accept copies of the gas volume statements. We agree, and we made this change. We also received a comment that it is unclear as to how and when the statements will be requested, and if this is a limited sampling program. The Regional Supervisor will request, from the lessee or the lessees' representative, a sampling of the statements, at various times during the year, covering the previous month. We expect the emphasis to be on OCS gas royalty meters.

• *(b)(9)*—We received comments saying that the data that the Regional Supervisor may request in this requirement is too open ended. We agree, and we modified the language accordingly. We recognize that occasionally the data that we need concerning volume and quality dispositions may not be on the gas volume statement; therefore, this requirement is meant to encompass that data. We also modified the Information Collection Request to reflect that, at first, this data may take longer to retrieve than we originally estimated. However, we feel that this will become routine after the first few submittals.

• *(c)(1)*—We received a comment saying that we should not change the current rates for calibrations. However, a monthly calibration is needed to ensure that the meters stay accurate, so we have not made the recommended change.

• *(c)(2)*—We received a comment saying that we should add ''test (verify), repair, or/and calibrate the meter.'' We agree that these are the steps; however, our definition of calibration includes these steps so we changed the language to say ''calibrate each meter by using the manufacturer's specifications.''

• *(c)(3)*—We deleted the reference to specific meter types because other meters may be used. We also recognize that, as the commenter said, gas turbine meters are not customarily calibrated

but are subject to operational testing. In addition, we added that the calibration should be as close as possible to the average hourly rate because we received a comment that the flow rate may be beyond the control of those responsible for calibration. We also received a comment that a meter factor curve should be allowed because it will increase accuracy. We are still evaluating this comment and we will analyze it for use in future rulemakings.

• *(c)(4)*—We received a comment that we should delete the term ''test data.'' We agree, and we changed the language to require that calibration reports, rather than test data, be retained.

• *(c)(5)*—We received a comment that MMS should witness only OCS royalty meter calibrations so we should change the rule to reflect this. We disagree. MMS may witness any calibrations for OCS royalty or allocation meters as defined in this subpart. In fact, the requirements in § 250.183 apply to both OCS gas royalty and allocation meters. This is not a change from the current requirements or the current policy. However, less than 10 percent of the approved meters are allocation meters. Inspections are needed if royalty is affected.

• *(d)*—We received a comment to add ''out of calibration or'' before ''malfunctioning'' because orifice meters are referred to as ''out of calibration.'' We agree, and we made the change. We also received a comment that a meter malfunction is when it is not operating within contractual tolerances. We agree, and we revised the language and the definition.

• *(d)(1)*—We received a comment that the requirement to calibrate gas meters should only refer to royalty meters. We disagree. Gas allocation meters must also be calibrated. This is not a change from current requirements.

• *(d)(2)(i)*—One commenter recommended removing the statement that MMS ''does not require retroactive volume adjustments for allocation beyond 21 days'' that was made in the proposed rule after the requirement to calculate the volume adjustment for the determinable period of a calibration error. The commenter felt that the quoted statement would hinder industry in obtaining monetary adjustments from purchasers for periods longer than 21 days for which adjustments for allocation would be nevertheless required because the error period could not be determined. We agree, and we revised the final rule accordingly.

• *(e)(1)(i)*—We received a comment to add that we are requiring only a copy of the gas processing plant statement. We agree, and we revised the final rule. We also received a comment to be more specific about what we are asking for on the statement. We agree, and the new paragraph (e)(1)(ii), specifies that we need the gross heating values of the inlet and residue streams if they are not reported on the gas plant statement. However, we believe that most gas plant statements will have the necessary information.

• *(e)(1)(ii)*—We received a comment saying that we should delete the requirement to submit gas volume statements for each meter facility because the information will already be on the gas volume statement that we may request. We agree, and we deleted the requirement.

• *(e)(1)(iii)*—We received a comment saying that gathering the compositional fractional analyses for the gas plant statements will be very time consuming for industry. We agree, and we deleted the term ''composite fractional analyses.''

• *(e)(2)*—One commenter inquired why MMS would inspect gas plants. MMS recognizes that most of the royalty measuring points for gas meters in the Gulf of Mexico OCS are located on OCS offshore facilities. However, that is not the case in the Pacific OCS where almost all of the oil and gas royalty measuring points are located at an onshore oil and gas plant facility and operated by the lessee.

Though most onshore oil and gas plants are on State owned property, the oil and gas that comes into the plant is still oil and gas produced from the Federal OCS and subject to all of the laws and regulations pertaining to Federal royalty and inspection requirements. This includes access to the onshore facility's Liquid Automatic Custody Transfer (LACT) Unit and gas sales meters for the purpose of witnessing a LACT meter proving, a gas meter calibration, or site security for both royalty measuring points. These inspections will continue to be conducted by MMS inspectors. However, we only expect to need information from a relatively few gas plants each year.

Section 250.184 Surface Commingling

• *(a)(2)(iii)*—We received a comment saying that this requirement was too open ended as stated. We agree. In the end, we deleted most of the specific requirements concerning the contents of a commingling application because we did not want to create a misunderstanding that no other kinds of information would ever be necessary. Because each commingling application is unique, it is best to contact the Regional Supervisor prior to submitting a commingling application.

• *(a)(3)*—We received a comment saying that MMS should publish the paper presented at the May 29, 1996, Acadian Flow Measurement Society Conference. Because it is only an example of a commingling application, we have not published it as part of the regulations. However, the paper is available to the public. Please contact the Regional Supervisor in the Gulf of Mexico OCS Region if you would like a copy.

• *(a)(4)*—We received a comment that MMS should delete this requirement [currently (a)(2)] because it is inappropriate. We agree that as written it may be confusing; therefore, we significantly re-wrote the requirement for clarity.

Section 250.185 Site Security

• *(a)(2)*—We received a request to clarify if this requirement pertains to onshore or offshore tanks and to stock or surge tanks. This applies to both inventory and royalty tanks (onshore and offshore) which are used in the royalty determination process. Therefore, by definition, this includes surge tanks. We clarified the requirement.

• *(b)(1)*—We received a comment to add the term ''meter'' after ''royalty.'' We agree, and we revised the final rule for clarification.

• *(b)(1)(i)*—We received a comment saying that it is impractical to seal the conduit leading to the control room. We agree, and we modified the language to clarify the location for the seals.

• *(b)(1)(ii)*—We received a comment requesting clarification on the seals for sampling systems. We agree, and we removed the term *chains*.

• *(b)(2)*—We received comments concerning our statement in the preamble that we may require seals on gas meters. A comment stated that it is impractical to seal an orifice meter. Another comment said that to seal all valves and gas metering devices in the Gulf of Mexico is needless. We did not intend to have orifice meter, or all valves and gas meter devices, sealed. Therefore, we changed the language to say *seal all bypass valves of gas royalty and allocation meters*. We are including the increased cost of the seals in our economic analysis.

Section 250.186 Measuring Gas Lost or Used on a Lease

In the final rule, MMS moved this section to new paragraphs in § 250.183 (f) (1) through (5) because it relates to gas measurement.

• *(a)*—We received comments that MMS should not require a lessee to measure the gas lost or used on a lease in every case because we currently allow them to either estimate or measure those volumes. We agree, and we modified the language.

• *(b)*—We received a comment that the cost of measuring gas lost or used on a lease would be substantial if the meters are not currently in place. We agree, and we modified the language to give the lessee the option of measuring or estimating the gas lost or used. We also received a question concerning what we mean by gas lost. Gas lost is gas that is neither sold nor used on the lease or unit nor used internally by the producer. We have added a definition of this term in § 250.181.

• *(d)*—We received a comment that documents are not always retained at the site but they can be easily obtained for an inspector to see. We agree, and we modified the language in the final rule. We also added that the documents must be kept for *at least* 2 years for consistency with audit requirements. If an audit occurs, MMS requires 6 years of documents under separate regulations governing audits. However, the inspectors will only need to see documents for the previous 2 years.

General Comments

• We received comments concerning the time it will take to submit copies of gas volume statements. We intend for this to be a sampling approach—on an ''as needed'' basis, upon the request of the Regional Supervisor. We realize that at first it will take longer to submit the copies of the statements. Also, occasionally we anticipate that the statement may not have the usual and customary volume and quality information or the saturation conditions. However, in time, the needed information should become relatively routine to obtain. We will work with industry to minimize the burden and to make the reporting and the methods of reporting as accommodating as possible. We also modified the information collection to reflect the possibility of some information being more difficult to obtain at first.

• We received comments on the subject of ''Documents Incorporated.'' The comment said that we need to incorporate three additional Chapters from the American Petroleum Institute (API) Manual of Petroleum Measurement Standard (MPMS). After reviewing the Chapters, we have incorporated: Chapter 1, Vocabulary; Chapter 20.1, Allocation Measurement; and Chapter 21.1, Electronic Gas Measurement as referenced in 30 CFR 250, Subpart A. MMS regulations that are different than the cited standards supercede the standard. For example, MMS has a few slightly different definitions and a different calibration rate than the cited standard, but MMS requirements will supercede the standard. Further, by adopting the API MPMS Chapter 20.1, Allocation Measurement, MMS is not automatically adopting the API MPMS Chapter 14.1, Collecting and Handling of Natural Gas Samples for Custody Transfer, which is cited in the standard document. We are reviewing that standard. Also, the new tabular format for the documents that we incorporate was created to assist users to easily find the citations for the documents that we incorporate by reference. We hope that you find this useful.

• In the proposed rule, MMS also sought comments on the applicable industry standards listed in 30 CFR 250.1 and incorporated by reference in the proposed rule (62 FR 8666). MMS received no negative comments on the use of those standards.

Executive Order (E.O.) 12866

This rule is not significant under E.O. 12866 and has not been reviewed by the Office of Management and Budget. The estimated total annual cost of compliance is less than $100 million, and the estimated level of newly imposed costs should not affect business and operating decisions in the OCS.

E.O. 12988

The Department of the Interior (DOI) has certified to the Office of Management and Budget (OMB) that this rule meets the applicable reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any year on State, local, and tribal governments, or the private sector.

Regulatory Flexibility Act

DOI has determined that because this rule applies to all OCS lessees, the lessees that are small businesses will be affected. However, the new economic burden, that includes collecting information and keeping records, is not a significant burden when compared to the amount of funding that is required to operate in the OCS. The annual burden to all OCS lessees is expected to be $186,550 for reporting and recordkeeping. In addition, the annual burden for complying with new seal and sampling requirements that are not standard practice is estimated to be $21,000. The impact is calculated using $35 per burden hour. In comparison, the average annual operating cost for each facility on the OCS is approximately $1 million per facility and $300,000 per well. This is in addition to the capital cost for the facility which may be greater than $200 million. Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Paperwork Reduction Act (PRA)

This rule contains information collections with different OMB approval numbers. The information collections are affected by this rule as shown in the following table.

The information collections in	Have the OMB approval number	and
Parts 202 and 216	1010–0040	Are not modified by this rule.
Subpart L of part 250	1010–0051	Are modified by this rule.

As part of the notice of proposed rulemaking (NPR) process, we submitted the revised information collection requirements in 30 CFR part 250, Subpart L, to OMB for approval.

OMB approved the information collection under OMB Control No. 1010-0051. A discussion of the comments received on the information collection aspects of the NPR for this subpart is included in the preamble. Based on changes made in this rule, we've submitted a revised information collection package to OMB for approval. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection aspects of this final rule will not take effect until approved by OMB. We will publish a notice in the **Federal Register** announcing the OMB approval of the revised collection of information associated with 30 CFR 250, Subpart L.

We invite the public and other Federal agencies to comment on this collection of information. Send comments regarding any aspect of the collection to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (1010–0051), 725 17th Street N.W., Washington, D.C. 20503. Send a copy of your comments to the Information Collection Clearance Officer, Minerals Management Service, 1849 C Street N.W., MS 4230, Washington, D.C. 20240. OMB is required to make a decision concerning the collection of information contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, your comments are best assured of being considered by OMB if OMB receives them by June 11, 1998.

This final rule for 30 CFR part 250, Subpart L, makes very few changes to the information collection requirements approved for the proposed rulemaking. Minor changes include relocating or separating various requirements for clarity and specificity. We reestimated the burdens for providing gas volume statements to reflect that, at first, these data may take longer to retrieve than we originally estimated. We also made slight adjustments to other estimates. There are two new requirements at §§ 250.182(a)(4) and (d)(4). The first requires lessees to submit pipeline (retrograde) condensate volumes upon request; and the second accommodates unique situations that may occur and allows for provings on a schedule that is different than monthly if the Regional Supervisor approves.

MMS collects the information required in Subpart L in order to ensure that the volumes of hydrocarbons produced are measured accurately, and royalties are paid on the proper volumes. Specifically, MMS uses the information to:

- Determine if measurement equipment is properly installed, provides accurate measurement of production on which royalty is due, and is operating properly;
- Obtain rates of production data in allocating the volumes of production measured at royalty sales meters which can be examined during field inspections;
- Ascertain if all removals of oil and condensate from the lease are reported;
- Determine the amount of oil that was shipped when measurements are taken by gauging the tanks rather than being measured by a meter;
- Ensure that the sales location is secure and production cannot be removed without the volumes being recorded; and
- Review proving reports to verify that data on run tickets are calculated and reported accurately.

Responses are mandatory. We will protect information considered proprietary under applicable law and under regulations at § 250.18 of this part and 30 CFR part 252 of this chapter.

Respondents are approximately 130 Federal OCS oil and gas lessees. The reporting and recordkeeping hour burden varies by section of the rule. We estimate the total burden will average approximately 41 hours per respondent. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may contact the MMS Information Collection Clearance Officer at 202/208–7744 to obtain a copy of the burden breakdown and the complete supporting statement submitted to OMB. In calculating the burdens, we've assumed that respondents perform some of the requirements and maintain records in the normal course of their activities. We consider these to be usual and customary. We invite your comments if you disagree with this assumption.

(1) We specifically solicit comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Are the burden hour estimates reasonable for the proposed collection?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on the applicants, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires us to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. We need your comments on this item. Your response should split the cost estimate into two components:

(a) Total capital and startup cost component; and

(b) Annual operation, maintenance, and purchase of services component.

Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

Takings Implication Assessment

DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

DOI determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 216

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Natural gas, Petroleum, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: April 24, 1998.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) is amending 30 CFR parts 202, 216, and 250 as follows:

PART 202—ROYALTIES

1. The authority citation for part 202 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*, 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*, 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*, 31 U.S.C. 9701 *et seq.*, 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

Subpart D—Federal and Indian Gas

2. Revise § 202.152(a)(1) to read as follows:

§ 202.152 Standards for reporting and paying royalties on gas.

(a)(1) If you are responsible for reporting production or royalties, you must:

(i) Report gas volumes and British thermal unit (Btu) heating values, if applicable, under the same degree of water saturation;

(ii) Report gas volumes in units of 1,000 cubic feet (mcf); and

(iii) Report gas volumes and Btu heating value at a standard pressure base of 14.73 pounds per square inch absolute (psia) and a standard temperature base of 60° F.

* * * * *

PART 216—PRODUCTION ACCOUNTING

1. The authority citation for part 216 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*, 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*, 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*, 31 U.S.C. 3716, 3720A, 9701, 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

Subpart B—Oil and Gas, General

2. Revise § 216.54 to read as follows:

§ 216.54 Gas Analysis Report.

When requested by MMS, any operator must file a Gas Analysis Report (GAR) (Form MMS–4055) for each royalty or allocation meter. The form must contain accurate and detailed gas analysis information. This requirement applies to offshore, onshore, or Indian leases.

(a) MMS may request a GAR when you sell gas, or transfer gas for processing, before the point of royalty computation.

(b) When MMS first requests this report, the report is due within 30 days. If MMS requests subsequent reports, they will be due no later than 45 days after the end of the month covered by the report.

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, et seq.

2. Revise § 250.1 to read as follows:

§ 250.1 Documents incorporated by reference.

(a) MMS is incorporating by reference the documents listed in the table in paragraph (d) of this section. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(1) MMS will publish any changes to these documents in the **Federal Register**.

(2) The rule change will become effective without prior opportunity to comment when MMS determines that the revisions to a document result in safety improvements or represent new industry standard technology, and do not impose undue costs on the affected parties.

(b) MMS has incorporated each document or specific portion by reference in the sections noted. The entire document is incorporated by reference, unless the text of the corresponding sections in this part calls for compliance with specific portions of the listed documents. In each instance, the applicable document is the specific edition or specific edition and supplement or addendum cited in this section.

(c) In accordance with §§ 250.3 (c), and 250.14(b), you may comply with a later edition of a specific document incorporated by reference provided:

(1) You demonstrate that compliance with the later edition provides a degree of protection, safety, or performance equal to or better than that which would be achieved by compliance with the listed edition; and

(2) You obtain the prior written approval for alternative compliance from the authorized MMS official.

(d) You may inspect these documents at the Minerals Management Service, 381 Elden Street, Room 3313, Herndon, Virginia; or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C.. You may obtain the documents from the publishing organizations at the addresses given in the following table.

For	Write to
ACI Standards	American Concrete Institute, P. O. Box 19150, Detroit, MI 48219.
AISC Standards	AISC—American Institute of Steel Construction, Inc., P.O. Box 4588, Chicago, IL 60680.
ANSI/ASME Codes	American National Standards Institute, Attention Sales Department, 1430 Broadway, New York, NY 10018; and/or American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017.
API Recommended Practices, Specs, Standards, Manual of Petroleum Measurement Standards (MPMS) chapters.	American Petroleum Institute, 1220 L Street N.W., Washington, D.C. 20005.
ASTM Standards	American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.
AWS Codes	American Welding Society, 550 N.W., LeJeune Road, P.O. Box 351040, Miami, FL 33135.
NACE Standards	National Association of Corrosion Engineers, P.O. Box 218340, Houston, TX 77218.

(e) In order to easily reference text of the corresponding sections with the list of documents incorporated by reference, the list is in alphanumerical order by organization and document.

Title of document	Incorporated by reference at
ACI Standard 318–95, Building Code Requirements for Reinforced Concrete, plus Commentary on Building Code Requirements for Reinforced Concrete (ACI 318R–95).	§ 250.138(b)(4)(i), (b)(6)(i), (b)(7), (b)(8)(i), (b)(9), (b)(10), (c)(3), (d)(1)(v), (d)(5), (d)(6), (d)(7), (d)(8), (d)(9), (e)(1)(i), (e)(2)(i).
ACI Standard 357–R–84, Guide for the Design and Construction of Fixed Offshore Concrete Structures, 1984.	§ 250.130(g);§ 250.138 (c)(2), (c)(3).
AISC Standard, Specification for Structural Steel for Buildings, Allowable Stress Design and Plastic Design, June 1, 1989, with Commentary.	§ 250.137(b)(1)(ii), (c)(4)(ii), (c)(4)(vii).
ANSI/ASME Boiler and Pressure Vessel Code, Section I, Power Boilers including Appendices, 1995 Edition.	§ 250.123(b)(1), (b)(1)(i); § 250.292(b)(1), (b)(1)(i).
ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Heating Boilers including Nonmandatory Appendices A, B, C, D, E, F, H, I, and J, and the Guide to Manufacturers Data Report Forms, 1995 Edition.	§ 250.123(b)(1), (b)(1)(i); § 250.292(b)(1), (b)(1)(i).
ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Pressure Vessels, Divisions 1 and 2, including Nonmandatory Appendices, 1995 Edition.	§ 250.123(b)(1), (b)(1)(i); § 250.292(b)(1), (b)(1)(i).
ANSI/ASME B 16.5–1988 (including Errata) and B 16.5a–1992 Addenda, Pipe Flanges and Flanged Fittings.	§ 250.152(b)(2).
ANSI/ASME B 31.8–1995, Gas Transmission and Distribution Piping Systems	§ 250.152(a).
ANSI Z88.2—1992, American National Standard for Respiratory Protection	§ 250.67(g)(4)(iv), (j)(13)(ii).
ANSI/ASME SPPE–1–1994 and SPPE–1d–1996, ADDENDA, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations.	§ 250.126(a)(2)(ii).
API RP 2A, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms Working Stress Design, Nineteenth Edition, August 1, 1991, API Stock No. 811–00200.	§ 250.130(g); § 250.142(a).
API RP 2D, Recommended Practice for Operation and Maintenance of Offshore Cranes, Third Edition, June 1, 1995, API Stock No. G02D03.	§ 250.20(c); § 250.260(g).
API RP 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems, Fourth Edition, July 1, 1994, with Errata dated June 1996, API Stock No. G14B04.	§ 250.121(e)(4); § 250.124(a)(1)(i); § 250.126(d).
API RP 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Fourth Edition, September 1, 1986, API Stock No. 811–07180.	§ 250.122(b), (e)(2); § 250.123(a), (b)(2)(i), (b)(4), (b)(5)(i), (b)(7), (b)(9)(v), (c)(2); § 250.124(a), (a)(5); § 250.152(d); § 250.154(b)(9); § 250.291(c), (d)(2); § 250.292(b)(2), (b)(4)(v); § 250.293(a).
API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fifth Edition, October 1, 1991, API Stock No. G07185.	§ 250.122(e)(3); § 250.291(b)(2), (d)(3).
API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms, Third Edition, September 1, 1991, API Stock No. G07190.	§ 250.53(c); § 250.123(b)(9)(v); § 250.292(b)(4)(v).
API RP 14G, Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms, Third Edition, December 1, 1993, API Stock No. G07194.	§ 250.123(b)(8), (b)(9)(v); § 250.292(b)(3), (b)(4)(v).
API RP 14H, Recommended Practice for Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore, Fourth Edition, July 1, 1994, API Stock No. G14H04.	§ 250.122(d); § 250.126(d).
API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, First Edition, June 1, 1991, API Stock No. G06005.	§ 250.53(b); § 250.122(e)(4)(i); § 250.123(b)(9)(i); § 250.291(b)(3); (d)(4)(i); § 250.292(b)(4)(i).
API RP 2556, Recommended Practice for Correcting Gauge Tables for Incrustation, Second Edition, August 1993, API Stock No. H25560.	§ 250.182(l)(4).
API Spec Q1, Specification for Quality Programs, Third Edition, June 1990, API Stock No. 811–00001a.	§ 250.126(a)(2)(ii).
API Spec 6A, Specification for Wellhead and Christmas Tree Equipment, Seventeenth Edition, February 1, 1996, API Stock No. G06A17.	§ 250.126 (a)(3); § 250.152(b)(1), (b)(2).
API Spec 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, First Edition, February 1, 1996, API Stock No. G06AV1.	§ 250.126(a)(3).
API Spec 6D, Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves), Twenty-first Edition, March 31, 1994, API Stock No. G03200.	§ 250.152(b)(1).
API Spec 14A, Specification for Subsurface Safety Valve Equipment, Ninth Edition, July 1, 1994, API Stock No. G14A09.	§ 250.126(a)(3).
API Spec 14D, Specification for Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, Ninth Edition, June 1, 1994, with Errata dated August 1, 1994, API Stock No. G07183.	§ 250.126(a)(3).
API Standard 2545, Method of Gaging Petroleum and Petroleum Products, October 1965, reaffirmed October 1992; also available as ANSI/American Society of Testing Materials (ASTM) D 1085–65, API Stock No. H25450.	§ 250.182(l)(4).
API Standard 2551, Standard Method for Measurement and Calibration of Horizontal Tanks, First Edition, 1965, reaffirmed October 1992; also available as ANSI/ASTM D 1410–65, reapproved 1984, API Stock No. H25510.	§ 250.182(l)(4).
API Standard 2552, Measurement and Calibration of Spheres and Spheroids, First Edition, 1966, reaffirmed October 1992; also available as ANSI/ASTM D 1408–65, reapproved 1984, API Stock No. H25520.	§ 250.182(l)(4).

Title of document	Incorporated by reference at
API Standard 2555, Method for Liquid Calibration of Tanks, September 1966, reaffirmed October 1992; also available as ANSI/ASTM D 1406–65, reapproved 1984, API Stock No. H25550.	§ 250.182(l)(4).
MPMS, Chapter 1, Vocabulary, Second Edition, July 1994, API Stock No. H01002	§ 250.181.
MPMS, Chapter 2, Tank Calibration, Section 2A, Measurement and Calibration of Upright Cylindrical Tanks by the Manual Strapping Method, First Edition, February 1995, API Stock No. H022A1.	§ 250.182(l)(4).
MPMS, Chapter 2, Section 2B, Calibration of Upright Cylindrical Tanks Using the Optical Reference Line Method, First Edition, March 1989; also available as ANSI/ASTM D4738–88, API Stock No. H30023.	§ 250.182(l)(4).
MPMS, Chapter 3, Tank Gauging, Section 1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, First Edition, December 1994, API Stock No. H031A1.	§ 250.182(l)(4).
MPMS, Chapter 3, Section 1B, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging, First Edition, April 1992, API Stock No. H30060.	§ 250.182(l)(4).
MPMS, Chapter 4, Proving Systems, Section 1, Introduction, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30081.	§ 250.182(a)(3),(f)(1).
MPMS, Chapter 4, Section 2, Conventional Pipe Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30082.	§ 250.182(a)(3),(f)(1).
MPMS, Chapter 4, Section 3, Small Volume Provers, First edition, July 1988, reaffirmed October 1993, API Stock No. H30083.	§ 250.182(a)(3),(f)(1).
MPMS, Chapter 4, Section 4, Tank Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30084.	§ 250.182(a)(3),(f)(1).
MPMS, Chapter 4, Section 5, Master-Meter Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30085.	§ 250.182(a)(3), (f)(1).
MPMS, Chapter 4, Section 6, Pulse Interpolation, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30086.	§ 250.182(a)(3), (f)(1).
MPMS, Chapter 4, Section 7, Field-Standard Test Measures, First Edition, October 1988, API Stock No. H30087.	§ 250.182(a)(3), (f)(1).
MPMS, Chapter 5, Metering, Section 1, General Considerations for Measurement by Meters, Third Edition, September 1995, API Stock No. H05013.	§ 250.182(a)(3).
MPMS, Chapter 5, Section 2, Measurement of Liquid Hydrocarbons by Displacement Meters, Second Edition, November 1987, reaffirmed October 1992, API Stock No. H30102.	§ 250.182(a)(3).
MPMS, Chapter 5, Section 3, Measurement of Liquid Hydrocarbons by Turbine Meters, Third Edition, September 1995, API Stock No. H05033.	§ 250.182(a)(3).
MPMS, Chapter 5, Section 4, Accessory Equipment for Liquid Meters, Third Edition, September 1995, with Errata, March 1996, API Stock No. H05043.	§ 250.182(a)(3).
MPMS, Chapter 5, Section 5, Fidelity and Security of Flow Measurement Pulsed-Data Transmission Systems, First Edition, June 1982, reaffirmed October 1992, API Stock No. H30105.	§ 250.182(a)(3).
MPMS, Chapter 6, Metering Assemblies, Section 1, Lease Automatic Custody Transfer (LACT) Systems, Second Edition, May 1991, API Stock No. H30121.	§ 250.182(a)(3).
MPMS, Chapter 6, Section 6, Pipeline Metering Systems, Second Edition, May 1991, API Stock No. H30126.	§ 250.182(a)(3).
MPMS, Chapter 6, Section 7, Metering Viscous Hydrocarbons, Second Edition, May 1991, API Stock No. H30127.	§ 250.182(a)(3).
MPMS, Chapter 7, Temperature Determination, Section 2, Dynamic Temperature Determination, Second Edition, March 1995, API Stock No. H07022.	§ 250.182 (a)(3), (l)(4).
MPMS, Chapter 7, Section 3, Static Temperature Determination Using Portable Electronic Thermometers, First Edition, July 1985, reaffirmed March 1990, API Stock No. H30143.	§ 250.182 (a)(3), (l)(4).
MPMS, Chapter 8, Sampling, Section 1, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, Third Edition, October 1995; also available as ANSI/ASTM D 4057–88, API Stock No. H30161.	§ 250.182 (b)(4)(i), (l)(4).
MPMS, Chapter 8, Section 2, Standard Practice for Automatic Sampling of Liquid Petroleum and Petroleum Products, Second Edition, October 1995; also available as ANSI/ASTM D 4177, API Stock No. H30162.	§ 250.182 (a)(3), (l)(4).
MPMS, Chapter 9, Density Determination, Section 1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products, First Edition, June 1981, reaffirmed October 1992; also available as ANSI/ASTM D 1298, API Stock No. H30181.	§ 250.182 (a)(3), (l)(4).
MPMS, Chapter 9, Section 2, Pressure Hydrometer Test Method for Density or Relative Density, First Edition, April 1982, reaffirmed October 1992, API Stock No. H30182.	§ 250.182 (a)(3), (l)(4).
MPMS, Chapter 10, Sediment and Water, Section 1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method, First Edition, April 1981, reaffirmed December 1993; also available as ANSI/ASTM D 473, API Stock No. H30201.	§ 250.182 (a)(3), (l)(4).
MPMS, Chapter 10, Section 2, Determination of Water in Crude Oil by Distillation Method, First Edition, April 1981, reaffirmed December 1993; also available as ANSI/ASTM D 4006, API Stock No. H30202.	§ 250.182 (a)(3), (l)(4).
MPMS, Chapter 10, Section 3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure), First Edition, April 1981, reaffirmed December 1993; also available as ANSI/ASTM D 4007, API Stock No. H30203.	§ 250.182 (a)(3), (l)(4).
MPMS, Chapter 10, Section 4, Determination of Sediment and Water in Crude Oil by the Centrifuge Method (Field Procedure), Second Edition, May 1988; also available as ANSI/ASTM D 96, API Stock No. H30204.	§ 250.182 (a)(3), (l)(4).

Title of document	Incorporated by reference at
MPMS, Chapter 11.1, Volume Correction Factors, Volume 1, Table 5A—Generalized Crude Oils and JP–4 Correction of Observed API Gravity to API Gravity at 60°F, and Table 6A—Generalized Crude Oils and JP–4 Correction of Observed API Gravity to API Gravity at 60°F, First Edition, August 1980, reaffirmed October 1993; also available as ANSI/ASTM D 1250, API Stock No. H27000.	§ 250.182 (a)(3), (g)(3), (l)(4).
MPMS, Chapter 11.2.1, Compressibility Factors for Hydrocarbons: 0–90° API Gravity Range, First Edition, August 1984, reaffirmed May 1996, API Stock No. H27300.	§ 250.182(a)(3),(g)(4).
MPMS, Chapter 11.2.2, Compressibility Factors for Hydrocarbons: 0.350–0.637 Relative Density (60°F/60°F) and −50°F to 140°F Metering Temperature, Second Edition, October 1986, reaffirmed October 1992; also available as Gas Processors Association (GPA) 8286–86, API Stock No. H27307.	§ 250.182(a)(3),(g)(4).
MPMS, Chapter 11, Physical Properties Data, Addendum to Section 2.2, Compressibility Factors for Hydrocarbons, Correlation of Vapor Pressure for Commercial Natural Gas Liquids, First Edition, December 1994; also available as GPA TP–15, API Stock No. H27308.	§ 250.182(a)(3).
MPMS, Chapter 11.2.3, Water Calibration of Volumetric Provers, First Edition, August 1984, reaffirmed, May 1996, API Stock No. H27310.	§ 250.182(f)(1).
MPMS, Chapter 12, Calculation of Petroleum Quantities, Section 2, Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Including Parts 1 and 2, Second Edition, May 1995; also available as ANSI/API MPMS 12.2–1981, API Stock No. H30302.	§ 250.182(a)(3), (g)(1), (g)(2)
MPMS, Chapter 14, Natural Gas Fluids Measurement, Section 3, Concentric Square-Edged Orifice Meters, Part 1, General Equations and Uncertainty Guidelines, Third Edition, September 1990; also available as ANSI/API 2530, Part 1, 1991, API Stock No. H30350.	§ 250.183(b)(2).
MPMS, Chapter 14, Section 3, Part 2, Specification and Installation Requirements, Third Edition, February 1991; also available as ANSI/API 2530, Part 2, 1991, API Stock No. H30351.	§ 250.183(b)(2).
MPMS, Chapter 14, Section 3, Part 3, Natural Gas Applications, Third Edition, August 1992; also available as ANSI/API 2530, Part 3, API Stock No. H30353.	§ 250.183(b)(2).
MPMS, Chapter 14, Section 5, Calculation of Gross Heating Value, Relative Density, and Compressibility Factor for Natural Gas Mixtures From Compositional Analysis, Revised, 1996; also available as ANSI/API MPMS 14.5–1981, order from Gas Processors Association, 6526 East 60th Street, Tulsa, Oklahoma 74145.	§ 250.183(b)(2).
MPMS, Chapter 14, Section 6, Continuous Density Measurement, Second Edition, April 1991, API Stock No. H30346.	§ 250.183(b)(2).
MPMS, Chapter 14, Section 8, Liquefied Petroleum Gas Measurement, First Edition, February 1983, reaffirmed May 1996, API Stock No. H30348.	§ 250.183(b)(2).
MPMS, Chapter 20, Section 1, Allocation Measurement, First Edition, September 1993, API Stock No. H30701.	§ 250.182(k)(1).
MPMS, Chapter 21, Section 1, Electronic Gas Measurement, First Edition, September 1993, API Stock No. H30730.	§ 250.183(b)(4).
ASTM Standard C33–93, Standard Specification for Concrete Aggregates including Nonmandatory Appendix.	§ 250.138(b)(4)(i).
ASTM Standard C94–96, Standard Specification for Ready-Mixed Concrete	§ 250.138(e)(2)(i).
ASTM Standard C150–95a, Standard Specification for Portland Cement	§ 250.138(b)(2)(i).
ASTM Standard C330–89, Standard Specification for Lightweight Aggregates for Structural Concrete.	§ 250.138(b)(4)(i).
ASTM Standard C595–94, Standard Specification for Blended Hydraulic Cements	§ 250.138(b)(2)(i).
D1.1–96, Structural Welding Code—Steel, 1996, including Commentary	§ 250.137(b)(1)(i).
DI.4–79, Structural Welding Code—Reinforcing Steel, 1979	§ 250.138 (e)(3)(ii).
NACE Standard MR–01–75–96, Sulfide Stress Cracking Resistant Metallic Materials for Oil Field Equipment, January 1996.	§ 250.67 (p)(2).
NACE Standard RP 0176–94, Standard Recommended Practice, Corrosion Control of Steel Fixed Offshore Platforms Associated with Petroleum Production.	§ 250.137(d).

3. Revise Subpart L to read as follows:

Subpart L—Oil and Gas Production Measurement Surface Commingling, and Security

Sec.
250.180 Question index table.
250.181 Definitions.
250.182 Liquid hydrocarbon measurement.
250.183 Gas measurement.
250.184 Surface commingling.
250.185 Site security.

Subpart L—Oil and Gas Production Measurement, Surface Commingling, and Security

§ 250.180 Question Index Table.

The table in this section lists questions concerning Oil and Gas Production Measurement, Surface Commingling, and Security.

Frequently asked questions	CFR citation
1. What are the requirements for measuring liquid hydrocarbons?	§ 250.182(a).
2. What are the requirements for liquid hydrocarbon royalty meters?	§ 250.182(b).
3. What are the requirements for run tickets?	§ 250.182(c).
4. What are the requirements for liquid hydrocarbon royalty meter provings?	§ 250.182(d).
5. What are the requirements for calibrating a master meter used in royalty meter provings?	§ 250.182(e).
6. What are the requirements for calibrating mechanical-displacement provers and tank provers?	§ 250.182(f).

Frequently asked questions	CFR citation
7. What correction factors must I use when proving meters with a mechanical displacement prover, tank prover, or master meter?.	§ 250.182(g).
8. What are the requirements for establishing and applying operating meter factors for liquid hydrocarbons?	§ 250.182(h).
9. Under what circumstances does a liquid hydrocarbon royalty meter need to be taken out of service, and what must I do?	§ 250.182(i).
10. How must I correct gross liquid hydrocarbon volumes to standard conditions?	§ 250.182(j).
11. What are the requirements for liquid hydrocarbon allocation meters?	§ 250.182(k).
12. What are the requirements for royalty and inventory tank facilities ?	§ 250.182(l).
13. To which meters do MMS requirements for gas measurement apply?	§ 250.183(a).
14. What are the requirements for measuring gas?	§ 250.183(b).
15. What are the requirements for gas meter calibrations?	§ 250.183(c).
16. What must I do if a gas meter is out of calibration or malfunctioning?	§ 250.183(d).
17. What are the requirements when natural gas from a Federal lease on the OCS is transferred to a gas plant before royalty determination?.	§ 250.183(e).
18. What are the requirements for measuring gas lost or used on a lease?	§ 250.183(f).
19. What are the requirements for the surface commingling of production?	§ 250.184(a).
20. What are the requirements for a periodic well test used for allocation?	§ 250.184(b).
21. What are the requirements for site security?	§ 250.185(a).
22. What are the requirements for using seals?	§ 250.185(b).

§ 250.181 Definitions.

Terms not defined in this section have the meanings given in the applicable chapter of the API MPMS, which is incorporated by reference in 30 CFR 250.1. Terms used in Subpart L have the following meaning:

Allocation meter—a meter used to determine the portion of hydrocarbons attributable to one or more platforms, leases, units, or wells, in relation to the total production from a royalty or allocation measurement point.

API MPMS—the American Petroleum Institute's Manual of Petroleum Measurement Standards, chapters 1, 20, and 21.

British Thermal Unit (Btu)—the amount of heat needed to raise the temperature of one pound of water from 59.5 degrees Fahrenheit (59.5 °F) to 60.5 degrees Fahrenheit (60.5 °F) at standard pressure base (14.73 pounds per square inch absolute (psia)).

Calibration—testing (verifying) and correcting, if necessary, a measuring device to industry accepted, manufacturer's recommended, or regulatory required standard of accuracy.

Compositional Analysis—separating mixtures into identifiable components expressed in mole percent.

Gas lost—gas that is neither sold nor used on the lease or unit nor used internally by the producer.

Gas processing plant—an installation that uses any process designed to remove elements or compounds (hydrocarbon and non-hydrocarbon) from gas, including absorption, adsorption, or refrigeration. Processing does not include treatment operations, including those necessary to put gas into marketable conditions such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, desulphurization, and compression. The changing of pressures or temperatures in a reservoir is not processing.

Gas processing plant statement—a monthly statement showing the volume and quality of the inlet or field gas stream and the plant products recovered during the period, volume of plant fuel, flare and shrinkage, and the allocation of these volumes to the sources of the inlet stream.

Gas royalty meter malfunction—an error in any component of the gas measurement system which exceeds contractual tolerances.

Gas volume statement—a monthly statement showing gas measurement data, including the volume (Mcf) and quality (Btu) of natural gas which flowed through a meter.

Inventory tank—a tank in which liquid hydrocarbons are stored prior to royalty measurement. The measured volumes are used in the allocation process.

Liquid hydrocarbons (free liquids)—hydrocarbons which exist in liquid form at standard conditions after passing through separating facilities.

Malfunction factor—a liquid hydrocarbon royalty meter factor that differs from the previous meter factor by an amount greater than 0.0025.

Natural gas—a highly compressible, highly expandable mixture of hydrocarbons which occurs naturally in a gaseous form and passes a meter in vapor phase.

Operating meter—a royalty or allocation meter that is used for gas or liquid hydrocarbon measurement for any period during a calibration cycle.

Pressure base—the pressure at which gas volumes and quality are reported. The standard pressure base is 14.73 psia.

Prove—to determine (as in meter proving) the relationship between the volume passing through a meter at one set of conditions and the indicated volume at those same conditions.

Pipeline (retrograde) condensate—liquid hydrocarbons which drop out of the separated gas stream at any point in a pipeline during transmission to shore.

Royalty meter—a meter approved for the purpose of determining the volume of gas, oil, or other components removed, saved, or sold from a Federal lease.

Royalty tank—an approved tank in which liquid hydrocarbons are measured and upon which royalty volumes are based.

Run ticket—the invoice for liquid hydrocarbons measured at a royalty point.

Sales meter—a meter at which custody transfer takes place (not necessarily a royalty meter).

Seal—a device or approved method used to prevent tampering with royalty measurement components.

Standard conditions—atmospheric pressure of 14.73 pounds per square inch absolute (psia) and 60° F.

Surface commingling—the surface mixing of production from two or more leases or units prior to measurement for royalty purposes.

Temperature base—the temperature at which gas and liquid hydrocarbon volumes and quality are reported. The standard temperature base is 60° F.

You or your—the lessee or the operator or other lessees' representative engaged in operations in the Outer Continental Shelf (OCS).

§ 250.182 Liquid hydrocarbon measurement.

(a) *What are the requirements for measuring liquid hydrocarbons?* You must:

(1) Submit a written application to, and obtain approval from, the Regional

Supervisor before commencing liquid hydrocarbon production or making changes to previously approved measurement procedures;

(2) Use measurement equipment that will accurately measure the liquid hydrocarbons produced from a lease or unit;

(3) Use procedures and correction factors according to the applicable chapters of the API MPMS as incorporated by reference in 30 CFR 250.1, when obtaining net standard volume and associated measurement parameters; and

(4) When requested by the Regional Supervisor, provide the pipeline (retrograde) condensate volumes as allocated to the individual leases or units.

(b) *What are the requirements for liquid hydrocarbon royalty meters?* You must:

(1) Ensure that the royalty meter facilities include the following approved components (or other MMS-approved components) which must be compatible with their connected systems:

(i) A meter equipped with a nonreset totalizer;

(ii) A calibrated mechanical displacement (pipe) prover, master meter, or tank prover;

(iii) A proportional-to-flow sampling device pulsed by the meter output;

(iv) A temperature measurement or temperature compensation device; and

(v) A sediment and water monitor with a probe located upstream of the divert valve.

(2) Ensure that the royalty meter facilities accomplish the following:

(i) Prevent flow reversal through the meter;

(ii) Protect meters subjected to pressure pulsations or surges;

(iii) Prevent the meter from being subjected to shock pressures greater than the maximum working pressure; and

(iv) Prevent meter bypassing.

(3) Maintain royalty meter facilities to ensure the following:

(i) Meters operate within the gravity range specified by the manufacturer;

(ii) Meters operate within the manufacturer's specifications for maximum and minimum flow rate for linear accuracy; and

(iii) Meters are reproven when changes in metering conditions affect the meters' performance such as changes in pressure, temperature, density (water content), viscosity, pressure, and flow rate.

(4) Ensure that sampling devices conform to the following:

(i) The sampling point is in the flowstream immediately upstream or downstream of the meter or divert valve (in accordance with the API MPMS as incorporated by reference in 30 CFR 250.1);

(ii) The sample container is vapor-tight and includes a power mixing device to allow complete mixing of the sample before removal from the container; and

(iii) The sample probe is in the center half of the pipe diameter in a vertical run and is located at least three pipe diameters downstream of any pipe fitting within a region of turbulent flow. The sample probe can be located in a horizontal pipe if adequate stream conditioning such as power mixers or static mixers are installed upstream of the probe according to the manufacturer's instructions.

(c) *What are the requirements for run tickets?* You must:

(1) For royalty meters, ensure that the run tickets clearly identify all observed data, all correction factors not included in the meter factor, and the net standard volume.

(2) For royalty tanks, ensure that the run tickets clearly identify all observed data, all applicable correction factors, on/off seal numbers, and the net standard volume.

(3) Pull a run ticket at the beginning of the month and immediately after establishing the monthly meter factor or a malfunction meter factor.

(4) Send all run tickets for royalty meters and tanks to the Regional Supervisor within 15 days after the end of the month;

(d) *What are the requirements for liquid hydrocarbon royalty meter provings?* You must:

(1) Permit MMS representatives to witness provings;

(2) Ensure that the integrity of the prover calibration is traceable to test measures certified by the National Institute of Standards and Technology;

(3) Prove each operating royalty meter to determine the meter factor monthly, but the time between meter factor determinations must not exceed 42 days;

(4) Obtain approval from the Regional Supervisor before proving on a schedule other than monthly; and

(5) Submit copies of all meter proving reports for royalty meters to the Regional Supervisor monthly within 15 days after the end of the month.

(e) *What are the requirements for calibrating a master meter used in royalty meter provings?* You must:

(1) Calibrate the master meter to obtain a master meter factor before using it to determine operating meter factors;

(2) Use a fluid of similar gravity, viscosity, temperature, and flow rate as the liquid hydrocarbons that flow through the operating meter to calibrate the master meter;

(3) Calibrate the master meter monthly, but the time between calibrations must not exceed 42 days;

(4) Calibrate the master meter by recording runs until the results of two consecutive runs (if a tank prover is used) or five out of six consecutive runs (if a mechanical-displacement prover is used) produce meter factor differences of no greater than 0.0002. Lessees must use the average of the two (or the five) runs that produced acceptable results to compute the master meter factor;

(5) Install the master meter upstream of any back-pressure or reverse flow check valves associated with the operating meter. However, the master meter may be installed either upstream or downstream of the operating meter; and

(6) Keep a copy of the master meter calibration report at your field location for 2 years.

(f) *What are the requirements for calibrating mechanical-displacement provers and tank provers?* You must:

(1) Calibrate mechanical-displacement provers and tank provers at least once every 5 years according to the API MPMS as incorporated by reference in 30 CFR 250.1; and

(2) Submit a copy of each calibration report to the Regional Supervisor within 15 days after the calibration.

(g) *What correction factors must a I use when proving meters with a mechanical-displacement prover, tank prover, or master meter?* Calculate the following correction factors using the API MPMS as referenced in 30 CFR 250, Subpart A:

(1) The change in prover volume due to the effect of temperature on steel (Cts);

(2) The change in prover volume due to the effect of pressure on steel (Cps);

(3) The change in liquid volume due to the effect of temperature on a liquid (Ctl); and

(4) The change in liquid volume due to the effect of pressure on a liquid (Cpl).

(h) *What are the requirements for establishing and applying operating meter factors for liquid hydrocarbons?* (1) If you use a mechanical-displacement prover, you must record proof runs until five out of six consecutive runs produce a difference between individual runs of no greater than .05 percent. You must use the average of the five accepted runs to compute the meter factor.

(2) If you use a master meter, you must record proof runs until three consecutive runs produce a total meter

factor difference of no greater than 0.0005. The flow rate through the meters during the proving must be within 10 percent of the rate at which the line meter will operate. The final meter factor is determined by averaging the meter factors of the three runs;

(3) If you use a tank prover, you must record proof runs until two consecutive runs produce a meter factor difference of no greater than .0005. The final meter factor is determined by averaging the meter factors of the two runs; and

(4) You must apply operating meter factors forward starting with the date of the proving.

(i) *Under what circumstances does a liquid hydrocarbon royalty meter need to be taken out of service, and what must I do?* (1) If the difference between the meter factor and the previous factor exceeds 0.0025 it is a malfunction factor, and you must:

(i) Remove the meter from service and inspect it for damage or wear;

(ii) Adjust or repair the meter, and reprove it;

(iii) Apply the average of the malfunction factor and the previous factor to the production measured through the meter between the date of the previous factor and the date of the malfunction factor; and

(iv) Indicate that a meter malfunction occurred and show all appropriate remarks regarding subsequent repairs or adjustments on the proving report.

(2) If a meter fails to register production, you must:

(i) Remove the meter from service, repair and reprove it;

(ii) Apply the previous meter factor to the production run between the date of that factor and the date of the failure; and

(iii) Estimate and report unregistered production on the run ticket.

(3) If the results of a royalty meter proving exceed the run tolerance criteria and all measures excluding the adjustment or repair of the meter cannot bring results within tolerance, you must:

(i) Establish a factor using proving results made before any adjustment or repair of the meter; and

(ii) Treat the established factor like a malfunction factor (see paragraph (i)(1) of this section).

(j) *How must I correct gross liquid hydrocarbon volumes to standard conditions?* To correct gross liquid hydrocarbon volumes to standard conditions, you must:

(1) Include Cpl factors in the meter factor calculation or list and apply them on the appropriate run ticket.

(2) List Ctl factors on the appropriate run ticket when the meter is not automatically temperature compensated.

(k) *What are the requirements for liquid hydrocarbon allocation meters?* For liquid hydrogen allocation meters you must:

(1) Take samples continuously proportional to flow or daily (use the procedure in the applicable chapter of the API MPMS as incorporated by reference in 30 CFR 250.1;

(2) For turbine meters, take the sample proportional to the flow only;

(3) Prove allocation meters monthly if they measure 50 or more barrels per day per meter; or

(4) Prove allocation meters quarterly if they measure less than 50 barrels per day per meter;

(5) Keep a copy of the proving reports at the field location for 2 years;

(6) Adjust and reprove the meter if the meter factor differs from the previous meter factor by more than 2 percent and less than 7 percent;

(7) For turbine meters, remove from service, inspect and reprove the meter if the factor differs from the previous meter factor by more than 2 percent and less than 7 percent;

(8) Repair and reprove, or replace and prove the meter if the meter factor differs from the previous meter factor by 7 percent or more; and

(9) Permit MMS representatives to witness provings.

(l) *What are the requirements for royalty and inventory tank facilities?* You must:

(1) Equip each royalty and inventory tank with a vapor-tight thief hatch, a vent-line valve, and a fill line designed to minimize free fall and splashing;

(2) For royalty tanks, submit a complete set of calibration charts (tank tables) to the Regional Supervisor before using the tanks for royalty measurement;

(3) For inventory tanks, retain the calibration charts for as long as the tanks are in use and submit them to the Regional Supervisor upon request; and

(4) Obtain the volume and other measurement parameters by using correction factors and procedures in the API MPMS as incorporated by reference in 30 CFR 250.1.

§ 250.183 Gas measurement.

(a) *To which meters do MMS requirements for gas measurement apply?* MMS requirements for gas measurements apply to all OCS gas royalty and allocation meters.

(b) *What are the requirements for measuring gas?* You must:

(1) Submit a written application to and obtain approval from the Regional Supervisor before commencing gas production or making changes to previously approved measurement procedures.

(2) Design, install, use, maintain, and test measurement equipment to ensure accurate and verifiable measurement. You must follow the recommendations in API MPMS as incorporated by reference in 30 CFR 250.1.

(3) Ensure that the measurement components demonstrate consistent levels of accuracy throughout the system.

(4) Equip the meter with a chart or electronic data recorder. If an electronic data recorder is used, you must follow the recommendations in API MPMS as referenced in 30 CFR 250.1.

(5) Take proportional-to-flow or spot samples upstream or downstream of the meter at least once every 6 months.

(6) When requested by the Regional Supervisor, provide available information on the gas quality.

(7) Ensure that standard conditions for reporting gross heating value Btu are at a base temperature of 60° F and at a base pressure of 14.73 psia and reflect the same degree of water saturation as in the gas volume.

(8) When requested by the Regional Supervisor, submit copies of gas volume statements for each requested gas meter. Show whether gas volumes and gross Btu heating values are reported at saturated or unsaturated conditions; and

(9) When requested by the Regional Supervisor, provide volume and quality statements on dispositions other than those on the gas volume statement.

(c) *What are the requirements for gas meter calibrations?* You must:

(1) Calibrate meters monthly, but do not exceed 42 days between calibrations;

(2) Calibrate each meter by using the manufacturer's specifications;

(3) Conduct calibrations as close as possible to the average hourly rate of flow since the last calibration;

(4) Retain calibration reports at the field location for 2 years, and send the reports to the Regional Supervisor upon request; and

(5) Permit MMS representatives to witness calibrations.

(d) *What must I do if a gas meter is out of calibration or malfunctioning?* If a gas meter is out of calibration or malfunctioning, you must:

(1) If the readings are greater than the contractual tolerances, adjust the meter to function properly or remove it from service and replace it.

(2) Correct the volumes to the last acceptable calibration as follows:

(i) If the duration of the error can be determined, calculate the volume adjustment for that period.

(ii) If the duration of the error cannot be determined, apply the volume adjustment to one-half of the time

elapsed since the last calibration or 21 days, whichever is less.

(e) *What are the requirements when natural gas from a Federal lease on the OCS is transferred to a gas plant before royalty determination?* If natural gas from a Federal lease on the OCS is transferred to a gas plant before royalty determination:

(1) You must provide the following to the Regional Supervisor upon request:

(i) A copy of the monthly gas processing plant allocation statement; and

(ii) Gross heating values of the inlet and residue streams when not reported on the gas plant statement.

(2) You must permit MMS to inspect the measurement and sampling equipment of natural gas processing plants that process Federal production.

(f) *What are the requirements for measuring gas lost or used on a lease?* (1) You must either measure or estimate the volume of gas lost or used on a lease.

(2) If you measure the volume, document the measurement equipment used and include the volume measured.

(3) If you estimate the volume, document the estimating method, the data used, and the volumes estimated.

(4) You must keep the documentation, including the volume data, easily obtainable for inspection at the field location for at least 2 years, and must retain the documentation at a location of your choosing for at least 7 years after the documentation is generated, subject to all other document retention and production requirements in 30 U.S.C. 1713 and 30 CFR part 212.

(5) Upon the request of the Regional Supervisor, you must provide copies of the records.

§ 250.184 Surface commingling.

(a) *What are the requirements for the surface commingling of production?* You must:

(1) Submit a written application to and obtain approval from the Regional Supervisor before commencing the commingling of production or making changes to previously approved commingling applications.

(2) Upon the request of the Regional Supervisor, lessees who deliver State lease production into a Federal commingling system must provide volumetric or fractional analysis data on the State lease production through the designated system operator.

(b) *What are the requirements for a periodic well test used for allocation?* You must:

(1) Conduct a well test at least once every 2 months unless the Regional Supervisor approves a different frequency;

(2) Follow the well test procedures in 30 CFR part 250, Subpart K; and

(3) Retain the well test data at the field location for 2 years.

§ 250.185 Site security.

(a) *What are the requirements for site security?* You must:

(1) Protect Federal production against production loss or theft;

(2) Post a sign at each royalty or inventory tank which is used in the royalty determination process. The sign must contain the name of the facility operator, the size of the tank, and the tank number;

(3) Not bypass MMS-approved liquid hydrocarbon royalty meters and tanks; and

(4) Report the following to the Regional Supervisor as soon as possible, but no later than the next business day after discovery:

(i) Theft or mishandling of production;

(ii) Tampering or bypassing any component of the royalty measurement facility; and

(iii) Falsifying production measurements.

(b) *What are the requirements for using seals?* You must:

(1) Seal the following components of liquid hydrocarbon royalty meter installations to ensure that tampering cannot occur without destroying the seal:

(i) Meter component connections from the base of the meter up to and including the register;

(ii) Sampling systems including packing device, fittings, sight glass, and container lid;

(iii) Temperature and gravity compensation device components;

(iv) All valves on lines leaving a royalty or inventory storage tank, including load-out line valves, drain-line valves, and connection-line valves between royalty and non-royalty tanks; and

(v) Any additional components required by the Regional Supervisor.

(2) Seal all bypass valves of gas royalty and allocation meters.

(3) Number and track the seals and keep the records at the field location for at least 2 years; and

(4) Make the records of seals available for MMS inspection.

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Part V

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Grant Funds Availability and Proposals (RFP) Request for the Community Food Projects Competitive Grants Program; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Announcement of Availability of Grant Funds and Request for Proposals (RFP) for the Community Food Projects Competitive Grants Program

REQUEST FOR PROPOSALS (RFP): Community Food Projects Competitive Grants Program.

SUMMARY: The Federal Agriculture Improvement and Reform Act of 1996 established new authority for a program of Federal grants to support the development of community food projects designed to meet the food needs of low-income people; increase the self-reliance of communities in providing for their own food needs; and promote comprehensive responses to local food, farm, and nutrition issues.

This RFP sets out the objectives for these projects, the eligibility criteria for projects and applicants, and the application procedures. Proposals are requested for projects designed to increase food security in a community (termed Community Food Projects).

This RFP contains the entire set of instructions needed to apply for a Fiscal Year (FY) 1998 Community Food Projects Competitive Grants Program (CFPCGP) grant. A key change from last year's RFP is that there is no solicitation this fiscal year for training and technical assistance proposals.

DATE: Applications must be received on or before June 19, 1998. (See Part IV—Submission of a proposal below for information on where and when to submit an application.) Proposals received after June 19, 1998 will be returned without review.

FOR FURTHER INFORMATION CONTACT: Dr. Mark R. Bailey, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2241, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2241; telephone: (202) 401–1898; Internet: mbailey@reeusda.gov., or Dr. Elizabeth Tuckermanty, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2240, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2240, telephone: (202) 205–0241; Internet: etuckermanty@reeusda.gov

Table of Contents

Part I—General Information

A. Legislative Authority
B. Definitions
C. Eligibility

Part II—Program Description

A. Purpose and Scope of the Program
B. Available Funds and Award Limitations
C. Matching Funds Requirement

Part III—Preparation of a Proposal

A. Program Application Materials
B. Content of a Proposal

Part IV—Submission of a Proposal

A. What to Submit
B. Where and When to Submit
C. Acknowledgment of Proposals

Part V—Selection Process and Evaluation Criteria

A. Selection Process
B. Evaluation Criteria

PART VI—Supplementary Information:

A. Access to Review Information
B. Grant Awards
C. Use of Funds; Changes
D. Other Federal Statutes and Regulations that Apply
E. Confidential Aspects of Proposals and Awards
F. Evaluation of Program

Part I—General Information

A. Legislative Authority

Section 25 of the Food Stamp Act of 1977, as amended by Section 401(h) of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. No. 104–127) (7 U.S.C. 2034), authorized a new program of Federal grants to support the development of community food projects; $16 million is authorized over seven years (1996–2002). For FY 1998, approximately $2.5 million is available ($2.5 million has been authorized in each subsequent year through fiscal year 2002). These grants are intended to assist eligible private nonprofit entities that need a one-time infusion of Federal dollars to establish and sustain a multi-purpose community food project.

B. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable:

(1) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service and any other officer or employee of the Department to whom the authority involved may be delegated.

(2) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(3) *Authorized organizational representative* means the president, director, or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

(4) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) *Cash contributions* means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

(6) *Community Food Project* is a project that requires a one-time infusion of Federal assistance to become self-sustaining and is designed to: (i) meet the food needs of low-income people; (ii) increase the self-reliance of communities in providing for their own food needs; and (iii) promote comprehensive responses to local food, farm, and nutrition issues. These activities help to increase food security in a community.

(7) *Department* or *USDA* means the United States Department of Agriculture.

(8) *Grant* means the award by the Secretary of funds to a private, non-profit entity to assist in meeting the costs of conducting, for the benefit of the public, an identified Community Food Project which is intended and designed to accomplish the purpose of the CFPCGP as identified in these guidelines.

(9) *Grantee* means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

(10) *Matching* means that portion of project costs not borne by the Federal Government, including the value of third party in-kind contributions.

(11) *Review experts* means a group of experts qualified by training and experience in particular fields to give expert advice on the merit of grant applications in such fields, and who evaluate eligible proposals submitted to this program in their personal and professional area(s) of expertise.

(12) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (2) above.

(13) *Private non-profit entity* means any corporation, trust, association, cooperative or other organization which (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, and/or expand its operations. The term private nonprofit organization excludes public entities, including State, local, and Federally recognized Indian tribal governments.

(14) *Project* means the particular activity within the scope of the program supported by a grant award.

(15) *Project director* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

(16) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(17) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

(18) *Third Party in-kind contributions* means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefitting and specifically identifiable to a funded project or program.

C. Eligibility

Grantees under the CFPCGP are statutorily limited to private, nonprofit entities. Because proposals for Community Food Projects must promote comprehensive responses to local food, farm, and nutrition issues, applicants are encouraged to seek and create partnerships among public, private nonprofit, and private for-profit entities. However, no more than one-third of an award for a Community Food Project may be subawarded to a for-profit organization or firm.

To be eligible for a Community Food Project grant, a private nonprofit applicant must meet three requirements:

(1) have experience in the area of:

(a) community food work that involves the provision of food to low-income people and familiarity with developing new markets in low-income communities to enhance their access to fresher, more nutritious foods; and/or

(b) job training and business development activities for food-related activities in low-income communities to increase the potential for long-term sustainability in the food security project being proposed;

(2) demonstrate competency to implement a project, provide fiscal accountability and oversight, collect data, and prepare reports and other appropriate documentation; and

(3) demonstrate a commitment and willingness to share information with researchers, practitioners, and other interested parties.

The intent of the CFPCGP is to encourage and support community-based, grass-roots efforts that enhance food security. To that end, applicants are strongly encouraged to link with academic and/or other appropriate professionals, and to involve other relevant community-based organizations and local government entities, as they plan for and then develop proposals that serve the mutual interests that support community food security projects.

Successful applicants must provide matching funds, either in cash and/or third party in-kind, amounting to at least 50 percent of the total cost of the project (i.e., an amount equal to or greater than the amount of Federal funds being requested) during the term of the grant award as provided by section 25(e) of the Food Stamp Act of 1977. The Federal share of the project costs can be no more than 50 percent of the total.

Part II—Program Description

A. Purpose and Scope of the Program

Proposals are invited for competitive grant awards under the CFPCGP for FY 1998. This program is administered by the Cooperative State Research, Education, and Extension Service (CSREES) of the U.S. Department of Agriculture (USDA). The purpose of this program is to support the development of Community Food Projects with a one-time infusion of Federal dollars to make such projects self-sustaining. Community Food Projects should be designed to: (i) meet the food needs of low-income people; (ii) increase the self-reliance of communities in providing for their own food needs; and (iii) promote comprehensive responses to local food, farm, and nutrition issues.

Community Food Projects are intended to take a comprehensive approach to developing long-term solutions to an identified community food need that help to ensure food security in communities by linking the food production and processing sectors to community development, economic opportunity, and environmental enhancement. Comprehensive solutions may include elements such as: (i) improved access to high quality, affordable food among low-income households; (ii) expanded economic opportunities for community residents through local businesses or other economic development, improved employment opportunities, job training, youth apprenticeship, school-to-work transition, and the like, and (iii) support for local food systems, from urban gardening to local farms that provide high quality fresh foods, ideally with minimal adverse environmental impact. Any solution proposed must tie into community food needs.

Project goals should integrate multiple objectives into their design. Proposed projects should seek to address impacts beyond a specific goal such as increasing food produced or available for a specific group. Goals and objectives should integrate economic, social, and environmental impacts such as job training, employment opportunities, small business expansion, neighborhood revitalization, open space development, transportation assistance or other community enhancements.

B. Available Funds and Award Limitations

The total amount of funds available in FY 1998 for support of this program is approximately $2,500,000. Applicants should request a budget commensurate with the project proposed. However, due to the effort required to properly evaluate proposals, USDA strongly urges that the Federal funds requested for a Community Food Project not be less than $10,000.

The spirit of the authorizing legislation is that no one grant should command a significant portion of the total funds available and that many grants be awarded each year. Therefore, USDA has concluded that no single grant shall exceed $100,000 in any single year or more than $250,000 over the life of the project.

Applicants may request one, two, or three years of funding, but in all cases, the grant term may not exceed three years for any one project. A Community Food Project may be supported by only a single grant under this program.

Awards will be made based on the merit of the proposed project with budgets considered only after the merits of the project have been determined. USDA reserves the right to negotiate final budgets with successful applicants. It is intended that the grantee will perform the substantive effort on the project. No more than one-third of the award, as determined by budget expenditures, may be subawarded to for-profit organizations. For purposes of obtaining additional knowledge or expertise that is not currently within the applicant organization, funds for expert consultation may be included in the All Other Direct Costs section of the proposed budget.

C. Matching Funds Requirement

Federal funds requested must be matched, at a minimum, on a dollar-for-dollar basis. The Federal share of the cost of establishing or carrying out a Community Food Project that receives

assistance under this program, may not exceed 50 percent of the cost of the project during the term of the grant. Grantees may provide for the non-Federal share through cash and/or third party in-kind contributions, fairly evaluated, including facilities, equipment, and services. A grantee may provide for the non-Federal share of the funding through State government, local government, or private sources. Examples of matching funds include direct costs such as: rent for office space used exclusively for the funded project; duplication or postage costs; and staff time from an entity other than the applicant for job training or nutrition education.

Part III—Preparation of a Proposal

A. Program Application Materials

Program application materials will be made available to interested entities upon request. These materials include information about the purpose of the program, how the program will be conducted, and the required contents of a proposal, as well as the forms needed to prepare and submit grant applications under the program. To obtain program application materials, please contact the Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting application materials for the Community Food Projects Competitive Grants Program.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 1998 Community Food Projects Competitive Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

You may also download this RFP and the application forms by contacting the agency home page at www.reeusda.gov, and clicking on ''Funding Opportunities,'' that brings up ''All Funding Opportunities,'' and then click on ''Community Food Projects Program.''

B. Content of a Proposal

(1) General

The proposal should follow these guidelines, enabling reviewers to more easily evaluate the merits of each proposal in a systematic, consistent fashion:

(a) The proposal should be prepared on only one side of the page using standard size (8½″ x 11″) white paper, one inch margins, typed or word processed using no type smaller than 12 point font, and single spaced. Use an easily readable font face (e.g., Geneva, Helvetica, CG Times). Once accepted for review, your proposal will be read by at least three expert reviewers. Thus it is to your advantage to ensure that your proposal is not difficult to read.

(b) Each page of the proposal, including the Project Summary, budget pages, required forms, and appendices, should be numbered sequentially in the top right corner.

(c) The proposal should be stapled in the upper left-hand corner. Do not bind. An original and 9 copies (10 total) must be submitted in one package, along with 20 copies of the ''Project Summary'' as a separate attachment.

(2) Cover Page

Complete Form CSREES–661, Application for Funding, in its entirety. This form is to be utilized as the Cover Page. In Block 14., note the total amount of Federal dollars being requested.

(a) Blocks 7., 13., 18., 19., 20., and 21. have been completed for you.

(b) In Block 8., enter ''Community Food Project''. Ignore all references to a program number.

(c) Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(d) The original copy of the Application for Funding form must contain the pen-and-ink signatures of the project director(s) and authorized organizational representative for the applicant organization.

(e) Note that by signing the Application for Funding form, the applicant is providing the required certifications set forth in 7 CFR Part 3017, as amended, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The three certification forms are included in this application package for informational purposes only. It is not necessary to sign and submit the forms to USDA as part of the proposal.

(3) Table of Contents

For ease in locating information, each proposal must contain a detailed table of contents just after the Cover Page. The Table of Contents should include page numbers for each component of the proposal. Page numbers, shown in the top right corner, should begin with the first page of the project summary.

(4) Project Summary

The proposal must contain a project summary of 250 words or less on a separate page. The summary must be self-contained and describe the overall goals and relevance of the project. The summary should also contain a listing of the major organizations participating in the project. The Project Summary should immediately follow the Table of Contents. In addition to the summary, this page must include the title of the project, the name of the applicant organization, the authorized organizational representative, and the project director(s), followed by the summary.

(5) Project Narrative

PLEASE NOTE: The Project Narrative shall not exceed 10 pages. This maximum has been established to ensure fair and equitable competition. Reviewers are instructed that they need to read only the first 10 pages of the Project Narrative and to ignore information on additional pages. The Project Narrative must repeat and answer each of the following eight questions [(a) through (h) below]:

(a) What is the community and the need(s) to be served by the proposed project? This part of the narrative lays the foundation as to the significance of the proposed project.

Succinctly describe critical elements of the local food economy or food system, demographics, income, and geographic characteristics of the area to be served and any other pertinent information, such as the community's assets and needs.

(b) What organizations will be involved in carrying out the proposed project and which segments of the local food economy or system do they link? This information will inform the reviewers on the extent to which the community is involved.

Include a description of the relevant experience of the organizations, including the applicant organization, that will be involved, and any project history. Letters from the organizations involved acknowledging their support and contributions must be provided in an appendix to the proposal. Letters specifying the type and amount of support, where appropriate, are strongly encouraged, for this provides evidence of community involvement. Proposals should demonstrate extensive community linkages and coalitions.

If an applicant organization has received CFPCGP support in the past, information on the results from that

prior funding is required as an appendix to this application. This information will be used in the review of the proposal and is limited in length to one page per award. For each award, list the CFPCGP award number, the amount and period of support, the title of the project, a summary of the results of the completed work, and the long-term effects of these results, and any publications resulting from the CFPCGP award.

(c) What are the goals or purposes to be achieved by the proposed project?

List these goals and/or purposes of the project and a justification for the goals in terms of the needs stated above.

(d) How will the goals be achieved?

Provide a systematic description of the approach by which the goals will be accomplished.

(e) What are the major milestones that will indicate progress toward achieving the project goals?

Provide a time line or description for accomplishing major project objectives.

(f) The legislation outlines three major objectives of the CFPCGP: (i) meet the food needs of low-income people; (ii) increase the self-reliance of communities in providing for their own food needs; and (iii) promote comprehensive responses to local food, farm and nutrition issues.

What measures will be used to assess project progress toward each of these three objectives? How will you assess whether or to what degree the project achieves these outcomes?

For example, an applicant may propose to develop a farmers' market in a low-income urban area, selling produce grown by farmers in the surrounding area, and employing staff from both the urban and rural communities. The goals may be to increase access to fresh produce by community residents (addresses objective i), increase employment and the income of farmers (addresses objective ii), and reduce the extent of poor nutrition among low-income residents (addresses objective iii). Possible outcome measures are the change in the consumption of produce by customers, the number of jobs created by the market, and the change in income experienced by the farmers supplying the market.

Community Food Project proposals should contain a strong evaluation component. Innovative evaluation strategies are especially encouraged. Evaluations should focus on the measurement of success in meeting the major objectives of the CFPCGP.

Through the CFPCGP, USDA also hopes to learn more about what happens to make such projects succeed, partially succeed, or fail. Therefore, proposals are encouraged that include both process evaluations (developing and monitoring indicators of progress towards the objectives) and outcome evaluations (to determine whether the objectives were met). Applicants should seek the help of experts in evaluation design and implementation as appropriate.

(g) How does the proposed project address each of the following issues: (i) development of innovative linkages and coalitions between two or more sectors of the food system; (ii) support for entrepreneurial and job-training projects; and (iii) encouragement of both short-term and long-term planning activities that encompass many agencies and organizations with different food security interests and missions in order to promote multi-system, interagency approaches?

Provide a description of how each of these issues, as appropriate, will be addressed. Entrepreneurial projects should provide evidence (e.g., in the form of a market analysis or the outline of a business plan) to demonstrate that it is likely to become self-sustaining and provide employees with important job skills.

(h) What are the plans for achieving self-sustainability?

Describe why a one-time infusion of Federal funds will be sufficient for the proposed Community Food Project to advance local capacity-building and deliver sustainability.

(6) Supplementary Considerations

In drafting the project narrative, applicants should keep in mind the intent of the program. Proposed projects should seek solutions rather than be focused on short-term food relief. They should seek comprehensive solutions to problems across all levels of the food system from producer to consumer. This point is emphasized because many proposals submitted previously were primarily for expanding applicant efforts in food relief and assistance, or for connecting established or partially established programs (such as community gardens and farmers' markets) with little evidence of strategic planning and participation by stakeholders in the proposed project design. Proposals must emphasize a food system and/or food security approach (i.e., an applicant must describe the large food-related picture in the community and the place of the proposed project within it). They must also show evidence of information sharing, coalition building, and substantial community linkages.

Applicants should be aware of several USDA policy themes and initiatives that have the potential to strengthen the impact and success of some community food projects. These include food recovery and gleaning efforts; connecting the low-income urban consumer with the rural food producer; aiding citizens in leaving public assistance and achieving self-sufficiency; and utilizing micro enterprise and/or development projects related to community food needs. Relevant ongoing USDA and other Federal initiatives include farmers' markets; CSREES programs and activities under the Fund for Rural America; U.S. Department of Housing and Urban Development designated Empowerment Zones, Enterprise Communities, and Champion Communities; and the AmeriCorps National Service Program (a potential source of staff support for Community Food Projects).

Applicants should also recognize the role played by food and nutrition assistance programs administered by USDA and may want to discuss in their proposals the utilization of these programs by the community and the connection to the proposed Community Food Project. These programs include: the Food Stamp Program; child nutrition programs such as the School Lunch, School Breakfast, Women, Infants, and Children (WIC) Supplemental Nutrition, Child and Adult Care Food, and Summer Food Service Programs; and commodity distribution programs.

Applicants also should be cognizant of resources available from other Federal programs with similar or related goals, such as the Community Food and Nutrition Program (CFNP) and Job Opportunities for Low-Income Individuals (JOLI) program administered by the Office of Community Services within the U.S. Department of Health and Human Services.

The community, not the individual per se, is the unit of analysis and medium for action. Many solutions to food access problems may come from beyond a community's own boundaries, since most food also comes from outside. In that context, wherever possible, Community Food Projects should support food systems based on strategies that improve the availability of high-quality locally or regionally produced foods to low-income people.

Community Food Projects are intended to bring together stakeholders from the distinct parts of the food system. Solutions to hunger and access to food should reflect a process that involves partnership building among the public, private nonprofit, and

private for-profit sectors. Together, these parties can address issues such as: the capacity of the community to produce food and support local growers; the need for, and location of, grocery stores that market affordable, high quality food; transportation constraints; economic opportunities for residents to increase income, thereby increasing access to high quality nutritious food; community development issues; the environment; and so on.

Community Food Projects should not be designed to merely support individual food pantries, farmers' markets, community gardens or other established projects. Rather, proposed Community Food Projects should build on these experiences and encourage innovative long-term efforts. A project should be designed to endure and outlive the one-time infusion of government and other matching funds. Community Food Projects should be intended to become self-supporting (or have a sustainable funding source) and expand or prove to be a replicable model.

The primary objectives of the CFPCGP are to increase the food self-reliance of communities; promote comprehensive responses to local food, farm and nutrition issues; develop innovative linkages between the public, for-profit, and nonprofit food sectors; and encourage long-term planning activities and multi-system inter-agency approaches. The following are some examples of these objectives in practice:

- Developing a working link between a food bank and area farmers to market fresh produce to a community through community-supported agriculture. Community members provide the financial support while the project develops links to institutions such as restaurants, food pantries, schools, and other institutions. The process increases community awareness and commitment to local agriculture, while providing farmers a local market for their goods, thereby expanding the supply of and access to high-quality food.
- Implementing a comprehensive strategic plan for a lower-income neighborhood to increase residents' access to high-quality, affordable food through farmers' markets, community gardens, supermarkets, and other food programs. Such a plan should include transportation assistance, business development, and/or neighborhood improvement. As with other sector planning, the community participates in identifying its food-related priorities and works with institutions through a collaborative interagency process to meet its objectives.
- Developing a system of community farm stands sponsored by neighborhood organizations and managed by youth that sell locally grown produce in low-income communities. The project provides skills training and/or jobs and aims to become self-supporting within a reasonable time. It increases participants' understanding of the food system, including food production and distribution, expands interest in good nutrition, and provides entrepreneurial training opportunities for young people.
- A local food policy council may develop and implement a plan that creates several new food ventures, including a new supermarket in a low-income neighborhood. The council serves as the planning and coordinating entity that brings together local farmers, for-profit food operators such as restaurants, processors, and retailers with low-income neighborhood development organizations and job training groups, emergency food providers, city hall, and other community service entities.
- Developing a comprehensive community response to job and food needs by creating job opportunities in food-related activities that respond to the needs of local businesses, building technical expertise that leads to well-paid jobs. It will be necessary to bring together resources that facilitate the development of work skills, work ethics, education completion and that respond to community food and nutrition needs.

(7) Key Personnel

Identify the key personnel to be involved in the project, including the project director, if known. (An organizational chart may be included if available.) What is their relevant experience? Include resumes or vitae that provide adequate information for proposal reviewers to make an informed judgment as to the capabilities and experience of the key personnel. For new positions in the project or for positions that are currently unfilled, a job description should be provided.

(8) Budget

(a) Budget Form: Prepare the budget form in accordance with instructions provided with the form. A budget form is required for each year of requested support. In addition, a cumulative budget is required detailing the requested total support for the overall project period. (For example, for a three-year project, the proposal would include four budget forms; one for each of the three years of the project and one cumulative budget for the full three years.) The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants must also include a budget explanation sheet to explain and justify their budgets.

We judge the relative merits of each proposal without initially considering proposed budgets. Once proposals are ranked based on the evaluation criteria, we then examine budgets closely. Thus, applicants should attach an explanation for all budget items to the budget form. Such information is useful to the reviewers and CSREES staff in making final budget recommendations to the Administrator.

(b) Matching Funds

(1) Proposals should include written verification of commitments of matching support (including both cash and in-kind contributions) from third parties. Written verification means:

(i) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (a) the name, address, and telephone number of the donor; (b) the name of the applicant organization; (c) the title of the project for which the donation is made; (d) the dollar amount of the cash donation; and (e) a statement that the donor will pay the cash contribution during the grant period; and

(ii) For any third party in-kind contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (a) the name, address, and telephone number of the donor; (b) the name of the applicant organization; (c) the title of the project for which the donation is made; (d) a good faith estimate of the current fair market value of the third party in-kind contribution; and (e) a statement that the donor will make the contribution during the grant period.

(2) The sources and amount of all matching support from outside the applicant institution should be summarized on a separate page and placed in the proposal immediately following the budget form. All pledge agreements must be placed in the proposal immediately following the summary of matching support.

(3) Applicants should refer to OMB Circulars A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals and Other Non-profit Organizations, and A–122, Cost Principles for Non-Profit Organizations, for further guidance and other requirements relating to matching and allowable costs.

(9) Current and Pending Support

All proposals must list any other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The application material includes Form CSREES–663, Current and Pending Support, which is suitable for listing current and pending support. Note that the project being proposed should be included in the proposed section of the form.

(10) Compliance with the National Environmental Policy Act (NEPA)

As outlined in 7 CFR Part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In most cases, based on previously funded projects, the preparation of environmental data is not usually required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, NEPA Exclusions Form, must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and supporting documentation should be the last page of the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity. This will be the case if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect. However, this rarely occurs.

Part IV—Submission of a Proposal

A. What to Submit

An original and nine copies of the complete proposal must be submitted. Each copy of the proposal must be stapled in the upper left-hand corner. DO NOT BIND. In addition, submit 20 copies of the proposal's Project Summary. All copies of the proposal and Project Summary must be submitted in one package.

B. Where and When to Submit

Proposals must be received by June 19, 1998. Proposals that are hand-delivered, delivered by courier, or sent via overnight delivery services must be sent or delivered to: Community Food Projects Competitive Grants Program c/o Proposal Services Unit, Office of Extramural Programs, USDA/CSREES, Room 303, Aerospace Center 901 D Street, SW, Washington, DC 20024, Telephone: (202) 401–5048.

Note: Applicants are strongly encouraged to submit their completed proposals via overnight mail or delivery services to ensure timely receipt by the USDA.

Proposals sent via the U.S. Postal Service must be sent to the following address: Community Food Projects Competitive Grants Program c/o Proposal Services Unit, Office of Extramural Programs, USDA/CSREES, STOP 2245, 1400 Independence Avenue, SW, Washington, DC 20250–2245, Telephone: (202) 401–5048

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and this acknowledgment will contain an identifying proposal number. Once your proposal has been assigned an identification number, please cite that number in future correspondence.

Part V—Selection Process and Evaluation Criteria

A. Selection Process

Proposals must be received on or before June 19, 1998. Since the award process must be completed by September 30, 1998, applicants should submit fully developed proposals that meet all the requirements set forth in this RFP and have fully developed budgets as well. However, USDA does retain the right to conduct discussions with applicants to resolve technical and/or budget issues as it deems necessary.

Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure it meets the basic eligibility requirements as set forth in this RFP. Proposals not meeting the requirements as set forth in this RFP will be returned without review. Second, each proposal that meets the eligibility requirements will be evaluated and judged on its merits by expert reviewers.

A number of individual experts will review and evaluate each proposal that is accepted for review basing their evaluation on the stated criteria. The reviewers will be selected from among those recognized as uniquely qualified by training and experience in their respective fields to render expert advice on the merit of proposals being reviewed. These reviewers will be drawn from a number of areas, among them government, universities, and other pertinent entities involved primarily in community food security organizations or activities. The views of the individual reviewers will be used by CSREES to determine which proposals will be recommended to the Administrator for funding.

Proposals will be ranked relative to all those received, and ranking will be based on how well the applicant answered the eight questions in the Project Narrative, the potential for achieving project goals and objectives, the extent to which appropriate community organizations are involved, and whether, in the judgment of the reviewers, the project will become self-sustaining. Final approval for those proposals recommended for an award will be made by the agency Administrator (or designee).

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Care will be taken to avoid actual, potential, and/or the appearance of conflicts of interest among reviewers. Evaluations will be confidential to USDA staff members, expert reviewers, and the project

director(s), to the extent permitted by law.

B. Evaluation Criteria

The evaluation of proposals will be based on the following criteria, weighted relative to each other as noted in the parentheses following each criteria discussion.

(1) The degree to which the proposed project addresses the three statutory objectives of the CFPCGP, namely i) meet the food needs of low-income people; ii) increase the self-reliance of communities in providing for their own food needs; and iii) promote comprehensive responses to local food, farm, and nutrition issues (25);

(2) The food security problem(s) being discussed, including an informative description of the community, its characteristics, assets, and needs (15);

(3) The goals and purposes of the project and how these goals will be achieved. The Secretary, in accordance with the legislation authorizing this program, will give preference to proposed projects that include one or more of the following goals, which will be given equal weight: (i) developing linkages between two or more sectors of the food system; (ii) supporting the development of entrepreneurial activities as part of the proposed project; (iii) developing innovative linkages between the for-profit and nonprofit food sectors; and (iv) encouraging long-term planning activities and multi-system, interagency approaches (25);

(4) A discussion of the organizations, including the applicant entity, to be involved in the proposed project, highlighting their relevant experience and extent of support. The extent to which an applicant private, nonprofit organization can demonstrate a history of commitment to and direct involvement in food security projects in low income communities or in communities with low income groups is an important evaluation element. In addition, the ability of applicants to meet the objectives of prior CFPCGP grants will be considered. (See PART III,B.,(5)(b), Project Narrative.) The qualifications of staff involved with the proposed project and/or organizational leadership should reflect the expertise necessary to carry out the proposed activities or similar types of activities. Experience in and connections with the community will be considered as important as academic or professional credentials in this regard (15);

(5) The viability of plans for achieving self-sufficiency with a one-time infusion of federal funds (15);

(6) The strength of the proposed project's evaluation component (3); and

(7) The time line for accomplishing project goals and objectives (2).

Part VI—Supplementary Information

A. Access to Review Information

Copies of summary reviews will be sent to all applicant project directors automatically, as soon as possible after the review process has been completed. The identity of the individual expert reviewers will not be provided.

B. Grant Awards

(1) General

Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in this request for proposals. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES under this request for proposals shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015, 3016, and 3019 of 7 CFR).

(2) Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the sponsoring agency as part of the preaward process.

(3) Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:

(a) Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for proposals;

(b) Title of project;

(c) Name(s) and address(es) of project director(s) chosen to direct and control approved activities;

(d) Identifying grant number assigned by the Department;

(e) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

(f) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(g) Legal authority(ies) under which the grant is awarded;

(h) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(i) Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

CSREES will award standard grants to carry out this program. A standard grant is a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without additional support at a future date.

C. Use of Funds; Changes

(1) Delegation of Fiscal Responsibility

The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(2) Reporting Requirements

The grantee must prepare an annual report that details all significant activities towards achieving the goals and objectives of the project. The narrative should be succinct and be no longer than five pages, using 12-point, single-spaced type. A budget summary should be attached to this report, which will provide an overview of all monies spent during the reporting period.

(3) Changes in Project Plans

(a) The permissible changes by the grantee, project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the project

director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the CSREES Authorized Departmental Officer (ADO) for a final determination.

(b) Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the CSREES ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

(d) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers.

(e) Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project. Nevertheless, the total duration of any grant, including any period(s) of extension, may not exceed 3 years. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant.

(f) Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

D. Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR Part 1, as amended—USDA implementation of the Freedom of Information Act.

7 CFR Part 3, as amended—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015, as amended—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3016, as amended—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019, as amended—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052 (62 **Federal Register** 45947)—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Evaluation of Program

Section 25(h) of the Food Stamp Act of 1977, as amended, requires USDA to provide for an evaluation of the success of community food projects supported under this authority. All grantees shall be expected to assist USDA by providing relevant information on their respective projects. Applicants need to plan for their own internal self-assessments and evaluations to measure the effectiveness of each project.

Done at Washington, D. C., this 6th day of May 1998.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 98–12460 Filed 5–11–98; 8:45 am]

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federal register

Tuesday
May 12, 1998

Part VI

Department of Housing and Urban Development

24 CFR Part 3280

Manufactured Home Construction and Safety Standards: Metal Roofing; Interpretative Bulletin I–2–98; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3280

[Docket No. FR–4271–N–01]

RIN 2502–AH05

Manufactured Home Construction and Safety Standards: Metal Roofing; Interpretative Bulletin I–2–98

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interpretative Bulletin.

SUMMARY: In January 1994 HUD amended the Manufactured Home Construction and Safety Standards to improve the resistance of manufactured homes to wind forces in areas prone to hurricanes. In part, the amendments provided that manufactured homes designed to be sited in high wind areas must be designed to resist either the design wind loads in a specified industry performance standard or alternative wind pressures set out in a prescriptive Table included in the regulations. Some questions have arisen concerning: Whether manufacturers that design their products using the wind pressures in the Table must provide roof sheathing under metal roofing; and the appropriateness of the testing of metal roofing that has been done. Therefore, the Department finds it necessary to reiterate, through this Interpretative Bulletin (IB), its current policy with regard to the regulations. A related advance notice of proposed rulemaking is published elsewhere in today's **Federal Register**.

DATES: Effective Date: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 9156, Washington, DC 20410, telephone: (202) 708–6401 (this is not a toll-free number). For hearing-and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In this Interpretative Bulletin (''IB'') HUD clarifies the meaning of the standard in 24 CFR 3280.305(c)(1)(ii)(B) as applied to metal roofing. Under this provision, elements of manufactured homes that are designed for high wind areas currently must be designed to resist wind pressures prescribed in a Table of Design Wind Pressures (''Table''). (Alternatively, under § 3280.305(c)(1)(ii)(A), the design may be qualified using general performance standards that utilize the design wind loads in ANSI/ASCE 7–88; this IB does not affect the option to use those performance standards.) This IB is issued pursuant to 24 CFR 3280.9 and 3282.113.

HUD has received requests from manufacturers and Design Approval Primary Inspection Agencies (DAPIAs) for clarification of design and testing requirements for metal roofing in wind zones II and III under the provisions in § 3280.305(c)(1)(ii)(B). Because these requirements are not being applied uniformly by DAPIAs and manufacturers, and HUD agrees with industry representatives that the regulation needs clarification, the Secretary has determined that the public's interest in the manufacture of housing that is safe for the conditions under which the housing is sited would best be served by the issuance of this IB. Issuance of the IB also is in the interest of competitive fairness to members of the industry. This IB does not denote any change in policy or interpretation formulated by HUD, but clarifies requirements that were adopted as part of an extensive notice-and-comment rulemaking process.

Therefore, because of the need for resolution of any question regarding the requirements applicable under the Manufactured Home Construction and Safety Standards (''standards'') to metal roofing in wind zones II and III, and the fact that this is not a change in the position or policy of the Department, in accordance with 24 CFR 3282.113, the Secretary has deemed it not to be in the public interest to issue the interpretation for public comment under 24 CFR part 3282, subpart C.

The Department understands, however, that there may be concerns about the requirements or implementation of roofing standards for manufactured homes sited in high-wind areas. In that regard, persons interested in recommending any changes to the policy clarified in this IB are directed to the advance notice of proposed rulemaking published elsewhere in today's **Federal Register**.

Background

The manufactured housing construction standards in 24 CFR 3280.305(c)(1)(ii) for wind zones II and III were established by HUD in a rule published on January 14, 1994 (59 FR 2469) (''January 1994 rule''). It is clear from the history of this rule, which amended the Federal Manufactured Home Construction and Safety Standards in 24 CFR part 3280 to improve the resistance of manufactured homes to wind forces in areas prone to hurricanes, that HUD was intending to create prescriptive standards that manufacturers could elect to comply with as an alternative to the general performance standards that utilize the design wind loads in ANSI/ASCE 7–88. In particular, the January 1994 rule provided that each manufactured home designed for wind zones II or III must be designed to resist either the design wind loads in ANSI/ASCE 7–88 or the wind pressures specified in the Table.

A question has been raised concerning whether manufacturers that design their homes using the wind pressures in the Table must provide roof sheathing under metal roofing to meet the requirement for resisting the wind pressures specified for roof coverings in the Table. Although the preamble of the January 1994 rule does not address the issue of metal roofing and roof sheathing directly, there is ample evidence of HUD's objectives in establishing the higher wind standards. The January 1994 rule clearly reflects HUD's intent to provide, through the prescriptive Table, an option that would provide comparable rigidity (''a rigid box''),[1] as an alternative to designing manufactured homes using the design wind loads of ANSI/ASCE 7–88. This intent also is consistent with the statement in § 3280.301 that subpart D of 24 CFR part 3280, which includes § 3280.305, is intended ''to assure that the manufactured home will provide: (a) Structural strength and rigidity * * *.''

The January 1994 Rule

Although it is more prescriptive than the ANSI/ASCE 7–88 performance standard, the Table allows manufacturers to use alternative materials for the roof structure as long as those materials, and the entire manufactured home, meet the requirements in the Table.[2] In explaining the need for the January 1994 rule, HUD noted that storm damage to manufactured housing is primarily in the form of roof failure, loss of roof diaphragm material, connection failures, and tiedown/foundation failures. HUD also noted that in Hurricane Andrew, manufactured homes ''became dangerous flying missiles, inflicting more property damage on neighboring

[1] Note, i.e., the option of using the Table would provide structural performance within permissible deflection limits.

[2] One kind of roof design, which is specified in footnote 7 of the Table, has been deemed to meet the performance requirements of the Table without the need for additional engineering analysis or load tests.

structures.'' (See 59 FR at 2457, ''Problem to be Addressed.'') In the ''Summary'' in the preamble of the January 1994 rule, HUD stated: ''The revised standard also requires exterior roof and wall coverings to be fastened adequately to sheathing and framing members, to resist higher design wind pressures. The purpose of this rule is to increase the safety of manufactured homes, thereby reducing deaths and injuries and extensive property damage losses in areas where wind-induced damage is a particular hazard and risk.'' (59 FR at 2456.)

Also in the preamble, HUD related that ''[a]mong the major deficiencies contributing to manufactured housing damage in Hurricane Andrew were inadequate connections between exterior roof or wall coverings and supporting sheathing or framing and between walls, roofs, and floors'' (59 FR at 2458, ''Field Investigations''). This portion of the preamble continues:

> In particular, losses of roof coverings were widespread, and were considered by some to be the first mode of failure for manufactured homes damaged in Hurricane Andrew. Other roof-related damage was due to loss of sheathing, failure of connections, or a combination of these problems * * *
>
> * * * Metal or plastic siding used in manufactured housing was readily damaged or penetrated by flying debris during the high winds in Hurricane Andrew. Loss of roof or wall cladding allows the building to be penetrated by the weather and has far-reaching consequences beyond the area of envelope integrity.
>
> * * * In addition, failure of coverings or attachments to the manufactured home structure also caused missile-type damage to other homes.
>
> * * * Edges and corners of roofs and endwalls of manufactured homes appeared to have been particularly vulnerable to the high wind forces, according to the damage typically reported in these areas * * * (59 FR at 2458)

Later in the preamble, these same themes were sounded. For example: ''Commonly observed failures included loss of roof membranes and blow-off of roof sheathing * * *.'' (59 FR at 2458.)

HUD also cited a Federal Emergency Management Agency (FEMA) report on the damage in Hurricane Andrew:

> It was observed that the breakup of corrugated metal siding and roofed buildings such as manufactured homes and pre-engineered metal frame buildings contributed significantly to the generation of airborne debris. This was evident from debris damage to nearby downwind structures.

(59 FR at 2462, ''Cost Considerations'').

HUD did state its expectation that the manufactured housing industry would be innovative in developing designs, components, and construction techniques that meet the standards but maintain the affordability of manufactured homes. It was clear, however, that the final product would be expected to perform at an acceptable level. In fact, HUD's stated intent was to strengthen the requirements for structural assemblies, components, connectors, fasteners, and a number of other areas so that the manufactured home would be able to resist the same wind forces as required for site-built and modular housing. (59 FR at 2467.)

HUD also notes that the economic analysis prepared by an industry trade association factored into the predicted costs of compliance with HUD's higher wind standard proposals the cost of roof sheathing.[3] Therefore, the indications are that the industry itself, at the time the rule was being developed, understood that the requirement was for a rigid box.

Finally, in summarizing the changes made by the January 1994 rule to § 3280.305(c), the preamble states that:

> Exterior roof and wall coverings (excluding glazing), sheathing, and fastenings need not be evaluated for the design pressures specified by the Table, when fastened to a 3/8″ structural rated sheathing and the sheathing is oriented and secured to framing members in accordance with the fastening schedule specified in the Table. (59 FR at 2467.)

An IB that was published by HUD in the **Federal Register** on July 1, 1994 (59 FR 34294), further bolsters the intent of the January 1994 rule. In that IB, HUD recognized that metal siding (such as vertical steel siding) could, under strict circumstances, be approved as both a structural wall sheathing and an exterior covering material. The strict circumstances specified in the IB ensured that the metal siding/exterior covering would, in effect, maintain a rigid box, including covering and fastening requirements, and would resist the full design pressures specified in the Table. The same reasoning applies to metal roofs in Wind Zones II and III in this IB.

Subsequent Testing of Metal Roofs

In reviewing tests performed under the higher wind standards on metal roof systems without sheathing, the Department has found that none of the tests satisfied all of the requirements of the standards. The test methods used introduced additional resistance for the test assemblies that would not be available under actual conditions of application or construction, contrary to the requirements of § 3280.303(c). The test methods also did not consider the combined effect on fasteners and components of horizontal wind forces, nor the compression load added as a result of the sole use of metal roofing without sheathing. The tests also did not measure deflection, as required under § 3280.401 and as would be necessary to ensure compliance with §§ 3280.305 (a) and (h).

Other specific questions about the tests include:

- Concerns about whether the laboratory tests simulated factory conditions for replicating the workmanship associated with the small edge distance and installation of the large number of fasteners required;
- The ability of the quality control system to prevent production problems that would be caused because of the large number of fasteners required and the small edge distance for the outermost row of fasteners at the metal-to-rim rail connection of the roof, which is likely to cause damage to wood rim members or tearing of the metal during production or when design wind loads are applied;
- Failure of the tests to include all of the fasteners required in actual production, which would have further damaged the rim rail and weakened the tested assemblies; and
- Lack of information about deformation criteria for the connectors (fastener slip) or other conditions that would constitute failure of the test assembly, such as rim rail rotation.

Accordingly, under the authority of 42 U.S.C. 3535(d), Interpretative Bulletin I–2–98 is issued by the Department as follows:

Note: HUD Interpretative Bulletin I–2–98 will not appear in the Code of Federal Regulations.

Interpretative Bulletin I–2–98—Manufactured Home Construction and Safety Standards: Metal Roofing (24 CFR Part 3280)

Under section 604 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403, the Secretary is authorized to establish, amend, and revoke by order appropriate Federal manufactured home construction and safety standards (''standards''). On January 14, 1994 (59 FR 2456), HUD published certain changes to the standards for high wind areas, as codified in 24 CFR part 3280. Subsequently, HUD has published interpretations of the January 1994 rule at 59 FR 19072 (April 21, 1994) and 59 FR 34294 (July 1, 1994). In the April 21,

[3] See attachments to the comments submitted by the Manufactured Housing Institute (commenter #112 in Docket #FR–3380) on the proposed rule that was finalized in the January 1994 rule.

1994, Interpretative Bulletin, HUD indicated that it may issue additional Interpretative Bulletins to provide further assistance in the implementation of the new standards. This Interpretative Bulletin I–2–98 [1] is issued to clarify requirements applicable to the use of metal roofing in wind zones II and III. All section references are to sections of 24 CFR part 3280.

HUD interprets § 3280.305(c)(1)(ii)(B) to require every design for manufactured housing for high wind areas to include roof sheathing or alternative roof material that performs like sheathing in resisting the wind pressures specified in the Table of Design Wind Pressures (''Table''), whenever the Table is used as the basis for qualifying the design. The phrase ''performs like sheathing'' means that the roofing system will transfer the higher wind loads to which the Table is formulated to structural support members and components without compromising the integrity of those members and components to such an extent that they cannot resist the applicable design pressures specified in the Table.[2] In developing the Table, HUD contemplated a design that utilizes structural rated roof sheathing that is at least ⅜ of an inch thick and is installed in accordance with footnote 7. If roof sheathing is not used in the design for the roof system, in accordance with § 3280.303(c) load tests or engineering analyses used to determine that the manufactured home complies with the Table must account for the additional high-wind loads transferred to other parts of the structure because of the absence of separate load-resistant sheathing. Thus, metal roofs without sheathing may be used if they are strong enough to perform like sheathing and can meet all of the requirements discussed in this paragraph.

When separate sheathing is utilized in a design, the sheathing must be shown to be capable of resisting the wind pressures specified for sheathing in the Table, unless the sheathing is structural rated roof sheathing that is at least 3/8 of an inch in thickness and is installed and secured as provided in footnote 7 of the Table. A manufacturer that includes in its design sheathing that complies with the specifications set out in footnote 7 can avoid having to substantiate the sheathing as being in compliance with the loading requirements for sheathing in the Table. In both of these cases, however, all other loading requirements in the Table and requirements of the standards would still have to be met.

Of course, manufacturers continue to have the additional option, set forth in § 3280.305(c)(1)(ii)(A), to design any manufactured home, including the roof (metal or nonmetal), using the design wind loads for Exposure C as specified in ANSI/ASCE 7–88 and the applicable design wind speed.

Testing Protocols

To be acceptable under the standards, all roofs, including metal roofs, must be designed using either engineering analysis or suitable load testing protocols, in accordance with § 3280.303(c). Until the higher standards were adopted for wind zones II and III, metal roofs for manufactured homes generally had been qualified using engineering analysis. Manufacturers have chosen to test metal roofs intended for wind zones II and III using the design wind pressures in the Table, apparently because the metal roofs may not have been able to qualify under the higher standards through engineering analysis.

The regulations set forth a series of requirements regarding testing. Under § 3280.303(c), if the strength and rigidity of a unit or component is to be determined by testing, the load tests must replicate the actual loads and conditions of application, not just approximate those loads and conditions. A manufacturer relying on § 3280.401 to establish the acceptability of a compliance alternative also must meet all of the requirements established in that section. Section 3280.401(b), for example, requires that deflection measurements be taken.[3] Further, if a manufacturer cannot perform an engineering analysis to demonstrate compliance with the § 3280.305(h) design requirements for roofs and the § 3280.305(c) design requirements for systems, components, and framing, the manufacturer must comply fully with established testing protocols or obtain HUD approval of special testing under § 3280.303(g).

Section 3280.303(g) allows for the development of special testing procedures that demonstrate structural properties and significant characteristics when there is no recognized or suitable testing procedure. In the absence of an established suitable testing protocol, a manufacturer that wants to establish compliance with a standard through testing must submit the testing protocol to HUD for approval. HUD would anticipate that such a protocol would address test set-up, loading apparatus, and size and dimensions of the test assembly, and would establish failure criteria. Section 3280.303(g) places the burden on manufacturers for developing such testing procedures to demonstrate structural properties and significant characteristics of a material, assembly, component, or member.

Summary of Requirements, Using Table

Because there has been confusion about the requirements of the regulations in question, HUD will allow a grace period of 30 days after the date of publication of this IB for compliance with the requirements as clarified in this IB. Thus, in qualifying any roof through testing, HUD will not recognize as being in compliance with the requirements of the Table a metal roof system that is installed on any unit for which the manufacturing process is completed beyond the grace period, unless that metal roof system is able to resist the appropriate wind pressures specified in the Table and complies with at least one of the following conditions:

(1) The metal roofing is a covering, which is designed to resist the applicable wind pressures specified for roof coverings in Table and is installed in conjunction with structural rated roof sheathing that is at least ⅜ of an inch in thickness and is fastened as provided in footnote 7 of the Table;

(2) The metal roofing is a covering, which is designed to resist the applicable wind pressures specified for roof coverings in Table and is installed in conjunction with roof sheathing that does not qualify as acceptable automatically under footnote 7 in the Table, but that has been qualified through engineering analysis or appropriate testing procedures as capable of resisting the wind pressures established for roof sheathing in the Table; or

(3) The metal roof itself has been tested, using procedures that either meet all of the requirements of §§ 3280.303(c)

[1] This designation indicates that this is the second interpretive bulletin issued in 1998. The interpretive bulletin issued on February 18, 1998 (63 FR 8330) was not officially designated as I–1–98 because it was an amendment to an earlier interpretative bulletin designated as J–1–76.

[2] In order for the metal roof to resist the uplift loads applicable in Wind Zones II and III and transfer the design loads, the Department expects that the metal roof would be fastened to the support members (trusses, edge members, etc.).

[3] This concern with deflection measurements, and the concept of a sound structural frame, are also seen in § 3280.305(h), which specifically requires that roofs be of sufficient strength to withstand the load requirements in § 3280.305(c) without exceeding established deflections, and in § 3280.305(a), which states:

Each manufactured home shall be designed and constructed as a completely integrated structure capable of sustaining the design load requirements of this standard, and shall be capable of transmitting these loads to stabilizing devices without exceeding the allowable stresses or deflections* * * .

and 3280.401 (or another suitable load test) or have been developed and approved in accordance with § 3280.303(g), and the metal roof has been determined to perform like sheathing by transferring the higher wind loads to structural support members and components without compromising the integrity of those members and components to such an extent that they cannot resist the applicable design pressures specified in the Table.[4]

As noted, in the absence of recognized testing procedures, a manufacturer may develop and submit to HUD for approval, in accordance with § 3280.303(g), a testing procedure that would demonstrate the requisite structural properties and significant characteristics of the alternate design or material.

[4] See footnote 2, above.

Authority: 42 U.S.C. 3535(d) and 5424.

Dated: April 29, 1998.

Art Agnos,

Acting General Deputy Assistant Secretary for Housing.

[FR Doc. 98–12341 Filed 5–11–98; 8:45 am]

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federal register

Tuesday
May 12, 1998

Part VII

Department of Housing and Urban Development

24 CFR Part 3280

Manufactured Home Construction and Safety Standards: Metal Roofing; Advance Notice; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3280

[Docket No. FR–4271–A–02]

RIN 2502–AH05

Manufactured Home Construction and Safety Standards: Metal Roofing; Advance Notice of Proposed Rulemaking

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Elsewhere in today's **Federal Register**, the Department is publishing an Interpretative Bulletin (IB) on roofing requirements for manufactured homes designed to be sited in high wind areas. That IB reiterates the Department's current policy as it addresses questions that have arisen concerning: Whether manufacturers that design their products using the wind pressures specified in a table in the Manufactured Home Construction and Safety Standards must provide roof sheathing under metal roofing; and the appropriateness of the testing of metal roofing that has been done under current regulations. By this advance notice of proposed rulemaking, the Department is providing an opportunity for interested persons to make recommendations regarding any changes in the table with respect to roofing requirements for manufactured homes designed to be sited in high wind areas. The Department will review any comments received in response to this advance notice and consider them in making a determination whether to revise the applicable Federal standards and regulations.

DATES: Comment Due Date: July 13, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this advance notice of proposed rulemaking to the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 9156, Washington, DC 20410, telephone: (202) 708–6401 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Prospective commenters should review Interpretative Bulletin I–2–98 published elsewhere in today's **Federal Register** for an explanation of the Department's interpretation of the standard in 24 CFR 3280.305(c)(1)(ii)(B), which includes the Table of Design Wind Pressures (''Table''), as applied to metal roofing in wind zones II and III. In that IB, HUD interprets the standard to require every design for manufactured housing for high wind areas to include roof sheathing or alternative roof material that performs like sheathing in resisting the wind pressures specified in the Table, whenever the Table is used as the basis for qualifying the design.

If the Department receives or develops information that indicates the standard codified in 24 CFR 3280.305(c)(1)(ii)(B) should be revised, the Department may propose revisions for further review and public comment in subsequent rulemaking. To ensure that all interested parties are given access to any advice the Department receives on this subject, a public docket has been opened. Comments received in response to this advance notice will be included in the public docket for inspection and copying.

Authority: 42 U.S.C. 3535(d) and 5424.

Dated: April 29, 1998.

Art Agnos,

Acting General Deputy Assistant Secretary for Housing.

[FR Doc. 98–12342 Filed 5–11–98; 8:45 am]

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federal register

Tuesday
May 12, 1998

Part VIII

Department of Education

Even Start Family Literacy Program for Federally Recognized Indian Tribes and Tribal Organizations; Inviting Applications for New Awards Using Fiscal Year 1998 Funds; Notices

DEPARTMENT OF EDUCATION

[CFDA No.: 84.258]

Even Start Family Literacy Program for Federally Recognized Indian Tribes and Tribal Organizations; Notice Inviting Applications for New Awards Using Fiscal year (FY) 1998 Funds

AGENCY: Department of Education.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Even Start Family Literacy Program for Indian tribes and tribal organizations is designed to help break the cycle of poverty and illiteracy by improving the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribes and tribal organizations.

Eligible Applicants: Federally recognized Indian tribes and tribal organizations.

Deadline for Transmittal of Applications: July 15, 1998.

Available Funds: The Department estimates that there will be sufficient FY 1998 funds for one to two new projects after funding continuation awards in FY 1998.

Estimated Range of Awards: $100,000–$250,000.

Estimated Average Size of Awards: $175,000.

Estimated Number of Awards: 1–2

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(4) 34 CFR Part 81 (General Education Provisions Act— Enforcement).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of Program: Under the authority of section 1202(a)(1)(C) of the Elementary and Secondary Education Act (ESEA), the Assistant Secretary of Elementary and Secondary Education (Assistant Secretary) awards grants to eligible applicants for projects that—

(1) Improve the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribe and tribal organization projects;

(2) Are implemented through cooperative activities that build on existing community resources to create a new range of services for federally recognized Indian tribe and tribal organization projects;

(3) Promote achievement of the National Education Goals one, three, five, and eight that address school readiness, student achievement, adult literacy, and parent involvement in the education of their children; and

(4) Assist children and adults to achieve to challenging State content standards and challenging State student performance standards.

Eligible participants. Eligible participants are children and their parents who also meet the following conditions specified in section 1206(a) of the ESEA:

(1) The parent or parents must be eligible for participation in an adult education program under the Adult Education Act; or

(2) For a parent or parents within the State's compulsory school attendance age range, a local educational agency must provide (or ensure the availability of) the basic education component; and

(3) The child or children must be younger than eight years of age.

Note: Family members of eligible participants described in paragraphs one through three, above, also may participate in Even Start Family Literacy Program activities when appropriate to serve Even Start purposes. In addition, section 1206(b) of the ESEA generally permits families to remain eligible for Even Start Family Literacy services until all family members become ineligible for participation. For example, in the case of a family in which the parent or parents have become ineligible due to educational advancement, eligibility would continue until all children in the family reach age eight. If all children in a family have reached the age of eight, the family continues to be eligible for two more years, or until the parents no longer are eligible for adult education under the Adult Education Act, whichever occurs earlier.

Budget period. Under 34 CFR 75.112 and 75.117, an eligible applicant must propose a project period (up to four years) and provide budgetary information for each year of that proposed project period in its initial application. The budgetary information provided should include, for each year, an amount for each key project component with an accompanying breakdown of any subcomponents. A written justification for all requested amounts should be provided.

An applicant is also required under 34 CFR 75.112(b) to describe how and when, in each budget period of the project, it plans to meet each objective of the project.

Note: This information will be used by the Assistant Secretary, in conjunction with the grantee's annual performance report required under 34 CFR 75.118(a), to determine whether to make a continuation award for the subsequent budget year. Under 34 CFR 75.253 a grantee may receive a continuation award only if it demonstrates that it either has made substantial progress toward meeting the objectives of the approved project, or has received the Assistant Secretary's approval of changes in the project to enable it to meet the objectives in the succeeding budget periods.

Federal and local funding. An Even Start Family Literacy project's funding is comprised of both a Federal portion of funds (Federal share) and a portion contributed by the eligible applicant (local project share). The local share of the project may be provided in cash or in kind and may be obtained from any source, including other Federal programs funded by the ESEA. The Federal share of the project may not exceed—

- 90 percent of the total cost of the project in the first year;
- 80 percent in the second year;
- 70 percent in the third year;
- 60 percent in the fourth year; and
- 50 percent in any subsequent year.

The Federal share for any grantee receiving a grant for a second grant cycle may not exceed 50 percent. Any grantee that wishes to reapply for a second grant cycle at the end of its first project period (up to 4 years) must recompete for funding with new applicants.

Indirect costs. Even Start Family Literacy Program funds generally may not be used for the indirect costs of a project. Recipients of an Even Start Indian tribe and tribal organization grant may request the Secretary to waive this requirement. To obtain a waiver, however, the recipient must demonstrate to the Secretary's satisfaction that the recipient otherwise would not be able to participate in the Even Start Family Literacy Program.

National and Local Evaluations: The Department is conducting a national

evaluation of Even Start Family Literacy projects. Grantees are required to participate in the Department's national evaluation and to conduct a separate independent local evaluation consistent with the grantee's responsibilities under 34 CFR 75.590.

The Even Start Family Literacy Program has a set of performance indicators developed for use in managing and reporting purposes. These indicators, which follow this application notice, have been approved by the Office of Management and Budget and shared with the Congress. Applicants are encouraged to use these indicators as a framework when developing their programs.

The Secretary suggests that each applicant budget for evaluation activities as follows: a project with an estimated cost of up to $120,000 should designate $5,000 for this purpose; a project with an estimated cost of over $120,000 should designate $10,000 for these activities. These funds will be used for expenditures related to the collection and aggregation of data required for the Department's national evaluation. The Secretary also recommends that projects budget for the cost of travel to Washington, DC, and two nights' lodging for the project director and the project evaluator, for their participation in annual evaluation meetings.

Technical Assistance: The Department holds annual technical assistance conferences for professional development. Grantees are strongly encouraged to participate in these conferences.

The Secretary suggests that each applicant budget $2,000 each year for these activities. These funds should cover the cost of travel to the West Coast, and two nights' lodging for the project director and one staff member, for their participation in annual technical assistance conferences.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for grants under this competition.

(1) The maximum composite score for all of these criteria is 100 points.

(2) The maximum score for each criterion is indicated in parentheses.

(a) *Meeting the purposes of the authorizing statute.* (10 points). The Secretary considers how well the project will meet the purpose of the Even Start Family Literacy Program for federally recognized Indian tribes and tribal organizations, which under sections 1201 and 1202(a)(1)(C) of the ESEA is to help break the cycle of poverty and illiteracy by awarding grants for projects that—

- Improve the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribe and tribal organization projects;
- Are implemented through cooperative projects that build on existing community resources to create a new range of services for Indian tribe and tribal organization projects;
- Promote achievement of the National Education Goals; and
- Assist children and adults from low-income families to achieve to challenging State content standards and challenging State student performance standards.

(b) *Need for project.* (15 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

Note: The Secretary invites applicants to address such factors as the following: the number of families in the area who need Even Start services, the lack of availability of comprehensive family literacy services for that population, other resources that will be used to benefit project participants, and any other factors that the applicant considers relevant to the extent of need for the project.

(c) *Significance.* (10 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(ii) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(d) *Quality of the project design.* (15 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

Note: In designing the project, an eligible applicant must propose a project that incorporates, at a minimum, the following program elements required by section 1205 of the ESEA:

(A) Identification and recruitment of families most in need of services provided under the Even Start Family Literacy Program, as indicated by a low level of income, a low level of adult literacy or English language proficiency of the eligible parent or parents, and other need-related indicators.

(B) Screening and preparation of parents, including teenage parents and children, to enable those parents to participate fully in the activities and services provided under the Even Start Family Literacy Program, including testing, referral to necessary counseling, other developmental and support services, and related services.

(C) Design that accommodates the participants' work schedule and other responsibilities, including the provision of support services, when those services are unavailable from other sources, but are necessary for participation in the activities assisted under the Even Start Family Literacy Program, such as—

- Scheduling and location of services to allow joint participation by parents and children;
- Child care for the period that parents are involved in the project; and
- Transportation to enable parents and their children to participate in the project.

(D) High-quality, intensive instructional programs that promote adult literacy and empower parents to support the educational growth of their children, developmentally appropriate early childhood educational services, and preparation of children for success in regular school programs.

(E) Special training of staff, including child care staff, to develop the skills necessary to work with parents and young children in the full range of instructional services offered through the Even Start Family Literacy Program.

(F) Providing and monitoring of integrated instructional services to participating parents and children through home-based programs.

(G) Operation on a year-round basis, including the provision of some program services, instructional or enrichment, during the summer months.

(H) Coordination with—

- Programs assisted under other parts of Title I and other programs under the ESEA;
- Any relevant programs under the Adult Education Act, the Individuals with Disabilities Education Act, and the Job Training Partnership Act; and
- The Head Start program, volunteer literacy programs, and other relevant programs.

(I) Ensuring that the proposed project will serve those families most in need of the activities and services provided by the Even Start Family Literacy Program.

(J) An independent evaluation of the project.)

(e) *Quality of project services*. (20 points). The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

Note: An eligible applicant must propose a project that has ''high-quality, intensive instructional programs'' in the three core instructional areas (early childhood education, adult education, and parenting education), as required by section 1205(d) of the ESEA. Concerning the quality of project services, the Secretary invites applicants to describe the level of intensity in these three core instructional services that the applicant believes sufficient to produce positive and sustainable outcomes for families, and how the project will provide that level of intensity of services.

(f) *Quality of project personnel*. (5 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(g) *Adequacy of resources*. (5 points.) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

Note: Applicants may address this criteria in any way that is reasonable. An eligible applicant must provide an increasing local project share over the grant period (at least the following amounts: 10% in the first year, 20% in the second year, 30% in the third year, and 40% in the fourth year), as required by section 1204(b) of the ESEA. In addressing adequacy of resources, the Secretary invites applicants to describe the resources that they will use to increase the amount of the local project's share over the four years of the grant, which will contribute to the applicant's ability to sustain the project at the end of the Federal funding.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iii) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(h) *Quality of the management plan*. (10 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(i) *Quality of project evaluation*. (10 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: Patricia McKee (CFDA #84.258), Compensatory Education Programs, Room 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC 20202–4725

or,

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: Patricia McKee (CFDA #84.258), Compensatory Education Programs, Room 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, and various assurances and certifications.

a. Instructions for the Application Narrative.

b. Estimated Public Reporting Burden Statement.

c. Notice to All Applicants.

d. Objectives and Performance Indicators for the Even Start Family Literacy Program.

e. Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

f. Budget Information—Non-Construction Programs (ED Form No. 524) and instruction.

g. Assurances—Non-Construction Programs (Standard Form 424B).

h. Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 6/90).

i. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

j. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

An applicant may submit information on photostatic copies of the application, budget forms, assurances, and certifications. However, the application form, assurances, and certifications must each have an original signature. No grant may be awarded unless a completed application form, including the signed assurances and certifications, have been received.

FOR FURTHER INFORMATION CONTACT: Laura Chow, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW (4400, Portals), Washington, DC 20202–6132. Telephone (202) 260–2683. 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.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G-Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. section 6362(a)(1)(C).

Dated: May 7, 1998.

Gerald N. Tirozzi,

Assistant Secretary, Elementary and Secondary Education.

Instructions for the Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of the selection criteria in the order in which the criteria are listed in this application package; and

3. Provide the following in response to the attached ''Notice to all Applicants'': (1) a reference to the portion of the application in which information appears as to how the applicant is addressing steps to promote equitable access and participation, or (2) a separate statement that contains that information.

4. Provide a copy of the signed set of assurances specified in section 14306(a) of the ESEA (20 U.S.C. 8856(a)) that the applicant has filed with its SEA and that is applicable to this grant application.

5. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications for similar programs generally meet this page limit.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is 1810–0540. The time required to complete this information collection is estimated to average 15 hours per response, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202–4651. If you

have comments or concerns regarding the status of your individual submission of this form, write directly to: Patricia McKee, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW, Room 4400, Portals Building, Washington D.C. 20202–6132.

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *All Applicants for New Awards Must Include Information in Their Applications To Address This New Provision in Order To Receive Funding Under This Program.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

Objectives and Performance Indicators for the Even Start Family Literacy Program

For your information, following are objectives and performance indicators for the Even Start Family Literacy Program (Part B of Title I of the ESEA) that the Department has developed in accordance with the Government Performance and Results Act.

Objective 1. The literacy of participating families will improve.

1.1 *Adult literacy achievement.* Increasing percentages of adults will achieve significant learning gains on literacy measures. *In 1996, 53% of adults achieved and posttest a moderate-to large-sized gain between pretest on a test of functional math skills, 19% on a test of functional reading skills, 17% on a test of math achievement, and 14% on a test of reading achievement.*

1.2 *Adult educational attainment.* Increasing percentages of adults will obtain their high school diploma or equivalent. *In 1996, 10% of adults earned a GED since participating in Even Start.*

1.3 *Children's school readiness and success.* Increasing percentages of children participating in Even Start will attain significant gains on measures of school readiness and achievement. *In 1996, 80% of children made better than expected gains on a test of school readiness, and 63% achieved moderate to large gains on a test of language development.*

1.4 *Parenting skills.* Increasing percentages of parents will show significant gains on measures of parenting skills, knowledge, and expectations for their children. *In 1996, 41% of parents scored 75% or higher correct on the posttest measuring the quality of cognitive stimulation and emotional support provided to children in the home.*

Objective 2. Self-sufficiency outcomes of participating families will improve.

2.1 *Adult employment.* Increasing percentages of adults will attain employment during or after participating in Even Start. *In 1996, 13% of parents unemployed at intake found employment by the end of the year.*

2.2 *Continuing adult education.* Increasing percentages of adults will continue in their education.

Objective 3. Even Start projects will reach their target population of families that are most in need of services.

3.1 *Recruitment of most in need.* The projects will recruit low-income, disadvantaged families with low literacy levels. *In 1996, 71% of families had less*

than $12,000 in annual income and 47% of parents had less than a ninth grade education at intake.

Objective 4. Local Even Start projects will provide comprehensive instructional and support services of high quality to all families in a cost-effective manner.

4.1 *Service hours.* Projects will offer increasingly higher levels of service hours annually. *In 1996, projects averaged 371 hours of adult education, 201 hours of parenting education, and 530 hours of early childhood education.*

4.2 *Participation, retention and continuity.* Projects will increasingly improve retention and continuity of services. *In 1996, 60% of families were expected to continue. The adult education participation national average in 1996 was 114 hours, parenting education, 27 hours.*

4.3 *Local collaborations.* Projects will increasingly promote high-quality, cost-effective collaborations. *In 1996, on average, projects had 11 collaborators.*

Objective 5. The Department of Education will provide effective guidance and technical assistance and will identify and disseminate reliable information on effective approaches.

5.1 *Federal technical assistance.* An increasing percentage of local project directors will be satisfied with technical assistance and guidance.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 5 8

TITLE: Even Start Family Literacy Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant,' " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change

For Material Change Only:
year _____ quarter ____
date of last report

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*:

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*

$

10. a. Name and Address of Lobbying ~~Entity~~ Registrant *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

~~**11. Amount of Payment** *(check all that apply):*~~

~~$ _____ ☐ actual ☐ planned~~

~~**12. Form of Payment** *(check all that apply):*~~

~~☐ a. cash~~
~~☐ b. in-kind; specify: nature _____~~
~~value _____~~

~~**13. Type of Payment** *(Check all that apply):*~~

~~☐ a. retainer~~
~~☐ b. one-time fee~~
~~☐ c. commission~~
~~☐ d. contingent fee~~
~~○ e. deferred~~
~~☐ f. other; specify: _____~~

~~**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**~~

~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~

~~**15. Continuation Sheet(s) SF-LLL attached:** ☐ Yes ☐ No~~

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ **Date:**

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate~~. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

[FR Doc. 98–12653 Filed 5–11–98; 8:45 am]
BILLING CODE 4000–01–C

federal register

Tuesday
May 12, 1998

Part X

President

Presidential Determination No. 98–21—Presidential Determination on the Proposed Agreement for Cooperation Between the United States of America and Ukraine Concerning Peaceful Uses of Nuclear Energy

Federal Register
Vol. 63, No. 91
Tuesday, May 12, 1998

Presidential Documents

Title 3—

The President

Presidential Determination No. 98–21 of April 28, 1998

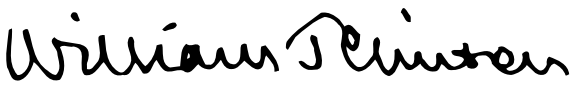
Presidential Determination on the Proposed Agreement for Cooperation Between the United States of America and Ukraine Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation Between the United States of America and Ukraine Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register.**



THE WHITE HOUSE,
Washington, April 28, 1998.

[FR Doc. 98–12816
Filed 5–11–98; 8:45 am]
Billing code 4710–10–M

Reader Aids

Federal Register

Vol. 63, No. 91

Tuesday, May 12, 1998

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Laws	**523–5227**

Presidential Documents

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The United States Government Manual	**523–5227**

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Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

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FEDERAL REGISTER PAGES AND DATES, MAY

24097–24382 1
24383–24738 4
24739–24910 5
24911–25152 6
25153–25386 7
25387–25746 8
25747–26062 11
26063–26420 12

CFR PARTS AFFECTED DURING MAY

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.

3 CFR

Proclamations:
7088 24383
7089 25145
7090 25147
7091 25149
7092 25151
7093 26415
Executive Orders:
13081 24385
Administrative Orders:
Presidential Determinations:
No. 98–21 of April 28, 1998 26419

5 CFR

1605 24380

7 CFR

301 .....25153, 25747, 25748
979 25387
Proposed Rules:
1 24467
210 .....24686, 25569
220 .....24686, 25569
271 .....24985, 26250
278 .....24985, 26250
279 .....24985, 26250
1710 24995
1714 24995

9 CFR

Proposed Rules:
93 26099
130 24473

10 CFR

11 25156
25 25156
430 25996

12 CFR

Ch. III 25157
Ch. VII 24097
330 25750
703 24103
704 24103
1720 26063
Proposed Rules:
935 25718
938 25718
970 25718

13 CFR

120 24739
Proposed Rules:
120 24753

14 CFR

11 25572
36 26063
39 .....24210, 24387, 24389, 24740, 24742, 24911, 24913, 24914, 24915, 25158, 25389, 26063
71 .....24389, 24390, 24744, 24745
97 .....25160, 25161
135 25572
Proposed Rules:
39 .....24136, 24138, 24756, 24758, 24760, 24762, 25179, 25180, 25182, 25781, 25787, 26100, 26102, 26104, 26106, 26107, 26109, 26111, 26112
71 .....24140, 24500, 24764, 24995

15 CFR

270 24917
911 24917

16 CFR

260 24240
Proposed Rules:
Ch. I 24996

17 CFR

4 24390
Proposed Rules:
1 24142
34 26114
35 26114
423 25417

19 CFR

101 24746
351 24391
354 24391

20 CFR

404 24927
416 24927

21 CFR

165 25764
184 24416
430 26066
431 26066
432 26066
433 26066
436 26066
440 26066
441 26066
442 26066
443 26066
444 26066
446 26066
448 26066
449 26066
450 26066
452 26066

453 26066
455 26066
460 26066
510 ..... 24105, 25163
522 ..... 24106, 24420
529 ..... 24105, 25163
556 24106
558 24420
801 24934
803 26069
804 26069
1240 269077

Proposed Rules:

101 ..... 24253, 24593
120 24253
165 25789
430 26127
431 26127
432 26127
433 26127
436 26127
440 26127
441 26127
442 26127
443 26127
444 26127
446 26127
449 26127
450 26127
452 26127
453 26127
455 26127
460 26127
803 26129
804 26129
874 25794

22 CFR

41 24107

24 CFR

3280 26386

Proposed Rules:

6 26022
180 26022
203 24736
570 26022
888 24846
3280 26392

26 CFR

Proposed Rules:

1 ..... 24765, 25796

28 CFR

2 ..... 25769, 25770, 25771
51 24108

29 CFR

4231 24421

Proposed Rules:

1910 24501
2700 25183

30 CFR

202 26362
203 24747
216 26362
250 26362
918 25391

Proposed Rules:

218 25187
250 25187
256 25187
934 25428

31 CFR

285 25136

32 CFR

323 25772
701 25773
706 24747
2101 25736

33 CFR

100 ..... 24109, 24425
117 24426
165 ..... 24109, 24425, 25164
207 24427

Proposed Rules:

100 25187
165 25189

36 CFR

223 24110

37 CFR

260 25394

39 CFR

241 25166

40 CFR

51 24429
52 ..... 24114, 24115, 24434, 24435, 24748, 24935, 25167, 25415, 25773
60 24436
62 24841
63 ..... 24116, 24436, 24749, 26078
76 24116
80 24117
81 ..... 24445, 24748
85 24429
86 24446
148 24596
156 25168
180 ..... 24118, 24119, 24450, 24451, 24452, 24936, 24939, 24941, 24949, 24955, 25775, 26082, 26089, 26097
261 ..... 24976, 24963
268 24596
271 24453
279 24963
281 24453
300 25169
302 24596
721 24120

Proposed Rules:

22 25006
51 25902
52 ..... 25191, 25796
59 25006
60 24515
63 ..... 24515, 24765
76 25902
96 25092
141 ..... 25430, 26137
142 25430
258 25430
260 25430
261 ..... 25006, 25430, 25796
264 25430
265 25430
266 25430
270 25430
279 ..... 25006, 25430

42 CFR

60 25777
409 26252
410 ..... 26252, 26318
411 26252
412 26318
413 ..... 26252, 26318
415 26318
422 25360
424 26252
483 26252
485 26318
489 26252

Proposed Rules:

405 25576
412 25576
413 25576

44 CFR

206 24969

Proposed Rules:

206 ..... 24143, 25010

45 CFR

Proposed Rules:

142 25272

47 CFR

0 ..... 24121, 25778
1 ..... 24121, 24126
43 24120
63 24120
64 24120
68 25170
73 ..... 24454, 24970

Proposed Rules:

22 26138
61 25811
64 26138
73 ..... 24517, 24518
76 24145

48 CFR

970 25779
5243 24129
5252 24129

Proposed Rules:

1 25382
4 25382
12 25382
14 25382
19 25382
26 25382
27 25382
32 25382
41 25382
52 25382
204 25438
208 25438
213 25438
216 25438
217 25438
219 25438
223 25438
225 25438
237 25438
242 25438
246 25438
247 25438
253 25438

49 CFR

223 24630
232 24130
239 24630
393 24454

Proposed Rules:

544 24519

50 CFR

17 25177
600 ..... 24212, 24970, 26250
648 25415
660 ..... 24970, 24973, 26250
679 24984

Proposed Rules:

217 24148
300 24751
600 24522
622 24522
648 25442

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 MAY 12, 1998

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Synthetic organic chemical manufacturing industry; published 5-12-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Azoxystrobin; published 5-12-98
- Imidacloprid; correction; published 5-12-98
- Myclobutanil; published 5-12-98

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Manufactured home construction and safety standards:
- Metal roofing requirements in high wind areas
  - Interpretative bulletin; published 5-12-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Airbus; published 4-7-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Spearmint oil produced in Far West; comments due by 5-19-98; published 4-29-98

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Black stem rust; comments due by 5-22-98; published 4-7-98

AGRICULTURE DEPARTMENT

Grants and cooperative agreements to State and local govenments, university, hospitals, and other non-profit organizations; comments due by 5-18-98; published 2-17-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- West Coast States and Western Pacific fisheries—
  - Pacific coast groundfish; comments due by 5-22-98; published 4-22-98
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 5-21-98; published 5-6-98

Magnuson Act provisions
- Essential fish habitat; comments due by 5-20-98; published 5-11-98

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:
- Trading hours; approval of changes; comments due by 5-18-98; published 5-1-98

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Civil defense costs; comments due by 5-19-98; published 3-20-98
- Mandatory Government source inspection; comments due by 5-19-98; published 3-20-98

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural Gas Policy Act:
- Interstate natural gas pipelines—
  - Business practice standards; comments due by 5-22-98; published 4-22-98

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Arizona; comments due by 5-18-98; published 4-1-98
- Missouri; comments due by 5-22-98; published 4-22-98
- Vermont; comments due by 5-22-98; published 4-22-98
- Washington; comments due by 5-21-98; published 4-21-98

Air quality planning purposes; designation of areas:
- Nebraska; comments due by 5-21-98; published 4-23-98

Drinking water:
- National primary drinking water regulations—
  - Variances and exemptions; revisions; comments due by 5-20-98; published 4-20-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Propazine; comments due by 5-18-98; published 3-18-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Telecommunications Act of 1996; implementation—
  - Broadcast ownership and other rules; biennial review; comments due by 5-22-98; published 3-31-98

Radio stations; table of assignments:
- Arkansas; comments due by 5-18-98; published 4-10-98

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Civil defense costs; comments due by 5-19-98; published 3-20-98
- Mandatory Government source inspection; comments due by 5-19-98; published 3-20-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:
- Food labeling—
  - Nutrient content claims; ''healthy'' definition; comments due by 5-19-98; published 3-18-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:
- Medicare integrity program establishment, fiscal intermediary and carrier functions, and conflict of interest requirements; comments due by 5-19-98; published 3-20-98

INTERIOR DEPARTMENT

Land Management Bureau

Range management:
- Grazing administration—
  - Alaska; livestock; comments due by 5-19-98; published 3-20-98

INTERIOR DEPARTMENT

Fish and Wildlife Service

Alaska National Wildlife Refuges:
- Kenai National Wildlife Refuge; seasonal closure of Moose Range Meadows public access easements; comments due by 5-18-98; published 3-18-98

Endangered and threatened species:
- Gentner's fritillary; comments due by 5-22-98; published 3-23-98
- Northern Idaho ground squirrel; comments due by 5-22-98; published 3-23-98

INTERIOR DEPARTMENT

National Park Service

Special regulations:
- Appalachian National Scenic Trail, ME et al.; snowmobile routes; comments due by 5-18-98; published 3-19-98

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Missouri; comments due by 5-22-98; published 4-22-98

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:
- Benefits applicants and petitioners fingerprinting fees and requirements for conducting criminal background checks before final naturalization adjudication; comments due by 5-18-98; published 3-17-98

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Civil defense costs; comments due by 5-19-98; published 3-20-98
- Mandatory Government source inspection; comments due by 5-19-98; published 3-20-98

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
- Federal credit unions acting as trustees and

custodians of pension and retirement plans; comments due by 5-20-98; published 3-24-98

STATE DEPARTMENT

Visas; nonimmigrant documentation:

New applications from aliens whose prior applications were refused; nonacceptance-for-six-months policy; comments due by 5-18-98; published 3-17-98

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:

Parker International Waterski Marathon; comments due by 5-18-98; published 4-2-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 5-20-98; published 4-20-98

Boeing; comments due by 5-18-98; published 4-3-98

British Aerospace; comments due by 5-21-98; published 4-21-98

Dassault; comments due by 5-20-98; published 4-20-98

Dornier; comments due by 5-21-98; published 4-21-98

Empresa Brasileira de Aeronautica S.A.; comments due by 5-21-98; published 4-21-98

Empresa Brasileira de Aeronautica, S.A; comments due by 5-21-98; published 4-21-98

Eurocopter France; comments due by 5-19-98; published 3-20-98

Maule Aerospace Technology Corp.; comments due by 5-22-98; published 3-24-98

McDonnell Douglas; comments due by 5-18-98; published 4-2-98

Saab; comments due by 5-21-98; published 4-21-98

Airworthiness standards:

Transport category airplanes—

Cargo or baggage compartments; fire safety standards; comments due by 5-18-98; published 2-17-98

Class E airspace; comments due by 5-18-98; published 3-30-98

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Side impact protection—

Side impact test dummy specifications; lumbar spine inserts-spacers and ribcage damper pistons; comments due by 5-18-98; published 4-2-98

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol, tobacco, and other excise taxes:

Brady Handgun Violence Prevention Act; implementation—

National instant criminal background check system; firearms dealer, importer, and manufacturer requirements; comments due by 5-20-98; published 2-19-98

Alcohol; viticultural area designations:

Chiles Valley, CA; comments due by 5-19-98; published 3-20-98

TREASURY DEPARTMENT

Customs Service

Organization and functions; field organization, ports of entry, etc.:

Fort Myers, FL; comments due by 5-18-98; published 3-17-98

TREASURY DEPARTMENT

Fiscal Service

Financial management services:

Debt Collection Imrovement Act of 1996—

Barring delinquent debtors from obtaining Federal loans or loan insurance or guarantees; comments due by 5-22-98; published 4-22-98

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 3579/P.L. 105–174

1998 Supplemental Appropriations and Rescissions Act (May 1, 1998; 112 Stat. 58)

Last List April 29, 1998

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